1–21–97
Vol. 62 No. 13
Pages 2891–3192

federal register

Tuesday
January 21, 1997

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV–95–305]

Shelled Almonds and Almonds in the Shell; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the United States Standards for Grades of Shelled Almonds and the United States Standards for Grades of Almonds in the Shell. The Agricultural Marketing Service (AMS), in cooperation with the almond industry and other interested parties, develops and revises standards of quality, condition, quantity, grade, and packaging in order to facilitate commerce by providing buyers, sellers, and quality assurance personnel uniform language and criteria for describing various levels of quality and condition as valued in the marketplace.

The revision will change the foreign material tolerances; the tolerance for live insects inside the shell; remove the language ''appearance of the lot'' from all definitions in the standards; combine tolerances for chipping and scratching and split and broken in the U.S. Standard Sheller Run grade; revise current definitions; and add new definitions.

EFFECTIVE DATE: March 24, 1997.

FOR FURTHER INFORMATION CONTACT: Frank O'Sullivan, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2065 South Building, Washington, D.C. 20090–6456, or call (202) 720–2185.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The United States standards issued pursuant to the Act, and issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of almonds who are subject to regulation under these standards and approximately 7,000 producers of almonds. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. A majority of handlers and producers of almonds may be classified as small entities.

The revisions will change the foreign material tolerances; the tolerance for live insects inside the shell; remove the language ''appearance of the lot'' from all definitions in the standards; combine tolerances for chipping and scratching and split and broken in the U.S. Standard Sheller Run grade; revise current definitions; and add new definitions. These changes are being made in order to bring the standards into conformity with current cultural, harvesting and marketing practices. (The standards were last revised in August 1960 and July 1964, respectively.) Accordingly, AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

Agencies periodically review existing regulations. An objective of the review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The proposed rule, United States Standards for Grades of Shelled Almonds, and the United States Standards for Grades of Almonds in the Shell, was published in the Federal Register on April 22, 1996 (61 FR 17580–17586).

The Almond Board of California's Grades Subcommittee (ABCGS) requested that the standards be revised in order to bring them into conformity with current cultural, harvesting and marketing practices.

The 60-day comment period ended June 21, 1996, and a total of seven comments were received from growers, handlers, shippers, and receivers.

A copy of the proposed rule was provided to the Agricultural Research Service (ARS) for help in identifying studies, data collection or other information concerning the possible effect of the proposed revision on pesticide use. ARS was unable to identify any relevant information.

Three comments were in favor of the proposal in its entirety. These commentors agreed that due to changes in current cultural, harvesting, and marketing practices of almonds, it was necessary to change the standards as proposed.

One commentor was in favor of the proposal with one exception, the zero tolerance for glass and metal in the U.S. Standards for Grades of Shelled Almonds ''could be devastating especially in a year of low prices to processors.'' The commentor states that ''a customer may claim to have found a small piece of glass or metal after the product has been graded and shipped which would cause rejection of the whole load.'' AMS disagrees that this would be a problem for the industry. Furthermore, an inspection at any point along the marketing chain may be requested. In addition, the ABCGS, which represents a majority of the industry, contends that the zero tolerance for glass and metal, which is

included in the tolerances for foreign material, reflects the current requirements of most buyers and meets current food safety concerns.

The three remaining comments were in favor of the proposal except for its provisions regarding embedded shell as it pertains to foreign material; the definition of similar varietal characteristics; and, definitions and tolerances for chipped and scratched kernels as well as split and broken kernels. All three comments expressed concern over ''embedded shell'' as a defect in the U.S. Standards for Grades of Almonds in the Shell. The commentors contend that almond shell that has become embedded in the almond nutmeat—embedded shell, should be considered as foreign material. AMS disagrees with classifying embedded shell as foreign material. The definition of foreign material in the standards does not include almonds or almond kernels, and has historically been reserved for material other than pieces of almond or almond kernels. Currently, embedded shell is scored as damage against the tolerance for ''other defects.'' Additionally, AMS understands that the industry is forming a working group to study this issue and to make a recommendation to AMS. Revising the standards to include the commentors' recommendation at this time would be premature in light of this study. Therefore, no change is being made to the rule in response to these comments.

Two of the three comments expressed concern over the proposed revision to the definition of similar varietal characteristics. One of the commentors raised the concern that the similarity in the shape and appearance is critical. The other commentor raised the concern that this definition is being ''relaxed where varieties are not properly identified.'' AMS disagrees. The proposed definition of similar varietal characteristics includes ''kernels that are similar in shape and appearance.'' Unless the lot is specified as ''California,'' the lot must have kernels that are similar in shape and appearance. Therefore, this should not relax the identification of varieties but enhance it. No change is being made to the rule in response to these comments.

Two of the three comments expressed concern over the proposed revision to the definitions of, and the tolerances for the defects ''chipping and scratching,'' and ''split and broken.'' One of the commentors raised the concern that the tolerances for chipping and scratching and split and broken in the U.S. Sheller Run grade ''* * * need to be measured separately.'' AMS is of the view that the proposed changes do address the defects separately. In the U.S. Standards for Grades of Shelled Almonds, § 51.2109 U.S. Sheller Run grade, paragraph (c) For kernels damaged by chipping and/or scratching or split and broken allows 35 percent, provided that not more than 15 percent shall be allowed for split and broken. The intent of this section is that chipped and/or scratched kernels have to be measured separately from broken and split kernels. The other commentor stated that the ''removal of the separate control limits for the two defects (chipping and scratching or split and broken) will result in wide product variance.'' AMS agrees that there will be some product variance in the U.S. Standards for Grades of Shelled Almonds, § 51.2109 U.S. Sheller Run grade, but only for chipped and scratched kernels. The proposed changes would allow up to 35 percent chipped and scratched kernels (with 0 percent split and broken), or any combination of the two types of defects totaling 35 percent (or less), as long as the percentage of split and broken does not exceed 15 percent. A contract between interested parties may specify a more restrictive tolerance for these defects. Chipped and scratched kernels essentially retain their full shape, but have superficial chips and scratches of the pellicle and meat. Split and broken kernels are those with ⅛ or more of the kernel split or broken off. In addition, ABCGS views chipped and scratched kernels as less objectionable than split and broken kernels. Therefore, there will be some product variance but only for chipped and scratched kernels, which is less objectionable than split and broken kernels, and contract specifications can further restrict these tolerances. Therefore, no change is being made to the rule in response to these comments.

Lastly, one of the three comments suggested revisions to the definitions of ''whole,'' ''split or broken kernels,'' and ''injury.'' The commentor suggested extensive revisions to these definitions in terms of redefining what they mean. AMS is of the view that these definitions have served for the more than 30 years and they have become common terminology among those who buy and sell commercial volumes of almonds. Changing these definitions, when no need has been adequately demonstrated, could disrupt the efficient marketing of almonds. Therefore, no change is being made to the rule in response to this comment.

AMS develops and improves standards of quality, condition, grade, and packaging in order to facilitate efficient marketing. The provisions of the proposed rule are being finalized without any changes.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR Part 51 is amended as follows:

PART 51—[AMENDED]

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. In Part 51, Subpart—United States Standards for Grades of Almonds in the Shell is revised to read as follows:

Subpart—United States Standards for Grades of Almonds in the Shell

Grades

Sec.
51.2075 U.S. No. 1.
51.2076 U.S. No. 1 Mixed.
51.2077 U.S. No. 2.
51.2078 U.S. No. 2 Mixed.

Application of Tolerances

51.2079 Application of tolerances.

Determination of Grade

51.2080 Determination of grade.

Definitions

51.2081 Similar varietal characteristics.
51.2082 Loose extraneous and foreign material.
51.2083 Clean.
51.2084 Fairly bright.
51.2085 Fairly uniform color.
51.2086 Well dried.
51.2087 Decay.
51.2088 Rancidity.
51.2089 Damage.
51.2090 Serious damage.
51.2091 Thickness.

Subpart—United States Standards for Grades of Almonds in the Shell

Grades

§ 51.2075 U.S. No. 1.

''U.S. No. 1'' consists of almonds in the shell which are of similar varietal characteristics and free from loose extraneous and foreign material. The shells are clean, fairly bright, fairly uniform color, and free from damage caused by discoloration, adhering hulls, broken shells or other means. The kernels are well dried, free from decay, rancidity, and free from damage caused by insects, mold, gum, skin discoloration, shriveling, brown spot or other means.

(a) Unless otherwise specified, the almonds are of a size not less than 28/64 of an inch (11.1 mm) in thickness.

(b) In order to allow for variations incident to proper grading and handling, the following tolerances are provided as specified:

(1) *For external (shell) defects.* 10 percent, by count, for almonds which fail to meet the requirements of this grade other than for variety and size;

(2) *For dissimilar varieties.* 5 percent, by count, including therein not more than 1 percent for bitter almonds mixed with sweet almonds;

(3) *For size.* 5 percent, by count, for almonds which are smaller than the specified minimum thickness;

(4) *For loose extraneous and foreign material.* 2 percent, by weight, including therein not more than 1 percent which can pass through a round opening 24/64 inch (9.5 mm) in diameter: Provided, that such material is practically free from insect infestation; and,

(5) *For internal (kernel) defects.* 10 percent, by count, for almonds with kernels failing to meet the requirements of this grade: Provided, that not more than one-half of this tolerance or 5 percent shall be allowed for kernels affected by decay or rancidity, damaged by insects or mold or seriously damaged by shriveling: And provided further, that no part of this tolerance shall be allowed for live insects inside the shell.

§ 51.2076 U.S. No. 1 Mixed.

''U.S. No. 1 Mixed'' consists of almonds in the shell which meet the requirements of U.S. No. 1 grade, except that two or more varieties of sweet almonds are mixed.

§ 51.2077 U.S. No. 2.

''U.S. No. 2'' consists of almonds in the shell which meet the requirements of U.S. No. 1 grade, except that an additional tolerance of 20 percent shall be allowed for almonds with shells damaged by discoloration.

§ 51.2078 U.S. No. 2 Mixed.

''U.S. No. 2 Mixed'' consists of almonds in the shell which meet the requirements of U.S. No. 2 grade, except that two or more varieties of sweet almonds are mixed.

Application of Tolerances

§ 51.2079 Application of tolerances.

The tolerances for the foregoing grades are applied to the entire lot of almonds, based upon a composite sample drawn from containers throughout the lot.

Determination of Grade

§ 51.2080 Determination of grade.

In grading the inspection sample, the percentage of loose hulls, pieces of shell, chaff and foreign material is determined on the basis of weight. Next, the percentages of nuts which are of dissimilar varieties, undersize or have adhering hulls or defective shells are determined by count, using an adequate portion of the total sample. Finally, the nuts in that portion of the sample are cracked, and the percentage having internal defects is determined on the basis of count.

Definitions

§ 51.2081 Similar varietal characteristics.

Similar varietal characteristics means that the almonds are similar in shape, and are reasonably uniform in degree of hardness of the shells, and that bitter almonds are not mixed with sweet almonds. For example, hard-shelled varieties, semi-soft shelled varieties, soft-shelled varieties and paper-shelled varieties are not mixed together, nor are any two of these types mixed under this definition.

§ 51.2082 Loose extraneous and foreign material.

Loose extraneous and foreign material means loose hulls, empty broken shells, pieces of shells, external insect infestation and any substance other than almonds in the shell or almond kernels.

§ 51.2083 Clean.

Clean means that the shell is practically free from dirt and other adhering foreign material.

§ 51.2084 Fairly bright.

Fairly bright means that the shells show good characteristic color.

§ 51.2085 Fairly uniform color.

Fairly uniform color means that the shells do not show excessive variation in color, whether bleached or natural.

§ 51.2086 Well dried.

Well dried means that the kernel is firm and brittle, not pliable or leathery.

§ 51.2087 Decay.

Decay means that part or all of the kernel has become decomposed.

§ 51.2088 Rancidity.

Rancidity means that the kernel is noticeably rancid to taste.

§ 51.2089 Damage.

Damage means any defect which materially detracts from the appearance of the individual kernel, or the edible or shipping quality of the almond. Any one of the following defects or combination thereof, the seriousness of which exceeds the maximum allowed for any one defect shall be considered as damage:

(a) Discoloration of the shell which is medium gray to black and affects more than one-eighth of the surface in the aggregate. Normal variations of a reddish or brownish color shall not be considered discoloration;

(b) Adhering hulls which cover more than 5 percent of the shell surface in the aggregate;

(c) Broken shells when a portion of the shell is missing, or the shell is broken or fractured to the extent that moderate pressure will permit the kernel to become dislodged;

(d) Insect injury when the insect, web or frass is present or there is definite evidence of insect feeding;

(e) Mold, when visible on the kernel, except when white or gray and easily rubbed off with the fingers;

(f) Gum, when a film of shiny, resinous appearing substance affects an area aggregating more than the equivalent of a circle one-quarter inch (6.4 mm) in diameter;

(g) Skin discoloration when more than one-half of the surface of the kernel is affected by very dark or black stains contrasting with the natural color of the skin;

(h) Shriveling when the kernel is excessively thin for its size, or when materially withered, shrunken, leathery, tough or only partially developed: Provided, that partially developed kernels are not considered damaged if more than three-fourths of the pellicle is filled with meat. An almond containing two kernels shall not be classed as damaged if either kernel has more than three-fourths of the pellicle filled with meat; and,

(i) Brown spot which affects an aggregate area on the kernel greater than the area of a circle one-eighth inch (3.2 mm) in diameter.

§ 51.2090 Serious damage.

Serious damage means any defect which makes a kernel or piece of kernel unsuitable for human consumption, and includes decay, rancidity, insect injury and damage by mold. The following defect shall be considered as serious damage: Shriveling when the kernel is seriously withered, shrunken, leathery, tough or only partially developed: Provided, that partially developed kernels are not considered seriously damaged if more than one-fourth of the pellicle is filled with meat.

§ 51.2091 Thickness.

Thickness means the greatest dimension between the two semi-flat surfaces of the shell measured at right angles to a plane extending between the seams of the shell.

3. In Part 51, Subpart—United States Standards for Grades of Shelled Almonds is revised to read as follows:

Subpart—United States Standards for Grades of Shelled Almonds

Grades

Sec.
51.2105 U.S. Fancy.
51.2106 U.S. Extra No. 1.
51.2107 U.S. No. 1.
51.2108 U.S. Select Sheller Run.
51.2109 U.S. Standard Sheller Run.
51.2110 U.S. No. 1 Whole and Broken.
51.2111 U.S. No. 1 Pieces.

Mixed Varieties

51.2112 Mixed varieties.

Size

51.2113 Size requirements.
51.2114 Tolerances for size.

Application of Tolerances

51.2115 Application of tolerances.

Definitions

51.2116 Similar varietal characteristics.
51.2117 Whole.
51.2118 Clean.
51.2119 Well dried.
51.2120 Decay.
51.2121 Rancidity.
51.2122 Insect injury.
51.2123 Foreign material.
51.2124 Doubles.
51.2125 Split or broken kernels.
51.2126 Particles and dust.
51.2127 Injury.
51.2128 Damage.
51.2129 Serious damage.
51.2130 Diameter.
51.2131 Fairly uniform in size.

Subpart—United States Standards for Grades of Shelled Almonds

Grades

§ 51.2105 U.S. Fancy.

''U.S. Fancy'' consists of shelled almonds of similar varietal characteristics which are whole, clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, doubles, split or broken kernels, particles and dust, and free from injury caused by chipped and scratched kernels, and free from damage caused by mold, gum, shriveling, brown spot or other means. (See §§ 51.2113 and 51.2114.)

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

(a) *For dissimilar varieties.* 5 percent, including not more than one-fifth of this amount, or 1 percent, for bitter almonds mixed with sweet almonds;

(b) *For doubles.* 3 percent;

(c) *For kernels injured by chipping and/or scratching.* 5 percent;

(d) *For foreign material.* One-twentieth of 1 percent (0.05 percent). No part of this percentage shall be allowed for glass and metal;

(e) *For particles and dust.* One-tenth of 1 percent (0.10 percent); and,

(f) *For other defects.* 2 percent, including not more than one-half of this amount, or 1 percent, for split or broken kernels, and including not more than one-half of the former amount, or 1 percent, for seriously damaged kernels.

§ 51.2106 U.S. Extra No. 1.

''U.S. Extra No. 1'' consists of shelled almonds of similar varietal characteristics which are whole, clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, doubles, split or broken kernels, particles and dust, and free from damage caused by chipped and scratched kernels, mold, gum, shriveling, brown spot or other means. (See §§ 51.2113 and 51.2114.)

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

(a) *For dissimilar varieties.* 5 percent, including not more than one-fifth of this amount, or 1 percent, for bitter almonds mixed with sweet almonds;

(b) *For doubles.* 5 percent;

(c) *For kernels damaged by chipping and/or scratching.* 5 percent;

(d) *For foreign material.* One-twentieth of 1 percent (0.05 percent). No part of this percentage shall be allowed for glass and metal;

(e) *For particles and dust.* One-tenth of 1 percent (0.10 percent); and,

(f) *For other defects.* 4 percent, including not more than one-fourth of this amount, or 1 percent, for split or broken kernels, and including not more than three-eighths of the former amount, or 1½ percent, for seriously damaged kernels.

§ 51.2107 U.S. No. 1.

''U.S. No. 1'' consists of shelled almonds of similar varietal characteristics which are whole, clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, doubles, split or broken kernels, particles and dust, and free from damage caused by chipped and scratched kernels, mold, gum, shriveling, brown spot or other means. (See §§ 51.2113 and 51.2114.)

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

(a) *For dissimilar varieties.* 5 percent, including not more than one-fifth of this amount, or 1 percent, for bitter almonds mixed with sweet almonds;

(b) *For doubles.* 15 percent;

(c) *For kernels damaged by chipping and/or scratching.* 10 percent;

(d) *For foreign material.* One-twentieth of 1 percent (0.05 percent). No part of this percentage shall be allowed for glass and metal;

(e) *For particles and dust.* One-tenth of 1 percent (0.10 percent); and,

(f) *For other defects.* 5 percent including not more than one-fifth of this amount, or 1 percent, for split or broken kernels, and including not more than three-tenths of the former amount, or 1½ percent, for seriously damaged kernels.

§ 51.2108 U.S. Select Sheller Run.

''U.S. Select Sheller Run'' consists of shelled almonds of similar varietal characteristics which are whole, clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, doubles, split or broken kernels, particles and dust, and free from damage caused by chipped and scratched kernels, mold, gum, shriveling, brown spot or other means. (See §§ 51.2113 and 51.2114.)

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

(a) *For dissimilar varieties.* 5 percent, including not more than one-fifth of this amount, or 1 percent, for bitter almonds mixed with sweet almonds;

(b) *For doubles.* 15 percent;

(c) *For kernels damaged by chipping and/or scratching.* 20 percent;

(d) *For foreign material.* One-tenth of 1 percent (0.10 percent). No part of this percentage shall be allowed for glass and metal;

(e) *For particles and dust.* One-tenth of 1 percent (0.10 percent);

(f) *For split and broken kernels.* 5 percent: Provided, that not more than two-fifths of this amount, or 2 percent, shall be allowed for pieces which will pass through a round opening 20/64 inch (7.9 mm) in diameter; and,

(g) *For other defects.* 3 percent, including not more than two-thirds of this amount, or 2 percent, for serious damage.

§ 51.2109 U.S. Standard Sheller Run.

''U.S. Standard Sheller Run'' consists of shelled almonds of similar varietal characteristics which are whole, clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, doubles, split or broken kernels, particles and dust, and free from damage caused by chipped and scratched kernels, mold, gum, shriveling, brown spot or other means. (See §§ 51.2113 and 51.2114.)

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

(a) *For dissimilar varieties.* 5 percent, including not more than one-fifth of this amount, or 1 percent, for bitter almonds mixed with sweet almonds;

(b) *For doubles.* 25 percent;

(c) *For kernels damaged by chipping and/or scratching or split and broken.* 35 percent; Provided, that not more than three-sevenths of this amount, or 15 percent, shall be allowed for split and broken: And Provided Further, that not more than one-third of this latter amount, or 5 percent, shall be allowed for pieces which will pass through a round opening 20/64 inch (7.9 mm) in diameter;

(d) *For foreign material.* Two-tenths of 1 percent (0.20 percent). No part of this percentage shall be allowed for glass and metal;

(e) *For particles and dust.* One-tenth of 1 percent (0.10 percent); and,

(f) *For other defects.* 3 percent, including not more than two-thirds of this amount, or 2 percent, for serious damage.

§ 51.2110 U.S. No. 1 Whole and Broken.

''U.S. No. 1 Whole and Broken'' consists of shelled almonds of similar varietal characteristics which are clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, doubles, particles and dust, and free from damage caused by mold, gum, shriveling, brown spot or other means.

(a) In this grade not less than 30 percent, by weight, of the kernels shall be whole. Doubles shall not be considered as whole kernels in determining the percentage of whole kernels.

(b) Unless otherwise specified, the minimum diameter shall be not less than 20/64 of an inch (7.9 mm). (See §§ 51.2113 and 51.2114.)

(c) In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

(1) *For dissimilar varieties.* 5 percent, including not more than one-fifth of this amount, or 1 percent, for bitter almonds mixed with sweet almonds;

(2) *For doubles.* 35 percent;

(3) *For foreign material.* Two-tenths of 1 percent (0.20 percent). No part of this percentage shall be allowed for glass and metal;

(4) *For particles and dust.* One-tenth of 1 percent (0.10 percent);

(5) *For undersize.* 5 percent; and,

(6) *For other defects.* 5 percent, including not more than three-fifths of this amount, or 3 percent, for serious damage.

§ 51.2111 U.S. No. 1 Pieces.

''U.S. No. 1 Pieces'' consists of shelled almonds which are not bitter, which are clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, particles and dust, and free from damage caused by mold, gum, shriveling, brown spot or other means.

(a) Unless otherwise specified, the minimum diameter shall be not less than 8/64 of an inch (3.2 mm). (See §§ 51.2113 and 51.2114.)

(b) In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

(1) *For bitter almonds mixed with sweet almonds.* 1 percent;

(2) *For foreign material.* Two-tenths of 1 percent (0.20 percent). No part of this percentage shall be allowed for glass and metal;

(3) *For particles and dust.* 1 percent; and

(4) *For other defects.* 5 percent, including not more than three-fifths of this amount, or 3 percent, for serious damage.

Mixed Varieties

§ 51.2112 Mixed varieties.

Any lot of shelled almonds designated as ''one type'' or undesignated as to type, which consists of a mixture of two or more dissimilar varieties which meet the other requirements of any of the grades of U.S. No. 1, U.S. Select Sheller Run, U.S. Standard Sheller Run, U.S. No. 1 Whole and Broken may be designated as: ''U.S. No. 1 Mixed;'' ''U.S. Select Sheller Run Mixed;'' ''U.S. Standard Sheller Run Mixed;'' ''U.S. No. 1 Whole and Broken Mixed;'' respectively; but no lot of any of these grades may include more than 1 percent of bitter almonds mixed with sweet almonds.

Size

§ 51.2113 Size requirements.

The size may be specified in terms of range in count of whole almond kernels per ounce or in terms of minimum, or minimum and maximum diameter. When a range in count is specified, the whole kernels shall be fairly uniform in size, and the average count per ounce shall be within the range specified. Doubles and broken kernels shall not be used in determining counts. Count ranges per ounce commonly used are shown below, but other ranges may be specified: Provided, that the kernels are fairly uniform in size.

Count Range Per Ounce
16 to 18, inclusive.
18 to 20, inclusive.
20 to 22, inclusive.
22 to 24, inclusive.
23 to 25, inclusive.
24 to 26, inclusive.
26 to 28, inclusive.
27 to 30, inclusive.
30 to 34, inclusive.
34 to 40, inclusive.
40 to 50, inclusive.
50 and smaller.

§ 51.2114 Tolerances for size.

(a) When a range is specified as, for example, ''18/20,'' no tolerance for counts above or below the range shall be allowed.

(b) When the minimum, or minimum and maximum diameter are specified, a total tolerance of not more than 10 percent, by weight, may fail to meet the specified size requirements: Provided, that not more than one-half of this amount, or 5 percent, may be below the minimum size specified.

Application of Tolerances

§ 51.2115 Application of tolerances.

The tolerances for the grades are to be applied to the entire lot, and a composite sample shall be taken for determining the grade. However, any container or group of containers in which the almonds are found to be materially inferior to those in the majority of the containers shall be considered a separate lot.

Definitions

§ 51.2116 Similar varietal characteristics.

Similar varietal characteristics means that the kernels are similar in shape and appearance. For example, long types shall not be mixed with short types, or broad types mixed with narrow types, and bitter almonds shall not be mixed with sweet almonds. Color of the kernels shall not be considered, since there is often a marked difference in skin color of kernels of the same variety.

(a) When a lot is specified as ''one type,'' all kernels shall be the same in shape and appearance; and,

(b) When a lot is specified and carton marked as ''California,'' kernels present may include any one or a combination of blanchable varieties within the ''California'' Marketing Classification. In addition, Nonpareil or similar types may be included provided that it does not exceed twenty-five percent (25%), by weight, of the lot.

§ 51.2117 Whole.

Whole means that there is less than one-eighth of the kernel chipped off or missing, and that the general contour of

the kernel is not materially affected by the missing part.

§ 51.2118 Clean.

Clean means that the kernel is practically free from dirt and other foreign substance.

§ 51.2119 Well dried.

Well dried means that the kernel is firm and brittle, and not pliable or leathery.

§ 51.2120 Decay.

Decay means that part or all of the kernel has become decomposed.

§ 51.2121 Rancidity.

Rancidity means that the kernel is noticeably rancid to the taste.

§ 51.2122 Insect injury.

Insect injury means that the insect, web, or frass is present or there is definite evidence of insect feeding.

§ 51.2123 Foreign material.

Foreign material means pieces of shell, hulls or other foreign matter which will not pass through a round opening 8/64 of an inch (3.2 mm) in diameter.

§ 51.2124 Doubles.

Doubles means kernels that developed in shells containing two kernels. One side of a double kernel is flat or concave.

§ 51.2125 Split or broken kernels.

Split or broken kernels means seven-eighths or less of complete whole kernels but which will not pass through a round opening 8/64 of an inch (3.2 mm) in diameter.

§ 51.2126 Particles and dust.

Particles and dust means fragments of almond kernels or other material which will pass through a round opening 8/64 of an inch (3.2 mm) in diameter.

§ 51.2127 Injury.

Injury means any defect which more than slightly detracts from the appearance of the individual almond. The following shall be considered as injury:

(a) Chipped and scratched kernels when the affected area on an individual kernel aggregates more than the equivalent of a circle one-eighth inch (3.2 mm) in diameter.

§ 51.2128 Damage.

Damage means any defect which materially detracts from the appearance of the individual kernel, or the edible or shipping quality of the almonds. Any one of the following defects or combination thereof, the seriousness of which exceeds the maximum allowed for any one defect shall be considered as damage:

(a) Chipped and scratched kernels, when the affected area on an individual kernel aggregates more than the equivalent of a circle one-quarter inch (6.4 mm) in diameter;

(b) Mold, when visible on the kernel, except when white or gray and easily rubbed off with the fingers;

(c) Gum, when a film of shiny, resinous appearing substance affects an area aggregating more than the equivalent of a circle one-quarter inch (6.4 mm) in diameter;

(d) Shriveling, when the kernel is excessively thin for its size, or when materially withered, shrunken, leathery, tough or only partially developed: Provided, that partially developed kernels are not considered damaged if more than three-fourths of the pellicle is filled with meat;

(e) Brown spot on the kernel, either single or multiple, when the affected area aggregates more than the equivalent of a circle one-eighth inch (3.2 mm) in diameter; and,

(f) Skin discoloration when more than one-half of the surface of the kernel is affected by very dark or black stains contrasting with the natural color of the skin.

§ 51.2129 Serious damage.

Serious damage means any defect which makes a kernel or piece of kernel unsuitable for human consumption, and includes decay, rancidity, insect injury and damage by mold.

§ 51.2130 Diameter.

Diameter means the greatest dimension of the kernel, or piece of kernel at right angles to the longitudinal axis. Diameter shall be determined by passing the kernel or piece of kernel through a round opening.

§ 51.2131 Fairly uniform in size.

Fairly uniform in size means that, in a representative sample, the weight of 10 percent, by count, of the largest whole kernels shall not exceed 1.70 times the weight of 10 percent, by count, of the smallest whole kernels.

Dated: January 14, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–1330 Filed 1–17–97; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 51

[Docket Number FV–96–301]

Florida Grapefruit, Florida Oranges and Tangelos, and, Florida Tangerines; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the United States Standards for Grades of Florida Grapefruit, United States Standards for Grades of Florida Oranges and Tangelos, and, United States Standards for Grades of Florida Tangerines. This rule revises the ''Application of Tolerances'' sections, which establishes the limitations of defective fruit per sample. It also sets a minimum sample size of twenty-five fruit.

EFFECTIVE DATE: February 20, 1997.

FOR FURTHER INFORMATION CONTACT: Frank O'Sullivan, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2065 South Building, Washington, D.C. 20090–6456, or call (202) 720–2185.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 150 handlers of Florida citrus who are subject to regulation under these standards and approximately 11,000 producers of citrus in Florida. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. A majority of handlers and producers of Florida citrus may be classified as small entities.

The revisions are to the ''Application of Tolerances'' sections, which establishes the limitations of defective fruit per sample and the ''Tolerances'' sections, which add a minimum of twenty-five fruit per sample. The industry stated that without these

revisions to the standards it would be very costly to the Florida citrus industry. If the standards are not revised an excessive amount of destruction to consumer packages could occur, resulting in costly repacking of fruit and replacing of these destroyed packages. Also, without these changes the tolerances would be too restrictive for consumer packages, ultimately resulting in failing to market citrus account of one piece of defective fruit. They also indicated that the minimum sample size should be a minimum of twenty-five fruit. Accordingly, AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

The interim final rule with request for comment, United States Standards for Grades of Florida Grapefruit, Florida Orange and Tangelos, and Florida Tangerines, was published in the Federal Register on August 2, 1996 (61 FR 40289–40290).

The United States Standards for Grades of Florida Grapefruit, United States Standards for Grades of Florida Oranges and Tangelos, and United States Standards for Grades of Florida Tangerines were recently revised following extensive discussions with the Florida citrus industry. However, we received two requests after the publication date concerning the revisions to the standards. One was from the Florida Citrus Packers, Inc., which ''represents nearly 90 percent of Florida's fresh commercial citrus industry, growers and shippers'' and from the Commissioner of the Florida Department of Agriculture and Consumer Services (FDACS). Both requested revision of the ''Application of Tolerances'' sections of the standards and they requested a minimum sample size of twenty-five fruit for each of the U.S. standards for Florida citrus.

The 60-day comment period for the interim final rule ended October 1, 1996, and a total of two comments were received. One comment was from an industry trade association which represents growers and shippers of Florida citrus, and the other comment was from the FDACS. Both comments were in favor of the revisions in their entirety.

The industry stated that without these revisions to the standards it would be very costly to the Florida citrus industry. If the standards are not revised an excessive amount of destruction to consumer packages could occur, resulting in costly repacking of fruit and replacing of these destroyed packages. Also, without these changes the tolerances would be too restrictive for consumer packages, ultimately resulting in failing to market citrus on account of one piece of defective fruit. They also indicated that the minimum sample size should be a minimum of twenty-five fruit.

The FDACS stated that they ''* * * support the interim final rule which bases tolerances and application of tolerances on a minimum 25 count sample for U.S. grades of Florida citrus.''

This rule finalizes the interim final rule which changed Sections 51.760, 51.1151, and 51.1820 ''Tolerances,'' to set a minimum sample size of twenty-five fruit, which reads as follows: ''In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, based on a minimum 25 count sample, are provided as specified:'' The Sections 51.761, 51.1152, and 51.1821 ''Application of Tolerances,'' will also change from individual package limitations to limitations on individual samples and will read as follows:

''Individual samples are subject to the following limitations, unless otherwise specified in §§ 51.760, 51.1151, 51.1820, respectively. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: *Provided,* that at least one decayed or wormy fruit may be permitted in any sample: *And provided further,* that the averages for the entire lot are within the tolerances specified for the grade.''

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR Part 51 is amended as follows:

PART 51—[AMENDED]

1. The authority citation for Part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 51.760 is amended by revising the introductory text to read as follows:

§ 51.760 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, based on a minimum 25 count sample, are provided as specified:

* * * * *

3. Section 51.761 is revised to read as follows:

§ 51.761 Application of tolerances.

Individual samples are subject to the following limitations, unless otherwise specified in § 51.760. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: *Provided,* that at least one decayed or wormy fruit may be permitted in any sample: *And provided further,* that the averages for the entire lot are within the tolerances specified for the grade.

4. Section 51.1151 is amended by revising the introductory text to read as follows:

§ 51.1151 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, based on a minimum 25 count sample, are provided as specified:

* * * * *

5. Section 51.1152 is revised to read as follows:

§ 51.1152 Application of tolerances.

Individual samples are subject to the following limitations, unless otherwise specified in § 51.1151. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: *Provided,* that at least one decayed or wormy fruit may be permitted in any sample: *And provided further,* that the averages for the entire lot are within the tolerances specified for the grade.

6. Section 51.1820 is amended by revising the introductory text to read as follows:

§ 51.1820 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, based on

a minimum 25 count sample, are provided as specified:

* * * * *

7. Section 51.1821 is revised to read as follows:

§ 51.1821 Application of Tolerances.

Individual samples are subject to the following limitations, unless otherwise specified in § 51.1820. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: *Provided,* that at least one decayed or wormy fruit may be permitted in any sample: *And provided further,* that the averages for the entire lot are within the tolerances specified for the grade.

Dated: January 14, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–1329 Filed 1–17–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–242–AD; Amendment 39–9883; AD 97–01–12]

RIN 2120–AA64

Airworthiness Directives; Airtell International, Inc., Centaurus Model C3–100 Ground Proximity Warning System (GPWS), as Installed in Various Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airtell International, Inc., Centaurus Model C3–100 GPWS equipment that is installed on any type of airplane, that requires replacement of this equipment with a similar type of equipment that meets specific performance requirements. This amendment is prompted by results of an investigation, which revealed that, under certain circumstances, the Centaurus GPWS equipment does not provide the flight crew with aural warnings to indicate that the airplane is descending. The actions specified by this AD are intended to prevent failure of the GPWS equipment to provide such aural warnings. If the flight crew relies on receiving such warnings and the GPWS equipment fails to provide those warnings, the ability of the flight crew to prevent the airplane from impacting the ground may be inhibited.

EFFECTIVE DATE: February 25, 1997.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John P. Dimtroff, Aerospace Engineer, Flight Test and Systems Branch, ANM–111, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2117; fax (206) 227–1100.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airtell International, Inc., Centaurus Model C3–100 ground proximity warning system (GPWS) equipment that is installed on any type of airplane was published in the Federal Register on October 18, 1996 (61 FR 54364). That action proposed to require removal and replacement of Centaurus Model C3–100 GPWS equipment with a similar type of equipment that meets specific performance requirements.

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

Conclusion

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

Cost Impact

The FAA estimates that 30 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $16,000 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $516,000, or $17,200 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

39.13 [Amended]

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

97–01–12 Airtell International, Inc.: Amendment 39–9883. Docket [96–NM–242–AD.]

Applicability: Centaurus Model C3–100 ground proximity warning system (GPWS) equipment, as installed in, but not limited to, the following airplanes, certificated in any category:

Beech 99 series airplanes;
Beech 200 series airplanes;
Dassault Aviation Model Mystere-Falcon 200 series airplanes;
EMBRAER (Empresa Brasileira de Aeronautica S.A.) EMB–110 series airplanes;
Fairchild Aircraft Model SA226–TC series airplanes;
Fairchild Aircraft Model SA227–AT series airplanes; and

Grumman Model G–73 Mallard airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the GPWS equipment to provide certain aural warnings, which could inhibit the ability of the flight crew to prevent the airplane from impacting the ground, accomplish the following:

(a) Within 60 days after the effective date of this AD, remove and replace Centaurus Model C3–100 GPWS equipment with a similar type of equipment that meets minimum performance standards specified in Technical Standard Order (TSO) C–92b, dated August 19, 1976. Accomplish the actions in accordance with a method approved by the Manager, Flight Test and Systems Branch, ANM–111, FAA, Transport Airplane Directorate.

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

Flight Test and Systems Branch, ANM–111. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Flight Test and Systems Branch, ANM–111.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Flight Test and Systems Branch, ANM–111.

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

(d) This amendment becomes effective on February 25, 1997.

Issued in Renton, Washington, on January 3, 1997.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–1351 Filed 1–17–97; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 96–AEA–09]

Establishment of Class E Airspace; Montauk, NY; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the airspace description of the Montauk, NY, Class E airspace area published in a final rule on November 27, 1996 (61 FR 60187), Airspace Docket Number 96–AEA–09.

EFFECTIVE DATE: January 21, 1997.

FOR FURTHER INFORMATION CONTACT: Michael J. Sammartino, Air Traffic Division, Operations Branch, AEA–530, Federal Aviation Administration, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430; telephone: (718) 553–4530.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 96–30207, Airspace Docket 96–AEA–09, published on November 27, 1996 (61 FR 60187) established the Class E airspace at Montauk, NY. An error was discovered in the legal description. This action adds the Hampton VORTAC to the legal description.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace legal description, as published on November 27, 1996 (61 FR 60187), Federal Register Document 96–30207; page 60187, column 3 is corrected in the legal description to the incorporation by reference in 14 CFR 71.1 as follows:

§ 71.1 [Corrected]

* * * * *

AEA NY E5 Montauk, NY [Corrected]

Montauk Airport, NY
(lat. 41°04′35″ N, long. 71°55′15″ W)
Hampton VORTAC
(lat. 40°55′08″ N, long. 72°19′00″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Montauk Airport and within 4 miles each side of the 062° bearing from the Hampton VORTAC extending from the 6.5-mile radius to 10 miles northeast of the VORTAC and excluding that portion within the Block Island, RI 700 foot Class E Airspace Area and that portion within the East Hampton, NY Class E Airspace Area.

* * * * *

Issued in Jamaica, New York, on January 8, 1997.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–1399 Filed 1–17–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AEA–13]

Amendment to Class E Airspace; Galax, VA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace at Galax, VA, to accommodate a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 36 at Twin County Airport. This amendment also corrects the geographic position of Twin County Airport published as a Notice of Proposed Rulemaking in the Federal Register November 27, 1996 (61 FR 60237). The intended effect of this action is to provide adequate controlled airspace for instrument flight rules (IFR) operations at the airport.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Frances Jordan, Airspace Specialist, Operations Branch, AEA–530, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On November 27, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying Class E airspace at Galax, VA, (61 FR 60237). This action would provide adequate Class E airspace for IFR operations at Twin County 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 designations are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, 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) modifies Class E airspace area at Galax, VA, to accommodate a GPS RWY 36 SIAP and for IFR operations at Twin County 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 10034; 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

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).

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 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 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 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

AEA VA E5 Galax, VA [Revised]

Twin County Airport, VA
(lat. 36°45′58″ N, long. 80°49′25″ W)
Pulaski VORTAC
(lat. 37°05′16″ N, long. 80°42′46″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Twin County Airport and within 4 miles each side of the Pulaski VORTAC 194° radial extending from the 6.3-mile radius to 7 miles south of the VORTAC and within 4 miles each side of the 179° bearing from the airport extending from the 6.3-mile radius to 12 miles south of the airport.

* * * * *

Issued in Jamaica, New York on January 8, 1997.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–1400 Filed 1–17–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 95N–0033]

Dental Devices; Endodontic Dry Heat Sterilizer

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the endodontic dry heat sterilizer, a medical device. Commercial distribution of this device must cease, unless a manufacturer or importer has filed with FDA a PMA or a notice of completion of a PDP for its version of the endodontic dry heat sterilizer within 90 days of the effective date of this regulation. This regulation reflects FDA's exercise of its discretion to require a PMA or notice of completion of a PDP for the preamendments device.

EFFECTIVE DATE: January 21, 1997.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301-827–2974.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of August 12, 1987 (52 FR 30082), FDA issued a final rule classifying the endodontic dry heat sterilizer (§ 872.6730 (21 CFR 872.6730)) into class III (premarket approval). Section 872.6730 applies to: (1) Any endodontic dry heat sterilizer that was in commercial distribution before May 28, 1976, the date of enactment of the Medical Devices Amendments of 1976 (Pub L. 94–295), and (2) any device that FDA has found to be substantially equivalent to the endodontic heat sterilizer and that has been marketed on or after May 28, 1976.

In the Federal Register of December 30, 1980 (45 FR 86155), FDA published the recommendation of the Dental Device Classification Panel (the panel), of the Medical Devices Advisory Committee, an FDA advisory committee, regarding the classification of the device.

The panel recommended that the device be in class III (premarket approval) because the device presented an unreasonable risk of illness or injury. According to the panel, the devices failed to sterilize adequately various endodontic and dental instruments. The panel felt that the failures could be the result of: (1) The device not reaching and maintaining an adequate temperature because of a faulty thermostat or (2) the result of unequal heat distribution by the glass beads throughout the well despite sufficient heat. The panel believed that it was not possible to establish an adequate performance standard for the device because satisfactory performance had never been demonstrated. The panel recommended the device to be subject to premarket approval to ensure that manufacturers of the device demonstrate satisfactory performance and that further study was necessary to determine the causes of the device's ineffectiveness.

FDA agreed with the panel's recommendation that endodontic dry heat sterilizers be classified into class III. FDA believed that there was an unreasonable risk of illness or injury because of the potential failure of the device to sterilize dental instruments adequately. FDA believed that there was inadequate information to determine if general controls or a performance standard would provide reasonable assurance of safety and effectiveness.

In the Federal Register of June 7, 1995 (60 FR 30032), FDA published a proposed rule to require the filing under section 515(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(b)) of a PMA or a notice of completion of a PDP for the endodontic dry heat sterilizer. In accordance with section 515(b)(2)(A) of the act, FDA included in the preamble to the proposal the agency's proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the premarket approval requirements of the act, and the benefits to the public from use of the device (60 FR 30032 at 30037). The June 7, 1995, proposed rule also provided an opportunity for interested persons to submit comments on the proposed rule and the agency's findings. Under section 515(b)(2)(B) of the act, FDA also provided an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any petition requesting a change in classification of the endodontic heat sterilizer was required to be submitted by September 5, 1995. The comment period closed August 7, 1995.

FDA received one comment in response to the proposed rule. The comment recommended that the endodontic dry heat sterilizer remain classified as class III, until sufficient evidence has been submitted documenting the safety and efficacy of these devices. It also pointed out concern in the use of the endodontic dry heat sterilizer for the generalized sterilization of instruments because of marked temperature gradients within the well which could result in inadequate sterilization and the appropriate use of the devices to sterilize large bulk instruments. FDA agrees with the concern and the comment that a PMA be required for endodontic dry heat sterilizers.

II. Findings With Respect to Risks and Benefits

A. Degree of Risk

The primary risk to health is infection through the use of inadequately sterilized instruments. A review of the literature has identified the following problems associated with the use of endodontic dry heat sterilizers which can contribute to the inability of these devices to sterilize instruments, including general medical instruments.

1. Temperature Variations Within the Well.

There are many reports in the literature describing the temperature variations found within the wells of endodontic dry heat (glass bead) sterilizers. It has been reported that the temperature distribution in four brands of these devices at two different sites from the center and at six different depths in the well varied significantly depending upon location. The temperature was highest at a location which was closest to the wall and midway down from the surface. Furthermore data have demonstrated temperature variations as much as 10 °C over time near the periphery of the well. The information in the literature suggested that endodontic dry heat (glass bead) sterilizers should not be used as a substitute for dry heat convection or steam sterilization sterilizers because of the temperature variations.

2. Exposure Times for the Sterilization of Instruments.

The manufacturers' recommended exposure times for sterilization of instruments vary from as short as 2 seconds to 45 seconds for sterilizers whose purported operating temperatures were from 218 to 260 °C. However, location in the well, size and mass, number and shape of the instruments must be factored into the amount of time required for sterilization. Larger instruments composed of more metal take more time to heat than smaller instruments. It was reported that the time required to raise an instrument's temperature was dependent upon its size. Small instruments such as root canal files heated rapidly while large instruments such as cotton pliers never reached the specified operating temperature. Endodontic dry heat (glass bead) sterilizers have been reported to be effective only with small instruments that can be imbedded into the heat transfer media and that their effectiveness has not been demonstrated for instruments of larger bulk. The insertion of large instruments would reduce the temperature of the glass beads below the minimum temperature required for sterilization. Heat conduction in a large, partially imbedded device would be variable.

Precleaning of the instruments before insertion into the heat transfer medium in the well of the sterilizer is critical to the effectiveness of the device. It was reported that if endodontic instruments were contaminated with a protein load (blood), the time required for sterilization was more than doubled. Such adverse conditions can easily be found in infected or gangrenous pulp. There are reports that spores, which are more resistant to sterilization processes than vegetative organisms, have been found in the oral cavity and cultured from pulp material.

3. Lack of Methods to Monitor the Performance/Sterilization Efficacy of the Device.

There are no identified methods for the routine monitoring of the sterilization efficacy of the endodontic dry heat sterilizer such as the ones which exist with the traditional sterilization methods, i.e., steam autoclaves, hot air dry heat sterilizers, or ethylene oxide sterilizers. Chemical and biological indicators are available for routine monitoring of the efficacy of the cycle parameters and for the validation of the process specifications for these traditional sterilizers. The data in the literature, as noted above, suggest that the user can not be assured that instruments inserted into an endodontic dry heat sterilizer will be reliably exposed to the minimum cycle parameters required for sterilization, i.e., exposure of the device to the set temperature for the specified time.

4. Warm–up Times for Endodontic Dry Heat (Glass Bead) Sterilizers.

Reported warm–up times for these devices range from 15 minutes to 50 minutes with the average of 15–20 minutes. However, it has been reported that it took up to 30 minutes for the temperature of the glass beads to stabilize even though the manufacturer claimed that the device reached operating temperature within 10 minutes.

5. Maintenance of Sterility After Removal From the Device.

The instructions for use for most of the devices do not instruct the user on the proper procedure to remove instruments from the device and how to maintain sterility of the instruments or the processed portion of the instrument during the cool down period. Because of the temperature variations reported within the wells, there exists the possibility that heat resistant microorganisms could survive on the glass beads in the cooler regions near the top of the glass beads and contaminate the instruments as they are removed from the well. Since endodontic dry heat sterilizers only process that portion of the instrument which has been inserted into the glass beads, there is also the potential of contaminating a sterile field with a device which had not been properly processed.

6. Heat Transfer Medium Remaining Upon the Devices.

Occasionally the heat transfer medium has been observed to adhere to wet instruments. If the particles are not detected before the devices are inserted into the site, then they could cause blockage of the wound site. This would cause significant problems if the heat transfer media were glass beads or molten metal.

B. Benefit of the Device

The endodontic dry heat sterilizer is used to decontaminate endodontic instruments during a procedure on a single patient provided the instruments are properly cleaned to remove organic debris before insertion into the unit. In theory the number of microorganisms that would be introduced into the same site or into a new site on the same patient during a single procedure would be reduced. Once the procedure is over, the instruments should be processed using traditional methods of decontamination and sterilization before use in the next patient.

C. Discussion of Risks and Benefits

The data in the literature indicate a lack of uniform sterilization parameters among the various endodontic dry heat (glass bead) sterilizers which have been marketed. Because of the temperature variations found within the wells of glass bead sterilizers, exposure of an instrument to an adequate sterilizing temperature is difficult to determine and must be confirmed independently for each instrument. Also determination of the sterilization exposure time is dependent upon instrument size and mass. It has been reported that some instruments never reach the appropriate temperature because of their size and mass; and that endodontic dry heat sterilizers are not appropriate for large bulk instruments.

Review of the claims being made for these devices suggests that manufacturers are expanding the claims beyond those originally defined in § 872.6730. The claims have been expanded to include the sterilization of general medical instruments and electrolysis and acupuncture needles, and to devices not regulated by FDA such as manicurist's instruments. The claims imply that these devices can be used as a substitute for the traditional methods of sterilization. It has been noted in the literature that endodontic dry heat sterilizers are not sterilizers, but are decontaminating devices and that they should not be used to sterilize instruments between patients. No system exists for: (1) Monitoring the exposure of the instrument to sterilization conditions or (2) demonstrating that the sterilization exposure parameters have been achieved within the well. Only the portion of the instrument which is inserted into the heat transfer medium has the potential of being sterilized; the portion which is not inserted into the glass beads is not sterilized. The use of endodontic dry heat sterilizers with general medical instruments and with the implication as a substitute sterilization method raises serious safety and efficacy questions which the manufacturers of these devices have not adequately addressed. There is the serious risk of infection through the use of inadequately processed instruments.

III. Final Rule

Under section 515(b)(3) of the act, FDA is adopting the findings as published in the preamble to the proposed rule and is issuing this final rule to require premarket approval of the generic type of device, endodontic dry heat device, by revising § 872.6730(c).

Under the final rule, a PMA or a notice of completion of a PDP is required to be filed with FDA within 90 days of the effective date of this regulation for any endodontic dry heat sterilizer device that was in commercial distribution before May 28, 1976, or any device that FDA has found to be substantially equivalent to such a device on or before September 5, 1995. An approved PMA or declared completed PDP is required to be in effect for any such device on or before 180 days after FDA files the application. Any other endodontic dry heat sterilizer device that was not in commercial distribution before May 28, 1976, or that FDA has not found, on or before September 5, 1995, to be substantially equivalent to an endodontic dry heat sterilizer device that was in commercial distribution before May 28, 1976, is required to have an approved PMA or declared completed PDP in effect before it may be marketed.

If a PMA or notice of completion of a PDP for an endodontic dry heat sterilizer device is not filed on or before September 5, 1995, that device will be deemed adulterated under section 501(f)(1)(A) of the act (21 U.S.C. 351(f)(1)(A)), and commercial distribution of the device will be required to cease immediately. The device may, however, be distributed for investigational use, if the requirements of the investigational device exemption (IDE) regulations part 812 (21 CFR part 812) are met.

Under § 812.2(d) of the IDE regulations, FDA hereby stipulates that the exemptions from the IDE requirements in § 812.2(c)(1) and (c)(2) will no longer apply to clinical investigations of the endodontic dry heat sterilizer devices. Further, FDA concludes that investigational endodontic dry heat sterilizer devices are significant risk devices as defined in § 812.3(m) and advises that as of the effective date of the regulations in § 872.6730(c), requirements of the IDE regulations regarding significant risk devices will apply to any clinical investigation of an endodontic dry heat sterilizer device. For any endodontic dry heat sterilizer device that is not subject to a timely filed PMA or notice of completion of a PDP, an IDE must be in effect under § 812.20 on or before September 5, 1995, or distribution of the device for investigational purposes must cease. FDA advises all persons currently sponsoring a clinical investigation involving an endodontic dry heat sterilizer to submit an IDE application to FDA no later than August 7, 1995, to avoid the interruption of ongoing investigations.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) and (e)(4) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because for more than 10 years the manufacturers of these devices have been aware of the need to prepare PMA's for these devices, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

List of Subjects in 21 CFR 872

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 872 is amended as follows:

PART 872—DENTAL DEVICES

1. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 872.6730 is amended by revising paragraph (c) to read as follows:

§ 872.6730 Endodontic dry heat sterilizer.

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of product development protocol (PDP) is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before September 5, 1995, for any endodontic dry heat sterilizer that was in commercial distribution before May 28, 1976, or that has on or before September 5, 1995, been found to be substantially equivalent to the endodontic dry heat sterilizer that was in commercial distribution before May 28, 1976. Any other endodontic dry heat sterilizer shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated:September 18, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–1336 Filed 1–17–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 127–97]

Exemption of Systems of Records Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice, Drug Enforcement Administration (DEA), is amending its Privacy Act regulations to to provide clarity and to include an additional reason for the exemption from subsection (e)(3). The additional reason will contribute to a better understanding of the need for the exemption. The revised language applies to the following systems of records as named in paragraphs (c)(1) through (c)(6): Air Intelligence Program (Justice/DEA–001), Investigative Reporting and Filing System (Justice/DEA–008), Planning and Inspection Division Records (Justice/DEA–010), Operations Files (Justice/DEA–011), Security Files (Justice/DEA–013), System to Retrieve Information from Drug Evidence (Stride/Ballistics) (Justice/DEA–014).

EFFECTIVE DATE: January 21, 1997.

FOR FURTHER INFORMATION CONTACT: Patricia E. Neely, Program Analyst (202–616–0178).

SUPPLEMENTARY INFORMATION: On October 17, 1996 (61 FR 54112), a proposed rule was published in the Federal Register with an invitation to comment. No comments were received.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have a ''significant economic impact on a substantial number of small entities.''

List of Subjects in Part 16

Administrative Practices and Procedure, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR part 16 is amended as set forth below.

Dated: December 30, 1996.

Stephen R. Colgate,

Assistant Attorney General for Administration.

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552B(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. 28 CFR 16.98 is amended by revising paragraph (d)(6) as follows:

§ 16.98 Exemption of the Drug Enforcement Administration (DEA)—Limited Access.

* * * * *

(d) * * *

(6) From subsection (e)(3) because the requirements thereof would constitute a serious impediment to law enforcement in that they could compromise the existence of an actual or potential confidential investigation and/or permit the record subject to speculate on the identity of a potential confidential source, and endanger the life, health or physical safety or either actual or potential confidential informants and witnesses, and of investigators/law enforcement personnel. In addition, the notification requirement of subsection (e)(3) could impede collection of that information from the record subject, making it necessary to collect the information solely from third party sources and thereby inhibiting law enforcement efforts.

* * * * *

[FR Doc. 97–1317 Filed 1–17–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Chapter V

Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Specially Designated Narcotics Traffickers, and Blocked Vessels: Additional Designations and Removal of Four Individuals

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Amendment of final rule.

SUMMARY: The Treasury Department is adding to appendices A and B to 31 CFR chapter V the names of 57 individuals and 21 entities, and revising information concerning 58 individuals and one entity, who have been determined to play a significant role in international narcotics trafficking centered in Colombia or have been determined to be owned or controlled by, or to act for or on behalf of, other specially designated narcotics traffickers. In addition, one individual specially designated narcotics trafficker and three individuals previously designated as acting for or on behalf of Iraq are being removed from the appendices.

EFFECTIVE DATE: January 15, 1997.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 22201; tel.: 202/622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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= ftp.fedworld.gov (192.239.92.205). Additional information concerning the programs of the Office of Foreign Assets Control is available for downloading from the Office's Internet Home Page: http://www.ustreas.gov/treasury/services/fac/fac.html, or in fax form through the Office's 24–hour fax–on–demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch–tone telephone.

Background

Appendices A and B to 31 CFR chapter V contain the names of blocked persons, specially designated nationals, specially designated terrorists, and specially designated narcotics traffickers designated pursuant to the various economic sanctions programs administered by the Office of Foreign Assets Control (''OFAC'') (61 FR 32936, June 26, 1996). Pursuant to Executive Order 12978 of October 21, 1995, ''Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers'' (the ''Order''), the following additional 21 entities and 57 individuals are added to the appendices as persons who have been determined to be owned or controlled by, or to act for or on behalf of, persons designated in or pursuant to the Order (collectively ''Specially Designated Narcotics Traffickers'' or ''SDNTs''). Any property subject to the jurisdiction of the United States in which an SDNT has an interest is blocked, and U.S. persons are prohibited from engaging in any transaction or in dealing in any property in which an SDNT has an interest. Supplemental identifying information is also added to certain existing SDNT entries, which are revised in their entirety.

The name of one SDNT individual, and three individuals designated pursuant to economic sanctions imposed against Iraq, are being removed since they are no longer subject to the applicable criteria for designation. All real and personal property of these individuals, including all accounts in which they have any interest, are unblocked; and all transactions involving U.S. persons and these individuals are permissible.

Designations of foreign persons blocked pursuant to the Order are effective upon the date of determination by the Director of the Office of Foreign Assets Control, acting under authority delegated by the Secretary of the Treasury. Public notice of blocking is effective upon the date of filing with the Federal Register, or upon prior actual notice.

Since the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

For the reasons set forth in the preamble, and under the authority of (1) 50 U.S.C. 1701–1706; 50 U.S.C. 1601–1641; 3 U.S.C. 301; E.O. 12978, 60 FR 54579, 3 CFR, 1995 Comp., p. 415, with respect to the SDNT entries, and (2) 50 U.S.C. 1701–1706; 50 U.S.C. 1601–1651; 22 U.S.C. 287c; Pub.L. 101–513, 104 Stat. 2047–55 (50 U.S.C. 1701 note); Pub. L. 104–132, 110 Stat. 1214, 1254 (18 U.S.C. 2332d); Pub. L 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 3 U.S.C. 301; E.O. 12722, 55 FR 31803, 3 CFR, 1990 Comp., p. 294; E.O. 12724, 55 FR 33089, 3 CFR, 1992 Comp., p. 317; E.O. 12817, 57 FR 48433, 3 CFR, 1992 Comp., p. 317, with respect to the Iraqi entries, appendices A and B to chapter V of 31 CFR are amended as set forth below:

1. Appendices A and B to chapter V of 31 CFR are amended by adding the following names inserted in alphabetical order (1) in appendix A and (2) under the heading ''Colombia'' in appendix B:

ACERO, Cesar Augusto, Avenida 7N No. 17A-48, Cali, Colombia; c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia (Cédula No. 70564947 (Colombia)) (individual) [SDNT]

AGROPECUARIA LA ROBLEDA S.A., Carrera 61 No. 11-58, Cali, Colombia; Avenida 2DN No. 24N-76, Cali, Colombia (NIT # 800160353-2) [SDNT]

AGUDELO GALVEZ, Lieride, c/o INVERSIONES GEMINIS S.A., Cali, Colombia (Cédula No. 6511576 (Colombia)) (individual) [SDNT]

AGUDELO, Ivan de Jesus, Avenida 6N No. 47-197 17, Cali, Colombia; c/o INDUSTRIA MADERERA ARCA LTDA., Cali, Colombia (individual) [SDNT]

ARIAS RAMIREZ, Jhon Helmer, c/o IMPORTADORA Y COMERCIALIZADORA LTDA., Cali, Colombia (Cédula No. 16796537 (Colombia)) (individual) [SDNT]

ARIZABALETA ARZAYUS, Phanor (Fanor), Avenida 39 No. 15-22, Bogotá, Colombia; Calle 110 No. 30-45, Bogotá, Colombia; Carrera 9 No. 9S-35, Buga, Colombia; Carrera 4 No. 12-41 of. 710, Cali, Colombia; c/o CONSTRUCTORA ALTOS DE RETIRO LTDA., Bogotá, Colombia; c/o INVERSIONES ARIO LTDA., Cali, Colombia (DOB 12 May 1938; Cédula No. 2879530 (Colombia)) (individual) [SDNT]

BANDERAS, Aracelly, c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia (individual) [SDNT]

BECERRA BECERRA, Alvaro, c/o AGROPECUARIA LA ROBLEDA LTDA., Cali, Colombia (Cédula No. 2730788 (Colombia)) (individual) [SDNT]

CASTAÑO PATIÑO, Maria Janet, c/o CONSTRUVIDA S.A., Cali, Colombia (Cédula No. 31149394 (Colombia)) (individual) [SDNT]

CASTRILLON CRUZ, Maria Leonor, c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia (individual) [SDNT]

CASTRO VERGARA, Sandra, c/o INVERSIONES EL PEÑON S.A., Cali, Colombia (Cédula No. 31924082 (Colombia)) (individual) [SDNT]

CHAVARRO, Hector Fabio, c/o AGROPECUARIA BETANIA LTDA., Cali, Colombia; c/o INVERSIONES VILLA PAZ S.A., Cali, Colombia (Cédula No. 16263212 (Colombia)) (individual) [SDNT]

CLAVIJO GARCIA, Hector Augusto, c/o GANADERIAS DEL VALLE, Cali, Colombia (Cédula No. 16613930 (Colombia)) (individual) [SDNT]

COMERCIAL DE NEGOCIOS CLARIDAD Y CIA., Avenida Caracas No. 59-77 of. 201A, 401B y 405B, Bogotá, Colombia (NIT # 800080719-0) [SDNT]

COMERCIALIZADORA EXPERTA Y CIA. S. EN C., Avenida Caracas No. 59-77 of. 201A, 401B, 405B y 407B, Bogotá, Colombia (NIT # 800075687-3) [SDNT]

CONSTRUCTORA ALTOS DEL RETIRO LTDA., Carrera 4 No. 86-88, Bogotá, Colombia; Carrera 7 No. 72-28 of. 301, Bogotá, Colombia; Transversal 3 No. 85-10 apt. 401 Interior 1, Bogotá, Colombia (NIT # 890329139-8) [SDNT]

CONSTRUVIDA S.A., Avenida 2N No. 7N-55 of. 521, Cali, Colombia; Calle 70N No. 14-31, Cali, Colombia; Carrera 68 No. 13B-61 of. 104B, Cali, Colombia (NIT # 800108122-8) [SDNT]

CONSULTORIA EMPRESARIAL ESPECIALIZADA LTDA., Avenida 2N No. 7N-55 of. 421, Cali, Colombia (NIT # 800109042-1) [SDNT]

CORREA PULGARIN, Ernesto, c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia (Cédula No. 2510585 (Colombia)) (individual) [SDNT]

CUERO MARTINEZ, Otalvaro, c/o INVHERESA S.A., Cali, Colombia (individual) [SDNT]

CULZAT LUGSIR, Rafael Alberto, Calle 7 Oeste No. 2-228, Cali, Colombia; Transversal 3 No. 86-73, Bogotá, Colombia; c/o CONSTRUCTORA ALTOS DEL RETIRO LTDA., Bogotá, Colombia; c/o INVERSIONES CULZAT GUEVARA Y CIA. S.C.S., Cali, Colombia (DOB 23 October 1940; Passport No. P551220 (Colombia); Cédula No. 14962523 (Colombia)) (individual) [SDNT]

DIAZ, Manuel, c/o COMERCIAL DE NEGOCIOS CLARIDAD Y CIA., Bogotá, Colombia; c/o COMERCIALIZADORA EXPERTA Y CIA. S. EN C., Bogotá, Colombia; c/o INMOBILIARIA GALES LTDA, Bogotá, Colombia (Cédula No. 396358 (Colombia)) (individual) [SDNT]

DIAZ, Rosa Isabel, c/o INVHERESA S.A., Cali, Colombia (individual) [SDNT]
FIGUEROA DE BRUSATIN, Dacier, c/o W. HERRERA Y CIA. S. EN C., Cali, Colombia (Cédula No. 29076093 (Colombia)) (individual) [SDNT]
GANADERIAS DEL VALLE S.A., Avenida 2FN No. 24N-92, Cali, Colombia; Carrera 61 No. 11-58, Cali, Colombia; Carrera 83 No. 6-50, Cali, Colombia (NIT # 800119808-9) [SDNT]
GARCIA ROMERO, Audra Yamile, c/o INVHERESA S.A., Cali, Colombia (Cédula No. 66765096 (Colombia)) (individual) [SDNT]
GARCIA, Freddy (Fredy), c/o PROCESADORA DE POLLOS SUPERIOR S.A., Palmira, Colombia (individual) [SDNT]
HENAO, Maria Nohelio, c/o INVHERESA S.A., Cali, Colombia (Cédula No. 26271587 (Colombia)) (individual) [SDNT]
HERRERA BUITRAGO, William, c/o W. HERRERA Y CIA. S. EN C., Cali, Colombia (DOB 29 November 1964; Passport No. P046550 (Colombia); Cédula No. 16716887 (Colombia)) (individual) [SDNT]
IDROBO ZAPATA, Edgar Hernando, c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia; c/o INVERSIONES EL PEÑON S.A., Cali, Colombia (Cédula No. 6078860 (Colombia)) (individual) [SDNT]
IMPORTADORA Y COMERCIALIZADORA LTDA. (a.k.a. IMCOMER), Avenida 6N y Avenida 4 No. 13N-50 of. 1201, Cali, Colombia (NIT # 800152058-0) [SDNT]
INDUSTRIA MADERERA ARCA LTDA., Calle 11 No. 32-47 Bodega 41 Arroyohondo, Cali, Colombia; Calle 32 No. 11-41 Bodega 4 Arroyohondo, Cali, Colombia (NIT # 800122866-7) [SDNT]
INMOBILIARIA BOLIVAR LTDA., Calle 17N No. 6N-28, Cali, Colombia; Calle 24N No. 6N-21, Cali, Colombia (NIT # 890330573-3) [SDNT]
INMOBILIARIA GALES LTDA., Avenida Caracas No. 59-77 of. 201A, 401B y 405B, Bogotá, Colombia (NIT # 800061287-1) [SDNT]
INTERVENTORIA, CONSULTORIA Y ESTUDIOS LIMITADA INGENIEROS ARQUITECTOS (a.k.a. INCOES), Avenida 6N No. 13N-50 of. 1209, Cali, Colombia (NIT # 800144790-0) [SDNT]
INVERSIONES AGRICOLAS AVICOLAS Y GANADERAS LA CARMELITA LTDA., Carrera 61 Nos. 11-58 y 11-62, Cali, Colombia (NIT # 800052898-1) [SDNT]
INVERSIONES ARIO LTDA., Carrera 4 No. 12-41 of. 608 y 701, Cali, Colombia (NIT # 890328888-1) [SDNT]
INVERSIONES CULZAT GUEVARA Y CIA. S.C.S., Avenida 4A Oeste No. 5-107 apt. 401, Cali, Colombia; Avenida 4A Oeste No. 5-187 apt. 401, Cali, Colombia; Avenida 7N No. 23N-39, Cali, Colombia (NIT # 860065523-1) [SDNT]
INVERSIONES VILLA PAZ S.A., Avenida 2CN No. 24N-92, Cali, Colombia; Avenida 2DN No. 24-N76, Cali, Colombia; Calle 70N No. 14-31, Cali, Colombia; Carrera 61 No. 11-58, Cali, Colombia (NIT # 800091083-2) [SDNT]
INVHERESA S.A., Avenida 2N No. 7N-55 of. 501, Cali, Colombia; Calle 70N No. 14-31, Cali, Colombia (NIT # 800108121-0) [SDNT]
LAVERDE GOMEZ, German, c/o CONSTRUCTORA ALTOS DEL RETIRO LTDA., Bogotá, Colombia (individual) [SDNT]
LONDOÑO DE UPEGUI, Maria del Carmen, c/o INVERSIONES VILLA PAZ S.A., Cali, Colombia (individual) [SDNT]
LOPEZ RODRIGUEZ, Cecilia, c/o PROCESADORA DE POLLOS SUPERIOR S.A., Palmira, Colombia (individual) [SDNT]
LOPEZ ZAPATA, Hernan de Jesus, c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia; c/o INDUSTRIA MADERERA ARCA LTDA., Cali, Colombia (Cédula No. 16344058 (Colombia)) (individual) [SDNT]
MERCAVICOLA LTDA., Calle 34 No. 5A-25, Cali, Colombia; Calle 47AN, Cali, Colombia (NIT # 800086338-5) [SDNT]
MILLAN BONILLA, German, c/o CONSTRUVIDA S.A., Cali, Colombia (Cédula No. 14995885 (Colombia)) (individual) [SDNT]
MONTOYA MARTINEZ, Juan Carlos, c/o AGROPECUARIA BETANIA LTDA., Cali, Colombia; c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o INVERSIONES VILLA PAZ S.A., Cali, Colombia (Cédula No. 16801475 (Colombia)) (individual) [SDNT]
MORENO, Carlos Arturo, c/o INVERSIONES EL PEÑON S.A., Cali, Colombia (Cédula No. 14264233 (Colombia)) (individual) [SDNT]
MURILLO MURILLO, Jose Tolentino, c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia (Cédula No. 2240779 (Colombia)) (individual) [SDNT]
NUÑEZ PEDROZA, Humberto, c/o CONSTRUCTORA ALTOS DEL RETIRO LTDA., Bogotá, Colombia (Cédula No. 4326541 (Colombia)) (individual) [SDNT]
OBEYMAR MAFLA, Carlos, c/o MERCAVICOLA LTDA., Cali, Colombia (Cédula No. 6226643 (Colombia)) [SDNT]
ORDOÑEZ MEDINA, Elizabeth, c/o ADMINISTRACION INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o INMOBILIARIA BOLIVAR LTDA., Cali, Colombia (individual) [SDNT]
OSPINA DUQUE, Elssy, c/o GANADERIAS DEL VALLE S.A., Cali, Colombia (Cédula No. 31834998 (Colombia)) (individual) [SDNT]
PATIÑO RINCON, Octavio, c/o INVERSIONES VILLA PAZ S.A., Cali, Colombia (Cédula No. 2438955 (Colombia)) (individual) [SDNT]
PERDOMO ZUÑIGA, Hugo Ivan, c/o CONSTRUVIDA S.A., Cali, Colombia (Cédula No. 16669843 (Colombia)) (individual) [SDNT]
PEREZ ORTEGA, Publio Eliecer, c/o INVERSIONES VILLA PAZ S.A., Cali, Colombia (Cédula No. 16597479 (Colombia)) (individual) [SDNT]
PEREZ SERNA, Wilmar Armando, c/o INVHERESA S.A., Cali, Colombia (individual) [SDNT]
PIEDRAHITA, Gustavo Adolfo, c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia (Cédula No. 16764002 (Colombia)) (individual) [SDNT]
POSSO DE LONDOÑO, Maria del Carmen, c/o INVERSIONES VILLA PAZ S.A., Cali, Colombia (Cédula No. 29664243 (Colombia)) (individual) [SDNT]
PROCESADORA DE POLLOS SUPERIOR S.A. (a.k.a. COMERCIALIZADORA INTERNACIONAL VALLE DE ORO S.A.), A.A. 1689, Cali, Colombia; Avenida 2N No. 7N-55 of. 521, Cali, Colombia; Carrera 3 No. 12-40, Cali, Colombia; Km 17 Recta Cali-Palmira, Palmira, Colombia (NIT # 800074991-3 (Colombia)) [SDNT]
PROHUEVO DE COLOMBIA LTDA., 1 Km Antes de Cavasa Palmira-Cali, Colombia; Calle 34 No. 5A-25, Cali, Colombia; Granja Pio Pio Carretera Cali-Candelaria Km 12, Cali, Colombia (NIT # 800089683-5) [SDNT]
QUIGUA ARIAS, Omar, c/o IMCOMER, Cali, Colombia; c/o INCOES, Cali, Colombia (individual) [SDNT]
RAMIREZ BUITRAGO, Luis Eduardo, c/o INCOES, Cali, Colombia (individual) [SDNT]
RAMIREZ BUITRAGO, Placido, c/o COMERCIALIZADORA INTERNACIONAL VALLE DE ORO S.A., Cali, Colombia (individual) [SDNT]
RAMIREZ SANCHEZ, Alben, c/o INCOES, Cali, Colombia (individual) [SDNT]
RAMOS RAYO, Heriberto, c/o INVERSIONES VILLA PAZ S.A., Cali, Colombia (Cédula No. 6186403 (Colombia)) (individual) [SDNT]
REYES MURCIA, Edgar, c/o CONSTRUVIDA S.A., Cali, Colombia (Cédula No. 17181081 (Colombia)) (individual) [SDNT]
ROZO C., Miguel, c/o CONSTRUCTORA ALTOS DEL RETIRO LTDA., Bogotá, Colombia (Cédula No. 17093270 (Colombia)) (individual) [SDNT]
SALAZAR, Jose Leonel, c/o PROCESADORA DE POLLOS SUPERIOR S.A., Palmira, Colombia; c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia (individual) [SDNT]
SEPULVEDA SEPULVEDA, Manuel Salvador, c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia; c/o INVHERESA S.A., Cali, Colombia (Cédula No. 16855038 (Colombia)) (individual) [SDNT]
SERNA, Maria Norby, c/o INVHERESA S.A., Cali, Colombia (Cédula No. 29475049 (Colombia)) (individual) [SDNT]
SOTO GUTIERREZ, Hernan, c/o INVERSIONES ARIO LTDA, Cali, Colombia (individual) [SDNT]
VALENCIA DE JARAMILLO, Maria Diocelina, c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia (individual) [SDNT]
VALENCIA FRANCO, Manuel, c/o GANADERIAS DEL VALLE S.A., Cali, Colombia (individual) [SDNT]

VALLE DE ORO S.A., Cali, Colombia; Pollo Tanrico Km 17 Recta Cali-Palmira, Palmira, Colombia (NIT # 890331067-2 (Colombia)) [SDNT]

VARGAS LOPEZ, Gustavo Adolfo, c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia; c/o INDUSTRIA MADERERA ARCA LTDA., Cali, Colombia; c/o INVERSIONES VILLA PAZ S.A., Cali, Colombia (Cédula No. 6457925 (Colombia)) (individual) [SDNT]

ZAMBRANO CERON, Maria Concepcion, c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia (individual) [SDNT]

ZAMORA, Jose Hernan, c/o GANADERIAS DEL VALLE S.A., Cali, Colombia (individual) [SDNT]

2. Appendices A and B to chapter V of 31 CFR are amended by revising the following existing entries to include additional identifying information (1) in appendix A and (2) under the heading ''Colombia'' in appendix B, to read as follows:

ADMINISTRACION INMOBILIARIA BOLIVAR S.A., Avenida 2CN No. 24N-92, Cali, Colombia; Calle 17N No. 6N-28, Cali, Colombia (NIT #800149060-5) [SDNT]

ABRIL CORTEZ, Oliverio (f.k.a. CORTEZ, Oliverio Abril), c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia; Calle 18A No. 8A-20, Jamundi, Colombia; c/o INVERSIONES EL PEÑON S.A., Cali, Colombia; c/o W. HERRERA Y CIA. S. EN C., Cali, Colombia; c/o AGROPECUARIA BETANIA LTDA., Cali, Colombia (Cédula No. 3002003 (Colombia)) (individual) [SDNT]

AGUADO ORTIZ, Luis Jamerson, c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o PLASTICOS CONDOR LTDA., Cali, Colombia (Cédula No. 2935839 (Colombia)) (individual) [SDNT]

ALAVAREZ GAVIRIA, Jaime Antonio, c/o EXPORT CAFE LTDA., Cali, Colombia (DOB 17 August 1947; Cédula No. 10060853 (Colombia)) (individual) [SDNT]

AMEZQUITA MENESES, Salustio, c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia (Cédula No. 14943885 (Colombia)) (individual) [SDNT]

ARBELAEZ PARDO, Amparo, c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o VALORES MOBILIARIOS DE OCCIDENTE, Bogotá, Colombia; c/o INVERSIONES ARA LTDA., Cali, Colombia (DOB 9 November 1950; alt. DOB 9 August 1950; Passports AC 568973 (Colombia), PEDO1850 (Colombia); Cédula No. 31218903 (Colombia)) (individual) [SDNT]

BUITRAGO DE HERRERA, Luz Mery, c/o AGROPECUARIA BETANIA LTDA., Cali, Colombia; c/o AGROPECUARIA Y REFORESTADORA HERREBE LTDA., Cali, Colombia; c/o CONSTRUEXITO S.A., Cali, Colombia; c/o INVERSIONES BETANIA LTDA., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia; c/o INVERSIONES HERREBE LTDA., Cali, Colombia; c/o SOCOVALLE, Cali, Colombia; c/o W. HERRERA Y CIA., Cali, Colombia (Cédula No. 29641219 (Colombia)) (individual) [SDNT]

CASTANO ARANGO, Fernando, c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia (Cédula No. 14953602 (Colombia)) (individual) [SDNT]

DAZA QUIROGA, Hugo Carlos, c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DISTRIBUIDORA MYRAMIREZ S.A., Bogotá, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS, S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia (Cédula No. 19236485 (Colombia)) (individual) [SDNT]

DAZA RIVERA, Pablo Emilio, c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA MYRAMIREZ S.A., Bogotá, Colombia; c/o FARMATODO S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR, Bogotá, Colombia; c/o COLOR 89.5 FM STEREO, Cali, Colombia; c/o DROGAS LA REBAJA, Cali, Colombia; c/o RIONAP COMERCIO Y REPRESENTACIONES S.A., Quito, Ecuador (Cédula No. 4904545 (Colombia)) (individual) [SDNT]

DOMINGUEZ GARIBELLO (GARIVELLO), Freddy Orlando, c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia (Cédula No. 16659634 (Colombia)) (individual) [SDNT]

GALINDO, Gilmer Antonio (a.k.a. GUZMAN TRUJILLO, Carlos Arturo), c/o COMERCIAL DE NEGOCIOS CLARIDAD Y CIA., Bogotá, Colombia; c/o COMERCIALIZADORA EXPERTA Y CIA. S. EN C., Bogotá, Colombia; c/o INMOBILIARIA GALES LTDA., Bogotá, Colombia; c/o CONSTRUEXITO S.A., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; Carrera 4C No. 53-40 apt. 307, Cali, Colombia (Cédula No. 16245188 (Colombia)) (individual) [SDNT]

GALINDO HERRERA, Diana Paola, c/o COMERCIAL DE NEGOCIOS CLARIDAD Y CIA., Bogotá, Colombia; c/o COMERCIALIZADORA EXPERTA Y CIA. S. EN C., Bogotá, Colombia; c/o INMOBILIARIA GALES LTDA., Bogotá, Colombia; c/o AGROPECUARIA Y REFORESTADORA HERREBE LTDA., Cali, Colombia; c/o CONSTRUEXITO S.A., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o INVERSIONES HERREBE LTDA., Cali, Colombia (individual) [SDNT]

GALINDO HERRERA, Diego Alexander, c/o COMERCIAL DE NEGOCIOS CLARIDAD Y CIA., Bogotá, Colombia; c/o COMERCIALIZADORA EXPERTA Y CIA. S. EN C., Bogotá, Colombia; c/o INMOBILIARIA GALES LTDA., Bogotá, Colombia; c/o AGROPECUARIA Y REFORESTADORA HERREBE LTDA., Cali, Colombia; c/o CONSTRUEXITO S.A., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o INVERSIONES HERREBE LTDA., Cali, Colombia (individual) [SDNT]

GARCIA MANTILLA, Edgar Alberto (a.k.a. GARCIA MOGAR, Edgar; a.k.a. GARCIA MONTELLA, Edgar Alberto; a.k.a. GARCIA MONTILLA, Edgar Alberto), c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o REVISTA DEL AMERICA LTDA., Cali, Colombia (DOB 28 November 1946; Passports AC365457 (Colombia), PE008603 (Colombia), PO564495 (Colombia), AA294885 (Colombia); Cédula No. 14936775 (Colombia)) (individual) [SDNT]

GARZON RESTREPO, Juan Leonardo, c/o ALFA PHARMA S.A., Bogotá, Colombia; c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o FARMATODO S.A., Bogotá, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS, Bogotá, Colombia; c/o LABORATORIOS KRESSFOR, Bogotá, Colombia; c/o PENTA PHARMA DE COLOMBIA S.A., Bogotá, Colombia; c/o VALORES MOBILIARIOS DE OCCIDENTE S.A., Bogotá, Colombia; Diagonal 53 No. 38A-20 apt. 103, Bogotá, Colombia; c/o DISTRIBUIDORA MYRAMIREZ S.A., Cali, Colombia; c/o DROGAS LA REBAJA, Cali, Colombia; c/o INVERSIONES ARA LTDA., Cali, Colombia; Carrera 7P No. 76-90, Cali, Colombia (DOB 14 January 1962; Cédula No. 16663709 (Colombia)) (individual) [SDNT]

GIL OSORIO, Alfonso, c/o SERVICIOS SOCIALES LTDA., Barranquilla, Colombia; c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia; c/o FARMATODO S.A., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia (DOB 17 December 1946; alt. DOB 17 December 1940; Passports 14949229 (Colombia), 14949279 (Colombia), 14949289 (Colombia), AC342060 (Colombia); Cédula No. 14949279 (Colombia)) (individual) [SDNT]

GUTIERREZ CANCINO, Fernando Antonio, c/o ALFA PHARMA S.A., Bogotá, Colombia; c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia; c/o FARMATODO S.A., Bogotá, Colombia; c/o INVERSIONES GEELE LTDA., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o PENTA PHARMA DE COLOMBIA S.A., Bogotá, Colombia; c/o CREACIONES DEPORTIVAS WILLINGTON LTDA., Cali, Colombia; c/o SERVICIOS SOCIALES LTDA., Cali, Colombia (DOB 4 December 1941; Cédula No. 6089071 (Colombia)) (individual) [SDNT]

GUTIERREZ LOZANO, Ana Maria, c/o SERVICIOS SOCIALES LTDA., Barranquilla, Colombia; c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o INVERSIONES GEELE LTDA., Bogotá, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia (DOB 1972; Cédula No. 39783954 (Colombia)) (individual) [SDNT]

GUTIERREZ LOZANO, Juan Pablo, c/o SERVICIOS SOCIALES LTDA., Barranquilla, Colombia; c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o INVERSIONES GEELE LTDA., Bogotá, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia (DOB 11 April 1972; Passport AC480604 (Colombia); Cédula No. 79570028 (Colombia)) (individual) [SDNT]

HERRERA BUITRAGO, Stella, c/o COMERCIAL DE NEGOCIOS CLARIDAD Y CIA., Bogotá, Colombia; c/o COMERCIALIZADORA EXPERTA Y CIA. S. EN C., Bogotá, Colombia; c/o INMOBILIARIA GALES LTDA., Bogotá, Colombia; Avenida 1B Oeste No. 1-44 apt. 602, Medeira Building, Cali, Colombia; c/o AGROPECUARIA Y REFORESTADORA HERREBE LTDA., Cali, Colombia; c/o CONCRETOS CALI S.A., Cali, Colombia; c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia; c/o INVERSIONES HERREBE LTDA., Cali, Colombia; c/o SOCOVALLE LTDA., Cali, Colombia (DOB 7 October (Year Unknown); Cédula No. 31143871 (Colombia)) (individual) [SDNT]

HOLGUIN SARRIA, Alvaro, c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DERECHO INTEGRAL Y CIA. LTDA., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia (Cédula No. 14950269 or 18950260 (Colombia)) (individual) [SDNT]

IBANEZ LOPEZ, Raul Alberto, c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia; c/o GANADERIAS DEL VALLE S.A., Cali, Colombia; c/o INCOES LTDA., Cali, Colombia; c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia (Cédula No. 16640123 (Colombia)) (individual) [SDNT]

IDARRAGA ORTIZ, Jaime, c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia; c/o FARMATODO S.A., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o INVERSIONES CAMINO REAL S.A., Cali, Colombia (Cédula No. 8237011 (Colombia)) (individual) [SDNT]

JAIMES RIVERA, Jose Isidro, c/o ADMINISTRACION INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o PROCESADORA DE POLLOS SUPERIOR S.A., Palmira, Colombia; c/o CONCRETOS CALI S.A., Cali, Colombia; c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o CONSULTORIA EMPRESARIAL ESPECIALIZADA LTDA., Cali, Colombia; c/o GANADERIAS DEL VALLE S.A., Cali, Colombia; c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia; c/o INVERSIONES BETANIA LTDA., Cali, Colombia; c/o INVERSIONES EL PEÑON S.A., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia; c/o SOCOVALLE LTDA., Cali, Colombia; (Cédula No. 19090006 (Colombia)) (individual) [SDNT]

LARRANAGA CALVACHE, Juan Carlos, c/o ADMINISTRACION INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o PROCESADORA DE POLLOS SUPERIOR S.A., Palmira, Colombia; c/o INMOBILIARIA BOLIVAR LTDA., Cali, Colombia; c/o INVERSIONES EL PEÑON S.A., Cali, Colombia (Cédula No. 12982064 (Colombia)) (individual) [SDNT]

LINARES REYES, Ricardo Jose (a.k.a. LLENARES REYES, Jose Ricardo), c/o ADMINISTRACION INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o CONCRETOS CALI S.A., Cali, Colombia; c/o CONSTRUEXITO S.A., Cali, Colombia; c/o INCOVALLE, Cali, Colombia; c/o INVERSIONES BETANIA LTDA., Cali, Colombia; c/o INVERSIONES EL PEÑON S.A., Cali, Colombia; c/o INVERSIONES HERREBE LTDA., Cali, Colombia; c/o INVERSIONES INVERVALLE S.A., Cali, Colombia; c/o INVHERESA S.A., Cali, Colombia; c/o VIAJES MERCURIO LTDA, Cali, Colombia; c/o W. HERRERA Y CIA. S. EN C., Cali, Colombia (DOB 8 March 1955; Passport PO466638 (Colombia); Cédula No. 14440139 (Colombia)) (individual) [SDNT]

LOZANO CANCINO DE GUTIERREZ, Maria Gladys (a.k.a. LOZANO DE GUTIERREZ, Gladys), c/o INVERSIONES GEELE LTDA., Bogotá, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o PENTA PHARMA DE COLOMBIA S.A., Bogotá, Colombia; c/o SERVICIOS SOCIALES LTDA., Bogotá, Colombia (DOB 19 October 1948; Cédula No. 41444092 (Colombia)) (individual) [SDNT]

LOZANO DE GOMEZ, Zilia, c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia (Cédula No. 541577886 (Colombia)) (individual) [SDNT]

LUGO VILLAFAÑE, Jesus Alberto, c/o CONCRETOS CALI S.A., Cali, Colombia; c/o INVERSIONES Y CONSTRUCCIONES VALLE S.A., Cali, Colombia; c/o INVHERESA S.A., Cali, Colombia; Calle 70N No. 14-31, Cali, Colombia (Cédula No. 14977685 (Colombia)) (individual) [SDNT]

MARMOLEJO LOAIZA, Carlos Julio, c/o PROCESADORA DE POLLOS SUPERIOR S.A., Palmira, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o INVERSIONES AGRICOLAS AVICOLAS Y GANADERAS LA CARMELITA LTDA., Cali, Colombia; c/o AGROPECUARIA BETANIA LTDA., Cali, Colombia (Cédula No. 16601783 (Colombia)) (individual) [SDNT]

MOGOLLON RUEDA, Eduardo, c/o ALFA PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o INVERSIONES RODRIGUEZ MORENO Y CIA. S. EN C., Cali, Colombia (DOB 5 February 1953; Cédula No. 19194691 (Colombia)) (individual) [SDNT]

MONDRAGON DE RODRIGUEZ, Mariela, c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o COMPAX LTDA., Cali, Colombia; c/o MARIELA DE RODRIGUEZ Y CIA. S. EN C., Cali, Colombia (DOB 12 April 1935; Passport 4436059 (Colombia); Cédula No. 29072613 (Colombia)) (individual) [SDNT]

MONROY ARCILA, Francisco Jose, c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o INVERSIONES EL PEÑON S.A., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia (Cédula No. 79153691 (Colombia)) (individual) [SDNT]

MUÑOZ RODRIGUEZ, Juan Carlos, c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia (DOB 25 September 1964; Passport 16703148 (Colombia); Cédula No. 16703148 (Colombia)) (individual) [SDNT]

MUÑOZ RODRIGUEZ, Soraya, c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o RADIO UNIDAS FM S.A., Cali, Colombia (DOB 26 July 1967; Passport AC569012 (Colombia); Cédula 31976822 (Colombia)) (individual) [SDNT]

PINZON, Marco Antonio, c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia (Cédula No. 17801803 (Colombia)) (individual) [SDNT]

RAMIREZ CORTES, Delia Nhora (Nora), c/o CONSTRUCTORA ALTOS DEL RETIRO LTDA., Bogotá, Colombia; c/o ADMINISTRACION INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o AGROPECUARIA Y REFORESTADORA HERREBE LTDA., Cali, Colombia; c/o CONSTRUEXITO S.A., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o INMOBILIARIA BOLIVAR LTDA., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia; c/o INVERSIONES HERREBE LTDA., Cali, Colombia; c/o INVERSIONES INVERVALLE S.A., Cali, Colombia; c/o SOCOVALLE LTDA., Cali, Colombia; c/o VIAJES MERCURIO LTDA., Cali, Colombia (DOB 20 January 1959; Cédula No. 38943729 (Colombia)) (individual) [SDNT]

RAMIREZ GARCIA, Manuel Hernan, c/o RADIO UNIDAS FM S.A., Cali, Colombia; Calle 5 No. 37A-65 of. 203, Cali, Colombia; Carrera 91 No. 17-17, Casa 4, Cali, Colombia (Cédula No. 14975762 (Colombia)) (individual) [SDNT]

RAMIREZ LIBREROS, Gladys Miriam, c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o INVERSIONES MOMPAX LTDA., Cali, Colombia (DOB 20 November 1945; Passport 38974109 (Colombia); Cédula No. 38974109 (Colombia)) (individual) [SDNT]

RAMIREZ VALENCIANO, William, c/o ADMINISTRACION INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o CONCRETOS CALI S.A., Cali, Colombia; c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o IMCOMER LTDA., Cali, Colombia; c/o INVERSIONES BETANIA LTDA., Cali, Colombia; c/o INVERSIONES EL PEÑON S.A., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia; Calle 3C No. 72-64 10, Cali, Colombia (Cédula No. 16694719 (Colombia)) (individual) [SDNT]

RIZO MORENO, Jorge Luis, c/o PROCESADORA DE POLLOS SUPERIOR S.A., Palmira, Colombia; c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o CONSTRUVIDA S.A., Cali, Colombia; c/o IMCOMER LTDA., Cali, Colombia; c/o INCOES LTDA., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o INVERSIONES EL PEÑON S.A., Cali, Colombia; c/o SERVICIOS INMOBILIARIOS LTDA., Cali, Colombia; Transversal 11, Diagonal 23-30 apt. 304A, Cali, Colombia (Cédula No. 16646582 (Colombia)) (individual) [SDNT]

RODRIGUEZ ABADIA, William, c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o VALORES MOBILIARIOS DE OCCIDENTE S.A., Bogotá, Colombia; c/o ANDINA DE CONSTRUCCIONES S.A., Cali, Colombia; c/o ASPOIR DEL PACIFICO Y CIA. LTDA., Cali, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DERECHO INTEGRAL Y CIA. LTDA., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o INVERSIONES ARA LTDA., Cali, Colombia; c/o INVERSIONES MIGUEL RODRIGUEZ E HIJO, Cali, Colombia; c/o M. RODRIGUEZ O. Y CIA. S. EN C., Cali, Colombia; c/o MUÑOZ Y RODRIGUEZ Y CIA. LTDA., Cali, Colombia; c/o RADIO UNIDAS FM S.A., Cali, Colombia; c/o REVISTA DEL AMERICA LTDA., Cali, Colombia; c/o RIONAP COMERCIO Y REPRESENTACIONES S.A., Quito, Ecuador (DOB 31 July 1965; Cédula No. 16716259 (Colombia)) (individual) [SDNT]

RODRIGUEZ ARBELAEZ, Maria Fernanda, c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o INVERSIONES ARA LTDA., Cali, Colombia; c/o RIONAP COMERCIO Y REPRESENTACIONES S.A., Quito, Ecuador (DOB 28 November 1973; alt. DOB 28 August 1973; Passport AC568974 (Colombia); Cédula No. 66860965 (Colombia)) (individual) [SDNT]

RODRIGUEZ DE ROJAS, Haydee (a.k.a. RODRIGUEZ DE MUÑOZ, Haydee; a.k.a. RODRIGUEZ OREJUELA, Haydee), c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o CREACIONES DEPORTIVAS WILLINGTON LTDA., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o HAYDEE DE MUÑOZ Y CIA. S. EN C., Cali, Colombia; c/o RADIO UNIDAS FM S.A., Cali, Colombia (DOB 22 September 1940; Cédula No. 38953333 (Colombia)) (individual) [SDNT]

RODRIGUEZ MONDRAGON, Alexandra (a.k.a. RODRIGUEZ MONDRAGON, Maria Alexandra), c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o PENTA PHARMA DE COLOMBIA S.A., Bogotá, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o MARIELA DE RODRIGUEZ Y CIA. S. EN C., Cali, Colombia; c/o TOBOGON, Cali, Colombia (DOB 30 May 1969; alt. DOB 5 May 1969; Passport AD359106 (Colombia); Cédula No. 66810048 (Colombia)) (individual) [SDNT]

RODRIGUEZ MONDRAGON, Humberto, c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia; c/o FARMATODO S.A., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o PENTA PHARMA DE COLOMBIA S.A., Bogotá, Colombia; c/o ANDINA DE CONSTRUCCIONES S.A., Cali, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o MARIELA DE RODRIGUEZ Y CIA. S. EN C., Cali, Colombia; c/o MAXITIENDAS TODO EN UNO, Cali, Colombia; c/o RADIO UNIDAS FM S.A., Cali, Colombia; c/o RIONAP COMERCIO Y REPRESENTACIONES S.A., Quito, Ecuador (DOB 21 June 1963; Passport AD387757 (Colombia); Cédula No. 16688683 (Colombia)) (individual) [SDNT]

RODRIGUEZ MONDRAGON, Jaime, c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia; c/o FARMATODO S.A., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o PENTA PHARMA DE COLOMBIA S.A., Bogotá, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o MARIELA DE RODRIGUEZ Y CIA. S. EN C., Cali, Colombia; c/o PLASTICOS CONDOR LTDA., Cali, Colombia; c/o RIONAP COMERCIO Y REPRESENTACIONES S.A., Quito, Ecuador (Cédula No. 16637592 (Colombia)) (individual) [SDNT]

RODRIGUEZ OREJUELA DE GIL, Amparo, c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o CREACIONES DEPORTIVAS WILLINGTON LTDA., Cali, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o RADIO UNIDAS FM S.A., Cali, Colombia (DOB 13 March 1949; Passport AC342062 (Colombia); Cédula No. 31218703 (Colombia)) (individual) [SDNT]

RODRIGUEZ RAMIREZ, Claudia Pilar (Patricia), c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia; c/o FARMATODO S.A., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia (DOB 30 June 1963; alt. DOB 30 August 1963; alt. DOB 1966; Passports 007281 (Colombia), P0555266 (Colombia); Cédula No. 51741013 (Colombia)) (individual) [SDNT]

ROSALES DIAZ, Hector Emilio, c/o ADMINISTRACION INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o CONCRETOS CALI S.A., Cali, Colombia; c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o INVERSIONES EL PEÑON S.A., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia; c/o INVERSIONES VILLA PAZ S.A., Cali, Colombia; c/o MERCAVICOLA LTDA., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia (Cédula No. 16588924 (Colombia)) (individual) [SDNT]

SALCEDO RAMIREZ, Nhora Clemencia, c/o ADMINISTRACION INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o INMOBILIARIA BOLIVAR LTDA., Cali, Colombia (Cédula No. 31273613 (Colombia)) (individual) [SDNT]

URIBE GONZALEZ, Jose Abelardo, c/o PROCESADORA DE POLLOS SUPERIOR S.A., Palmira, Colombia; c/o CONSULTORIA EMPRESARIAL ESPECIALIZADA LTDA., Cali, Colombia; c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia; c/o SERVICIOS INMOBILIARIAS LTDA., Cali, Colombia (Cédula No. 16647906 (Colombia)) (individual) [SDNT]

VALENCIA, Reynel (Reinel), c/o PROCESADORA DE POLLOS SUPERIOR S.A., Palmira, Colombia; c/o GANADERIAS DEL VALLE S.A., Cali, Colombia; c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia (Cédula No. 16258610 (Colombia)) (individual) [SDNT]

VICTORIA POTES, Nestor Raul, c/o ADMINISTRACION INMOBILIARIA S.A., Cali, Colombia; c/o AGROPECUARIA BETANIA LTDA., Cali, Colombia; c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia; c/o GANADERIAS DEL VALLE S.A., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o INVERSIONES VILLA PAZ S.A., Cali, Colombia; c/o PROHUEVO DE COLOMBIA LTDA., Cali, Colombia; Calle 70N No. 14-31, AA26397, Cali, Colombia (Cédula No. 16247701 (Colombia)) (individual) [SDNT]

VILLALOBOS CASTAÑO, Luis Enrique, c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia (Cédula No. 14875020 (Colombia)) (individual) [SDNT]

VILLEGAS ARIAS, Maria Deisy (Deicy), c/o CONCRETOS CALI S.A., Cali, Colombia; c/o CONSTRUEXITO S.A., Cali, Colombia; c/o GANADERIAS DEL VALLE S.A., Cali, Colombia; c/o INDUSTRIA MADERERA ARCA LTDA, Cali, Colombia; c/o SOCOVALLE LTDA., Cali, Colombia; Calle 66 No. 1A-6 51, Cali, Colombia (Cédula No. 31200871 (Colombia)) (individual) [SDNT]

VILLEGAS BOLAÑOS, Silver Amado, c/o ADMINISTRACION INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o CONCRETOS CALI S.A., Cali, Colombia; c/o CONSULTORIA EMPRESARIAL ESPECIALIZADA LTDA., Cali, Colombia; c/o GANADERIAS DEL VALLE S.A., Cali, Colombia (Cédula No. 10480869 (Colombia)) (individual) [SDNT]

ZUÑIGA OSORIO, Marco Fidel, c/o FARMATODO S.A., Bogotá, Colombia; c/o LABORATORIOS BLANCO PHARMA, Bogotá, Colombia (individual) [SDNT]

3. Appendices A and B to chapter V of 31 CFR are amended by (1) removing the entries in the names ''ABRAHAM, Trevor'', ''ALLEN, Peter Francis'', ''HENDERSON, Paul'', and ''RIVERA MOSQUERA, Mauricio Jose'' from appendix A and (2) under the heading ''England'' in appendix B, removing the entries in the names ''ABRAHAM, Trevor'', ''ALLEN, Peter Francis'', and ''HENDERSON, Paul''; and under the heading ''Colombia'' in appendix B, removing the entry in the name ''RIVERA MOSQUERA, Mauricio Jose''.

Dated: December 30, 1996.

Loren L. Dohm,

Acting Director, Office of Foreign Assets Control.

Approved: December 30, 1996.

Elisabeth A. Bresee,

Deputy Assistant Secretary (Law Enforcement).

[FR Doc. 97–1306 Filed 1–15–97; 8:45 am]

BILLING CODE 4810–25–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO35–1–6190, CO41–1–6826, CO40–1–6701, CO42–1–6836; FRL–5664–5]

Clean Air Act Approval and Promulgation of State Implementation Plans; Colorado; New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State implementation plan (SIP) revisions submitted by the Governor of Colorado on November 12, 1993, August 25, 1994, September 29, 1994, November 17, 1994, and January 29, 1996. These submittals revised Colorado Regulation No. 3 and the Common Provisions Regulation pertaining to the State's new source review (NSR) permitting requirements. The submittals included revisions to make the State's NSR rules more compatible with its title V operating permit program, the addition of nonattainment NSR provisions for new and modified major sources of PM–10 precursors locating in the Denver PM–10 nonattainment area, a change from the dual ''source'' definition to the plantwide definition of ''source'' in the State's nonattainment NSR permitting requirements, and correction of deficiencies in the State's construction permitting rules. EPA proposed approval of these SIP revisions in the August 28, 1996 Federal Register, and no comments were received. EPA is approving these regulatory revisions because they provide for consistency with the Clean Air Act (Act), as amended, and the corresponding Federal regulations and guidance.

Also, EPA is revising 40 CFR 52.320 to list various sections of the Common Provisions Regulation in the ''Incorporation by reference'' section which EPA approved in past actions but which EPA did not list in the CFR. Last, EPA is deleting two NSR rule disapprovals listed in 40 CFR 52.324(c) and 52.343(a)(1) because the State has submitted, and EPA has approved, revisions addressing the disapprovals.

EFFECTIVE DATE: This action is effective February 20, 1997.

ADDRESSES: Copies of the State's submittals and other information are available for inspection during normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405; Air Pollution Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530; and The Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper at (303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. Background

On November 12, 1993, the Governor of Colorado submitted revisions to its construction permitting requirements in Regulation No. 3, including the State's nonattainment NSR provisions, for approval as part of the SIP. The State made numerous revisions to Regulation No. 3 as a result of the State's adoption of its title V operating permit program. In order to address deficiencies identified by EPA in the November 12, 1993 submittal, the State submitted additional revisions to Regulation No. 3 on September 29, 1994 and January 29, 1996. On August 25, 1994, the State also submitted PM–10 precursor NSR requirements applicable in the Denver PM–10 nonattainment area. In addition, on November 17, 1994, the State submitted a change in the definition of ''source,'' to switch from the dual definition of source to the plantwide definition of source in its nonattainment NSR rules. On August 28, 1996, EPA proposed to approve all of the revisions submitted, with the exception of Section IV.C. of Part A of Regulation No. 3 (see 61 FR 44264–44269). A sixty-day public comment period was provided, and no public comments were received on the proposal.

A. November 12, 1993, September 29, 1994, and January 29, 1996 Submittals

The revisions to the State's construction permitting program submitted on November 12, 1993 were adopted at the same time as the State's title V operating permit program, and the majority of the changes were adopted to make the two permitting programs work together and to allow for implementation of certain title V provisions. In addition, the State completely restructured Regulation No. 3 in the November submittal, so it is now divided into four parts:

1. Part A contains all definitions and provisions that apply to both the construction permit and operating permit programs. In this part, Colorado extended the administrative permit amendment provisions and some of the operational flexibility provisions of 40 CFR part 70 to the construction permit program;

2. Part B contains provisions which apply only to the construction permit program (including the nonattainment NSR and prevention of significant deterioration (PSD) programs). The State made revisions to allow certain aspects of the operating permit program to also apply to construction permits (e.g., combined permits and general permits) and to allow certain operational flexibility provisions to be implemented through the operating permit program without requiring construction permits (e.g., minor modifications, SIP equivalency, and other permit changes);

3. Part C contains provisions which apply solely to the State's operating permit program; and

4. Part D contains the Statements of Basis and Purpose for each revision to Regulation No. 3.

Parts A and B of Regulation No. 3 were submitted for approval as part of the SIP in the November 12, 1993 SIP submittal. Parts A and C of Regulation No. 3 were submitted for approval as part of the State's title V operating permit program on November 5, 1993.

In a September 19, 1994 letter to the State, EPA identified many deficiencies in the State's November 12, 1993 SIP submittal. In that letter, EPA identified deficiencies that needed to be addressed by the State before EPA would proceed to act on the November 1993 SIP submittal. EPA also recommended other revisions to provide for clarity in the State's permitting regulations.

Some of the deficiencies identified by EPA in the State's November 12, 1993 SIP submittal were also identified as deficiencies in the State's title V operating permit program which EPA required the State to address before EPA would proceed with interim approval of the State's title V program. Those deficiencies included (1) the fact that the State does not currently have a SIP-approved generic emissions trading program under which the trading described in Section IV.B. of Part A of Regulation No. 3 would be allowed, and (2) the allowing of alternative emission limits to be developed in permits when Section IV.D.1.i. of Part B of Regulation No. 3 did not adequately provide for this flexibility. The State adopted revisions intended to address these deficiencies (as well as to address other deficiencies in its title V operating permit program) on August 18, 1994 and submitted these revisions for approval in the SIP and for revision to its title V program on September 29, 1994.

EPA's review of the September 29, 1994 submittal found that the State adequately addressed these SIP/title V deficiencies by clarifying that Section IV.B. of Part A could only be implemented if the SIP included an EPA-approved trading program and by

deleting Section IV.D.1.i. of Part B. Based on this September 29, 1994 title V program revision (which also included correction of other title V program deficiencies), EPA granted interim approval of Colorado's operating permit program on January 24, 1995 (60 FR 4563).

On March 16, 1995, the State adopted further revisions to Regulation No. 3 intended to address the remaining deficiencies EPA identified in the State's November 12, 1993 SIP submittal. Those revisions were submitted to EPA for approval on January 29, 1996 and include the following:

1. Changes to the definitions of ''lowest achievable emission rate (LAER)'' and ''net emissions increase'' to be consistent with the Federal definitions in 40 CFR 51.165(a)(1)(xiii) and 40 CFR 51.165(a)(1)(vi), respectively;

2. Consolidation of the State's definitions of ''air pollution source,'' ''stationary source,'' and ''new source'' so that only the term ''stationary source,'' which is consistent with the Federal definition, is used in the provisions of Regulation No. 3. The State also retained the definition of ''air pollution source'' because it reflects the definition found in State statute, but it is no longer used in Regulation No. 3;

3. The addition of a requirement to the definition of ''volatile organic compound (VOC)'' requiring EPA approval prior to use of any test method that is not an EPA reference test method;

4. Revisions to the administrative process in Section II.D.5. of Part A of Regulation No. 3 which allows for processing individual requests to exempt additional sources from the State's Air Pollution Emission Notice (APEN) requirements (and, consequently, from construction permit requirements) to require EPA approval of any new exemptions prior to use;

5. Revisions to the definition of ''surplus'' in Section V.C.10. of Part A of Regulation No. 3 to be consistent with EPA's Emission Trading Policy Statement (see 51 FR 43832, 12/4/86);

6. The addition of a provision to Section V.E. of Part A of Regulation No. 3 to ensure that new source growth cannot interfere with reasonable further progress towards attainment, in order to be consistent with section 173(a)(1)(A) of the Act;

7. The addition of a reference to the State's definition of ''net emission increase'' in Section V.I. of Part A of Regulation No. 3 (which discusses netting);

8. The addition of a requirement to Section IV.C.1. of Part B of Regulation No. 3 requiring the opportunity for public comment on permits for sources trying to obtain Federally enforceable limits on their potential to emit; and

9. The deletion of an exemption from nonattainment NSR requirements for sources undergoing fuel switches due to lack of adequate fuel supply (which is not allowed by EPA). EPA believes these regulatory revisions adequately address the deficiencies described above.

The State addressed some of EPA's other comments with an opinion from the State Attorney General's office dated July 3, 1995. Those comments and the State's responses are as follows:

1. EPA recommended adding definitions to Regulation No. 3 of ''begin actual construction,'' ''necessary preconstruction approvals or permits,'' and ''construction'' to be consistent with the Federal definitions. The State did not add these definitions because the State contends that its definitions of ''commenced construction,'' ''construction'' in the Common Provisions Regulation, and ''modification'' made the addition of these definitions unnecessary. After further review of the definitions referred to by the State, EPA agrees with the State's contention; and

2. Section IV.A. of Part A of Regulation No. 3 allows for alternative operating scenarios to be included in a construction permit, and this provision is based on the title V provision in 40 CFR 70.6(a)(9). However, in order to approve this provision for construction permits, EPA wanted assurances from the State that it would require compliance with all PSD or nonattainment NSR provisions (e.g., ambient air quality analysis or net air quality benefit) for every scenario allowed under the permit. The State's July 3, 1995 letter included an interpretation that compliance with all PSD or nonattainment NSR requirements (whichever was applicable) would be ensured under the provision in Section IV.A.2. of Regulation No. 3, which requires that the permit contain conditions to ensure each scenario meets all applicable Federal and State requirements. This satisfies EPA's concern.

EPA believes the comments discussed above were adequately addressed by the State in its revisions to Regulation No. 3 adopted on March 16, 1995 and its opinion from the State Attorney General's office. In addition, the State also addressed many of EPA's recommended revisions to Regulation No. 3, which EPA believes will help to strengthen the State's construction permit regulations.

EPA had also commented on Section IV.C. of Part A of Regulation No. 3, which provides for a construction permit (as well as a title V operating permit) to contain terms and conditions allowing for the trading of emissions decreases and increases under a permit cap, as long as certain conditions are met. This provision is based on the title V operating permit requirement in 40 CFR 70.4(b)(12)(iii), but EPA had concerns with the use of this provision in construction permitting. EPA is currently working on revisions to the Federal NSR regulations as part of the ''NSR Reform'' rules that would allow a source to establish a cap in its construction permit (termed a plantwide applicability limit or PAL) for NSR applicability under which emissions trading might be allowed. EPA proposed these NSR Reform rules for public comment on July 23, 1996 (see 61 FR 38250). Until the final EPA regulations are promulgated on this issue, EPA does not believe it is appropriate to approve the State's provision allowing trading under permit caps for construction permits, as EPA could be approving a rule that is inconsistent with the forthcoming Federal regulations. However, as discussed in the preamble to the July 23, 1996 rulemaking, Colorado may be able to consider the issuance of permits with emissions caps on a case-by-case basis under EPA's existing regulations (see 61 FR 38264).

EPA believes the State adequately addressed all of the deficiencies EPA identified in the State's November 12, 1993 SIP submittal. Thus, EPA is approving the revisions to Regulation No. 3 submitted on November 12, 1993, September 29, 1994, and January 29, 1996. However, as discussed above, EPA is not acting on Section IV.C. of Part A of Regulation No. 3 at this time. For further details, see the Technical Support Document (TSD) accompanying this document.

B. August 25, 1994 SIP Submittal of Nonattainment NSR Rules for New and Modified Sources of PM–10 Precursors

When the Act was amended in 1990, it included, among other things, revised requirements for nonattainment areas which are set out in part D of title I of the Act. It also set out specific deadlines for submittals of SIP revisions addressing these new requirements, including the submittal of nonattainment NSR rules for which the deadlines varied depending on the type and designation of the nonattainment area. In response to those requirements, the Governor of Colorado submitted a

SIP revision on January 14, 1993 to bring the State's nonattainment NSR rules up to date with the requirements of the amended Act. EPA acted on that submittal on August 18, 1994 (59 FR 42500). Specifically, EPA approved the State's nonattainment NSR rules as meeting the requirements of the amended Act for the State's ozone and carbon monoxide areas, as well as for the Canon City, Pagosa Springs, and Lamar PM–10 nonattainment areas. However, EPA only partially approved the State's NSR submittal in that action for the Aspen, Telluride, and Denver moderate PM–10 nonattainment areas because the State had not submitted NSR regulations for new and modified major sources of PM–10 precursors and because, at the time of publication of the August 18, 1994 Federal Register document, EPA had not promulgated findings that such sources of PM–10 precursors did not contribute significantly to exceedances of the PM–10 national ambient air quality standards (NAAQS) in any of these three areas. [1] (See 59 FR 42503–42504 for further details.)

Since that August 18, 1994 Federal Register action, EPA has promulgated findings that sources of PM–10 precursors do not contribute significantly to PM–10 NAAQS exceedances in the Aspen and Telluride PM–10 nonattainment areas (see 59 FR 47092–47093, September 14, 1994, and 59 FR 47809, September 19, 1994, respectively), resulting in fully approved NSR provisions for these two PM–10 nonattainment areas. However, in the Denver moderate PM–10 nonattainment area, EPA has indicated that it does consider major stationary sources of PM–10 precursors (specifically oxides of nitrogen (NO_X) and sulfur dioxide (SO_2)) to contribute significantly to exceedances of the PM–10 NAAQS (see 58 FR 66331, December 20, 1993).

On February 17, 1994, the State adopted nonattainment NSR provisions for new and modified major sources of PM–10 precursors (defined as SO_2 and NO_X) in the Denver metropolitan moderate PM–10 nonattainment area. These Regulation No. 3 revisions were formally submitted to EPA for approval into the SIP on August 25, 1994.

As discussed in EPA's August 28, 1996 proposed rulemaking on the State's submittal, EPA believes the State's August 25, 1994 submittal of NSR revisions adequately addresses all of the PM–10 precursor NSR requirements in the Denver moderate PM–10 nonattainment area. Specifically, those requirements include requiring new major stationary sources (based on the 100 ton per year major source threshold) of PM–10 precursors in the Denver moderate PM–10 nonattainment area, as well as major modifications of PM–10 precursors (based on the major modification significance levels for SO_2 and NO_X), to meet all of the nonattainment NSR permitting requirements (including, among other things, application of lowest achievable emission rate (LAER) and the requirements to obtain emission offsets providing a net air quality benefit).

The State adopted specific provisions regarding NSR offsets for new and modified major stationary sources of PM–10 and PM–10 precursors, as follows: In Section V.F.1. of Part A of Regulation No. 3 which identifies the criteria for approval of all emissions trading transactions including NSR offsets, the State added provisions explaining which interpollutant trades between PM–10 and PM–10 precursors are allowed for NSR offsets. Specifically, Section V.F.1. provides that new or modified major sources of a PM–10 precursor can obtain offsets from reductions in that same precursor or in PM–10, while new or modified major sources of PM–10 can only obtain offsets from reductions in PM–10. This is consistent with EPA's current policy regarding offsets for PM–10.

However, the State did adopt an exception to this requirement in Section V.H.9. of Part A of Regulation No. 3. Specifically, Section V.H.9. allows interpollutant offsets other than those discussed in Section V.F.1. to be approved on a case-by-case basis, provided that the applicant demonstrates, on the basis of EPA-approved methods where possible, that the emissions increases for the new or modified source will not cause or contribute to a violation of the NAAQS. Section V.H.9. further provides that the source's permit application will not be approved by the State until written approval has been received from the EPA. Because written approval will be required from EPA before a permit will be issued which allows an interpollutant trade for offsetting (other than those trades allowed in Section V.F.1.), EPA believes that it will be able to ensure any interpollutant offsets will meet the requirements of the Act concerning NSR. Thus, this exception is acceptable to EPA.

Thus, EPA is fully approving the State's nonattainment NSR rules for the Denver moderate PM–10 nonattainment area. For further details on the State's August 25, 1994 SIP submittal, see the August 28, 1996 notice of proposed rulemaking (61 FR 44266–44267) and the TSD.

C. November 17, 1994 SIP Submittal Revising the Definition of ''Source''

On October 14, 1981, EPA deleted the dual source definition from the nonattainment NSR permitting requirements and replaced it with the plantwide definition to give States the option of adopting the plantwide definition of source in nonattainment areas (see 46 FR 50766). Under the dual source definition, emissions increases that occurred either at an individual piece of process equipment or at the entire plant were reviewed to determine whether a major modification had occurred. This dual source definition precluded major sources undergoing a modification at an individual piece of process equipment from considering other emission decreases within the plant in determining the net emissions increase of the modification.

In the October 1981 Federal Register document, EPA set forth its rationale for allowing use of the plantwide definition (46 FR 50766–50769). EPA reasoned that, since part D of the Act requires States to adopt adequate SIPs which demonstrate attainment and maintenance of the NAAQS, ''deletion of the dual definition increases State flexibility without interfering with timely attainment of the ambient standards and so is consistent with part D'' (46 FR 50767). EPA also added that, by bringing more plant modifications into the NSR permitting process, the dual source definition may discourage replacement of older, dirtier processes and, hence, retard not only economic growth but also progress toward clean air. Last, EPA pointed out that, under the plantwide definition, new equipment would still be subject to any applicable new source performance standard (NSPS). Thus, EPA regarded changing to the plantwide definition as presenting, at the very worst, environmental risks that were manageable because of the independent impetus to create adequate part D plans and, at best, the potential for air quality improvements driven by the marketplace. In 1984, the Supreme Court upheld EPA's action as a reasonable accommodation of the

[1] Section 189(e) of the amended Act requires that the control requirements applicable to major stationary sources of PM–10 must also apply to major stationary sources of PM–10 precursors, except where the Administrator of EPA has determined that such sources do not contribute significantly to PM–10 levels which exceed the standard in the area. Any such determination that sources of PM_{10} precursors do not contribute significantly is generally made concurrently with EPA's promulgation of an action on a SIP submittal for a PM_{10} nonattainment area.

conflicting purposes of part D of the Act and, hence, well within EPA's broad discretion. *Chevron, U.S.A., Inc.* v. *NRDC, Inc.*, 104 S.Ct. 2778.

Consequently, on November 17, 1994, Colorado submitted revisions to the Common Provisions Regulation and Regulation No. 3 to change from the dual definition of ''source'' to the plantwide ''source'' definition in its nonattainment NSR permitting requirements.

In the October 14, 1981 Federal Register which deleted the dual source definition from the Federal nonattainment NSR permitting requirements, EPA ruled that a State wishing to adopt a plantwide definition generally has complete discretion to do so, and it set only one restriction on that discretion. If a State had specifically projected emission reductions from its NSR program as a result of a dual source or similar definition and had relied on those reductions in an attainment strategy that EPA later approved, then the State needed to revise its attainment strategy as necessary to accommodate reduced NSR permitting under the plantwide definition (see 46 FR 50767 and 50769).

This 1981 ruling allowing States to adopt a plantwide definition assumed that nonattainment areas already had, or shortly would have, approved part D plans in place. However, the Act was amended in 1990, creating new requirements and deadlines for submittal of attainment plans for areas which were not in attainment of the NAAQS. In light of these changes, EPA will now approve adoption of the plantwide definition into SIPs for nonattainment areas that need but lack adequate part D attainment plans approved by EPA only if the State has demonstrated that it is making, and will continue to make, reasonable efforts to adopt and submit complete plans for timely attainment in these areas.

For the majority of Colorado's nonattainment areas that are required to have part D attainment plans, the State has EPA-approved part D plans. The only areas for which the State does not yet have fully approved part D attainment plans are the Denver PM–10, Denver carbon monoxide (CO), Longmont CO, and Steamboat Springs PM–10 nonattainment areas. The State has submitted part D plans for all of these areas, but EPA has not yet completed action on these submittals. Thus, EPA believes the State has adequately demonstrated that it has made, and will continue to make, reasonable efforts to get an approved part D attainment plan in place for these areas.

Further, the State has certified that it did not, and will not, rely on any emissions reductions from the operation of the NSR program using the dual source definition in any of its nonattainment area demonstrations of attainment. EPA's examination of the State's attainment demonstrations confirmed the State's certification. Therefore, EPA believes it is appropriate to approve Colorado's switch to a plantwide definition of source in accordance with EPA's 1981 action, inasmuch as the State has demonstrated that it is making, and will continue to make, reasonable efforts to get approved part D attainment plans in place for all of its nonattainment areas.

II. Final Action

EPA is approving the revisions to Colorado's construction permitting program in Regulation No. 3 submitted on November 12, 1993, August 25, 1994, September 29, 1994, November 17, 1994, and January 29, 1996. EPA is also approving the revisions to the Common Provisions Regulation submitted on November 17, 1994. However, for the reasons discussed above, EPA is taking no action, at this time, on Section IV.C. of Part A of Regulation No. 3.

EPA would also like to clarify its action regarding the State's provisions for trading of emission reduction credits in Section V. of Part A of Regulation No. 3. The State initially submitted those provisions to EPA on November 17, 1988, along with other revisions to Regulation No. 3, for approval as a generic emissions trading rule. However, in EPA's June 17, 1992 rulemaking on the State's November 17, 1988 SIP submittal, EPA stated that the State's emission reduction credit trading rule was only being approved as a rule which requires case-by-case SIP revisions for approval of all bubbles. (See 57 FR 26999.) In the SIP submittals being acted on in this action, the State did not submit any revisions intended to change EPA's June 17, 1992 rulemaking regarding the State's emissions trading provisions. Thus, in this action, EPA is only approving Section V. of Part A as a rule that requires case-by-case SIP revisions for approval of all bubbles.

Also in this action, EPA is revising 40 CFR 52.320 to list in the ''Incorporation by reference'' section various sections of the Common Provisions Regulation that EPA approved in past actions but that EPA did not list in the CFR, as follows:

A. Section I.A. and the definitions of ''emission control regulation'' and ''volatile organic compound,'' which were part of the State's January 14, 1993 SIP submittal that EPA approved on August 18, 1994 (59 FR 42500–42506); and

B. The definitions of ''baseline area'' and ''reconstruction,'' which were part of the State's April 9, 1992 SIP submittal that EPA approved on September 27, 1993 (58 FR 50269–50271).

Last, EPA is deleting two NSR rule disapprovals listed at 40 CFR 52.324(c) and 52.343(a)(1). The State corrected deficiencies in these rules in its January 14, 1993 SIP submittal, which EPA approved on August 18, 1994 (see 59 FR 42504). Therefore, these disapprovals no longer apply to Colorado's NSR program.

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

III. Administrative Requirements

A. Executive Order 12866

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 (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant 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.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal

inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 24, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: December 5, 1996.

Jack W. McGraw,

Acting Regional Administrator

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(72) to read as follows:

§52.320 Identification of plan.

* * * * *

(c) * * *

(72) On November 12, 1993, August 25, 1994, September 29, 1994, November 17, 1994, and January 29, 1996, the Governor of Colorado submitted revisions to the State's construction permitting requirements in Regulation No. 3 and the Common Provisions Regulation. These revisions included nonattainment new source review permitting requirements for new and modified major sources of PM–10 precursors locating in the Denver moderate PM–10 nonattainment area, changing from the dual source definition to the plantwide definition of source in nonattainment new source review permitting, other changes to Regulation No. 3 to make the construction permitting program more compatible with the State's title V operating permit program, and correction of deficiencies. In addition, the Governor submitted revisions to the Common Provisions Regulation on April 9, 1992 and January 14, 1993.

(i) Incorporation by reference.

(A) Common Provisions Regulation, 5 CCR 1001–2, Section I.G., definitions of ''baseline area'' and ''reconstruction;'' adopted 10/17/91, effective 11/30/91.

(B) Common Provisions Regulation, 5 CCR 1001–2, Section I.G., definitions of ''net emissions increase'' and ''stationary source;'' adopted 8/20/92, effective 9/30/92.

(C) Common Provisions Regulation, 5 CCR 1001–2, Section I.A. and Section I.G., definitions of ''emission control regulation'' and ''volatile organic compound;'' adopted 11/19/92, effective 12/30/92.

(D) Regulation No. 3, Air Contaminant Emissions Notices, 5 CCR 1001–5, revisions adopted 8/18/94, effective 9/30/94, as follows: Part A (with the exception of Section IV.C.) and Part B. This version of Regulation No. 3, as incorporated by reference here, supersedes and replaces all versions of Regulation No. 3 approved by EPA in previous actions.

(E) Regulation No. 3, Air Contaminant Emissions Notices, 5 CCR 1001–5, revisions adopted on 3/16/95, effective 5/30/95, as follows: Part A: Sections I.B.12., I.B.31., I.B.32., I.B.35.B., I.B.36., I.B.37., I.B.41., I.B.50., I.B.57., I.B.66., II.D.5.c., II.D.5.d., V.B., V.C.6., V.C.10., V.E.1.c., V.E.1.d., V.H.4. through V.H.8., V.I.1., VI.C.1.f., and VII.A.; Part B: Sections III.D.2., III.D.3., IV.B.4., IV.C.1., IV.D.1.a., IV.D.2.c.(i)(E), IV.D.4.a., and IV.J.

(ii) Additional material.

(A) July 3, 1995 letter from Martha E. Rudolph, First Assistant Attorney General, Colorado Office of the Attorney General, to Jonah Staller, EPA.

* * * * *

§ 52.324 [Amended]

3. Section 52.324 is amended by removing paragraph (c).

4. Section 52.329 is amended by adding paragraph (b) to read as follows:

§52.329 Rules and regulations.

* * * * *

(b) On January 14, 1993 and on August 25, 1994, the Governor of Colorado submitted revisions to the State's nonattainment new source review permitting regulations to bring the State's regulations up to date with the 1990 Amendments to the Clean Air Act. With these revisions, the State's regulations satisfy the part D new source review permitting requirements for the Denver metropolitan moderate PM–10 nonattainment area.

§ 52.343 [Amended]

5. Section 52.343 is amended by removing paragraph (a)(1) and by redesignating paragraphs (a)(2), (a)(3), and (a)(4) as (a)(1), (a)(2) and (a)(3) respectively.

[FR Doc. 97–1084 Filed 1–17–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[KY–092–9649a; FRL–5653–9]

Approval and Promulgation of Revisions to the Commonwealth of Kentucky's State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On June 19, 1996, the Commonwealth of Kentucky through the Kentucky Natural Resources and Environmental Protection Cabinet (KNREPC) submitted revisions to the Kentucky SIP. This revision exempts acetone and perchloroethylene (tetrachloroethylene) from the list of compounds regulated as volatile organic compounds (VOC) for ozone control purposes.

DATES: This action will be effective March 24, 1997 unless adverse or critical comments are received by February 20, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Kimberly Bingham at the EPA Region 4 address listed below. Copies of the material submitted by KNREPC may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460.

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 100 Alabama Street, Atlanta, Georgia 30303–3104.

Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham, Regulatory Planning Section, Air Planning Branch, Air Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, 100 Alabama Street, SW, Atlanta, Georgia 30303–3104. The telephone number is (404) 562–9038.

SUPPLEMENTARY INFORMATION: On June 19, 1996, the Commonwealth of Kentucky through the KNREPC submitted revisions to the Kentucky SIP. The EPA is approving the following revisions to the Kentucky SIP. 401 KAR Chapters 50, 51, 59, 61, 63, and 65 were amended to add acetone and perchloroethylene (tetrachloroethylene) to the list of compounds excluded from the definition of VOC on the basis that these compounds have been determined to have negligible photochemical reactivity. Hence, acetone and perchloroethylene will be excluded as a VOC for ozone control purposes. The EPA published notices in the Federal Register on June 16, 1995, (60 FR 31633) and February 7, 1996, (61 FR 4590), that document the Agency's decision to add acetone and perchloroethylene to this list of excluded compounds, respectively.

Final Action

The EPA is approving the aforementioned revisions because they meet the Agency requirements. This action is being published without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision, should adverse or critical comments be filed. This action will be effective March 24, 1997 unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed rule published with this action. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective March 24, 1997.

Under section 307(b)(1) of the Clean Air Act (CAA), 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 24, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2)).

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 (OMB) has exempted this regulatory action from E.O. 12866 review.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2) and 7410(k)(3).

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

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

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 110 of the CAA. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. EPA has examined whether the rules being approved by this action would impose no new requirements, since such sources are already subject to these

regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action, and therefore there will be no significant impact on a substantial number of small entities.

Under 801(a)(1)(A) of the Administrative Procedures Act (APAA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APAA as amended.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: November 4, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart S—Kentucky

2. Section 52.920 is amended by adding paragraph (c)(85) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(85) The Commonwealth of Kentucky submitted revisions to the Kentucky SIP on June 19, 1996. These revisions involve changes to 401 KAR Chapters 50, 51, 59, 61, 63, and 65.

(i) Incorporation by reference. 401 KAR Chapters 50:010(62), 51.001(62), 59:001(63), 61:001(63), 63:001(62), and 65:001(31) of the Kentucky regulations effective on June 6, 1996.

(ii) Other material. None.

[FR Doc. 97–1333 Filed 1–17–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IL143–1a; FRL–5671–5]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On January 8, 1996, the State of Illinois submitted to EPA a site-specific State Implementation Plan (SIP) revision request for Reynolds Metals Company's (Reynolds) McCook Sheet and Plate Plant in McCook, Illinois (in Cook County). The purpose of this request is to amend the State's volatile organic material (VOM) reasonably available control technology (RACT) requirements for Reynolds' aluminum rolling operations to mirror the facility's RACT requirements promulgated under the Chicago area Federal Implementation Plan (FIP). VOM, as defined by the State of Illinois, is identical to ''volatile organic compounds'' (VOC), as defined by EPA. Emissions of VOC react with nitrogen oxides in sunlight to form ground-level ozone, commonly known as smog. Exposure to high ozone concentrations causes respiratory irritation, especially to children, seniors, and people with asthma and other respiratory problems. RACT rules establish the lowest VOC emission limitation that major stationary sources are capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility. In this action, EPA is approving the requested SIP revision through a ''direct final'' rulemaking; the rationale for this approval is set forth in the ''supplementary information'' section of this rulemaking. Elsewhere in this Federal Register, EPA is proposing approval and soliciting comment on this direct final action; if adverse comments are received, EPA will withdraw the direct final and address the comments received in a new final rule; otherwise, no further rulemaking will occur on this requested SIP revision.

DATES: This final rule is effective March 24, 1997 unless adverse comments are received by February 20, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

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

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

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

SUPPLEMENTARY INFORMATION:

I. Background

On June 29, 1990, the EPA promulgated a FIP which contained RACT regulations for stationary sources located in six northeastern Illinois (Chicago area) counties: Cook, DuPage, Kane, Lake, McHenry, and Will.[1] Included in EPA's rules was a requirement that major non-Control Techniques Guideline (CTG) sources be subject to 40 CFR 52.741 (s), (u), (v), (w), or (x).[2] The major non-CTG limits in 40 CFR 52.741(x) applied to the hot and cold aluminum rolling operations at the Reynolds McCook facility, and required the facility's rolling mills to meet an 81 percent (%) reduction in uncontrolled VOM emissions. On August 19, 1991, Reynolds requested that EPA reconsider the application of 40 CFR 52.741(x) to the facility, and on October 17, 1991, Reynolds requested that EPA promulgate site-specific RACT limits for the facility's hot and cold rolling mills. EPA agreed to reconsider the RACT control requirements for Reynold's aluminum rolling operations, and on March 10, 1995, revised the FIP as it applied to Reynolds by promulgating site-specific lubricant selection and temperature control requirements as RACT for the facility (60 FR at 3042). On November 15, 1990, Congress enacted amendments to the 1977 Clean Air Act; Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q (Act). Section 182(b)(2) of the Act requires states with moderate and above ozone nonattainment areas to adopt RACT rules covering ''major'' sources not already covered by a CTG for all areas designated nonattainment for ozone and classified as moderate or

[1] A definition of RACT is cited in a General Preamble-Supplement on CTGs, published at 44 FR at 53761 (September 17, 1979). RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

[2] CTGs are documents published by EPA which contain information on available air pollution control techniques and provide recommendations on what the EPA considers the ''presumptive norm'' for RACT. Sources which are not covered by a CTG are called ''non-CTG'' sources.

above. The Chicago ozone nonattainment area (Cook, DuPage, Kane, Lake, McHenry, Will Counties and Aux Sable and Goose Lake Townships in Grundy County and Oswego Township in Kendall County) is classified as ''severe'' nonattainment for ozone, and, hence, is subject to the Act's non-CTG RACT requirement. Under Section 182(d), sources located in severe ozone nonatttainment areas are considered ''major'' sources if they have the potential to emit 25 tons per year or more of VOC.

On October 21, 1993, and March 4, 1994, the State of Illinois submitted RACT rules covering major non-CTG sources in the Chicago severe ozone nonattainment area, which includes Subparts PP, QQ, RR, TT, and UU of Part 218 of the 35 Illinois Administrative Code (IAC), as a revision to the Illinois SIP. These State rules were based on the Chicago FIP as promulgated on June 29, 1990. The SIP revision was approved by EPA on October 21, 1996 (61 FR at 54556). Included in the SIP revision was section 218.103, which provided that if EPA amended the June 29, 1990 FIP for any source, Illinois would adopt and submit to EPA site-specific SIP revision corresponding to that amendment.

On June 9, 1995, Reynolds and the Illinois Environmental Protection Agency (IEPA) filed a joint petition for an adjusted standard with the Illinois Pollution Control Board (Board). The adjusted standard petition requested that Illinois revise its RACT requirements for Reynolds' aluminum rolling operations to mirror Reynolds' requirements under the March 10, 1995, FIP revision. A public hearing on the adjusted standard petition was held on July 18, 1995, in Chicago, Illinois. On September 21, 1995, the Board adopted a Final Opinion and Order, AS 91–8, granting the adjusted standard requested by Reynolds. The adjusted standard also became effective on September 21, 1995.

The IEPA formally submitted the adjusted standard for Reynolds on January 8, 1996, as a site-specific revision to the Illinois SIP for ozone. In doing so, IEPA intends to cover the Act's Section 182(b)(2) major non-CTG RACT requirement for Reynolds' McCook, Illinois facility.

II. Analysis of SIP Submittal

The adjusted standard's requirements for the Reynolds McCook facility are as follows:

A. Hot Rolling Mill

The Reynolds facility's hot rolling operations must use an oil/water emulsion rolling lubricant not to exceed 15 percent, by weight, of petroleum-based oil and additives. The hot rolling operations must also not exceed a maximum inlet sump rolling lubricant temperature of 200 degrees Fahrenheit (F). Compliance shall be demonstrated by a monthly analysis of a grab rolling lubricant sample from the hot mill and continuous temperature reading of the rolling lubricant temperature measured at or after the inlet sump but prior to the lubricant nozzles.

The lubricants at the hot mill must be sampled and tested, for the percentage of oil and water, on a monthly basis. ASTM Method D95–83 (Reapproved 1990), ''Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation,'' shall be used to determine the percent by weight for petroleum-based oil and additives.

B. Cold Rolling Mills

For the Reynolds McCook facility's cold rolling mills, the rolling lubricants used must have an initial and final boiling point between 460 and 635 degrees F. To demonstrate compliance, all incoming shipments of the oils to be used as lubricants must be sampled and tested using ASTM 86–90 ''Standard Test Method for Distillation of Petroleum Products.'' Moreover, a grab sample of the as-applied rolling lubricant must be taken on a monthly basis during any month the mill is in operation, and tested using ASTM 86–90, as well.

Reynolds' cold rolling mills must also not exceed an inlet supply rolling lubricant temperature of 150 degrees F. Compliance with this temperature control shall be demonstrated through continuous temperature readings of the rolling lubricant temperature measured at or after the inlet sump but prior to the lubricant nozzles.

C. Coolant Temperature Monitoring

Coolant temperature shall be monitored at all of the rolling mills by use of thermocouple probes and chart recorder or computer data system which automatically record values at least every five (5) minutes.

D. Recordkeeping and Reporting

The Reynolds McCook facility must maintain records of all emulsion formulations, percent oil tests, and rolling lubricant temperatures used in hot rolling operations for three years. Likewise, Reynolds must maintain records of rolling lubricant formulations, distillation range tests for incoming shipments of oils and as-applied rolling lubricants, and rolling lubricant temperatures for three years, as well. These records shall be made available to IEPA or EPA upon request.

If Reynolds violates the control requirements specified in the adjusted standard for any reason, it must submit a written report providing a description of the deviation, along with a date and time, cause of the deviation, if known, and any corrective action taken. Such written report shall be submitted, for each calendar year, by May 1 of the following year, unless more frequent or detailed reporting is required under other provisions, including permit conditions.

E. Compliance Date

Reynolds shall comply with the above requirements listed above by November 20, 1995.

III. Final Action

The EPA has undertaken its analysis of the site-specific SIP revision request for Reynolds McCook facility and has determined that the VOM control measures specified for the facility's aluminum rolling mills is generally consistent with the March 10, 1995, site-specific FIP revision for the facility, and, therefore, constitutes RACT. On this basis, this site-specific SIP revision is approvable.

This site-specific SIP revision consists of adjusted standard AS 91–8, which was adopted on September 21, 1995, and became effective on September 21, 1995. This adjusted standard replaces the requirements of section 218.986 of the 35 IAC as they apply to Reynolds McCook facility's hot and cold aluminum rolling operations.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on March 24, 1997 unless, by February 20, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent rulemaking that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public

is advised that this action will be effective on March 24, 1997.

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

IV. Administrative Requirements

A. Executive Order 12866

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 D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

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

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

C. Unfunded Mandates

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

D. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 24, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: December 17, 1996.

Michelle D. Jordan,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(132) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(132) On January 8, 1996, Illinois submitted a site-specific revision to the State Implementation Plan establishing lubricant selection and temperature control requirements for the hot and cold aluminum operations at Reynolds Metals Company's McCook Sheet and Plate Plant in McCook, Illinois (in Cook County), as part of the Ozone Control Plan for the Chicago area.

(i) Incorporation by reference. September 21, 1995, Opinion and Order of the Illinois Pollution Control Board AS 91–8, effective September 21, 1995.

[FR Doc. 97–1331 Filed 1–17–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32 and 53

[CC Docket No. 96–150; FCC 96–490]

Accounting Safeguards Under the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On December 23, 1996, the Commission adopted a Report and Order (''Order'') establishing accounting safeguards necessary to satisfy the requirements of Sections 260 and 271 through 276 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (''1996 Act''). This Order prescribes the way incumbent local exchange carriers, including the Bell Operating Companies (''BOCs''), must account for transactions with affiliates involving, and allocate costs incurred in the provision of, both regulated telecommunications services and nonregulated services, including telemessaging, interLATA telecommunications, information, manufacturing, electronic publishing, alarm monitoring and payphone services, to ensure compliance with the 1996 Act.

EFFECTIVE DATE: The requirements and regulations established in this Order shall become effective upon approval by OMB of the new information collection requirements adopted herein, but no sooner than February 20, 1997. The Commission will publish a document at a later date establishing the effective date.

FOR FURTHER INFORMATION CONTACT: Mark Ehrlich, Attorney/Advisor, Accounting and Audits Division, Common Carrier Bureau, (202) 418–0385. For additional information concerning the information collections contained in this Report and Order contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This Report and Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget

(OMB) for review under the PRA. OMB, the general public, and other federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding. This is a summary of the Commission's Report and Order adopted December 23, 1996, and released December 24, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room (Room 239), 1919 M St., N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcript Service (202) 857–3800 1919 M Street, N.W., Suite 246, Washington, D.C. 20554.

Paperwork Reduction Analysis

This Report and Order contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Order, as required by the Paperwork Reduction At of 1995, Public Law No. 104–12. Written comments by the public on the information collections are due 30 days after date of publication in the Federal Register. OMB notification of action is due March 24, 1997. Comments should address: (1) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0734

Title: Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996.

Form No.: N/A.

Type of Review: Revision.

Respondents: Businesses or other for profit.

Section/title	No. of respondents	Est. time per Response (hrs.)	Total annual burden (hrs.)
Affiliate Company, Books, Records & Accounts, Section 272	20	6,056.25	121,125
Affiliate Company, Books, Records & Accounts, Section 274	7	6,056.25	42,383.75
Est. Fair Market, Value—Recordkeeping	20	24	480
Arms' Length Requirement	7	72	504
Biennial Federal/State Audit/Audit Planning/ Audit Analysis & Evaluation	7	250	1,750
Filing Written Contract	7	1	7
Compliance Audit	7	250	1,750
Report of Exceptions	7	80	560
10–K Requirement	7	1,711	11,977

Total Annual Burden: 180,536.75 Hours.

Estimated Costs Per Respondents: $632,500.

Needs and Uses: The information that subject carriers are required to submit under the Order will enable the Commission to ensure that the subscribers to regulated telecommunications services do not bear the costs of these new nonregulated services and that transactions between affiliates and carriers will be at prices that do not ultimately result in unfair rates being charged to ratepayers. If the information collections in this submission are not conducted, or conducted less frequently, the Commission would not be able to prevent cross-subsidization between these new nonregulated activities and the local exchange carriers' regulated operations and the Commission would not be in compliance with the 1996 Act. The Commission concludes that the burden on the BOCs and incumbent local exchange carriers to comply with these rules will be minimal.

Regulatory Flexibility Analysis

We have determined that Section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. § 605(b), does not apply to these rules because they will not have a significant economic impact on a substantial number of small entities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration. Entities directly subject to these rule changes are engaged in the provision of local exchange and exchange access telecommunications services. These entities are generally large corporations that are dominant in their fields of operations and thus, are not ''small entities'' as defined by the Act. While these companies may have fewer than 1,500 employees and thus fall within the SBA's definition of small telecommunications entity, we do not believe that such entities should be considered small entities within the meaning of the Regulatory Flexibility Act. Because the small incumbent local exchange carriers subject to these rules are either dominant in their field of operations or are not independently owned and operated, they should be excluded from the definition of ''small entity'' and ''small business concerns.'' Moreover, to the extent that small telephone companies will be affected by these rules, we hereby certify that these rules will not have a significant economic effect on a substantial number of ''small entities.'' Although we do not find that the Regulatory Flexibility Act is applicable to this proceeding, this Commission has an ongoing concern with the effect of its rules and regulation on small business and the customers of the regulated carriers as is evidenced by this proceeding.

Summary of Report and Order

I. Safeguards for Integrated Operations

The Order establishes accounting safeguards for telemessaging, certain interLATA telecommunications and information, alarm monitoring, and payphone services that the BOCs and other incumbent local exchange carriers may provide on an integrated basis in accordance with sections 260, 271, 275 and 276 of the 1996 Act. It concludes that our existing cost allocation rules satisfy the requirements of these sections that certain competitive telecommunications and information services not be subsidized by subscribers to regulated

telecommunications services. In general, our current cost allocation rules help ensure that interstate ratepayers do not bear the costs and risks of the telephone companies' nonregulated activities by prescribing how telecommunications carriers must separate the costs of certain regulated activities from the costs of nonregulated activities. Under these rules, incumbent local exchange carriers may not apportion the costs of nonregulated activities to regulated products and services. We discuss below the application of our cost allocation rules to services permitted under sections 260, 271, 275, and 276.

Section 260—Telemessaging Service

Section 260(a)(1) provides that each incumbent local exchange carrier providing telemessaging service ''shall not subsidize its telemessaging service directly or indirectly from its telephone exchange service or its exchange access.'' ''Telemessaging service'' includes voice mail and voice storage and retrieval services, and any live operator services used to record, transcribe, or relay messages. The Order concludes that our existing accounting safeguards will effectively prevent cross-subsidization of telemessaging services in accordance with section 260(a)(1). Our existing Part 64 cost allocation rules are designed to prevent cross-subsidization of nonregulated activities such as telemarketing by establishing a methodology for allocating joint and common costs between regulated and nonregulated activities. Under our cost allocation rules, carriers must assign costs directly, wherever possible, to regulated or nonregulated activities. If costs cannot be directly assigned, they are considered ''common costs'' and must be placed in homogenous cost pools. The carrier must then divide the costs in each pool between regulated and nonregulated activities using formulas or factors known as ''allocators.'' Whenever possible, common costs must be directly attributed based upon a direct analysis of the origins of those costs. Common costs that cannot be directly attributed must be indirectly attributed based on an indirect, but cost-causative, linkage to another cost pool or pools for which a direct assignment or attribution is possible. Only if direct or indirect attribution factors are not available may the carrier allocate a pool of common costs using what is known as a ''general allocator.''

Section 271—InterLATA Telecommunications Services

Section 254(k) prohibits telecommunications carriers from using ''services that are not competitive to subsidize services that are subject to competition.'' The Order concludes that section 254(k) bars all incumbent local exchange carriers, including BOCs, from subsidizing competitive interLATA telecommunications services, such as out-of-region services and certain types of incidental interLATA services, with revenues from exchange services and exchange access that are not subject to competition. Moreover, it concludes that our cost allocation rules, as outlined above, should apply to interLATA telecommunications services, including out-of-region services and certain types of incidental services, that may be provided by incumbent local exchange carriers on an integrated basis. However, in order to protect against improper cost allocations from one regulated activity to another regulated activity, we will now treat both out-of-region and certain types of incidental interLATA services that may be provided by incumbent local exchange carriers on an integrated basis like nonregulated activities.

Section 272(e)(3)—Imputation of Charges

Section 272(e)(3) requires that ''[a] Bell operating company * * * impute to itself (if using [exchange] access for its provision of its own services), an amount for access that is *no less than* the amount charged to any unaffiliated interexchange carriers for such service.'' The Order concludes that to record imputed exchange access charges required under section 272(e)(3), BOCs should debit the nonregulated operating revenue account by the amount of the imputed exchange access charges and credit the regulated revenue account by the amount of the imputed exchange access charges. By requiring BOCs to account for imputed exchange access charges in this manner, the accounting for this imputed revenue will be consistent with our current accounting rules for imputing revenues derived from services provided to nonregulated affiliates. Where a BOC charges different rates to different unaffiliated carriers for access to its telephone exchange service, the BOC must impute to its integrated operations the highest rate paid for such access by unaffiliated carriers. In determining the highest rate paid by unaffiliated carriers, the BOC may consider the comparability of the service provided. If, for example, rates charged unaffiliated carriers vary based on the volume purchased, the BOC may consider comparable volume in determining the highest rate to impute to its integrated operations. Accordingly, a BOC may take advantage of the same volume discount purchases offered to its interLATA affiliate and other unaffiliated carriers.

Section 275—Alarm Monitoring Services

Section 275(e) defines ''alarm monitoring service'' as ''a service that uses a device located at a residence, place of business, or other fixed premises (1) to receive signals from other devices located at or about such premises regarding a possible threat at such premises to life, safety, or property, from burglary, fire, vandalism, bodily injury, or other emergency, and (2) to transmit a signal regarding such threat by means of transmission facilities of a local exchange carrier or one of its affiliates to a remote monitoring center to alert a person'' about the emergency. Section 275(b)(2) specifies that an incumbent local exchange carrier engaged in the provision of alarm monitoring services ''not subsidize its alarm monitoring services either directly or indirectly from telephone exchange service operations.'' As with the prohibition against subsidizing telemessaging services, the Order concludes that our present Part 64 cost allocation rules will adequately safeguard against the subsidies prohibited by section 275(b)(2).

Section 276—Payphone Services

Section 276(a)(1) states that ''any Bell operating company that provides payphone service shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations.'' To implement the prohibition, section 276(b)(1)(C) directs the Commission to prescribe nonstructural safeguards for BOC payphone service that, ''at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90–623) proceeding.'' In Computer III, we examined our regulatory regime for the provision of enhanced services and replaced our previous requirements with a series of nonstructural safeguards. These safeguards included the Part 64 cost allocation rules and the affiliate transactions rules. Our experience with accounting safeguards in Computer III has demonstrated that these safeguards can effectively guard against the subsidization of competitive activities by regulated ratepayers, which section 276 prohibits. Accordingly, the Order concludes that we should apply accounting safeguards identical to those adopted in Computer III to BOCs and incumbent local exchange carriers

providing payphone service on an integrated basis.

II. Safeguards for Separated Operations

Previously, we adopted rules to govern how carriers record costs when conducting business with nonregulated affiliates. These affiliate transactions rules were designed to protect ratepayers from subsidizing the competitive ventures of incumbent local exchange carriers' affiliates. The affiliate transactions rules do not require carriers or their affiliates to charge any particular price for assets transferred or services provided; rather, the rules require carriers to use certain specified valuation methods in determining the amounts to record in their Part 32 accounts, regardless of the prices charged. The Order concludes that, except where the 1996 Act imposes specific additional requirements, our current affiliate transactions rules generally satisfy the statute's requirement of safeguards to ensure that these services are not subsidized by subscribers to regulated telecommunications services. However, the Order adopts several modifications to our current affiliate transactions rules, as discussed more fully below. These modifications apply to all transactions between incumbent local exchange carriers currently subject to these rules and their affiliates, not just to transactions between BOCs and their affiliates required under the Act.

Section 272—Manufacturing and InterLATA Services

Section 272(b)(5) of the 1996 Act requires that transactions between a BOC and its affiliates engaged in the manufacturing activities, origination of interLATA telecommunications services, and offering of interLATA information services described in section 272(a)(2) be conducted on ''an arm's length basis.'' The Order concludes that our affiliate transactions rules will ensure compliance with the ''arm's length'' requirement of section 272(b)(5). Furthermore, in order to satisfy section 272(b)(5)'s requirement that transactions between section 272 affiliates and the BOC of which they are an affiliate be ''reduced to writing and available for public inspection,'' the Order requires the separate affiliate, at a minimum, to provide a detailed written description of the asset or service transferred and the terms and conditions of the transaction on the Internet within 10 days of the transaction through the company's home page. The description of the asset or service and the terms and conditions of the transaction should be sufficiently detailed to allow us to evaluate compliance with our accounting rules. This information must also be made available for public inspection at the principal place of business of the BOC, along with a certification statement described in the Order. While section 272(b)(5) requires BOCs to reduce their transactions to writing and make them ''available for public inspection,'' we will protect the confidential information of BOCs, as well as other incumbent local exchange carriers.

Changes to the Affiliate Transactions Rules

Prevailing Price

Under our current affiliate transactions rules, BOCs may use, under certain circumstances, the ''prevailing price'' method as a valuation method for recording affiliate transactions between themselves and their affiliates engaged in activities described in section 272(a)(2). The prevailing price describes the price at which a company offers an asset or service to the general public. Prevailing price currently represents just one component in the hierarchy of methods for valuing transactions between a carrier and its affiliate. A carrier subject to our current affiliate transactions rules currently uses one of the following methods to value asset transfers for regulated accounts: (1) Tariffed rates, (2) prevailing company prices, (3) net book cost, or (4) estimated fair market value. In comparison, carriers must record transactions involving services in their Part 32 accounts according to one of three valuation methods: (1) Tariffed rates, (2) prevailing company prices, or (3) fully distributed cost.

One of the difficulties we have identified with respect to prevailing price valuation has been determining when carriers should apply the prevailing price method to transfers of particular assets or services. The mere offering of an asset or service to unaffiliated entities is not sufficient to establish a prevailing price. A substantial quantity of business must be conducted with unaffiliated third parties in order to establish a true prevailing price. Specifically, if the percentage of third-party business is small, there can be no assurance that the price agreed upon by the carrier and its affiliate represents the true market price, thus raising legitimate questions as to whether the parties actually negotiated ''on an arm's length basis.'' In such situations, the use of prevailing prices to value transactions could permit an affiliate to charge inflated prices to its affiliated regulated carrier, possibly leading to higher prices for customers purchasing the regulated services. The Order solves these difficulties by modifying and clarifying the prevailing price valuation method.

Our previous rules did not clarify the meaning of a ''substantial'' amount of third-party business for the purpose of establishing a true prevailing price. The Order concludes that annual sales, as measured by quantity, of greater than 50 percent of a particular product or service to third parties must occur to satisfy the requirement that there be a ''substantial'' amount of outside business in order to produce a true prevailing price for that particular product or service. The Order also concludes that this 50 percent threshold must be applied on a product-by-product and service-by-service basis, rather than on a product-line or service-line basis, because applying the 50 percent threshold on a product-line or service-line basis would give carriers the incentive to define product lines and service lines as broadly as possible in order to be able to value as many transactions as possible at prevailing price. However, products and services subject to section 272 need not meet the 50 percent threshold in order for a BOC to record the transaction involving such products and services at prevailing price.

Valuation Methods for Assets and Services

Our Part 64 cost allocation rules direct subject carriers to use different methods to value transfers of assets and transfers of services. The Order directs carriers to now apply the valuation method currently prescribed for asset transfers to service transfers as well. We believe that requiring carriers to use the same valuation methods for both services and asset transfers will reduce the incentive for a carrier to record an affiliate transaction as a service transfer, rather than an asset transfer. Requiring a carrier to value transfers of services using the same valuation methods currently used for asset transfers will reduce the carrier's ability to value a transfer so that a carrier can pass on to their affiliates any financial advantages flowing from how they choose to characterize the transaction. We continue, however, to define the cost of asset transfers in terms of net book cost and the cost of service transfers in terms of fully distributed costs because the net book cost of an asset is comparable to the fully distributed cost of a service.

However, transactions where a carrier *purchases* from its affiliate services that are neither tariffed nor subject to prevailing company prices and such

affiliate exists *solely* to provide services to members of the carrier's corporate family will continue to be valued at fully distributed cost. This allows ratepayers to enjoy the benefits of economies of scale and scope that are created by an affiliate established to provide services solely to the carrier's corporate family. Requiring carriers to perform fair market valuations for such transactions would increase the cost to ratepayers while providing limited benefit.

Fair Market Value

The Order concludes that the procedures carriers use in estimating fair market value should vary with the circumstances of each transaction. For this reason, the Order does not specify the methodologies that carriers must follow to estimate fair market value where such a valuation method is required under the affiliate transactions rules. Allowing carriers to make good faith determinations of fair market value, rather than prescribing specific methodologies, will provide them with the flexibility to use a methodology appropriate for the circumstances of the transaction. This good faith requirement will help ensure that transactions involving a BOC and its section 272 affiliate satisfy the ''arm's length'' requirement of section 272. Furthermore, this good faith requirement is now imposed on all affiliate transactions between an incumbent local exchange carrier currently subject to our affiliate transactions rules and any of its affiliates, not just to affiliate transactions involving the activities described in section 272(a). When estimating the market value of transactions using independent valuation methods, carriers may use appraisals, catalogs listing similar items, competitive bids, replacement cost of an asset, and net realizable value of an asset. If sales to third parties of a product at a particular price generate large revenues then the sale price is strong evidence of a good faith estimate of fair market value. When situations arise involving transactions that are not easily valued by independent means, the Order requires carriers to maintain records sufficient to support their value determination. Specifically, the valuation method chosen by the carrier must succeed in capturing the available supporting information regarding the transaction and must utilize generally accepted techniques and principles regarding the particular type of transaction at issue.

Tariffed-Based Valuation

Under section 252, incumbent local exchange carriers may submit agreements adopted by negotiations or arbitration to State commissions for approval or rejection without filing a tariff. Alternatively, they may file statements of generally available terms pursuant to section 252(f) that state terms on which these incumbent local exchange carriers would provide services to all customers who desire them. The Order amends our affiliate transactions rules to allow incumbent local exchange carriers to use charges appearing in publicly-filed agreements submitted to a State commission pursuant to section 252(e) or statements of generally available terms pursuant to section 252(f) in the place of tariffed rates when tariffed rates are not available.

Return Component for Allowable Costs

Previously, the Commission determined that fully distributed costs should include a return on investment, but no ''profit'' in excess of the return then prescribed for the carrier's interstate regulated activities. Consequently, carriers that utilize fully distributed cost to value affiliate transactions include in their cost computations a component for rate of return. The Commission has prescribed a unitary, overall rate of return of 11.25 percent for those incumbent local exchange carriers still subject to rate-of-return regulation to use in computing interstate revenue requirements, unless a carrier can show that such use would be confiscatory. The Order concludes that incumbent local exchange carriers should use the rate of return on interstate services, as amended periodically by the Commission, to determine the fully distributed costs associated with affiliate transactions. The prescribed interstate rate of return is consistent with the return on investment that an incumbent local exchange carrier could anticipate if it were to use its investment to provide services to third parties. The Order also concludes that for all affiliate transactions, incumbent local exchange carriers bear the burden of demonstrating with specificity that the business risks that they face in providing services to their affiliates would justify a risk-based adjustment to the cost of capital that would result in a rate of return different than 11.25%.

Accounting Requirements of Sections 272(b)(2) and (c)(2)

Section 272(b)(2) requires the separate affiliates prescribed under section 272(a)(2) to ''maintain books, records, and accounts in the manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by the [BOC] of which it is an affiliate.'' The Order concludes that separate affiliates prescribed under section 272(a)(2) must maintain their books, records, and accounts in accordance with GAAP, which will result in a uniform audit trail at minimal cost. Moreover, a requirement of GAAP for separate affiliates required under section 272(a)(2) imposes some degree of uniformity upon these affiliates. We find no reason to impose the additional burden of requiring separate affiliates required under Section 272(a)(2) to maintain their books, records, and accounts in accordance with the Part 32 Uniform System of Accounts.

Application to InterLATA Telecommunications Affiliates

Section 272(b)(5) requires BOC affiliates established under section 272(a), such as an affiliate providing in-region services, to ''conduct all transactions with the Bell operating company of which it is an affiliate on an arm's length basis.'' The Order concludes that the current affiliate transactions rules satisfy section 272(b)(5)'s ''arm's length'' requirement by treating interLATA telecommunications services like a nonregulated activity strictly for accounting purposes, and applying our affiliate transactions rules to transactions between each BOC and any interLATA telecommunications affiliate it establishes under section 272(a), such as an affiliate providing in-region services. However, when a BOC affiliate provides both regulated Title II services permitted under sections 271 and 272, such as interLATA telecommunications services, and nonregulated activities, such as interLATA information services, the Order concludes that we need not apply our cost allocation rules to prevent subsidization of nonregulated activities by subscribers to these interLATA telecommunications services because market forces leave BOC affiliates with little ability to subsidize nonregulated activities by interLATA telecommunications services.

Application to Sharing of Services

BOCs are permitted to share in-house services other than operating, installation, and maintenance services with their section 272 affiliates if the agreement to share in-house services complies with the requirements of section 272, including section 272(b)(1)'s ''operate independently''

requirement, section 272(b)(3)'s ''separate officers, directors, and employees'' requirement, section 272(b)(5)'s ''arm's length'' requirement, and section 272(c)(1)'s nondiscrimination requirements. Earlier in this Order, we determined that our affiliate transactions rules should apply to transactions between BOCs and their section 272 affiliates in order to satisfy section 272(b)(5)'s ''arm's length'' requirement. The Order concludes, therefore, that our affiliate transactions rules apply to transactions between BOCs and their section 272 affiliates for the sharing of in-house services, including joint marketing services. Moreover, the sharing of in-house services by a BOC and its section 272 affiliate constitutes a ''transaction'' under section 272(b)(5) that must be ''reduced to writing and available for public inspection.''

Audit Requirements

Section 272(d) requires that a company required to operate a separate subsidiary under section 272 ''shall obtain and pay for a joint federal/State audit every two years conducted by an independent auditor to determine whether such company has complied with this section and the regulations promulgated under this section, and particularly whether such company has complied with the separate accounting requirements under [section 272(b)].'' The purpose of the required audits is to determine whether the BOCs and their separate subsidiaries are complying with the accounting and structural safeguards required by section 272 and to report the audit results to the Commission and the state regulatory agencies. Because of the critical nature of accounting safeguards in promoting competition in the telecommunication marketplace and the critical role the biennial audit will play in ensuring that the safeguards are working, the Order concludes that the Commission and the States need to oversee the scope, terms and conditions of the biennial audit.

Under the rules adopted in the Order, the Chief, Common Carrier Bureau has the authority to form a federal/State joint audit team with the States having jurisdiction over a BOC's local exchange service. This joint audit team will review the conduct of the audit and direct the independent auditor to take such action as the team finds necessary to ensure compliance with the audit requirements. The structural and transactional requirements and the nondiscrimination safeguards set forth in sections 272(b) 272(c) and 272(e) will be subject to audits. The BOCs cannot hire independent auditors who have participated during the two years preceding the biennial audit in designing any of the systems under review in the audit.

The rules adopted in the Order set an orderly schedule for conducting the audit and for submitting the audit report to the Commission and the States as well as to interested parties for comment. The rules call for participation and agreement by the BOC and by the federal/State joint audit team in defining the scope and purpose of the audit prior to its commencement. The federal/State joint audit team may review and, if necessary, direct modifications to the design of the independent auditor's audit program.

The final audit report must include: (1) The findings and conclusions of the independent auditor; (2) exceptions of the federal/State joint audit team to the auditor's findings and conclusions; (3) response of the BOC to the auditor's findings and conclusions, and (4) reply of the independent auditor to both the exceptions of the federal/State joint audit team and the response of the BOC. The independent auditor's section of the audit report must include a discussion of: (1) The scope of the work conducted, with a description of how the affiliate's or joint venture's books were examined and the extent of the examination; (2) the auditor's findings and conclusions on whether examination of the books, records and operations has revealed compliance or non-compliance with section 272 and with the affiliate transactions rules and any applicable nondiscrimination requirements; and (3) a description of any limitations imposed on the auditor in the course of its review by the affiliate or joint venture or other circumstances that might affect the auditor's opinion. However, the Order does not require a statement by the auditor that the carrier's cost allocation methodologies conform to the Act. The first audit will begin at the close of the first full year of operations. The next audit will begin two years later and will cover the operations of the previous two years. Each BOC must obtain one audit that covers all affiliates engaged in services specified in section 272(a)(2), including resale, rather than requiring individual audits for each of these services.

Workpapers related to the biennial audits, including material obtained from the examined entities, will receive confidential treatment consistent with section 220(f) and the Commission's policy for Part 64 audits. Any State commission having access to the audit workpapers should have provisions in place to ensure the protection of proprietary information as required by section 272(d)(3)(C). Without such provisions in place, a State commission could neither be represented on the federal/State joint audit team nor participate in the biennial audit. To the extent the biennial audit and the cost allocation manual audit under Part 64 overlap, we will permit the biennial audit to meet the requirement of the section 64.904 annual audit. For a biennial audit to satisfy any part of a cost allocation manual audit, we will require a statement by the auditor that the carrier's cost allocation methodologies conform to the Act. We also note that, unlike the biennial audits, the cost allocation manual audits under Part 64 do not involve State participation. Thus, by relying on the biennial audit, we will allow State participation in the overlapping areas of the audits. In their cost allocation manual audit workpapers, the independent auditors should include copies of the audit work performed under the biennial audit.

Section 273—Manufacturing by Certifying Entities

Section 273(d) requires entities that certify telecommunications or customer premises equipment to maintain separate affiliates in order to engage in certain types of manufacturing activities. Under section 273(d)(3), when such an entity certifies telecommunications equipment or customer premises equipment manufactured by an unaffiliated entity, the certifying entity ''shall only manufacture a particular class of telecommunications equipment or customer premises equipment for which it is undertaking or has undertaken, during the previous eighteen months, certification activity * * * through a separate affiliate.'' ''[N]otwithstanding [section 273(d)(3)],'' section 273(d)(1)(B) prohibits ''Bell Communications Research, Inc., or any successor entity or affiliate'' from ''engag[ing] in manufacturing telecommunications equipment or customer premises equipment as long as it is an affiliate of more than 1 otherwise unaffiliated [BOC] or successor or assign of any such company.'' Section 273(d)(3)(B) requires the separate affiliate to ''maintain books, records, and accounts separate from those of the entity that certifies such equipment, consistent with generally acceptable accounting principles[,]'' and to ''have segregated facilities and separate employees'' from the certifying entity. Section 273(g) permits ''[t]he Commission [to] prescribe such additional rules and regulations as the Commission determines necessary to carry out the provisions of this section,

and otherwise to prevent discrimination and cross-subsidization in a [BOC's] dealings with its affiliates and with third parties.''

The Order concludes that our affiliate transactions rules, as modified here, satisfy section 273(g)'s requirement that we ''prescribe such additional rules and regulations as [we] determine are necessary to * * * prevent * * * cross-subsidization in a [BOC's] dealings with its affiliate.'' Elsewhere in this Order, we concluded that BOCs are subject to the modified affiliate transactions rules in their dealings with their affiliates engaged in activities permitted under section 272(a), including manufacturing affiliates, in order to assure compliance with the ''arm's length'' requirement of section 272(b)(5). Accordingly, BOCs that perform certification activities are already subject to the affiliate transactions rules in dealings with their manufacturing affiliates under section 272(b)(5) and current conditions do not warrant additional rules to satisfy section 273(g). In addition, as long as a certifying entity, such as Bellcore, remains affiliated with a regulated BOC, our affiliate transactions rules apply to any transactions between that certifying entity and its section 273 separated, nonregulated manufacturing affiliate that ultimately result in an asset or service being provided to the BOC.

Section 274—Electronic Publishing

Section 274 prescribes the terms under which a BOC may offer electronic publishing. Section 274(a) permits a BOC or its affiliate to provide electronic publishing over its own or its affiliate's basic telephone service only through a ''separated affiliate'' or an ''electronic publishing joint venture.'' The Order concludes that in order to satisfy sections 274(b) and 254(k), we must apply our affiliate transactions rules, as modified in this Order, to transactions between BOCs and their ''separated'' electronic publishing affiliates or joint ventures. This will serve as a safeguard against the misallocation of costs from a BOC's nonregulated services, such as electronic publishing services, to regulated telecommunication services. Our affiliate transactions rules, as modified in this Order, prevent the BOCs' ratepayers from bearing the costs of competitive services provided by BOC affiliates and are, therefore, sufficient to implement section 254(k)'s requirement that carriers not ''use services that are not competitive to subsidize services that are subject to competition.''

Section 274(b)(8) requires that a BOC and its electronic publishing ''separated'' affiliate or joint venture each perform an annual compliance review conducted by ''an independent entity'' to determine compliance with section 274. The Order concludes that we need not adopt any rules regarding the compliance review beyond the plain language of section 274(b)(8)(A). Because of the differences between a compliance review under section 274 and an audit, it further concludes that a carrier may not use the electronic publishing compliance review to satisfy any portion of the annual cost allocation manual audit required by section 64.904 of the Commission's rules.

Section 274(b)(9) requires the BOC and its electronic publishing ''separated'' affiliate or joint venture to file a report with the Commission of any exceptions and corrective action resulting from the compliance review. Section 274(b)(9) further requires the Commission to ''allow any person to inspect and copy such report subject to reasonable safeguards to protect any proprietary information contained in such report from being used for purposes other than to enforce or pursue remedies under [section 274].'' The Order found that these requirements of section 274(b)(9) are self-effectuating and, therefore, we need not adopt any rules regarding this requirement beyond the plain language of section 274(b)(9). The same treatment will be given to confidential information in such reports as is applied to confidential information contained in other Commission filings.

Section 274(f)'s Reporting Requirement

Section 274(f) requires any ''separated'' affiliate under section 274 to file annual reports with the Commission ''in a form substantially equivalent to the Form 10–K required by regulations of the Securities and Exchange Commission.'' To minimize burdens on the filing companies, the Order concludes that when an electronic publishing ''separated'' affiliate already files a Form 10–K with the SEC, the ''separated'' affiliate may file the same Form 10–K with the Common Carrier Bureau within 90 days after the end of the ''separated'' affiliate's fiscal year in satisfaction of section 274(f)'s requirements. For each ''separated'' affiliate not subject to the SEC's Form 10–K requirement, however, the Order concludes that the ''separated'' affiliate need not file an actual SEC Form 10–K with the Commission. Instead, such affiliates must file with the Commission a report containing the same information as is required in the SEC's Form 10–K. In accordance with section 274(f), the report must be organized ''in a form substantially equivalent to the Form 10–K required by regulations of the [SEC].''

Section 274 Transactional Requirements

Section 274(b)(1) requires the ''separated'' affiliate or joint venture and the BOC with which it is affiliated to ''maintain separate books, records, and accounts and prepare separate financial statements.'' Section 274(b) requires the ''separated'' affiliate or joint venture to ''be operated independently from the [BOC].'' Pursuant to section 274(b)(3), the ''separated'' affiliate or joint venture and the BOC with which it is affiliated must ''carry out transactions (A) in a manner consistent with such independence, (B) pursuant to written contracts or tariffs that are filed with the Commission and made publicly available, and (C) in a manner that is auditable in accordance with generally accepted auditing standards.'' Section 274(b)(4) requires the ''separated'' affiliate or joint venture to ''value any assets that are transferred directly or indirectly from the [BOC] to a separated affiliate or joint venture, and record any transactions by which such assets are transferred, in accordance with such regulations as may be prescribed by the Commission or a State commission to prevent improper cross subsidies.'' The Order concludes that section 274(b)(1)'s requirement of separate books, records, accounts, and financial statements is self-effectuating and, therefore, does not adopt any rules regarding this requirement beyond the plain language of section 274(b)(1). Furthermore, section 274(b)(3)(A)'s requirement that transactions be carried out ''in a manner consistent with such independence'' requires that transactions between a ''separated'' electronic publishing affiliate or joint venture and its affiliated BOC occur on an arm's length basis, as the transaction would occur between unrelated parties. The phrase ''such independence'' in section 274(b)(3)(A) refers to section 274(b)'s requirement that a ''separated'' electronic publishing affiliate or joint venture ''be operated independently from the [BOC].''

However, we find the language of section 274(b)(3)(B) to be ambiguous. Pursuant to this section, a BOC and its separated affiliate shall carry out transactions ''pursuant to written contracts or tariffs that are filed with the Commission and made publicly available.'' From this language it is unclear whether written contracts must be filed with the Commission or whether only tariffs are required to be filed with the Commission. It is also unclear whether written contracts must be made publicly available or whether only tariffs are required to be made

publicly available. We therefore intend to seek further comment on the meaning of section 274(b)(3)(B) in CC Docket No. 96–152.

Section 274 ''separated'' electronic publishing affiliates or joint ventures must maintain their books, records, and accounts in accordance with GAAP in order to satisfy section 274(b)(3)(C)'s requirement that transactions be ''auditable in accordance with generally accepted auditing standards.''

Moreover, the Order concludes that we should conform our valuation methods governing the provision of services between an electronic publishing ''separated'' affiliate or joint venture and the BOC with which it is affiliated to those governing asset transfers. We therefore will require all non-tariffed affiliate transactions to be recorded at prevailing price if such price exists, and otherwise at the higher of cost and estimated fair market value when the carrier is the seller or transferor, and at the lower of cost and estimated fair market value when the carrier is the buyer or transferee. We will continue to define the applicable cost benchmarks as net book cost for asset transfers and fully distributed costs for service transfers. Although section 274(b)(4) only refers to asset transfers, we read section 274's requirement that the ''separated'' affiliate or joint venture and the BOC with which it is affiliated ''carry out transactions * * * in a manner consistent with such independence'' to prohibit the ''separated'' affiliate or joint venture and the BOC with which it is affiliated from subsidizing electronic publishing services from regulated telecommunications services. We designed our affiliate transactions rules to prevent such cross-subsidization. We therefore conclude that the affiliate transactions rules, as we modify them in this Order, should apply to all transactions—both asset transfers and the provision of services—between a BOC and its ''separated'' affiliate or joint venture engaged in electronic publishing activities permitted under section 274.

Finally, our modified affiliate transactions rules apply whenever a BOC under common ownership or control with an electronic publishing ''separated'' affiliate or joint venture provides network access and interconnections for basic telephone service to such ''separated'' affiliates or joint venture.

Separated Operations Under Sections 260 and 271 Through 276

Even when sections 260 and 271 through 276 do not require BOCs or other incumbent local exchange carriers to offer services through a separate affiliate, an incumbent LEC might choose to perform these activities through an affiliate. Under such circumstances, the Order concludes that our affiliate transactions rules should apply to transactions between an incumbent local exchange carrier and any of its affiliates engaged in activities of the types permitted by these sections 260 and 271 through 276, regardless of whether the Act requires those activities to be conducted through a separate affiliate. In order to protect against the subsidies prohibited by these sections, we conclude that we must apply our affiliate transactions rules to all transactions between non-BOC incumbent local exchange carriers and their affiliates engaged in telemessaging activities, incidental interLATA services, alarm monitoring activities, and payphone services. We also conclude we must apply our affiliate transactions rules to all transactions between incumbent local exchange carriers and their affiliates providing any of the competitive services of the types permitted under sections 260 and 271 through 276.

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to sections 4(i), 4(j), 201–205, 218, 220, 260, 271–76, 303(r), 403 of the Communications Act of 1934, as amended by the 1996 Act, 47 U.S.C. §§ 154(i), 154(j), 201–205, 218, 220, 260, 271–176, 303(r), 403, the rules, requirements and policies discussed in this order are *adopted* and sections 32.27, 53.209, 53.211, and 53.213 of the Commission's rules, 47 CFR §§ 32.27, 53.209, 53.211, and 53.213 *are amended* as set forth below.

It is further ordered that the requirements and regulations established in this decision shall become effective upon approval by OMB of the new information collection requirements adopted herein, but no sooner than February 20, 1997.

List of Subjects

47 CFR Part 32

Communications common carriers, Reporting and recordkeeping requirements, Separate affiliate safeguards, Telephone, Uniform System of Accounts.

47 CFR Part 53

Bell Operating Companies, Communications common carriers, InterLATA services, Separate affiliate safeguards, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 32 and 53 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for Part 32 continues to read as follows:

Authority: Secs. 4(i), 4(j) and 220 as amended; 47 U.S.C. 154(i), 154(j) and 220; Telecommunications Act of 1996, Public Law No. 104–104, sec. 402(c), 110 Stat 56 (1996) unless otherwise noted.

2. Section 32.27 is amended by revising paragraphs (b), (c) and (d) to read as follows:

§ 32.27 Transactions with affiliates.

* * * * *

(b) Assets sold or transferred between a carrier and its affiliate pursuant to a tariff, including a tariff filed with a state commission, shall be recorded in the appropriate revenue accounts at the tariffed rate. Non-tariffed assets sold or transferred between a carrier and its affiliate that qualify for prevailing price valuation, as defined in paragraph (d) of this section, shall be recorded at the prevailing price. For all other assets sold by or transferred from a carrier to its affiliate, the assets shall be recorded at the higher of fair market value and net book cost. For all other assets purchased by or transferred to a carrier from its affiliate, the assets shall be recorded at the lower of fair market value and net book cost. For purposes of this section carriers are required to make a good faith determination of fair market value.

(c) Services provided between a carrier and its affiliate pursuant to a tariff, including a tariff filed with a state commission, shall be recorded in the appropriate revenue accounts at the tariffed rate. Non-tariffed services provided between a carrier and its affiliate pursuant to publicly-filed agreements submitted to a state commission pursuant to section 252(e) of the Communications Act of 1934 or statements of generally available terms pursuant to section 252(f) shall be recorded using the charges appearing in such publicly-filed agreements or statements. Non-tariffed services provided between a carrier and its affiliate that qualify for prevailing price valuation, as defined in paragraph (d) of this section, shall be recorded at the prevailing price. For all other services provided by a carrier to its affiliate, the

services shall be recorded at the higher of fair market value and fully distributed cost. For all other services received by a carrier from its affiliate, the service shall be recorded at the lower of fair market value and fully distributed cost, except that services received by a carrier from its affiliate that exists solely to provide services to members of the carrier's corporate family shall be recorded at fully distributed cost. For purposes of this section carriers are required to make a good faith determination of fair market value.

(d) In order to qualify for prevailing price valuation in paragraphs (b) and (c) of this section, sales of a particular asset or service to third parties must encompass greater than 50 percent of the total quantity of such product or service sold by an entity. Carriers shall apply this 50 percent threshold on a asset-by-asset and service-by-service basis, rather than on a product line or service line basis. In the case of transactions for assets and services subject to section 272, a BOC may record such transactions at prevailing price regardless of whether the 50 percent threshold has been satisfied.

* * * * *

PART 53—SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

1. The authority citation for Part 53 continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 218, 251, 253, 271–75, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 218, 251, 253, 271–75, unless otherwise noted.

2. Section 53.209 is added to subpart C to read as follows:

§ 53.209 Biennial audit.

(a) A Bell operating company required to operate a separate affiliate under section 272 of the Act shall obtain and pay for a Federal/State joint audit every two years conducted by an independent auditor to determine whether the Bell operating company has complied with the rules promulgated under section 272 and particularly the audit requirements listed in paragraph (b) of this section.

(b) The independent audit shall determine:

(1) Whether the separate affiliate required under section 272 of the Act has:

(i) Operated independently of the Bell operating company;

(ii) Maintained books, records, and accounts in the manner prescribed by the Commission that are separate from the books, records and accounts maintained by the Bell operating company;

(iii) Officers, directors and employees that are separate from those of the Bell operating company;

(iv) Not obtained credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the Bell operating company; and

(v) Conducted all transactions with the Bell operating company on an arm's length basis with the transactions reduced to writing and available for public inspection.

(2) Whether or not the Bell operating company has:

(i) Discriminated between the separate affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or the establishment of standards;

(ii) Accounted for all transactions with the separate affiliate in accordance with the accounting principles and rules approved by the Commission.

(3) Whether or not the Bell operating company and an affiliate subject to section 251(c) of the Act:

(i) Have fulfilled requests from unaffiliated entities for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or its affiliates;

(ii) Have made available facilities, services, or information concerning its provision of exchange access to other providers of interLATA services on the same terms and conditions as it has to its affiliate required under section 272 that operates in the same market;

(iii) Have charged its separate affiliate under section 272, or imputed to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service; and

(iv) Have provided any interLATA or intraLATA facilities or services to its interLATA affiliate and made available such services or facilities to all carriers at the same rates and on the same terms and conditions, and allocated the associated costs appropriately.

(c) An independent audit shall be performed on the first full year of operations of the separate affiliate required under section 272 of the Act, and biennially thereafter.

(d) The Chief, Common Carrier Bureau, shall work with the regulatory agencies in the states having jurisdiction over the Bell operating company's local telephone services, to attempt to form a Federal/State joint audit team with the responsibility for overseeing the planning of the audit as specified in § 53.211 and the analysis and evaluation of the audit as specified in § 53.213. The Federal/State joint audit team may direct the independent auditor to take any actions necessary to ensure compliance with the audit requirements listed in paragraph (b) of this section. If the state regulatory agencies having jurisdiction choose not to participate in the Federal/State joint audit team, the Chief, Common Carrier Bureau, shall establish an FCC audit team to oversee and direct the independent auditor to take any actions necessary to ensure compliance with the audit requirements in paragraph (b) of this section.

3. Section 53.211 is added to subpart (C) to read as follows:

§ 53.211 Audit planning.

(a) Before selecting a independent auditor, the Bell operating company shall submit preliminary audit requirements, including the proposed scope of the audit and the extent of compliance and substantive testing, to the Federal/State joint audit team organized pursuant to § 53.209(d);

(b) The Federal/State joint audit team shall review the preliminary audit requirements to determine whether it is adequate to meet the audit requirements in § 53.209 (b). The Federal/State joint audit shall have 30 days to review the audit requirements and determine any modifications that shall be incorporated into the final audit requirements.

(c) After the audit requirements have been approved by the Federal/State joint audit team, the Bell operating company shall engage within 30 days an independent auditor to conduct the biennial audit. In making its selection, the Bell operating company shall not engage any independent auditor who has been instrumental during the past two years in designing any of the accounting or reporting systems under review in the biennial audit.

(d) The independent auditor selected by the Bell operating company to conduct the audit shall develop a detailed audit program based on the final audit requirements and submit it to the Federal/State joint audit team. The Federal/State joint audit team shall have 30 days to review the audit program and determine any modifications that shall be incorporated into the final audit program.

(e) During the course of the biennial audit, the independent auditor, among other things, shall:

(1) Inform the Federal/State joint audit team of any revisions to the final

audit program or to the scope of the audit.

(2) Notify the Federal/State joint audit team of any meetings with the Bell operating company or its separate affiliate in which audit findings are discussed.

(3) Submit to the Chief, Common Carrier Bureau, any accounting or rule interpretations necessary to complete the audit.

4. Section 53.213 is added to subpart (C) to read as follows:

§ 53.213 Audit analysis and evaluation.

(a) Within 60 dates after the end of the audit period, but prior to discussing the audit findings with the Bell operating company or the separate affiliate, the independent auditor shall submit a draft of the audit report to the Federal/State joint audit team.

(1) The Federal/State joint audit team shall have 45 days to review the audit findings and audit workpapers, and offer its recommendations concerning the conduct of the audit or the audit findings to the independent auditor. Exceptions of the Federal/State joint audit team to the finding and conclusions of the independent auditor that remain unresolved shall be included in the final audit report.

(2) Within 15 days after receiving the Federal/State joint audit team's recommendations and making appropriate revisions to the audit report, the independent auditor shall submit the audit report to the Bell operating company for its response to the audit findings and send a copy to the Federal/State joint audit team. The independent auditor may request additional time to perform additional audit work as recommended by the Federal/State joint audit team.

(b) Within 30 days after receiving the audit report, the Bell operating company will respond to the audit findings and send a copy of its response to the Federal/State joint audit team. The Bell operating company's response shall be included as part of the final audit report along with any reply that the independent auditor wishes to make to the response.

(c) Within 10 days after receiving the response of the Bell operating company, the independent auditor shall make available for public inspection the final audit report by filing it with the Commission and the state regulatory agencies participating on the joint audit team.

(d) Interested parties may file comments with the Commission within 60 days after the audit report is made available for public inspection.

[FR Doc. 97–1388 Filed 1–17–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 53

[CC Docket No. 96–149; FCC 96–489]

Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The First Report and Order (Order) released December 24, 1996 clarifies certain provisions of sections 271 and 272 of the Communications Act of 1934, as amended, and promulgates regulations to implement other provisions. The intended effect of this Order is to further the Commission's goal of fostering competition in the telecommunications market.

EFFECTIVE DATE: February 20, 1997. The collections of information contained within sections 53.203(b) and (e) of these Rules are contingent upon approval by the Office of Management and Budget. The Commission will publish a document at a later date establishing the effective date.

FOR FURTHER INFORMATION CONTACT: Radhika Karmarkar, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. For additional information concerning the information collections contained in this Report and Order contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted December 23, 1996, and released December 24, 1996. This Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding. This is a synopsis, the full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc96489.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

Regulatory Flexibility Analysis

We determined that section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), does not apply to the rules adopted in this Order because they do not have a significant economic impact on a substantial number of small entities, as defined by section 301(3) of the Regulatory Flexibility Act.

Paperwork Reduction Act

Some of the rules adopted in this Order impose information collection requirements that are explained in a companion order, entitled *Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96–150, FCC 96–490. The paperwork reduction estimates associated with these rules are contained in this section. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–12. Written comments by the public on the information collections are due 30 days after date of publication in the Federal Register. OMB notification of action is due (60 days from date of publication in the Federal Register.) Comments should address: (a) whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0734.

Title: Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996.

Form No.: N/A.

Type of review: Revision.

Respondents: Businesses or other for profit.

Section/title	No. of respondents	Est. time per response	Total annual burden
Affiliate Company, Books, Records and Accounts, Section 272	20	6,056.25 hrs.	121,125 hrs.
Arms' Length Requirement	7	72 hrs.	504 hrs.

Total Annual Burden: 121,629 total hours in this Report and Order (Total Annual Burden hours for OMB control number 3060–0734—180,536.75).

Estimated Costs Per Respondents: $0.

Needs and Uses: The attached item adopts safeguards to govern the Bell Operating Companies' (BOCs) entry into certain new markets. It promulgates rules and policies implementing and, where necessary, clarifying the non-accounting separate affiliate and nondiscrimination safeguards prescribed by Congress in sections 271 and 272 of the Communications Act of 1934, as amended. These safeguards are intended both to protect subscribers to BOC monopoly services, such as local telephony, against the potential risk of having to pay costs incurred by the BOCs to enter competitive markets, such as interLATA services and equipment manufacturing, and to protect competition in those markets from the BOCs' ability to use their existing market power in local exchange services to obtain an anticompetitive advantage in those new markets the BOCs seek to enter.

Synopsis of First Report and Order

I. Introduction

In February 1996, the Telecommunications Act of 1996 became law. Telecommunications Act of 1996, Public Law No. 104–104, 110 Stat. 56 (1996 Act), *to be codified at* 47 U.S.C. §§ 151 *et seq.* The intent of the 1996 Act is ''to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.''

In this proceeding, we adopt non-accounting safeguards, pursuant to section 272 of the Communications Act, to govern entry by the Bell Operating Companies (BOCs) into certain new markets. This proceeding is one of a series of interrelated rulemakings that collectively will implement the telephony provisions of the 1996 Act. Other proceedings under the 1996 Act have focused on opening markets to entry by new competitors, establishing rules to preserve and advance universal service, establishing rules for competition in those markets that are opened to competitive entry, and on lifting legal and regulatory barriers to competition.

Upon enactment, the 1996 Act permitted the BOCs immediately to provide interLATA services that originate outside of their in-region states. The 1996 Act conditions the BOCs' entry into in-region interLATA services on their compliance with certain provisions of section 271. Under section 271, we must determine, among other things, whether the BOC has complied with the safeguards imposed by section 272 and the rules adopted herein. Section 272 addresses the BOCs' provision of interLATA telecommunications services originating in states in which they provide local exchange and exchange access services, interLATA information services, and BOC manufacturing activities.

On July 18, 1996, we initiated this proceeding by releasing a Notice of Proposed Rulemaking (NPRM) 61 FR 39397 (July 29, 1996) that sought comment on the non-accounting separate affiliate and nondiscrimination safeguards of the 1996 Act. These provisions govern the BOCs' entry into certain new markets. We initiated a separate proceeding to address the accounting safeguards required to implement sections 260 and 272 through 276 of the Communications Act. Comments on the non-accounting separate affiliate and nondiscrimination safeguards were filed on August 15, 1996, and reply comments were filed on August 30, 1996.

The NPRM also sought comment on whether we should relax the dominant carrier classification that under our current rules would apply to in-region, interstate, domestic, interLATA services provided by the BOCs' interLATA affiliates. Further, the NPRM sought comment on whether we should modify our existing rules for regulating the provision of in-region, interstate, interexchange services by independent local exchange carriers (LECs) (namely, carriers not affiliated with a BOC). Finally, the NPRM considered whether to apply the same regulatory treatment to the BOC affiliates' and independent LECs' provision of in-region, international services, as would apply to the provision of in-region, interstate, domestic, interLATA services and in-region, interstate, domestic interexchange services, respectively. This order addresses only the non-accounting separate affiliate and nondiscrimination safeguards in sections 271 and 272. The classification of BOC affiliates or independent LECs (and their affiliates) as dominant or non-dominant will be addressed in a separate Report and Order in this docket.

In this order, we promulgate rules and policies implementing, and, where necessary, clarifying the non-accounting separate affiliate and nondiscrimination safeguards prescribed by Congress in sections 271 and 272. These safeguards are intended both to protect subscribers to BOC monopoly services, such as local telephony, against the potential risk of having to pay costs incurred by the BOCs to enter competitive markets, such as interLATA services and equipment manufacturing, and to protect competition in those markets from the BOCs' ability to use their existing market power in local exchange services to obtain an anticompetitive advantage in those new markets the BOCs seek to enter. Our action today continues the process of enhancing competition in all telecommunications markets as envisioned by the 1996 Act.

A. Background

The fundamental objective of the 1996 Act is to bring to consumers of telecommunications services in all markets the full benefits of vigorous competition. As we recognized in the *First Interconnection Order*, 61 FR 45476 (August 29, 1996), ''[t]he opening of all telecommunications markets to all providers will blur traditional industry distinctions and bring new packages of services, lower prices, and increased innovation to American consumers.'' With the removal of legal, economic, and regulatory impediments to entry, providers of various telecommunications services will be able to enter each other's markets and provide various services in competition with one another. Both the BOCs and other firms, most notably existing interexchange carriers, will be able to offer a widely recognized brand name that is associated with telecommunications services. As firms expand the scope of their existing operations to new product lines, they will increasingly offer consumers the ability to purchase local, intraLATA,

and interLATA telecommunications services, as well as wireless, information, and other services, from a single provider (*i.e.*, ''one stop shopping''), and other advantages of vertical integration.

The 1996 Act opens local markets to competing providers by imposing new interconnection and unbundling obligations on existing providers of local exchange service, including the BOCs. The 1996 Act also allows the BOCs to provide interLATA services in the states where they currently provide local exchange and exchange access services once they satisfy the requirements of section 271. Moreover, by requiring compliance with the competitive checklist set out in section 271(c)(2)(B) as a prerequisite to BOC provision of in-region interLATA service, the statute links the effective opening of competition in the local market with the timing of BOC entry into the long distance market, so as to ensure that neither the BOCs nor the existing interexchange carriers could enjoy an advantage from being the first to enter the other's market.

In enacting section 272, Congress recognized that the local exchange market will not be fully competitive immediately upon its opening. Congress, therefore, imposed in section 272 a series of separate affiliate requirements applicable to the BOC's provision of certain new services and their engagement in certain new activities. These requirements are designed, in the absence of full competition in the local exchange marketplace, to prohibit anticompetitive discrimination and cost-shifting, while still giving consumers the benefit of competition.

As we observed in the NPRM, BOC entry into in-region interLATA services raises issues for competition and consumers, even after a BOC has satisfied the requirements of section 271(d)(3). BOCs currently are the dominant providers of local exchange and exchange access services in their in-region states, accounting for approximately 99.1 percent of the local service revenues in those markets. If a BOC is regulated under rate-of-return regulation, a price caps structure with sharing (either for interstate or intrastate services), a price caps scheme that adjusts the X-factor periodically based on changes in industry productivity, or if any revenues it is allowed to recover are based on costs recorded in regulated books of account, it may have an incentive to allocate improperly to its regulated core business costs that would be properly attributable to its competitive ventures.

In addition, a BOC may have an incentive to discriminate in providing exchange access services and facilities that its affiliate's rivals need to compete in the interLATA telecommunications services and information services markets. For example, a BOC may have an incentive to degrade services and facilities furnished to its affiliate's rivals, in order to deprive those rivals of efficiencies that its affiliate enjoys. Moreover, to the extent carriers offer both local and interLATA services as a bundled offering, a BOC that discriminates against the rivals of its affiliates could entrench its position in local markets by making these rivals' offerings less attractive. With respect to BOC manufacturing activities, a BOC may have an incentive to purchase only equipment manufactured by its section 272 affiliate, even if such equipment is more expensive or of lower quality than that available from other manufacturers.

Moreover, if a BOC charges other firms prices for inputs that are higher than the prices charged, or effectively charged, to the BOC's section 272 affiliate, then the BOC could create a ''price squeeze.'' In that circumstance, the BOC affiliate could lower its retail price to reflect its unfair cost advantage, and competing providers would be forced either to match the price reduction and absorb profit margin reductions or maintain their retail prices at existing levels and accept market share reductions. This artificial advantage may allow the BOC affiliate to win customers even though a competing carrier may be a more efficient provider in serving the customer. Unlawful discriminatory preferences in the quality of the service or preferential dissemination of information provided by BOCs to their section 272 affiliates, as a practical matter, can have the same effect as charging unlawfully discriminatory prices. If a BOC charged the same rate to its affiliate for a higher quality access service than the BOC charged to unaffiliated entities for a lower quality service, or disclosed information concerning future changes in network architecture to its manufacturing affiliate before disclosing it to others, the BOC could effectively create the same ''price squeeze'' discussed above.

The structural and nondiscrimination safeguards contained in section 272 ensure that competitors of the BOC's section 272 affiliate have access to essential inputs, namely, the provision of local exchange and exchange access services, on terms that do not discriminate against the competitors and in favor of the BOC's affiliate. Because the BOC has the incentive to provide its affiliate with the most efficient access, the statute requires the BOC to provide competitors the same access. Access to such inputs on nondiscriminatory terms will enable a new entrant to compete effectively, assuming it is at least as efficient as the BOC and/or its section 272 affiliate. At the same time, Congress also was sensitive to the value to the BOCs of potential efficiencies stemming from economies of scale. Our task is to implement section 272 in a manner that ensures that the fundamental goal of the 1996 Act is attained—to open all telecommunications markets to robust competition—but at the same time does not impose requirements on the BOCs that will unfairly handicap them in their ability to compete. The rules and policies adopted in this order seek to preserve the carefully crafted statutory balance to the extent possible until facilities-based alternatives to the local exchange and exchange access services of the BOCs make those safeguards no longer necessary.

B. Overview and Summary

Section 272 allows a BOC to engage in the manufacturing of telecommunications equipment and CPE, the origination of certain interLATA telecommunications services, and the provision of interLATA information services, as long as the BOC provides these activities through a separate affiliate. Unless extended by the Commission, the statutory separate affiliate requirements for manufacturing and interLATA telecommunications services expire three years after a BOC or any BOC affiliate is authorized to provide in-region interLATA services. The statutory interLATA information services separate affiliate requirement expires on February 8, 2000, four years after enactment of the 1996 Act, unless extended by the Commission.

This order implements the structural separation requirements mandated by section 272 in a manner that is designed to prevent improper cost allocation between the BOC and its section 272 affiliate and discrimination by the BOC in favor of its section 272 affiliate. In particular, we construe the section 272(b)(1) ''operate independently'' requirement to prohibit the BOC and its section 272 affiliate from jointly owning transmission and switching facilities or the land and buildings on which such facilities are located. Moreover, we prohibit a BOC and its affiliates, other than the section 272 affiliate itself, from providing operating, installation, and maintenance services associated with the facilities owned by the section 272

affiliate. Similarly, a section 272 affiliate may not provide such services associated with the BOC's facilities. These requirements should reduce the potential for the improper allocation of costs to the BOC that should be allocated to the section 272 affiliate. In addition, they should ensure that a section 272 affiliate must follow the same procedures as its competitors in order to gain access to a BOC's facilities. Consistent with these requirements and those established pursuant to sections 272(b)(5) and 272(c)(1), however, a section 272 affiliate may negotiate with an affiliated BOC on an arm's length basis to obtain transmission and switching facilities, to arrange for collocation of facilities, and to provide or obtain services other than those expressly prohibited herein.

The structural separation requirements of section 272, in conjunction with the affirmative nondiscrimination obligations imposed by that section, also are intended to address concerns that the BOCs could potentially use local exchange and exchange access facilities to discriminate against competitors in order to gain an anticompetitive advantage for their affiliates that engage in competitive activities. We interpret section 272(c)(1) as imposing a flat prohibition against discrimination more stringent than the bar on ''unjust and unreasonable'' discrimination contained in section 202 of the Act. In short, the BOCs must treat all other entities in the same manner in which they treat their section 272 affiliates. We conclude that a BOC may not discriminate in favor of its section 272 affiliate by: (1) Providing exchange access services to competing interLATA service providers at a higher rate than the rate offered to its section 272 affiliate; (2) providing a lower quality service to competing interLATA service providers than the service it provides to its section 272 affiliate at a given price; (3) giving preference to its affiliate's equipment in the procurement process; or (4) failing to provide advance information about network changes to its competitors. We seek comment in a Further Notice of Proposed Rulemaking on specific disclosure requirements to implement section 272(e)(1).

In this order, we also seek to ensure that BOC section 272 affiliates have the same opportunity to compete for customers as other long distance service providers. The joint marketing rules we have established limit the ability of the largest interexchange carriers to market jointly their interLATA service with resold BOC local exchange service, until the BOC receives in-region, interLATA authority under section 271 or until 36 months after enactment of the 1996 Act. Once the BOC receives interLATA authority, the restrictions on interexchange carrier joint marketing expire, and the interexchange carriers and the BOCs and their section 272 affiliates may engage in the same types of marketing activities.

In addition, we clarify that the Communications Act allows a section 272 affiliate to purchase unbundled elements pursuant to section 251(c)(3) and telecommunications services at wholesale rates under section 251(c)(4). Thus, the section 272 affiliate may provide integrated services in the same manner as other competitors. Such an approach is consistent with the objectives of the 1996 Act, which are to give service providers the freedom to develop a wide array of service packages and allow consumers to select what best suits their needs. We note, however, that the BOC may not transfer local exchange and exchange access facilities and capabilities to the section 272 affiliate, or another affiliate, in order to evade regulatory requirements.

We recognize that no regulatory scheme can completely prevent or deter discrimination, particularly in its more subtle forms. In this order, we shift the burden of production to the BOCs in the context of section 271(d)(6) enforcement proceedings in order to alleviate the burden on the complainant and facilitate the detection of anticompetitive behavior. Because the BOC is likely to be in sole possession of most of the relevant information necessary to establish the complainant's case, shifting the burden is the most efficient way of resolving complaints alleging violations of the conditions of in-region interLATA entry under section 271(d)(3). The goal of this proceeding and others is to establish a regulatory framework that enables service providers to enter each other's markets and compete on an equal footing by not allowing one service provider to game regulatory requirements in such a way as to hinder competition.

II. Scope of Commission Authority

A. Rulemaking Authority

1. Background

In the NPRM, we addressed the scope of the Commission's authority, pursuant to sections 271 and 272, over interLATA services, interLATA information services and manufacturing activities. Although we did not seek comment on whether the Commission has authority to adopt rules implementing section 272, several commenters addressed this issue.

2. Discussion

We reject as unfounded the assertion that the Commission lacks authority to adopt regulations implementing section 272. Sections 4(i), 201(b), and 303(r) of the Act authorize the Commission to adopt any rules it deems necessary or appropriate in order to carry out its responsibilities under the Act, so long as those rules are not otherwise inconsistent with the Act. Nothing in section 272 bars the Commission from exercising the rulemaking authority granted by these sections of the Act to clarify and implement the requirements of section 272. Moreover, courts repeatedly have held that the Commission's general rulemaking authority is ''expansive'' rather than limited. In addition, as AT&T notes, it is well-established that an agency has the authority to adopt rules to administer congressionally mandated requirements. Contrary to those parties that argue that section 272 is self-executing, we find that Congress enacted in section 272 broad principles that require interpretation and implementation in order to ensure an efficient, orderly, and uniform regime governing BOC entry into in-region interLATA telecommunications and other markets covered by section 272. In the NPRM, we identified areas of ambiguity in the requirements of section 272 with the specific goal of clarifying and implementing Congress' intent in that provision. That remains our goal in this Order. Due to the importance of the introduction of competition to the local exchange market, we believe this Order to be both important and necessary to protect BOC customers and new entrants. Further, we agree with PacTel that it serves the interests of justice for us to clarify in advance the section 272 requirements so that BOCs and other parties may be advised of what is required to meet the condition for 271 authorization that in-region interLATA services be provided in compliance with section 272.

We are not persuaded by the argument that the removal of the Senate bill's provision regarding implementing regulations from the 1996 Act indicates Congress' intent that section 272 be self-executing. Parties advancing this argument rely on a rule of statutory construction providing that, when a provision in a prior draft is altered in the final legislation, Congress intended a change from the prior version. The courts have rejected this rule of statutory construction, however, when changes from one draft to another are not explained. In this instance, the only statement from Congress regarding the

meaning of the omission of the Senate provision appears in the Joint Explanatory Statement. According to that Statement, all differences between the Senate Bill, the House Amendment, and the substitute reached in conference are noted therein ''except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.'' Because the Joint Explanatory Statement did not address the removal of the Senate bill provision, the logical inference is that Congress regarded the change as an inconsequential modification, rather than a significant alteration. Moreover, it seems implausible that, in enacting the final version of section 272, Congress intended a radical alteration of the Commission's general rulemaking authority. We therefore conclude that elimination of the proposed provision was a nonsubstantive change. Based on the foregoing, we find, pursuant to the general rulemaking authority vested in the Commission by sections 4(i), 201(b), and 303(r) of the Act, and consistent with fundamental principles of administrative law, that the Commission has the requisite authority to promulgate rules implementing section 272 of the Act.

B. Scope of Commission's Authority Regarding InterLATA Services

1. Background

In the NPRM, we tentatively concluded that the Commission's authority under sections 271 and 272 applies to intrastate and interstate interLATA services provided by BOCs or their affiliates. We based this tentative conclusion in part on our analysis that Congress intended sections 271 and 272 to replace the pre-Act restrictions on the BOCs contained in the MFJ, which barred their provision of both intrastate and interstate interLATA services. We also observed that the interLATA/intraLATA distinction appears to some extent to have supplanted the traditional interstate/intrastate distinction for purposes of sections 271 and 272. We further noted that reading sections 271 and 272 as applying to all interLATA services fits well with the structure of the statute as a whole, and that reading the sections as limited to interstate services would lead to implausible results. We also indicated that we do not believe that section 2(b) of the Act precludes the conclusion that our authority under sections 271 and 272 applies to intrastate as well as interstate interLATA services. Finally, we asked parties that disagreed with the foregoing analysis to comment on the extent to which the Commission may have authority to preempt state regulation with respect to some or all of the non-accounting matters addressed by sections 271 and 272.

2. Discussion

For the reasons set forth below, we conclude that sections 271 and 272, and the Commission's authority thereunder, apply to intrastate as well as interstate interLATA services provided by the BOCs or their affiliates. We base this conclusion on the scope of the pre-1996 Act MFJ restrictions on the BOCs' provision of interLATA services, as well as on the plain language of sections 271 and 272, and the requirements of those sections. In addition, we find that section 2(b) does not bar the Commission from establishing regulations to clarify and implement the requirements of section 272 that apply to intrastate interLATA services and other intrastate matters that are within the scope of section 272. We hold, therefore, that the rules we establish to implement section 272 are binding on the states, and the states may not impose regulations with respect to BOC provision of intrastate interLATA service that are inconsistent with section 272 and the Commission's rules under section 272. We emphasize, however, that the scope of the Commission's authority under sections 271 and 272 extends only to matters covered by those sections. Those sections do not alter the jurisdictional division of authority with respect to matters falling outside their scope. For example, rates charged to end users for intrastate interLATA service have traditionally been subject to state authority, and will continue to be.

We stated in the NPRM, and several parties agree, that section 601(a) of the 1996 Act indicates that Congress intended the provisions of the Act to supplant the MFJ. That section provides:

> Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the [MFJ] shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and shall not be subject to the restrictions and the obligations imposed by [the MFJ].

No party challenges the fact that the MFJ generally prohibited the BOCs and their affiliates from providing any interLATA services—interstate or intrastate. Moreover, no party challenges the fact that the term ''interLATA services'' as used in the MFJ referred to both intrastate and interstate services.

Similarly, with respect to the term ''interLATA services'' as used in sections 271 and 272, the DOJ, AT&T, and BellSouth maintain that, because the Act defines the term ''interLATA'' to include intrastate services, references in sections 271 and 272 to interLATA services apply to both intrastate and interstate services. We agree.

The Act defines ''interLATA service'' as ''telecommunications between a point in a local access and transport area and a point located outside such area.'' The Act further defines the term ''LATA'' as ''a contiguous geographic area * * * established before the date of enactment of the [1996 Act] by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the [MFJ]'' or subsequently modified with approval of the Commission. This definition expressly recognizes that a LATA may comprise an area, such as a metropolitan statistical area, that is smaller than a state. Indeed, the DOJ notes that most LATAs established by the MFJ consist of only parts of individual states; only nine LATAs out of a total of 158 encompass an entire state. Thus, by defining an interLATA service as telecommunications from a point inside a LATA to a point outside a LATA, the Act expressly recognizes that interLATA services may include telecommunications between two LATAs within a single state. Accordingly, we find that the term ''interLATA services,'' as used in sections 271 and 272, expressly refers to both intrastate and interstate services.

Although the term ''interLATA services'' as used in the MFJ and in sections 271 and 272 refers to both interstate and intrastate interLATA services, the New York Commission and others assert that, when Congress transferred responsibility for enforcing the prohibition on the BOCs' provision of interLATA services from the U.S. District Court to the Commission, it intended to limit our authority only to interstate interLATA services. To the contrary, we find that reading sections 271 and 272 as granting the Commission authority over intrastate as well as interstate interLATA services is consistent with, and indeed necessary to effectuate, Congress' intent that sections 271 and 272 replace the restrictions of the MFJ with respect to BOC provision of interLATA services.

The jurisdictional limitation that the New York Commission and others seek

to read into sections 271 and 272 would lead to implausible results. Specifically, under that statutory interpretation, the BOCs would have been permitted to provide in-region, intrastate, interLATA services upon enactment, without complying with the section 271 entry requirements or the section 272 safeguards, and subject only to any existing, generally applicable state rules on interexchange entry. Any such rules, presumably, would not have been specifically directed at BOC entry, because of the long-standing MFJ prohibition on entry. Because concerns about BOC control of bottleneck facilities needed for the provision of in-region interLATA services are applicable to both interstate and intrastate services, it seems clear that sections 271 and 272 apply equally to the BOCs' provision of both intrastate and interstate, in-region, interLATA services. We find no reasonable basis for concluding that Congress intended to lift the MFJ's ban on BOC provision of intrastate interLATA services, which constitute approximately 30 percent of interLATA traffic, and permit the BOCs to offer such services before satisfying the requirements of sections 271 and 272. As the DOJ notes, ''Congress could not have intended, for example, to open up the intrastate interLATA market immediately for BOC entry, without the carefully-devised entry requirements of Section 271, while at the same time establishing those requirements with respect to interstate interLATA entry. Nor could Congress have meant to defeat the safeguards carefully imposed under Section 272 by permitting the BOCs to engage in the behavior which Section 272 prohibits, as long as they do it within the individual states.'' Indeed, we find it significant that neither the states nor the BOCs have argued that such a result was intended. In light of this analysis, we find that the Commission's authority under sections 271 and 272 extends to both intrastate and interstate interLATA services.

Similarly, several parties support the conclusion that our authority to consider the applications of BOCs seeking to provide in-region interLATA service pursuant to section 271(d) applies to both interstate and intrastate services. None of the state representatives and BOCs commenting on this issue claims that the Commission's authority under section 271(d) does not apply to a BOC's provision of intrastate interLATA services. Despite the lack of controversy on this point, several commenters claim that rules adopted under section 272 apply only to interstate services. We believe that the requirements of sections 271 and 272 repudiate this argument. In granting an application under section 271(d), the Commission must determine, among other things, that the BOC meets the requirements of section 271(d)(3)(B). Under this provision, the Commission must find that the requested authorization ''will be carried out in accordance with the requirements of section 272.'' In light of the Commission's authority to approve entry into both intrastate and interstate in-region interLATA service, pursuant to section 271, it seems logical and necessary that the Commission's authority to impose safeguards established by section 272, should similarly extend to both intrastate and interstate interLATA service.

Several parties have argued that, although the MFJ restrictions on the BOCs applied to both interstate and intrastate interLATA services, the states retained authority to regulate a BOC's intrastate interLATA services when such services were authorized by the MFJ court. They assert, therefore, that, even if sections 271 and 272 apply to intrastate services, those provisions would not divest the states of authority over intrastate services. As we stated at the outset of this discussion, the scope of the Commission's authority under sections 271 and 272 extends only to matters covered by those sections, *i.e.*, authorization for BOC entry into in-region interLATA service and the safeguards imposed in section 272. We do not dispute that the states retain their authority to regulate intrastate services in other contexts.

We further find that the requirements of sections 271 and 272 buttress our conclusions regarding the scope of the Commission's jurisdiction. For example, we find it significant that section 271(h) directs the Commission to address intrastate matters relating to BOC provision of incidental interLATA services. That section states that ''[t]he Commission shall ensure that the provision of [incidental interLATA services] by a Bell operating company or its affiliate *will not adversely affect telephone exchange service ratepayers* or competition in any telecommunications market.'' Telephone exchange service is primarily an intrastate service. This reference to a plainly intrastate service indicates that the scope of section 271 encompasses intrastate matters, and thus the Commission's authority thereunder applies to both intrastate and interstate interLATA services.

State representatives and some BOCs argue that sections 2(b) and 601(c) of the Act preserve the states' authority to adopt rules regarding BOC provision of intrastate interLATA services. They argue that section 2(b) bars the Commission from exercising authority under sections 271 and 272 to establish rules applicable to intrastate interLATA services. For the reasons set forth below, we find that section 2(b) does not preclude us from finding that sections 271 and 272, and our authority to promulgate rules thereunder, apply to BOC provision of intrastate interLATA services.

In *Louisiana Public Service Commission* v. *Federal Communications Commission*, 476 U.S. 355, 377 (1986), the Supreme Court determined that, in order to overcome section 2(b)'s limits on the Commission's jurisdiction with respect to intrastate communications service, Congress must either modify section 2(b) or grant the Commission additional authority. As explained above, we find that the term ''interLATA services,'' by the Act's own definition, includes intrastate services, and that Congress, in sections 271 and 272, expressly granted the Commission authority over intrastate interLATA services for purposes of those sections. Accordingly, consistent with the Court's statement in *Louisiana*, we find that section 2(b) does not limit our authority over intrastate interLATA services under sections 271 and 272.

In addition, we find that, in enacting sections 271 and 272 after section 2(b), and squarely addressing therein the issues before us, Congress intended for sections 271 and 272 to take precedence over any contrary implications based on section 2(b). In construing these provisions, we are mindful that ''it is a commonplace of statutory construction that the specific governs the general.'' Moreover, where amended and original sections of a statute cannot be harmonized, the new provisions should be construed to prevail as the latest declaration of legislative will. We find also that, in enacting the 1996 Act, there are other instances where Congress indisputably gave the Commission intrastate jurisdiction without amending section 2(b). For instance, section 251(e)(1) provides that ''[t]he Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States.'' Section 253 directs the Commission to preempt state regulations that prohibit the ability to provide intrastate services. Section 276(b) directs the Commission to ''establish a per call compensation plan to ensure that payphone service providers are fairly compensated for each and every completed intrastate and interstate call.'' Section 276(c) provides

that, ''[t]o the extent that any State [payphone] requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements.'' None of these provisions is specifically excepted from section 2(b), yet all of them explicitly give the Commission jurisdiction over intrastate matters. Thus, we find that the lack of an explicit exception in section 2(b) does not require us to conclude that the Commission's jurisdiction under sections 271 and 272 is limited to interstate services. A contrary holding would nullify several explicit grants of authority to the Commission, noted above, and would render substantial parts of the statute meaningless. Thus, in this instance, we believe that the lack of an explicit exception in section 2(b) is not dispositive of the scope of the Commission's jurisdiction.

Moreover, as stated above, with the exception of the New York Commission, the parties challenging the Commission's authority to preempt state regulation under sections 272 do not address the issue of whether ''interLATA services'' are defined by the Act to include intrastate services. The New York Commission agrees with us that it does. These parties (including the New York Commission) also do not challenge the proposition that Congress vested in the Commission authority over BOC entry into all in-region interLATA services—intrastate and interstate. We find it difficult to reconcile these parties' silence on these issues, as well as the New York Commission's agreement that ''interLATA services'' includes intrastate services, with their position that section 2(b) limits the application of the Commission's implementing rules under section 272 to interstate interLATA services. If, as it remains undisputed in the record, the Commission would necessarily determine, in assessing whether to allow BOC entry into in-region interLATA services, whether a BOC's provision of intrastate as well as interstate interLATA services complies with section 272, we can find no basis to maintain that the Commission's authority under sections 271 and 272 does not include authority to apply its interpretation of section 272 to all of the interLATA services—intrastate and interstate—at issue in the BOC's 271 in-region interLATA services application.

NARUC and the Missouri Commission stress that earlier drafts of the legislation would have amended section 2(b) to make an exception for certain sections of Title II, including sections 271 and 272, but the enacted version did not include that exception. They argue that this change demonstrates that Congress intended that section 2(b)'s limitations remain fully in force with regard to sections 271 and 272. We find this argument unpersuasive.

As noted above, parties that attach significance to the omission of the proposed amendment of section 2(b) rely on a rule of statutory construction providing that, when a provision in a prior draft is altered in the final legislation, Congress intended a change from the prior version. This rule of statutory construction has been rejected, however, when changes from one draft to another are not explained. In this instance, the only statement from Congress regarding the meaning of the omission of the section 2(b) amendment appears in the Joint Explanatory Statement. According to the Joint Explanatory Statement, all differences between the Senate Bill, the House Amendment, and the substitute reached in conference are noted therein ''except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.'' Because the Joint Explanatory Statement did not address the removal of the section 2(b) amendment from the final bill, the logical inference is that Congress regarded the change as an inconsequential modification rather than a significant alteration. It seems implausible that, by enacting the final version, Congress intended a radical alteration of the Commission's authority under sections 271 and 272, given the total lack of legislative history to that effect. Based on the foregoing, we conclude that elimination of the proposed amendment of section 2(b) was a nonsubstantive change.

Moreover, even if it were appropriate to speculate as to the meaning of the omission of the section 2(b) exception, we disagree with the argument that the omission necessarily indicates that Congress intended *not* to provide the Commission authority over intrastate services in sections 271 and 272. We find it is equally possible that Congress omitted the exception based on an understanding that the use of the term interLATA in sections 271 and 272 established a clear grant of authority over intrastate services and therefore that such an exception was unnecessary.

We similarly are not persuaded that section 601(c) of the 1996 Act evinces an intent by Congress to preserve states' authority over intrastate matters. Section 601(c) of the 1996 Act provides that the Act and its amendments ''shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments.'' As explained above, we conclude that sections 271 and 272, which apply to interLATA services, were expressly intended to modify federal and state law and jurisdictional authority.

For all of the reasons discussed above, we conclude that sections 271 and 272, and the Commission's authority thereunder, apply to intrastate and interstate interLATA services provided by the BOCs or their affiliates. We hold, therefore, that the rules we establish to implement section 272 are binding on the states, and the states may not impose, with respect to BOC provision of intrastate interLATA service, requirements inconsistent with sections 271 and 272 and the Commission's rules under those provisions. In this regard, based on what we find is clear congressional intent that the Commission is authorized to make determinations regarding BOC entry into interLATA services, we reject the suggestion by the Wisconsin Commission that, after the Commission has granted a BOC application for authority under section 271, a state nonetheless may condition or delay BOC entry into intrastate interLATA services.

C. Scope of Commission's Authority Regarding Manufacturing Services

In the NPRM, we tentatively concluded that the Commission's authority under section 272 extends to all BOC manufacturing of telecommunications equipment and CPE. Only two parties, Sprint and TIA, commented on this issue, and both agreed with our tentative conclusion.

We adopt our tentative conclusion that our authority under section 272 extends to all BOC manufacturing of telecommunications equipment and CPE. As we stated in the NPRM, to the extent that sections 271 and 272 address BOC manufacturing activities, we believe that the same statutory analysis set forth above with respect to interLATA services would apply. We see no basis for distinguishing among the various subsections of sections 271 and 272. Even apart from that analysis, however, we believe that the provisions concerning manufacturing clearly apply to all manufacturing activities. Section 2(b) of the Communications Act limits the Commission's authority over ''charges, classifications, practices, services, facilities, or regulation for or in connection with intrastate communications service.'' Even though, for the reasons stated above, we find section 2(b) not to be relevant to

sections 271 and 272, we find that the manufacturing activities addressed by sections 271 and 272 are not, in any event, within the scope of section 2(b). Alternatively, even if section 2(b) were deemed to apply with respect to BOC manufacturing, we find that such manufacturing activities plainly cannot be segregated into interstate and intrastate portions. Thus, any state regulation inconsistent with sections 271 and 272 or our implementing regulations would necessarily thwart and impede federal policies, and should be preempted.

III. Activities Subject to Section 272 Requirements

Section 272(a) provides that a BOC (including any affiliate) that is a LEC subject to the requirements of section 251(c) may provide certain services only through a separate affiliate. Under section 272, BOCs (or BOC affiliates) may engage in the following activities only through one or more affiliates that are separate from the incumbent LEC entity: (A) Manufacturing activities; (B) interLATA telecommunications services that originate in-region; and (C) interLATA information services. We discuss below both the activities subject to the section 272 separate affiliate requirements and the activities that are exempt from these requirements.

A. General Issues

1. Definition of ''InterLATA services''

a. Background. In the NPRM, we indicated that the 1996 Act defines ''interLATA service'' as a telecommunications service. We further stated that, where the 1996 Act draws distinctions between in-region and out-of-region ''interLATA services,'' these distinctions do not apply to interLATA information services.

b. Discussion. Upon consideration of the arguments raised in the record, we modify our interpretation of the scope of the term ''interLATA service.'' Consistent with the views of the commenters that addressed this point, we conclude that the term ''interLATA services'' encompasses both interLATA information services and interLATA telecommunications services.

We are persuaded that the definition of ''interLATA service,'' which is ''telecommunications between a point located in a [LATA] and a point located outside such area,'' does not limit the scope of the term to telecommunications services because, as MFS and BellSouth point out, information services are also provided *via telecommunications.* Elsewhere in this Report and Order, we conclude that ''interLATA information services'' must include a bundled, interLATA transmission component. Thus, interLATA information services are provided via interLATA telecommunications transmissions and, accordingly, fall within the definition of ''interLATA service.'' Moreover, we believe that it is a more natural, common-sense reading of ''interLATA services'' to interpret it to include both telecommunications services and information services. In addition, as MFS argues, in section 272(a)(2), Congress uses and distinguishes between ''interLATA telecommunications services'' and ''interLATA information services,'' demonstrating that it limited the term ''interLATA services'' to transmission services when it wished to. Further, if Congress had intended the term ''interLATA services'' to include only interLATA telecommunications services, its use of the term ''interLATA telecommunications services'' in section 272(a)(2) would have been unnecessary and redundant.

As MCI points out, interpreting the term ''interLATA services'' to include both interLATA telecommunications and interLATA information services means that a BOC may not provide in-region interLATA information services until it obtains section 271 authorization. As a practical matter, we believe that interpreting ''interLATA services'' to include interLATA information services will not alter the application of section 271. As noted above, and discussed in greater detail below, we conclude that the term ''interLATA information service'' refers to an information service that incorporates as a necessary, bundled element an interLATA telecommunications transmission component provided to the customer for a single charge. Thus, regardless of whether we interpret ''interLATA service'' to include interLATA information services, a BOC would be required to obtain section 271 authorization prior to providing, in region, the interLATA telecommunications transmission component of an interLATA information service.

2. Application of Section 272 Safeguards to International InterLATA Services

In the NPRM, we tentatively concluded that Congress intended the section 272 safeguards to apply to all domestic and international interLATA services. All of the parties that commented on this point supported this tentative conclusion. As noted above, the 1996 Act defines ''interLATA services'' as ''telecommunications between a point located in a [LATA] and a point located outside such area.'' The definition does not distinguish between domestic and international interLATA services. Further, international telecommunications services, which originate in a LATA and terminate in a country other than the United States, or vice versa, fit within the statutory definition of interLATA services. Thus, we hereby adopt our tentative conclusion.

3. Provision of Services Through a Single Affiliate

a. Background. In the NPRM, we tentatively concluded that BOCs may conduct all, or some combination of, manufacturing activities, interLATA telecommunications services, and interLATA information services through a single separate affiliate, so long as the affiliate satisfies all statutory and regulatory requirements imposed on the provision of each type of service. Elsewhere in the NPRM, we sought comment on whether the 1996 Act permits us to, and if so, whether we should, interpret or apply any of the requirements of section 272(b) differently with respect to a BOC's provision of interLATA telecommunications services, which are regulated under Title II, as opposed to a BOC's engagement in manufacturing and provision of interLATA information services, which are unregulated activities. In addition, we sought comment on how we could impose different regulatory requirements if a BOC provides both regulated and unregulated services through a single affiliate.

b. Discussion. Based on the comments submitted in the record and our analysis of the 1996 Act, we adopt our tentative conclusion that BOCs may conduct all, or some combination, of manufacturing activities, interLATA telecommunications services, and interLATA information services through a single separate affiliate. Section 272(a) requires a BOC to provide these services through ''one or more affiliates'' that are ''separate from any operating company entity that is subject to the requirements of section 251(c).'' We conclude that this language is intended to allow the BOCs flexibility in structuring their provision of competitive services, so long as those services are separated from the BOCs' provision of any local exchange services that are subject to the requirements of section 251(c).

We further conclude, as a policy matter, that it is not necessary to require the BOCs to separate their manufacturing activities from their

provision of interLATA telecommunications services and interLATA information services, as suggested by VoiceTel. First, a BOC's manufacturing activities do not entail control over bottleneck local exchange facilities. Second, during the period that the MFJ prohibited the BOCs from engaging in manufacturing activities, a competitive market for these activities developed. The market for information services is fully competitive; the market for interLATA telecommunications services is also substantially competitive. Thus, while a BOC may achieve certain efficiencies and economies of scope by conducting all three categories of activity through the same section 272 affiliate, it cannot thereby increase its ability to exercise market power in either the manufacturing, interLATA telecommunications services, or interLATA information services markets. Further, we note that section 273, which is the subject of a separate proceeding, establishes additional safeguards applicable to BOC manufacturing activities, which are intended to promote competition and prevent discrimination. For these reasons, we conclude that BOCs may conduct all, or some combination of, manufacturing activities, interLATA telecommunications services, and interLATA information services through the same section 272 affiliate.

Further, we decline to adopt different requirements pursuant to section 272(b) for regulated and unregulated activities. The safeguards of section 272(b) apply to any ''separate affiliate required by'' section 272(a). Thus, the section 272(b) safeguards address the BOCs' potential to allocate costs improperly and to discriminate in favor of their section 272 affiliates, irrespective of the activities in which those affiliates engage.

4. Manufacturing Activities

In the NPRM, we stated that BOCs may only engage in manufacturing activities through a separate affiliate that meets the requirements of section 272, and noted that section 273 sets forth additional safeguards applicable to BOC entry into manufacturing activities. Subsequent to the closing of the record in this proceeding, the Commission released a Notice of Proposed Rulemaking to clarify and implement the provisions of section 273. Several parties have raised arguments relating to the section 273 provisions on the record in this proceeding. Because this proceeding implements the non-accounting safeguards provisions of sections 271 and 272, arguments relating to the specific provisions of section 273 are more appropriately addressed in the section 273 proceeding. We note that BOCs must conduct their manufacturing activities through a section 272 separate affiliate, manufacture and provide telecommunications equipment and CPE in accordance with section 273, and comply with the regulations that the Commission promulgates to implement both sections 272 and 273.

B. Mergers/Joint Ventures of Two or More BOCs

1. Background

In the NPRM, we tentatively concluded that, pursuant to sections 271(i)(1) and 153(4)(B), if two or more of the BOCs combine their operations through merger or acquisition, the in-region states of the resultant entity shall include all of the in-region states of each of the BOCs involved in the merger/acquisition. We sought comment on whether the entry into a merger agreement or a joint venture arrangement by two or more BOCs affects the application of the section 271 and 272 non-accounting separate affiliate and nondiscrimination requirements to those BOCs. We further sought comment on whether additional safeguards are required to ensure that these BOCs do not provide the affiliates of their merger partners with an unfair competitive advantage during the pendency of their merger agreement.

2. Discussion

We note the unanimous support among parties that commented on the issue, and hereby affirm our tentative conclusion that, upon completion of a merger between or among BOCs, the in-region states of the merged entity shall include all of the in-region states of each of the BOCs involved in the merger. We decline, however, to adopt a general rule that would treat the regions of merging BOCs as combined prior to completion of the merger, for the purposes of applying the section 272 separate affiliate and nondiscrimination safeguards. Section 272 requires a BOC to provide certain services (interLATA telecommunications and information services and manufacturing activities) through one or more separate affiliates, and establishes nondiscrimination requirements that apply to the BOC's conduct and its relationship with these affiliates. Section 3(1), in turn, defines an ''affiliate'' as ''a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership and control with, another person.'' Prior to completion of a merger, the merging BOCs are neither affiliates, nor successors or assigns, of one another. Thus, entry into a merger agreement does not render the section 272 safeguards applicable to a BOC's relationship with its merger partner, nor to its relationship with its merger partner's affiliates. Moreover, treating the regions of merging BOCs as combined from the inception of a merger agreement might create considerable problems in applying the section 271 and 272 safeguards. For example, if BOC A were offering out-of-region interLATA services in BOC B's region at the time the two entered a merger agreement, BOC A might be required immediately to cease the provision of such services until it had received approval under section 271 to offer in-region interLATA services. That result would be both disruptive and confusing to customers.

We further decline to adopt any additional regulations applicable to pending mergers or joint ventures between or among BOCs. We are persuaded that adequate protections against discriminatory and anticompetitive conduct already apply to mergers, acquisitions, and joint ventures among BOCs. As the DOJ and other commenters point out, these protections include the nondiscrimination obligations of sections 201 and 202 of the Communications Act, which, among other things, prevent the BOCs from unjustly or unreasonably discriminating in providing facilities or services to interexchange carriers, and would thus govern a BOC's relationship with the long-distance affiliate of its merger partner. Continuing enforcement of the MFJ equal access requirements and pre-existing Commission-prescribed interconnection requirements, pursuant to section 251(g), also safeguards against BOC discrimination in favor of the affiliates of their merger partners. Further, as USTA notes, BOCs will be subject to the pre-merger review process under the Hart-Scott-Rodino amendment to the Clayton Act. See 15 U.S.C. § 18a. Moreover, as MCI suggests, we retain our authority to impose additional safeguards in the context of particular mergers, should circumstances demonstrate the need for such safeguards, on a case-by-case basis.

C. Previously Authorized Activities

1. Background

In the NPRM, we sought comment on the meaning of and interaction between sections 271(f), 272(a)(2)(B)(iii), and 272(h). Specifically, we sought comment on whether, subject to the

exception established by section 272(a)(2)(B)(iii), section 272(h) requires the BOCs to come into compliance with the section 272 safeguards with respect to all of the activities listed in section 272(a)(2) (A)–(C) that they were providing on the date of enactment of the 1996 Act. We observed that section 272(a)(2)(B)(iii) establishes an exemption for ''previously authorized activities described in section 271(f)'' from the separate affiliate requirement for ''origination of interLATA telecommunications services.'' We sought comment on whether Congress intended, through section 272(h), to require BOCs engaged in previously authorized manufacturing activities and interLATA information services to come into compliance with the section 272 requirements.

2. Discussion

Based on the record before us and our analysis of the relevant statutory terms, we conclude that BOCs may continue to provide all previously authorized services without interruption, pursuant to the terms and conditions set forth in the MFJ court orders that authorize those services. Previously authorized interLATA information services and manufacturing activities must come into compliance with the section 272 separate affiliate requirements within one year. Previously authorized interLATA telecommunications services, which do not have to comply with the section 272 separate affiliate requirements, must continue to be provided pursuant to the terms and conditions of the MFJ court orders that authorize them.

Section 271(f). As a general matter, section 271 addresses the timing and requirements for BOC entry into the interLATA market. Section 271(f) specifies that neither section 271(a) nor section 273 ''prohibits'' a BOC or its affiliate from engaging, at any time after enactment, in any activity previously authorized by an order of the MFJ court, subject to the terms and conditions imposed by the court. We conclude that the purpose of Section 271(f) is to preserve the BOCs' ability to engage in previously authorized activities, without first having to obtain section 271 authorization from the Commission. Section 271(f) by its terms does not address, and thus does not preclude, application of the section 272 separate affiliate requirements to previously authorized services. Except for specifying that BOCs may continue to provide previously authorized services pursuant to the terms and conditions contained within the MFJ court order authorizing the service, section 271(f) does not address the manner in which BOCs must structure their provision of previously authorized services, or whether they must provide these services through a separate affiliate. These issues are addressed in section 272.

Section 272(a)(2)(B)(iii). Section 272 sets forth separate affiliate and nondiscrimination requirements with which the BOC must comply in order to provide certain services. Separate subsections of section 272(a)(2) establish separate affiliate requirements for BOC provision of manufacturing activities (section 272(a)(2)(A)), origination of interLATA telecommunications services (section 272(a)(2)(B)), and interLATA information services (section 272(a)(2)(C)). Section 272(a)(2)(B)(iii) exempts ''previously authorized activities described in section 271(f)'' from the separate affiliate requirement for ''origination of interLATA telecommunications services.'' We conclude that, because this exemption appears in section 272(a)(2)(B), it applies by its terms only to previously authorized activities that involve the origination of interLATA telecommunications services.

Previously authorized activities described in section 271(f) may include both manufacturing activities and interLATA information services. Neither of these types of previously authorized activities, however, is exempt from the section 272 separate affiliate requirements, because neither section 272(a)(2)(A) nor section 272(a)(2)(C) contains an exemption for previously authorized activities similar to the explicit exemption set forth in section 272(a)(2)(B)(iii). We reject Ameritech's argument that section 272(a)(2)(B)(iii) exempts previously authorized interLATA information services from the section 272 separate affiliate requirements, because section 272(a)(2)(B) applies only to origination of interLATA telecommunications services. Section 272(a)(2)(C) establishes the separate affiliate requirement for BOC provision of interLATA information services; there are exceptions to this requirement for electronic publishing services and alarm monitoring services, but there is no exception specified for previously authorized activities.

Section 272(h). As the majority of commenters agree, section 272(h) establishes a one-year transition period for BOCs to comply with the separate affiliate requirements of section 272 for all services they were providing on the date of enactment of the 1996 Act that are not exempt from these requirements. Because we concluded in the preceding paragraphs that previously authorized interLATA information services and manufacturing activities are not exempt from the section 272 separate affiliate requirements, BOCs providing these services must comply with those requirements within one year of enactment. We reject PacTel's argument that section 272(h) gives the BOCs one year to comply with the various requirements imposed by section 272 on their provision of exchange and exchange access services, because we find these requirements are effective immediately upon a BOC's entry into the in-region interLATA market pursuant to section 271.

Differential Treatment. We conclude that, with respect to requiring compliance with the section 272 separate affiliate requirements, Congress intended to treat previously authorized interLATA telecommunications services differently from previously authorized interLATA information services and manufacturing activities. Certain of the BOCs argue that such a distinction is justified because it would be more difficult to provide previously authorized interLATA telecommunications services on a separated basis. Ameritech, however, argues that certain previously authorized interLATA information services, such as TDDS, would be equally difficult to provide on a separated basis. Section 10 of the Communications Act requires us to forbear from applying any provision of the Act that is not necessary to ensure just and reasonable charges and practices in the telecommunications marketplace, or to protect consumers, if we find that such forbearance would promote competition and is consistent with the public interest. Thus, to the extent a BOC demonstrates, with respect to a particular previously authorized interLATA information service, that forbearance from the section 272 separate affiliate requirement fully satisfies the section 10 test, we must forbear from requiring the BOC to provide that service through a section 272 affiliate.

D. Out-of-Region InterLATA Information Services

1. Background

In the NPRM, we tentatively concluded that the BOCs must provide interLATA information services through a separate affiliate, regardless of whether these services are provided in-region or out-of-region. We observed that section 272(a)(2)(B)(ii) exempts out-of-region interLATA services from the

separate affiliate requirement for ''origination of interLATA telecommunications services,'' but there is no analogous exemption from the section 272(a)(2)(C) separate affiliate required for interLATA information services (other than electronic publishing and alarm monitoring services).

2. Discussion

Based on the record before us and our own statutory analysis, we hereby adopt our tentative conclusion that BOCs must provide out-of-region interLATA information services through a section 272 separate affiliate. Although we concluded above that ''interLATA information services'' are included within the term ''interLATA services'' as used in section 271(b), that determination does not alter the conclusion that BOCs must provide out-of-region interLATA information services through a section 272 separate affiliate. Section 271(b)(2) permits a BOC or its affiliate to provide interLATA services, including interLATA information services, that originate outside its in-region states, immediately upon enactment of the 1996 Act. Section 271, however, does not address whether such services must be provided through a separate affiliate; that issue is addressed in section 272(a).

Section 272(a)(2)(B) requires a separate affiliate for the ''origination of interLATA telecommunications services,'' but exempts from that requirement ''out-of-region services described in section 271(b)(2).'' We conclude that the exception created by section 272(a)(2)(B)(ii) extends only to out-of-region interLATA services that are telecommunications services. Section 272(a)(2)(C) requires a separate affiliate for ''interLATA information services,'' and exempts electronic publishing and alarm monitoring services from that requirement. There are no other exceptions to the requirements of section 272(a)(2)(C). As several commenters noted, section 272(a)(2)(B) explicitly excludes out-of-region services, but section 272(a)(2)(C) does not. We agree with MCI that the explicit exclusion of out-of-region interLATA telecommunications services in one subsection of the statute, and the absence of such an express exclusion of out-of-region interLATA information services in another subsection of the same provision, suggests that Congress intended not to exclude the latter from the separate affiliate requirement. Therefore, we find that out-of-region interLATA information services are not excluded from the separate affiliate requirement for interLATA information services.

BellSouth has argued that requiring BOCs to provide out-of-region interLATA information services through a section 272 separate affiliate violates the First Amendment. As noted above, we find that this result is required by the statute. Although the courts have ultimate authority to determine the constitutionality of this and other statutes, we find it appropriate to state that we find BellSouth's argument to be without merit. BellSouth bases its argument on an assertion that as ''content-related'' services, information services are commercial speech entitled to First Amendment protections. We conclude, first, that with respect to certain information services, a BOC neither provides, nor exercises editorial discretion over, the content of the information associated with those particular services, and therefore provision of those information services does not constitute speech subject to First Amendment protections. Second, to the extent that BOC provision of other interLATA information services constitutes speech for First Amendment purposes, the section 272 separate affiliate requirement neither prohibits the BOCs from providing such services, nor places any restrictions on the content of the information the BOCs may provide. Instead, the section 272 separate affiliate requirement is a content-neutral restriction on the manner in which BOCs may provide interLATA information services, intended by Congress to protect against improper cost allocation and discrimination concerns. Thus, we conclude that the separate affiliate requirement imposed by section 272 of the Communications Act on BOC provision of interLATA information services does not violate the First Amendment.

E. Incidental InterLATA Services

1. Background

In the NPRM, we sought comment on whether we should establish any non-accounting structural or nonstructural safeguards for BOC provision of the ''incidental interLATA services'' set forth in section 271(g), in light of section 271(h). Section 271(h) directs the Commission to ensure that the provision of incidental interLATA services ''will not adversely affect telephone exchange service ratepayers or competition in any telecommunications market,'' and states that the provisions of section 271(g) ''are intended to be narrowly construed.'' We also sought comment regarding the interplay between section 271(h) and section 254(k), which prohibits telecommunications carriers from ''us[ing] services that are not competitive to subsidize services that are subject to competition.''

2. Discussion

Section 271(b)(3) permits the BOCs to provide incidental interLATA services described in section 271(g) immediately after the date of enactment of the 1996 Act. Thus, unlike other in-region interLATA services, BOCs may provide incidental interLATA services originating in their own in-region states without receiving prior authorization from the Commission pursuant to section 271(d). Neither section 271(b) nor section 271(g) addresses whether BOCs must provide incidental interLATA services through a section 272 separate affiliate; this issue is addressed by section 272 itself.

Scope of the section 272(a)(2)(B)(i) exemption. Section 272(a)(2)(B)(i) sets forth an exception to the separate affiliate requirement imposed on ''origination of interLATA telecommunications services.'' Congress specifically limited this exception to the ''incidental interLATA services described in paragraphs (1), (2), (3), (5), and (6) of section 271(g).'' Consistent with the analysis set forth in the two immediately preceding sections of this Order, we conclude that the section 272(a)(2)(B)(i) exception applies, by its terms, to the origination of incidental interLATA services that are telecommunications services.

For the most part, the incidental interLATA services enumerated within the section 272(a)(2)(B)(i) exception are telecommunications services. (Congress deliberately excluded remote data storage and retrieval services that fall within section 271(g)(4) from the section 272(a)(2)(B)(i) exception.) Although the incidental interLATA services set forth in sections 271(g)(1)(A), (B), and (C) include audio, video, and other programming services that do not appear to be solely telecommunications services, section 271(h) specifies that these incidental interLATA services ''are limited to *those interLATA transmissions incidental to* the provision by a [BOC] or its affiliate of video, audio, and other programming services that the company or its affiliate is engaged in providing to the public.'' We therefore conclude that, pursuant to section 272(a)(2)(B)(i), BOCs are not required to provide the interLATA telecommunications transmission incidental to provision of the programming services listed in sections 271(g)(1)(A), (B), and (C) through a

section 272 separate affiliate. Moreover, alarm monitoring services, listed as incidental interLATA services under section 271(g)(1)(D), are explicitly excepted from the section 272 separate affiliate requirements under section 272(a)(2)(C).

In addition, section 271(g)(2), which designates as ''incidental interLATA services'' the interLATA provision of ''two-way interactive video services or Internet services over dedicated facilities to or for elementary and secondary schools as defined in section 254(h)(5),'' may encompass services that are not solely telecommunications services. The statute does not classify educational interactive interLATA services as either telecommunications services or information services. We conclude, however, that the explicit inclusion of section 271(g)(2) in the list of services subject to the section 272(a)(2)(B)(i) exception exempts educational interactive interLATA services from the section 272 separate affiliate requirements. This interpretation is consistent with Congress' clear intent, expressed in other provisions of the 1996 Act, to promote the provision of advanced telecommunications and information services, of which educational interactive interLATA services are examples, to eligible public and non-profit elementary and secondary schools. The inclusion of educational interactive interLATA services among the list of ''incidental interLATA services'' that BOCs could provide immediately upon enactment of the 1996 Act without prior Commission authorization promotes the congressional goal of rapidly deploying advanced telecommunications by permitting the BOCs to offer such services. Thus, we further find it reasonable to conclude that Congress did not wish to impose a significant regulatory barrier, in the form of a separate affiliate requirement, on BOC provision of these services.

Additional regulation of incidental interLATA services. We decline to impose the section 272 separate affiliate requirements on incidental interLATA services that, as discussed above, are exempt from those requirements under section 272(a)(2)(B)(i). Section 272 itself does not require the BOCs to provide these services through a separate affiliate. Further, we conclude as a legal matter that neither section 271(h) nor section 254(k) requires us to impose the section 272 separate affiliate requirements on exempt incidental interLATA services in order to protect telephone exchange ratepayers or competition in the telecommunications market. Moreover, we decline to do so as a matter of policy, because we see no present need to impose structural separation requirements beyond those mandated by Congress in order to protect against improper cost allocation and access discrimination. We likewise decline to impose any other structural separation requirements on BOC provision of these services, as suggested by certain commenters. This decision comports with the Commission's prior determinations not to impose structural separation requirements in contexts in which it found that nonstructural safeguards provide sufficient protection against improper cost allocation and access discrimination (*e.g.*, BOC provision of enhanced services).

Under our rules, the BOCs are subject to existing nonstructural safeguards in their provision of incidental interLATA services, and we conclude that these safeguards are sufficient to protect telephone exchange ratepayers and competition in telecommunications markets, in accordance with section 271(h). For accounting purposes, incidental interLATA services will be treated as non-regulated services under our Part 32 affiliate transaction rules and Part 64 cost allocation rules, and accordingly costs associated with provision of those services may not be allocated to regulated services accounts. Further, at the federal level and in many states, the BOCs are subject to price cap regulation, which reduces their incentive to engage in strategic cost-shifting behavior. The BOCs are also subject to the section 251 interconnection and unbundling requirements, which compel them to make available to other telecommunications carriers the local network elements and local exchange facilities that such carriers may require to provide services comparable to the incidental interLATA services listed in section 271(g). Further, the BOCs are subject to network disclosure requirements imposed by section 251(c)(5), which require them to give timely information about network changes to their affiliates' competitors.

Given the complement of nonstructural safeguards to which the BOCs are subject in their provision of incidental interLATA services, we find that the record in this proceeding does not justify the imposition of additional nonstructural safeguards on these services. We decline to extend to the integrated provision of incidental interLATA services any of the section 272(c) and 272(e) nondiscrimination requirements that depend on the existence of a section 272 affiliate, as suggested by AT&T. Further, we decline to adopt any additional unbundling requirements applicable to BOC provision of incidental interLATA services, as suggested by MCI. We agree with BellSouth that it would be inconsistent with the 1996 Act for us to require the BOCs to unbundle and make available interLATA transmission services that they are not authorized to provide except as components of an incidental interLATA service (*i.e.*, without obtaining prior authorization under section 271 or complying with the section 272 separation requirements). For the foregoing reasons, we decline to adopt any additional structural or nonstructural safeguards applicable specifically to BOC provision of incidental interLATA services.

F. InterLATA Information Services

1. Relationship Between Enhanced Services and Information Services

a. Background. In the NPRM, we sought comment on the services that are included in the statutory definition of ''information service,'' and whether that term encompasses all activities that the Commission classifies as ''enhanced services.'' We noted that the statutory definition of ''information service'' is based on the definition used in the MFJ, and that prior to passage of the 1996 Act, neither the Commission nor the MFJ court resolved the question of whether the definition of enhanced services under the Commission's rules was synonymous with the definition of information services under the MFJ.

b. Discussion. We conclude that all of the services that the Commission has previously considered to be ''enhanced services'' are ''information services.'' We are persuaded by the arguments advanced by ITAA, CIX, and others, that the differently-worded definitions of ''information services'' and ''enhanced services'' can and should be interpreted to extend to the same functions. We believe that interpreting ''information services'' to include all ''enhanced services'' provides a measure of regulatory stability for telecommunications carriers and ISPs alike, by preserving the definitional scheme under which the Commission exempted certain services from Title II regulation. We agree with ISPs that regulatory certainty and continuity benefits both large and small service providers. In sum, we find no basis to conclude that by using the MFJ term ''information services'' Congress intended a significant departure from the Commission's usage of ''enhanced services.''

We also find, however, that the term ''information services'' includes services that are not classified as ''enhanced services'' under the Commission's current rules. Stated differently, we conclude that, while all enhanced services are information services, not all information services are enhanced services. As noted by U S West, ''enhanced services'' under Commission precedent are limited to services ''offered over common carrier transmission facilities used in interstate communications,'' whereas ''information services'' may be provided, more broadly, ''via telecommunications.'' Further, we agree with BellSouth and AT&T that live operator telemessaging services that do not involve ''computer processing applications'' are information services, even though they do not fall within the definition of ''enhanced services.''

We further conclude that, subject to the exceptions discussed below, protocol processing services constitute information services under the 1996 Act. We reject Bell Atlantic's argument that ''information services'' only refers to services that transform or process the content of information transmitted by an end-user, because we agree with Sprint that the statutory definition makes no reference to the term ''content,'' but requires only that an information service transform or process ''information.'' We also agree with ITI and ITAA that an end-to-end protocol conversion service that enables an end-user to send information into a network in one protocol and have it exit the network in a different protocol clearly ''transforms'' user information. We further find that other types of protocol processing services that interpret and react to protocol information associated with the transmission of end-user content clearly ''process'' such information. Therefore, we conclude that both protocol conversion and protocol processing services are information services under the 1996 Act.

This interpretation is consistent with the Commission's existing practice of treating end-to-end protocol processing services as enhanced services. We find no reason to depart from this practice, particularly in light of Congress' deregulatory intent in enacting the 1996 Act. Treating protocol processing services as telecommunications services might make them subject to Title II regulation. Because the market for protocol processing services is highly competitive, such regulation is unnecessary to promote competition, and would likely result in a significant burden to small independent ISPs that provide protocol processing services. Thus, policy considerations support our conclusion that end-to-end protocol processing services are information services.

We note that, under *Computer II* and *Computer III*, we have treated three categories of protocol processing services as basic services, rather than enhanced services, because they result in no net protocol conversion to the end-user. These categories include protocol processing: (1) involving communications between an end-user and the network itself (*e.g.*, for initiation, routing, and termination of calls) rather than between or among users; (2) in connection with the introduction of a new basic network technology (which requires protocol conversion to maintain compatibility with existing CPE); and (3) involving internetworking (conversions taking place solely within the carrier's network to facilitate provision of a basic network service, that result in no net conversion to the end-user). We agree with PacTel that analogous treatment should be extended to these categories of ''no net'' protocol processing services under the statutory regime. Because ''no net'' protocol processing services are information service capabilities used ''for the management, control, or operation of a telecommunications system or the management of a telecommunications service,'' they are excepted from the statutory definition of information service. Thus, ''no net'' protocol conversion services constitute telecommunications services, rather than information services, under the 1996 Act.

We further find, as suggested by PacTel, that services that the Commission has classified as ''adjunct-to-basic'' should be classified as telecommunications services, rather than information services. In the *NATA Centrex* order, the Commission held that the enhanced services definition did not encompass adjunct-to-basic services. *See* 101 FCC 2d 349, 359–361, ¶¶ 24–28 (1985). Although the latter services may fall within the literal reading of the enhanced service definition, they facilitate establishment of a basic transmission path over which a telephone call may be completed, without altering the fundamental character of the telephone service. Similarly, we conclude that ''adjunct-to-basic'' services are also covered by the ''telecommunications management exception'' to the statutory definition of information services, and therefore are treated as telecommunications services under the 1996 Act.

2. Distinguishing InterLATA Information Services Subject to Section 272 From IntraLATA Information Services

a. Background. In the NPRM, we sought comment on how to distinguish between interLATA information services, which are subject to the section 272 separate affiliate requirements, and intraLATA information services, which are not. In particular, we asked whether an information service should be considered an interLATA service only when the service actually involves an interLATA telecommunications transmission component, or, alternatively, when it potentially involves interLATA telecommunications transmissions (e.g., the service can be accessed across LATA boundaries). We further sought comment regarding how the manner in which a BOC structures its provision of an information service may affect whether the service is classified as interLATA.

We also invited comment on whether a particular service for which a BOC had applied for or received an MFJ waiver should presumptively be treated as an interLATA information service subject to the separate affiliate requirements of section 272. In addition, we sought comment on whether we should presume that services provided by BOCs pursuant to CEI plans approved by the Commission prior to the enactment of the 1996 Act are intraLATA information services.

b. Discussion. InterLATA Transmission/Resale. We conclude that, as used in section 272, the term ''interLATA information service'' refers to an information service that incorporates as a necessary, bundled element an interLATA telecommunications transmission component, provided to the customer for a single charge. We find, as noted in the comments of AT&T, MCI, and the BOCs, that this definition of interLATA information service conforms to the MFJ precedent in this area. *See United States* v. *Western Electric*, 907 F.2d 160, 163 (D.C. Cir. 1990). We further conclude that a BOC provides an interLATA information service when it provides the interLATA telecommunications transmission component of the service either over its own facilities, or by reselling the interLATA telecommunications services of an interexchange provider. This conclusion also comports with MFJ precedent.

USTA contends that BOC provision of interLATA transmission through resale should be permitted because it does not

raise improper cost allocation and discrimination concerns. This argument, however, does not address the key issue of what is required by the statute. As discussed above, we find that section 601(a) of the 1996 Act indicates that Congress intended the provisions of the 1996 Act to supplant the MFJ. Therefore, we conclude that the restrictions imposed by the 1996 Act on BOC provision of interLATA services, like the interLATA restrictions imposed under the MFJ, apply to services provided through resale, as well as to services provided through the BOC's own transmission facilities. Moreover, we decline to adopt PacTel's suggestion that end-user receipt of an ''interLATA benefit'' should be the test for determining whether an information service is interLATA. PacTel's proposed test is inconsistent with MFJ precedent and would be very difficult to administer. Finally, we reject the arguments raised by Sprint and MFS that we should classify all information services as interLATA services because of the difficulties inherent in distinguishing between interLATA and intraLATA information services. We conclude that it is possible to distinguish between interLATA and intraLATA information services by applying the rule established by this Order.

InterLATA Access. We agree with AT&T and the BOCs that an information service may not be considered interLATA merely because it may be accessed on an interLATA basis by means independently chosen by the customer, such as a presubscribed interexchange carrier. In interpreting the statutory restrictions on BOC provision of interLATA information services, we are concerned not with the manner in which an information service is used, but rather with the components of the service that are provided by the BOC. When a BOC is neither providing nor reselling the interLATA transmission component of an information service that may be accessed across LATA boundaries, the statute does not require that service to be provided through a section 272 separate affiliate. We reject MFS's contention that, where an interLATA transmission service is necessary for a customer to obtain access to a particular BOC-provided information service, that information service should be considered interLATA, even if the necessary interLATA transmission component is separately provided by another carrier. In such circumstances, the BOC is not providing any interLATA services, and therefore is not required by section 272 to provide the information service in question through a separate affiliate.

Moreover, as the BOCs point out, if we were to determine that the mere possibility of interLATA access was sufficient to classify an information service as an interLATA service, that rule would render any telecommunications service that carries traffic that originates in one LATA and terminates in another, including local exchange service and exchange access service, an interLATA service. Congress clearly did not intend that result.

In addition, we agree with the BOCs that classifying information services as interLATA solely because end-users may obtain access to the service across LATA boundaries would represent a significant departure from Commission precedent, as well as from MFJ precedent. BOCs are currently providing a number of information services on an integrated basis pursuant to the Commission's *Computer III* regulations, and users may obtain access to some, if not all, of these services on an interLATA basis. If we were to determine that these services were interLATA services simply because end-users may obtain access across LATA boundaries, BOCs would have to change the manner in which they are providing many of these services, which would likely result in lost efficiency and disruption of services to customers. We see no basis in the statute to adopt such an interpretation, as sections 271 and 272 are intended to govern the BOCs' provision of services that they were previously prohibited from providing under the MFJ, not services that they were previously authorized to provide under the MFJ.

Bundling. As we concluded above, an interLATA information service incorporates a bundled interLATA telecommunications transmission component. When a customer obtains interLATA transmission service from an interexchange provider that is not affiliated with a BOC, the use of that transmission service in conjunction with an information service provided by a BOC or its affiliate does not make the information service a BOC interLATA service offering. A customer also may obtain an in-region interLATA telecommunications service from a BOC section 272 affiliate that the customer uses in conjunction with an intraLATA information service provided by that affiliate or by the BOC itself. When such telecommunications and information services are provided, purchased, and priced separately, we conclude that they do not collectively constitute an interLATA information service offering by the BOC. (We note that even when an information service and interLATA transmission service are ostensibly separately priced, if the BOC offers special discounts or incentives to customers that take both services, this would constitute sufficient evidence of bundling to render the information service an interLATA information service.) In such a situation, the BOC would, of course, be required to provide the in-region interLATA transmission service pursuant to section 271 authorization and the section 272 separate affiliate and nondiscrimination requirements. The BOC could choose to provide the separate, intraLATA information service either on an integrated basis, in compliance with the Commission's CEI and *ONA* requirements, or through a separate affiliate.

Remote Databases/Network Efficiency. BOCs may not provide interLATA services in their own regions, either over their own facilities or through resale, before receiving authorization from the Commission under section 271(d). Therefore, we conclude that BOCs may not provide interLATA information services, except for information services covered by section 271(g)(4), in any of their in-region states prior to obtaining section 271 authorization. Section 271(g)(4) designates as an incidental interLATA service the interLATA provision by a BOC or its affiliate of ''a service that permits a customer that is located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA.'' Because BOCs were able to provide incidental interLATA services immediately upon enactment of the 1996 Act, they may provide interLATA information services that fall within the scope of section 271(g)(4) without receiving section 271(d) authorization from the Commission. Since section 271(g)(4) services are not among the incidental interLATA services exempted from section 272 separate affiliate requirements, however, they must be provided in compliance with those requirements. To the extent that parties have argued in the record that centralized data storage and retrieval services that fall within section 271(g)(4) either are not interLATA information services, or are not subject to the section 272 separate affiliate requirements, we specifically reject these arguments.

We also reject the BOCs' argument that their use of interLATA transmission, outside the control of the end-user and solely to maximize network efficiencies, in connection with

the provision of an information service, does not render that information service interLATA in nature. Whenever interLATA transmission is a component of an information service, that service is an interLATA information service, unless the end-user obtains that interLATA transmission service separately, *e.g.*, from its presubscribed interexchange provider. To the extent that BOCs are allowed to perform certain interLATA call processing functions associated with their provision of telephone exchange service or exchange access service in connection with an intraLATA information service, however, they may continue to do so without transforming that information service into an interLATA information service.

We also reject PacTel's claim that a BOC's use of interLATA transmission solely for its own business convenience in providing an information service falls within the ''telecommunications management exception'' to ''information service.'' We disagree with PacTel's assertion that this practice is covered by the ''technical management exception,'' because the BOC would be providing interLATA transmission in connection with the management of an information service, not ''the management of a telecommunications service,'' as specified by section 3(20). Further, as noted above, we believe that the ''telecommunications management exception'' is analogous to the Commission's classification of certain services as ''adjunct-to-basic;'' that is, it covers services that may fit within the literal reading of the information services definition, but that are used to facilitate the provision of a basic telecommunications transmission service, without altering the character of that service. In other words, the ''technical management exception'' relates to the classification of services as either telecommunications services or information services; it has no bearing upon the classification of either of these types of services as intraLATA or interLATA. As such, the ''telecommunications management exception'' provides no safe harbor for interLATA transmission services employed by BOCs in connection with the provision of information services.

Presumptions Regarding Previously Authorized Information Services. With respect to information services that the BOCs were authorized to provide prior to passage of the 1996 Act, we conclude that as a matter of administrative convenience it is helpful to establish several rebuttable presumptions regarding intraLATA or interLATA classification. Thus, we will presume that information services that BOCs were authorized to provide pursuant to CEI plans, without MFJ waivers, are intraLATA information services. Similarly, we will presume that information services for which BOCs were required to obtain MFJ waivers are interLATA information services. We conclude that these presumptions are rebuttable, rather than conclusive, because the BOCs have noted that, for expediency purposes, they sometimes requested and obtained MFJ waivers in order to provide services that were not clearly interLATA in nature. Thus, a BOC would be able to rebut the presumption that an information service provided pursuant to an MFJ waiver is an interLATA information service by showing that it had obtained a waiver to provide the service on an intraLATA basis prior to 1991. Similarly, the presumption that an information service provided pursuant to a CEI plan is an intraLATA information service may be rebutted by a showing that the information service incorporates a bundled, interLATA telecommunications transmission component, as specified in this Order.

3. BOC-provided Internet Access Services

a. Background. On June 6, 1996, the Common Carrier Bureau (Bureau) released an order approving a CEI plan filed by Bell Atlantic for the provision of Internet Access Service. MFS had filed comments opposing Bell Atlantic's plan, arguing, *inter alia*, that Bell Atlantic's Internet access service offering is an interLATA service that Bell Atlantic may only provide through a section 272 affiliate after obtaining section 271 authorization from the Commission. Following release of the *Bell Atlantic CEI Plan Order*, MFS filed a petition for reconsideration of that Order, raising similar arguments. At about the same time, Southwestern Bell Telephone Company (SWBT) filed a CEI plan for Internet Support Services. On July 25, 1996, one week after the Commission released the NPRM in this proceeding, MFS filed with the Commission a petition seeking to consolidate proceedings related to the *Bell Atlantic CEI Plan Order* reconsideration and the SWBT Internet support CEI plan with the instant proceeding, on the grounds that the three proceedings raise similar novel, policy, factual, and legal arguments. Although the NPRM in the instant proceeding did not specifically seek comment on the proper classification or regulatory treatment of BOC-provided Internet services and Internet access services under the 1996 Act, several parties discussed these matters in their comments, in the course of addressing how we should define ''interLATA information services.''

b. Discussion. The preceding sections of this Order establish a definition of ''interLATA information service'' that should assist the BOCs and other interested parties in determining the types of information services that the BOCs are statutorily-required to provide through section 272 affiliates. If a BOC's provision of an Internet or Internet access service (or for that matter, any information service) incorporates a bundled, in-region, interLATA transmission component provided by the BOC over its own facilities or through resale, that service may only be provided through a section 272 affiliate, after the BOC has received in-region interLATA authority under section 271. We believe that this is not the appropriate forum for considering whether the various specific Internet services provided by the BOCs are ''interLATA information services'' because such determinations must be made on a case-by-case basis. We believe that the lawfulness of the specific Internet services provided by Bell Atlantic and SWBT is more appropriately analyzed in the context of the separate CEI plan proceedings regarding each service that are currently pending before the Bureau, consistent with the rules and policies enunciated in this rulemaking proceeding. Therefore, we deny MFS's request to consolidate proceedings related to the provision of Internet and Internet access services by Bell Atlantic and SWBT with the instant proceeding.

4. Impact of the 1996 Act on the Computer II, Computer III, and ONA requirements

a. Background. In the NPRM, we concluded that, because the 1996 Act does not establish regulatory requirements for BOC provision of intraLATA information services, *Computer II, Computer III,* and *ONA* requirements continue to govern BOC provision of these services, to the extent that these requirements are consistent with the 1996 Act. We sought comment on which of the Commission's existing requirements were inconsistent with, or had been rendered unnecessary by, the 1996 Act, as well as on the specific provisions of the 1996 Act that supersede the existing requirements. We also sought comment on the impact of the statute on our pending *Computer III Further Remand Proceedings.*

b. Discussion. Consistency of Commission's Computer II, Computer III, and ONA Rules with the 1996 Act.

We conclude that the *Computer II, Computer III,* and *ONA* requirements are consistent with the 1996 Act, and continue to govern BOC provision of intraLATA information services. By its terms, the 1996 Act imposes separate affiliate and nondiscrimination requirements on BOC provision of ''interLATA information services,'' but does not address BOC provision of intraLATA information services. We concluded above that, for the purposes of applying sections 271 and 272, interLATA information services must include a bundled interLATA transmission component. We further conclude, in light of our definition of interLATA information services, that BOCs are currently providing a number of information services on an intraLATA basis. We find that the BOCs may continue to provide such intraLATA information services on an integrated basis, in compliance with the nonstructural safeguards established in *Computer III* and *ONA*.

We reject Bell Atlantic's conclusory assertions that the 1996 Act's customer proprietary network information (CPNI), network disclosure, nondiscrimination, and accounting provisions supersede various of the Commission's *Computer III* nonstructural safeguards. We also reject NYNEX's claim that the section 251 interconnection and unbundling requirements render the Commission's *Computer III* and *ONA* requirements unnecessary. Based on our review of the record in this proceeding, we conclude that the pending *Computer III Further Remand Proceedings* are the appropriate forum in which to examine the necessity of retaining any or all of these individual *Computer III* and *ONA* requirements. We therefore plan to issue a Further NPRM in that proceeding to determine how to regulate BOC provision of intraLATA information services in light of the 1996 Act.

In the interim, the Commission's *Computer II, Computer III,* and *ONA* rules are the only regulatory means by which certain independent ISPs are guaranteed nondiscriminatory access to BOC local exchange services used in the provision of intraLATA information services. As noted above, the section 272 nondiscrimination requirements do not apply to BOC provision of intraLATA information services, and ISPs that are not telecommunications carriers cannot obtain interconnection or access to unbundled elements under section 251. Thus, we believe that continued enforcement of these safeguards is necessary pending the conclusion of the *Computer III Further Remand Proceedings* and establishes important protections for small ISPs that are not provided elsewhere in the Act.

Requiring section 272 affiliates for intraLATA information services. We decline to require the BOCs to provide intraLATA information services through section 272 affiliates. It is clear that section 272 does not require the BOCs to offer intraLATA information services through a separate affiliate. We further decline to exercise our general rulemaking authority to impose such a requirement. We conclude that the record in this proceeding does not justify a departure from our determination, in *Computer III,* to allow BOCs to provide intraLATA information services on an integrated basis, subject to appropriate nonstructural safeguards. Some parties in this proceeding argue that we should harmonize our regulatory treatment of intraLATA information services provided by the BOCs with the section 272 requirements imposed by Congress on interLATA information services. We invite these parties to comment on these matters in response to the Further NPRM we intend to issue in the *Computer III Further Remand Proceedings.*

Application of Computer II, Computer III, and ONA requirements to section 272 affiliate activities. We conclude that a BOC that provides interLATA telecommunications services and information services through the same section 272 affiliate may bundle such services without providing comparably efficient interconnection to the basic underlying interLATA telecommunications services. Under our definition of ''interLATA information service,'' as explained above, such service must include a bundled interLATA telecommunications element. Hence, to prohibit a BOC affiliate from bundling interLATA telecommunications and information services would effectively prevent the BOCs from offering any interLATA information services, a result clearly not contemplated by the statute. Further, we note that the market for information services is fully competitive, and the market for interLATA telecommunications services is substantially competitive. Thus, we see no basis for concern that a section 272 affiliate providing an information service bundled with an interLATA telecommunications service would be able to exercise market power. If, however, a BOC's section 272 affiliate were classified as a facilities-based telecommunications carrier (*i.e.,* it did not provide interLATA telecommunications services solely through resale), the affiliate would be subject to a *Computer II* obligation to unbundle and tariff the underlying telecommunications services used to furnish any bundled service offering.

Under our current regulatory regime, a BOC must comply fully with the *Computer II* separate subsidiary requirements in providing an information service in order to be relieved of the obligation to file a CEI plan for that service. We decline to adopt NYNEX's proposal that we find that all BOC information services provided through a section 272 separate affiliate satisfy the *Computer II* separate subsidiary requirements, because we conclude that the record in this proceeding is insufficient to support such a conclusion. Instead, we intend to examine this issue further in the context of the *Computer III Further Remand Proceedings.* Further, we reject USTA's argument that *ONA* reporting requirements do not extend to intraLATA information services provided through a section 272 separate affiliate. BOCs must comply with the *ONA* requirements regardless of whether they provide information services on a separated or integrated basis.

G. Information Services Subject to Other Statutory Requirements

1. Electronic Publishing (section 274)

a. Background. In the NPRM, we observed that, although electronic publishing is specifically identified as an information service, interLATA provision of electronic publishing is exempt from section 272, and is instead subject to section 274. Noting that we had initiated a separate proceeding to clarify and implement, *inter alia,* the requirements of section 274, we sought comment on how to distinguish information services subject to the section 272 requirements from electronic publishing services subject to the section 274 requirements. We also invited parties to comment on whether, in situations involving services that do not clearly fall within either the definition of ''electronic publishing'' (section 274(h)(1)) or the enumerated exceptions thereto (section 274(h)(2)), we should identify as ''electronic publishing'' those services for which the carrier controls, or has a financial interest in, the content of information transmitted by the service.

b. Discussion. Upon review of the record and further consideration, we conclude that it is not necessary to adopt the ''financial interest or control'' test in determining whether a particular BOC service involves the provision of electronic publishing, in addition to the definitions set forth in sections

274(h)(1) and 274(h)(2). Generally speaking, if a particular service does not appear to fit clearly within either the definition of ''electronic publishing,'' set forth in section 274(h)(1), or the exceptions thereto listed in section 274(h)(2), determining the appropriate classification of that service will involve a highly fact-specific analysis that is better performed on a case-by-case basis. In the context of such a case-by-case determination, the Commission may consider a number of factors, including whether the BOC controls, or has a financial interest in, the content of information transmitted to end-users. We also note that the definition of electronic publishing, as well as specific services encompassed by that definition, may be further refined in the *Electronic Publishing* proceeding.

We also decline to adopt ITAA's suggestion that, because of potential difficulties in distinguishing between information services and electronic publishing services, we should impose substantially the same separate affiliate requirements on both. Such an approach would be directly contrary to the statute. Congress set forth distinct separate affiliate and nondiscrimination requirements in sections 272 and 274, and specified that the former apply to interLATA information services, while the latter apply to all BOC-provided electronic publishing services. To impose the section 272 requirements on electronic publishing services, or to impose the section 274 requirements on interLATA information services, would be inconsistent with the clear statutory scheme.

Moreover, we specifically reject AT&T's contention that electronic publishing services are subject to the section 272 separate affiliate requirements, pursuant to section 272(a)(2)(B), which imposes a separate affiliate requirement on interLATA telecommunications services. Electronic publishing services, however, are specifically included within the statutory definition of information services. Accordingly, electronic publishing services would be subject to section 272(a)(2)(C), which imposes a separate affiliate requirement on interLATA information services, except that section 272(a)(2)(C) specifically exempts ''electronic publishing (as defined in section 274(h)).''

2. Telemessaging (section 260)

a. Background. In the NPRM, we tentatively concluded that ''telemessaging'' is an information service. We further tentatively concluded that BOC provision of telemessaging on an interLATA basis is subject to the section 272 separate affiliate requirements, in addition to the section 260 safeguards.

b. Discussion. Based on our review of the comments and analysis of the statute, we hereby adopt our tentative conclusion that telemessaging is an information service. We reject PacTel's contention that live operator services do not constitute information services. Under the statute, live operator services ''used to record, transcribe, or relay messages'' are telemessaging services. Because these functions plainly provide ''the capability for * * * storing * * * or making available information'' via telecommunications, we conclude that live operator telemessaging services fall within the statutory definition of information services. We also adopt our tentative conclusion that BOCs that provide telemessaging services that meet the definition of interLATA information services must do so in accordance with the section 272 requirements, in addition to the section 260 requirements.

IV. Structural Separation Requirements of Section 272

A. Application of the Section 272(b) Requirements

Section 272(b) of the Communications Act establishes five structural and transactional requirements for separate affiliate(s) established pursuant to section 272(a). We address each of the requirements below, with the exception of section 272(b)(2), which we discuss in the *Accounting Safeguards Order.*

B. The ''Operate Independently'' Requirement

1. Background

Section 272(b)(1) states that a separate affiliate ''shall operate independently from the BOC.'' The Act does not elaborate on the meaning of the phrase ''operate independently.'' We stated in the NPRM that under principles of statutory construction, a statute should be interpreted so as to give effect to each of its provisions. We therefore tentatively concluded that the section 272(b)(1) ''operate independently'' provision imposes requirements beyond those contained in subsections 272(b)(2)-(5).

As we observed in the NPRM, section 274(b) contains similar language to section 272(b)(1). It states that ''[a] separated affiliate or electronic publishing joint venture shall be operated independently from the [BOC].'' Subsections 274(b)(1)-(9) list several requirements that govern the relationship of an electronic publishing entity and the BOC with which it is affiliated. We sought comment on the relevance of the ''operated independently'' language of section 274(b) when construing the ''operate independently'' requirement of section 272(b)(1).

In addition, we sought comment on what rules, if any, we should adopt to implement the requirements of section 272(b)(1). Moreover, we asked whether we should impose one or more of the separation requirements established in the *Computer II* or *Competitive Carrier* proceedings.

In the *Computer II* proceeding, the Commission required AT&T to provide enhanced services through a separate affiliate, a requirement that the Commission extended to the BOCs following divestiture. The Commission required the enhanced services subsidiary to ''have its own operating, marketing, installation and maintenance personnel for the services and equipment it offer[ed],'' to comply with information disclosure requirements, and to maintain its own books of account. The Commission prohibited the regulated entity and its enhanced services subsidiary from using in common any leased or owned physical space or property on which transmission equipment or facilities used in basic transmission services were located, barred them from sharing computer capacity, and limited the regulated entity's ability to provide software to the affiliate. Moreover, the Commission barred the enhanced services subsidiary from constructing, owning, or operating its own transmission facilities, thereby requiring it to obtain such facilities from a local exchange carrier pursuant to tariff.

In the *Competitive Carrier* proceeding, the Commission prescribed the separation requirements to which independent LECs must conform to be regulated as nondominant in the provision of domestic, interstate, interexchange services. Specifically, an independent LEC must provide interstate interexchange services through an affiliate that:

(1) maintains separate books of account; (2) does not jointly own transmission or switching facilities with its affiliated exchange telephone company; and (3) acquires that exchange telephone company's services at tariffed rates and conditions.

2. Discussion

We adopt our tentative conclusion that the ''operate independently'' requirement of section 272(b)(1) imposes requirements beyond those listed in sections 272(b)(2)–(5). This conclusion is based on the principle of

statutory construction that a statute should be construed so as to give effect to each of its provisions.

Relationship of Section 272(b)(1) to Section 274(b). Section 274(b) mandates that a separated affiliate or electronic publishing joint venture be ''operated independently'' and then lists nine specific requirements governing the relationship between a BOC and a separated affiliate. In contrast, section 272(b) imposes five structural and transactional requirements governing the relationship between a BOC and a section 272 affiliate, one of which is that the affiliate ''shall operate independently from the [BOC].'' The structural differences in the organization of the two sections suggest that the term ''operate independently'' in section 272(b)(1) should not be interpreted to impose the same obligations on a BOC as section 274(b). In particular, while the enumerated requirements of section 274(b) may be interpreted to define the term ''operated independently'' in that context, they do not define the term ''operate independently'' as used in section 272(b). We agree with SBC that, because the requirements listed in sections 274(b)(1)–(9) of the Act overlap with the requirements of sections 272(b), (c), and (e), it would be redundant to incorporate all of the section 274(b) requirements into the ''operate independently'' requirement of section 272(b)(1).

Defining ''Operate Independently.'' The requirements that we adopt to implement section 272(b)(1) are intended to prevent a BOC from integrating its local exchange and exchange access operations with its section 272 affiliate's activities to such an extent that the affiliate could not reasonably be found to be operating independently, as required by the statute. In order to protect against the potential for a BOC to discriminate in favor of a section 272 affiliate in a manner that results in the affiliate's competitors operating less efficiently, we seek to ensure that a section 272 affiliate and its competitors enjoy the same level of access to the BOC's transmission and switching facilities. Accordingly, we conclude that operational independence precludes the joint ownership of transmission and switching facilities by a BOC and its section 272 affiliate, as well as the joint ownership of the land and buildings where those facilities are located. Furthermore, operational independence precludes a section 272 affiliate from performing operating, installation, and maintenance functions associated with the BOC's facilities. Likewise, it bars a BOC or any BOC affiliate, other than the section 272 affiliate itself, from performing operating, installation, or maintenance functions associated with the facilities that the section 272 affiliate owns or leases from a provider other than the BOC with which it is affiliated. Consistent with these requirements and those established pursuant to sections 272(b)(5) and 272(c)(1), a section 272 affiliate may negotiate with an affiliated BOC on an arm's length and nondiscriminatory basis to obtain transmission and switching facilities, to arrange for collocation of facilities, and to provide or to obtain services other than those expressly prohibited herein.

We agree with several commenters that joint ownership of transmission and switching facilities and the property on which they are located would permit such substantial integration of the BOCs' local operations with their interLATA activities as to preclude independent operation, in violation of section 272(b)(1). Imposing a prohibition on such joint ownership also avoids the need to allocate the costs of such transmission and switching facilities between BOC activities and the competitive activities in which a section 272 affiliate may be involved. We agree with the claims of some commenters that, because the costs of wired telephony networks and network premises are largely fixed and largely shared among local, access, and other services, sharing of switching and transmission facilities may provide a significant opportunity for improper allocation of costs between the BOC and its section 272 affiliate.

By prohibiting joint ownership of transmission and switching facilities, we also reduce the potential for a BOC to discriminate in favor of its section 272 affiliate. Consistent with this purpose, we define transmission and switching facilities broadly to include the facilities used to provide local exchange and exchange access service. The prohibition ensures that a section 272 affiliate must obtain any such facilities pursuant to section 272(b)(5), which requires all transactions between a BOC and its section 272 affiliate to be on an arm's length basis and reduced to writing. Requiring section 272 affiliates to obtain transmission and switching facilities from a BOC on an arm's length basis will increase the transparency of such transactions, thereby facilitating monitoring and enforcement of the section 272 requirements. Moreover, a section 272 affiliate and its interLATA competitors will have to follow the same procedures when obtaining services and facilities from a BOC. As described below, sections 272(c) (1) and (e) require a section 272 affiliate to obtain services and facilities on the same rates, terms, and conditions available to unaffiliated entities. Contrary to the suggestion of some commenters, those nondiscrimination safeguards would offer little protection if a BOC and its section 272 affiliate were permitted to own transmission and switching facilities jointly. To the extent that a section 272 affiliate jointly owned transmission and switching facilities with a BOC, the affiliate would not have to contract with the BOC to obtain such facilities, thereby precluding a comparison of the terms of transactions between a BOC and a section 272 affiliate with the terms of transactions between a BOC and a competitor of the section 272 affiliate. Together, the prohibition on joint ownership of facilities and the nondiscrimination requirements should ensure that competitors can obtain access to transmission and switching facilities equivalent to that which section 272 affiliates receive.

The requirement that a BOC and its section 272 affiliate not commonly own the land and buildings where their transmission and switching facilities are located, like the prohibition on joint ownership of facilities, should ensure that a section 272 affiliate and its competitors both receive the best available access to transmission and switching facilities. It does not, however, preclude a section 272 affiliate from collocating its equipment in end offices or on other property owned or controlled by its affiliated BOC. Rather, as IDCMA recognizes, the requirement should ensure that collocation agreements between a BOC and its section 272 affiliate are reached pursuant to arm's length negotiations and that the same collocation opportunities are available to similarly situated non-affiliated entities. Moreover, the ban on joint ownership of facilities should protect local exchange competitors that request physical collocation by ensuring that a BOC's section 272 affiliate does not obtain preferential access to the limited available space in the BOC's central office.

We decline to read the ''operate independently'' requirement to impose a blanket prohibition on joint ownership of property by a BOC and a section 272 affiliate. Rather, we limit the restriction to joint ownership of transmission and switching facilities and the land and buildings where those facilities are located. We conclude that the prohibition we have adopted should ensure that the section 272 affiliate's

competitors gain nondiscriminatory access to those transmission and switching facilities that both section 272 affiliates and their competitors may be unable to obtain from other sources. We find that joint ownership of other property, such as office space and equipment used for marketing or the provision of administrative services, may provide economies of scale and scope without creating the same potential for discrimination by the BOCs. Moreover, we believe that the Commission's accounting rules; the separate books, records, and accounts requirement of section 272(b); and the audit requirement of section 272(d) provide adequate protection against the potential for improper cost allocation.

We further conclude that allowing the same personnel to perform the operating, installation, and maintenance services associated with a BOC's network and the facilities that a section 272 affiliate owns or leases from a provider other than the BOC would create the opportunity for such substantial integration of operating functions as to preclude independent operation, in violation of section 272(b)(1). Regardless of whether the BOC or the section 272 affiliate were to provide such services, we agree with AT&T that allowing the same individuals to perform such core functions on the facilities of both entities would create substantial opportunities for improper cost allocation, in terms of both the personnel time spent in performing such functions and the equipment utilized. We conclude, as we did in the *BOC Separations Order,* 49 FR 1190 (January 10, 1984), that allowing the sharing of such services would require ''excessive, costly and burdensome regulatory involvement in the operation, plans and day-to-day activities of the carrier * * * to audit and monitor the accounting plans necessary for such sharing to take place.'' Accordingly, we read section 272(b)(1) to bar a section 272 affiliate from contracting with a BOC or another entity affiliated with the BOC to obtain operating, installation, and maintenance functions associated with the section 272 affiliate's facilities. As stated above, we believe that a prohibition on joint ownership of transmission and switching facilities is necessary to ensure that a BOC complies with the nondiscrimination requirements of section 272. Consistent with that approach, we further interpret the term ''operate independently'' to bar a BOC from contracting with a section 272 affiliate to obtain operating, installation, or maintenance functions associated with the BOC's facilities. Allowing a BOC to contract with the section 272 affiliate for operating, installation, and maintenance services would inevitably afford the affiliate access to the BOC's facilities that is superior to that granted to the affiliate's competitors.

We clarify that section 272(b)(1) does not preclude a BOC or a section 272 affiliate from providing telecommunications services to one another, so long as each entity performs itself, or obtains from an unaffiliated third party, the operating, installation, and maintenance functions associated with the facilities that it owns or leases from an entity unaffiliated with the BOC. In particular, if a section 272 affiliate obtains unbundled elements from a BOC, that BOC can perform the operating, installation, and maintenance functions associated with those facilities. Moreover, we recognize the need for an exception to the prohibition on shared operating, installation, and maintenance services to allow the BOC to obtain support services for sophisticated equipment purchased from the affiliate on a compensatory basis. For instance, the BOC could contract with the section 272 affiliate for the installation, maintenance, or repair of equipment, or the affiliate could train the BOC's personnel to perform such functions. We further note that the limited prohibition on shared services that we adopt is consistent with section 272(e)(4), which states that a BOC or BOC affiliate that is subject to section 251(c) ''may provide any interLATA or intraLATA facilities or services to its interLATA affiliate if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions.'' As we discuss below, section 272(e)(4) does not grant a BOC the authority to provide particular services to its affiliate, but rather prescribes the manner in which a BOC must provide those services that it is otherwise authorized to provide. Thus, section 272(e)(4) does not grant a BOC the authority to provide operating, installation, and maintenance services associated with the facilities that a section 272 affiliate owns or leases from a provider other than the BOC.

In imposing these requirements, we reject the contention of some commenters that Congress considered and rejected a prohibition on the joint ownership of telecommunications transmission or switching equipment or other property. Although the House bill contained such a prohibition, the Senate bill did not. The Joint Explanatory Statement indicates merely that the conference committee adopted the Senate version of this provision with several modifications and does not offer any specific explanation for the exclusion of the joint ownership restriction. In these circumstances, our obligation is to interpret the language of section 272(b)(1) in a manner consistent with its purpose, which is to ensure the operational independence of a section 272 affiliate from its affiliated BOC.

The limited prohibition on shared services that we impose rests on the ''operate independently'' requirement of section 272(b)(1), rather than the requirement of section 272(b)(3) that a BOC and its section 272 affiliate have ''separate officers, directors, and employees.'' Accordingly, we reject the statutory construction argument advanced by several BOCs, which is predicated on the text of the latter provision. Those BOCs argue that, if a rule against separate employees were sufficient to prevent the sharing of in-house services, Congress would not have prohibited a BOC from engaging in purchasing, installation, maintenance, hiring, training, and research and development for the separated affiliate, in addition to forbidding the BOC and its separated affiliate from having common officers, directors, and employees, in section 274(b).

We believe it is consistent with both the letter and purposes of section 272 to strike an appropriate balance between allowing the BOCs to achieve efficiencies within their corporate structures and protecting ratepayers against improper cost allocation and competitors against discrimination. We decline to impose additional structural separation requirements given the nondiscrimination safeguards, the biennial audit requirement, and other public disclosure requirements imposed by section 272. In combination with the accounting protections established in the *Accounting Safeguards Order,* we believe the requirements set forth herein will protect against potential anticompetitive behavior.

In particular, we decline to read the ''operate independently'' requirement to impose a prohibition on all shared services. We recognize the inherent tension between the ''operate independently'' requirement and allowing the integration of services. As we discuss further below, however, we believe the economic benefits to consumers from allowing a BOC and its section 272 affiliate to derive the economies of scale and scope inherent in the integration of some services outweigh any potential for competitive harm created thereby. Therefore, we permit the sharing of administrative and other services. For example, we read

section 272(b)(1) not to preclude a BOC and a section 272 affiliate from contracting with one another to provide marketing services.

In construing other provisions of section 272, we address the concerns of those commenters who urge us to interpret section 272(b)(1) to prohibit a BOC and a section 272 affiliate from engaging in various forms of joint research and development. As a preliminary matter, we note that the MFJ Court considered equipment design and development to be an integral part of ''manufacturing,'' as the term was used in the MFJ. We emphasize that to the extent that research and development is a part of manufacturing, it must be conducted through a section 272 affiliate, pursuant to section 272(a). To the extent that a BOC seeks to develop services for or with its section 272 affiliate, the BOC must develop services on a nondiscriminatory basis for or with other entities, pursuant to section 272(c)(1).

Finally, although a number of commenters support a *Computer II*-type prohibition on a section 272 affiliate's ability to construct, own, or operate its own local exchange facilities, we conclude that such a prohibition is not required by the language of section 272(b)(1). As several BOCs suggest, limiting a section 272 affiliate to resale would not necessarily increase the affiliate's operational independence, particularly if the affiliate had to acquire facilities from its affiliated BOC as a result of the requirement.

C. Section 272(b)(3) and Shared Services

1. Background

In the NPRM, we tentatively concluded that the section 272(b)(3) requirement that a BOC and its section 272 affiliate have ''separate officers, directors, and employees'' prohibits the sharing of in-house functions, including operating, installation, and maintenance, as well as administrative services. We noted that, pursuant to the *Computer II* proceeding, the Commission allowed AT&T and its enhanced services subsidiaries to share certain administrative services—accounting, auditing, legal services, personnel recruitment and management, finance, tax, insurance, and pension services—on a cost reimbursable basis, but required the subsidiary to have its own operating, marketing, installation, and maintenance personnel for the services and equipment it offered. We sought comment on whether section 272(b)(3) forbids the sharing of outside services or other types of personnel sharing.

In the context of our discussion of section 272(g), we sought comment on the related question of whether a section 272 affiliate must purchase marketing services from an affiliated BOC on an arm's length basis, pursuant to section 272(b)(5). Moreover, we sought comment on whether it is necessary to require a BOC and its section 272 affiliate to contract jointly with an outside marketing entity for joint marketing of interLATA and local exchange services in order to comply with section 272(b)(3). Finally, we invited parties to comment on the corporate and financial arrangements that are necessary to comply with sections 272(g)(2), 272(b)(3), and 272(b)(5).

2. Discussion

Sharing of Services. Based on the record before us, we decline to prohibit the sharing of services other than operating, installation, and maintenance services, as described above. We clarify that ''sharing of services'' means the provision of services by the BOC to its section 272 affiliate, or vice versa. In response to our tentative conclusion on this issue in the NPRM, the BOCs have argued persuasively that such a prohibition is neither required as a matter of law, nor desirable as a matter of policy. We note that section 272(b)(3) on its face is silent on the issue of shared services. We are persuaded by the arguments of the BOCs that the section 272(b)(3) requirement that a BOC and a section 272 affiliate have separate officers, directors, and employees simply dictates that the same person may not simultaneously serve as an officer, director, or employee of both a BOC and its section 272 affiliate. Thus, as MFS asserts, an individual may not be on the payroll of both a BOC and a section 272 affiliate. As discussed below, to the extent that a BOC provides services to its section 272 affiliate, it must provide them to other entities on the same rates, terms, and conditions, pursuant to section 272(c)(1).

We also decline to impose a prohibition on the sharing of services other than operating, installation, and maintenance services, on policy grounds. We find that, if we were to prohibit the sharing of services, other than those restricted pursuant to section 272(b)(1), a BOC and a section 272 affiliate would be unable to achieve the economies of scale and scope inherent in offering an array of services. We do not believe that the competitive benefits of allowing a BOC and a section 272 affiliate to achieve such efficiencies are outweighed by a BOC's potential to engage in discrimination or improper cost allocation. As we have noted, the Commission permitted the sharing of administrative services in the *Computer II Final Order,* 45 FR 31319 (May 13, 1980), on the grounds that ''[w]ith an appropriate accounting system, whatever administrative efficiencies may exist are preserved.'' We reject the arguments of some parties that, because of changes in the telecommunications marketplace and the language of the 1996 Act, a different outcome is warranted in this case.

We recognize that allowing the sharing of in-house services will require a BOC to allocate the costs of such services between the operating company and its section 272 affiliate and provide opportunities for improper cost allocation, exchanges of information, and discriminatory treatment that may not be revealed in a subsequent audit. Indeed, in the *Computer II* proceeding, the Commission indicated that a major reason for prohibiting the sharing of particular services, such as marketing services, was its desire to eliminate ''the inherent difficulties in allocating joint and common costs.'' For these reasons, we conclude that a BOC and a section 272 affiliate may share in-house services with each other only to the extent that such sharing is consistent with sections 272(b)(1), 272(b)(5), and 272(c)(1) of the Act.

Consistent with section 272(b)(1), a BOC and its section 272 affiliate may not share operating, installation, and maintenance services, as discussed above. In addition, as we conclude in the *Accounting Safeguards Order,* an agreement to provide in-house services by a BOC to its section 272 affiliate (or vice versa) constitutes a transaction between that BOC and its section 272 affiliate, so that the requirements of section 272(b)(5) govern. Accordingly, such transactions must be conducted on an arm's length basis, reduced to writing, and made available for public inspection. Moreover, such transactions must be consistent with the affiliate transaction rules, as modified in the *Accounting Safeguards Order.* In addition, the section 272 requirements that a BOC and its section 272 affiliate maintain separate books, records, and accounts, and be subject to an audit every two years should strengthen the ability of competitors and regulators to detect any inequities in cost allocation for shared services. We agree with commenters who contend that, in any event, federal price cap regulation reduces a BOC's incentives to allocate costs improperly. Finally, section 272(c)(1) ensures that to the extent that

a BOC provides services to its section 272 affiliate, it must make them available to the affiliate's competitors on the same rates, terms, and conditions.

We further conclude that section 272(b)(3) does not preclude the parent company of the BOC and the section 272 affiliate from performing functions for both the BOC and the section 272 affiliate, subject to the requirements of section 272(b)(1). Similarly, an affiliate of the BOC, such as a services affiliate, could provide services to both a BOC and a section 272 affiliate. We are not persuaded by claims that the sharing of services provided to a BOC and its section 272 affiliate by a parent company or another BOC affiliate would allow the BOC and the section 272 affiliate to achieve an unacceptable level of integration. Instead, we agree with the view that the section 272(b)(3) separate employees requirement extends only to the relationship between a BOC and its section 272 affiliate. To the extent that the BOC contracts with an unregulated affiliate, it is subject to the affiliate transaction rules. Moreover, a parent company or a BOC affiliate that performs services for both a BOC and its section 272 affiliate must fully document and properly apportion the costs incurred in furnishing such services.

Consistent with our conclusions, we decline to read section 272(b)(3) to preclude the sharing of marketing services. Given that section 272(g) expressly contemplates that the each entity may market or sell the services of the other, we conclude that a BOC and its section 272 affiliate may provide marketing services for each other. We agree with those commenters that assert that the entities must provide such services pursuant to arm's length transactions, consistent with the requirements of section 272(b)(5). Moreover, the parent of a BOC and its section 272 affiliate or another BOC affiliate may perform marketing functions for both entities.

Services Provided by an Outside Entity. We further conclude that section 272(b)(3) does not prohibit a BOC and its section 272 affiliate from obtaining services from the same outside supplier. Indeed, we find no statutory support for limiting permissible outsourcing, as proposed by MCI or Time Warner.

Nor do we construe section 272(b)(3), when read in light of section 272(b)(1), to require a BOC and a section 272 affiliate to contract with outside entities to perform their joint marketing services. We agree with the Citizens for a Sound Economy Foundation that such a requirement would reduce the BOCs' ability to serve consumers without providing additional protection against anticompetitive behavior. Each entity, however, must pay its full share of any outsourced services that it receives.

Other activities. We reject AT&T's request that we interpret section 272(b)(3) to prohibit compensation schemes that base the level of remuneration of BOC officers, directors, and employees on the performance of the section 272 affiliate, or vice versa. We conclude that tying the compensation of an employee of a section 272 affiliate to the performance of a Regional Holding Company and all of its enterprises as a whole, including the performance of the BOC, does not make that individual an employee of the BOC. Similarly, tying the compensation of a BOC employee to the performance of a Regional Holding Company and all of its enterprises as a whole, including the performance of the section 272 affiliate, does not make that individual an employee of the section 272 affiliate.

E. Section 272(b)(4)

1. Background

Section 272(b)(4) states that a section 272 affiliate ''may not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the [BOC].'' In the NPRM, we tentatively concluded ''that a BOC may not co-sign a contract or any other instrument with a separate affiliate that would allow the affiliate to obtain credit in a manner that violates'' this section. We sought comment on what other types of activities section 272(b)(4) prohibits, whether the Commission should establish specific requirements regarding those activities, and the relative costs and benefits of such regulation.

2. Discussion

As we stated in the NPRM, the intent of this provision is to protect ratepayers from shouldering the cost of a default by a section 272 affiliate. We adopt our tentative conclusion that section 272(b)(4) prohibits a BOC from co-signing a contract or any other instrument with a section 272 affiliate that would allow the affiliate to obtain credit in a manner that grants the creditor recourse to the BOC's assets in the event of default by the section 272 affiliate. Moreover, because the provision precludes the section 272 affiliate from obtaining credit under ''any arrangement that would permit a creditor, upon default, to have recourse to the assets of the [BOC],'' we find that section 272(b)(4) likewise prohibits the parent of a BOC or any non-272 affiliate from co-signing a contract or any other arrangement with the BOC's section 272 affiliate that would allow the creditor to obtain such recourse to the BOC's assets in the event of default by the section 272 affiliate. Indeed, we conclude that section 272(b)(4) prohibits a section 272 affiliate from entering into any arrangement to obtain credit that permits the lender recourse to the BOC in the event of default.

While preventing the affiliate from jeopardizing ratepayer assets, we conclude that section 272(b)(4) does not forbid a section 272 affiliate from using assets other than its own as collateral when seeking credit. To impose such a restriction where, as here, it is not needed to protect ratepayer assets, would force section 272 affiliates to operate inefficiently, to the detriment of consumers and competition. In particular, we agree with MCI and Sprint that a BOC's parent could secure credit, whether through the issuance of bonds or otherwise, for the benefit of the section 272 affiliate, provided that BOC assets are not at risk.

F. Section 272(b)(5)

1. Background

Section 272(b)(5) states that an affiliate ''shall conduct all transactions with the [BOC] of which it is an affiliate on an arm's length basis with any such transactions reduced to writing and available for public inspection.'' In the NPRM, we sought comment on whether this provision necessitates the adoption of any non-accounting safeguards.

2. Discussion

We conclude that we need not adopt additional non-accounting safeguards to implement section 272(b)(5). In the *Accounting Safeguards Order*, we address the definition of ''transactions'' and consider the provision's requirement that all transactions be ''reduced to writing and available for public inspection.'' Moreover, in our discussion of sections 272(b)(1) and (b)(3), we make clear that ''transactions'' include the provision of services and transmission and switching facilities by the BOC and its affiliate to one another. We reject CompTel's proposal to adopt additional requirements, which are addressed generally in other parts of this Order and the companion *Accounting Safeguards Order.*

V. Nondiscrimination Safeguards

As we observed in the NPRM, after a BOC enters a competitive market, such as long distance, it may have an incentive to use its control of local exchange facilities to discriminate against its affiliate's rivals. Section

272(c) of the Act responds to these competitive concerns by establishing nondiscrimination safeguards that apply to the BOCs' provision of manufacturing, interLATA telecommunications, and interLATA information services. We address the requirements of this section below.

A. Relationship of Section 272(c)(1) and Pre-existing Nondiscrimination Requirements

1. Background

Section 272(c)(1) states that ''[i]n its dealings with its affiliate described in subsection (a), a [BOC] (1) may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards.'' In the NPRM, we sought comment on the relationship between the nondiscrimination obligations imposed by sections 272(c)(1) and the Commission's pre-existing nondiscrimination obligations in sections 201 and 202. In particular, we sought comment on whether the flat prohibition against discrimination in section 272(c)(1) imposes a stricter standard for compliance than the ''unjust and unreasonable'' standard in section 202.

2. Discussion

We find that section 272(c)(1) establishes an unqualified prohibition against discrimination by a BOC in its dealings with its section 272 affiliate and unaffiliated entities. Section 202(a), by contrast, prohibits ''any unjust or unreasonable discrimination * * *, or * * * any undue or unreasonable preference or advantage.'' Because the text of the section 272(c)(1) nondiscrimination bar differs from the section 202(a) prohibition, we conclude that Congress did not intend section 272's prohibition against discrimination in the 1996 Act to be synonymous with the ''unjust and unreasonable'' discrimination language used in the 1934 Act, but rather, intended a more stringent standard. We therefore reject the arguments of those who argue that the section 272(c)(1) standard is not materially different from the standard in section 202.

B. Meaning of Discrimination in Section 272(c)(1)

1. Background

We tentatively concluded in the NPRM that the prohibition against discrimination in section 272(c)(1) means, at a minimum, that BOCs must treat all other entities in the same manner as they treat their section 272 affiliates, and must provide and procure goods, services, facilities, and information to and from these other entities under the same terms, conditions, and rates. We noted, however, that a requesting entity may have equipment with different technical specifications than the equipment of the BOC section 272 affiliate. We sought comment, therefore, on whether the terms of section 272(c)(1) could be construed to require a BOC to provide a requesting entity with a quality of service or ''functional outcome'' identical to that provided to its affiliate even if this would require the BOC to provide goods, facilities, services, or information to a requesting entity that are different from those provided to the affiliate.

2. Discussion

We affirm our tentative conclusion that BOCs must treat all other entities in the same manner as they treat their section 272 affiliates. We conclude therefore that, pursuant to section 272(c)(1), a BOC must provide to unaffiliated entities the same goods, services, facilities, and information that it provides to its section 272 affiliate at the same rates, terms, and conditions. We decline, as some commenters suggest, to interpret section 272(c)(1) more broadly to conclude that a BOC must provide unaffiliated entities different goods, services, facilities, and information than it provides to its section 272 affiliate in order to ensure that it is providing the same quality of service or functional outcome to both its affiliate and unaffiliated entities. To do so would, in effect, be interpreting this section the same way we interpreted section 251(c)(2) in the *First Interconnection Order,* 61 FR 45476 (August 29, 1996). We believe that to interpret the nondiscrimination requirement of section 272(c)(1) in this manner would be inappropriate as a matter of statutory construction, inconsistent with its legislative purpose, and unenforceable.

As a matter of statutory construction, we find that the nondiscrimination provision of section 272(c)(1), by its terms, is much narrower in scope than the requirement in section 251(c)(2). Section 251(c)(2) imposes on incumbent LECs ''the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network * * * that is at least equal in quality to that provided by the [LEC] to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection.'' In the *First Interconnection Order,* we interpreted the term ''equal in quality'' as requiring an incumbent LEC to provide interconnection to its network at a level of quality that is at least indistinguishable from that which the incumbent LEC provides itself. Further, we found that, to the extent a carrier requests interconnection that is of a superior or lesser quality than the incumbent LEC currently provides, the incumbent LEC is obligated to provide the requested interconnection to the extent technically feasible.

The language of section 272(c)(1), in contrast, contains no such ''equal in quality'' requirement; it simply requires that unaffiliated entities receive the same treatment as the BOC gives to its section 272 affiliate. Unlike section 251, therefore, section 272(c) is not a vehicle by which requesting entities can require a BOC to provide goods, facilities, services, or information that are different from those that the BOC provides to itself or to its affiliates. Nor is it, as some commenters suggest, designed to prevent a BOC from discriminating between unaffiliated competitors.

Our reading of the statutory language of sections 251 and 272 is consistent with the differing underlying purposes of those provisions. The section 251 requirements are designed to ensure that incumbent LECs do not discriminate in opening their bottleneck facilities to competitors. As we stated in the *First Interconnection Order,* ''[u]nder section 251, incumbent [LECs], including [BOCs], are mandated to take several steps to open their network to competition, including providing interconnection, offering access to unbundled elements to their networks, and making their retail services available at wholesale rates so that they can be resold.'' In implementing section 251, therefore, we adopted rules to open one of the last monopoly bottleneck strongholds in telecommunications—the local exchange and exchange access market.

In adopting rules in this proceeding, however, our goal is to ensure that BOCs do not use their control over local exchange bottlenecks to undermine competition in the new markets they are entering—interLATA services and manufacturing. The section 272 safeguards, among other things, are intended to protect competition in these markets from the BOCs' ability to use their existing market power in local exchange services to obtain an anticompetitive advantage. We find that when viewed in this context, the section 272(c)(1) nondiscrimination provision is designed to provide the BOC an

incentive to provide efficient service to rivals of its section 272 affiliate, by requiring that potential competitors do not receive less favorable prices or terms, or less advantageous services from the BOC than its separate affiliate receives.

We find that interpreting section 272 to require ''functional equality'' between a BOC section 272 affiliate and any unaffiliated entity would not only be impractical, but unenforceable. The ''functional equality'' standard would require a BOC to provide additional services or functions to other entities that it does not provide to its own affiliate. Because section 272, unlike section 251, contains no requirement that a BOC must provide goods, services, facilities, and information to the extent ''technically feasible,'' it would be extremely difficult, as a practical matter, to limit the types of goods, services, and facilities that a BOC would be obligated to provide to requesting entities. Further, the terms ''functional outcome'' or ''functional equality'' are likely to mean different things to different entities. Because the meaning of these terms is likely to depend on the particular characteristics of each requesting entity, the Commission would be required to apply this standard to a myriad of factual circumstances on a case-by-case basis. As one commenter observes, ensuring this type of equality would be impossible to do, as well as impossible to enforce.

We reject the argument that, because our interpretation of section 272(c)(1) effectively limits competitors to those options that the BOC affiliate finds ''useful,'' a BOC will be able to design network interfaces that work optimally only with its section 272 affiliate's specifications and not with the specifications of other entities. Section 272(c)(1) prohibits a BOC from discriminating in the establishment of standards. As we conclude below, a BOC's adoption of a network interface that favors its section 272 affiliate and disadvantages an unaffiliated entity will establish a *prima facie* case of discrimination under section 272(c)(1). Further, section 272(c)(1) prohibits a BOC from discriminating in the provision of facilities or information, and section 251(c)(5) imposes upon BOCs certain network disclosure requirements. As mentioned above, section 251(c)(5) requires incumbent LECs to provide reasonable public notice of network changes affecting competing service providers' performance or ability to provide telecommunications services, as well as changes that would affect the incumbent LEC's interoperability with other service providers. In the *Second Interconnection Order,* 61 FR 47284 (September 6, 1996), we interpreted this provision to require incumbent LECs to disclose changes subject to this requirement at the ''make/buy'' point. In light of the requirements of sections 272(c)(1) and 251(c)(5), we decline at this time to impose additional obligations on the BOCs to ensure that they structure their own networks to achieve the same level of interoperability that the section 272 affiliate receives from the BOC.

We also decline to adopt MCI's suggested presumption that the specifications requested by an unaffiliated entity are the appropriate ones for a truly separate and independent affiliate and that any different specifications needed by the BOC's section 272 affiliate reflect a lack of proper physical and operational separation from the BOC. We recognize that there may be circumstances, such as the adoption of a new and innovative technology by the BOC section 272 affiliate, where differences in technical specifications between a section 272 affiliate and an unaffiliated entity do not evidence a lack of structural separation between the BOC and its section 272 affiliate.

As discussed below, we conclude that the protection of section 272(c)(1) extends to any good, service, facility, or information that a BOC provides to its section 272 affiliate. We therefore agree with AT&T that to the extent a BOC develops new services for or with its section 272 affiliate, it must develop new services for or with unaffiliated entities in the same manner. That is, we find that the development of new services, including the development of new transmission offerings, is the provision of service under section 272(c)(1) that, once provided by the BOC to its section 272 affiliate, must be provided to unaffiliated entities in a nondiscriminatory manner. In the NPRM, we recognized the potential for competitive harm in a situation in which a BOC failed to cooperate with an interLATA carrier that is introducing an innovative new service until the BOC's section 272 affiliate is ready to initiate the same service. Similarly, AT&T asserts that the section 272(c)(1) nondiscrimination requirement should be interpreted to prevent BOCs from denying a competitor's request for a new or more cost effective access arrangement on the ground that all entities, including its section 272 affiliate, are receiving the same access service at the same price. We find that the BOC, under section 272(c)(1), is obligated to work with competitors to develop new services if it cooperates in such a manner with its section 272 affiliate.

We agree with AT&T therefore that if, as we outlined in our NPRM, a BOC purposely delayed the implementation of an innovative new service by denying a competitor's reasonable request for interstate exchange access until the BOC section 272 affiliate was ready to provide competing service, such conduct may constitute unlawful discrimination under the Act. Moreover, as we observed in the NPRM, although the 1996 Act imposes specific nondiscrimination obligations on the BOCs and their section 272 affiliates, the Communications Act imposed certain pre-existing nondiscrimination requirements on common carriers providing interstate communications service. Among them, section 201 provides that all common carriers have a duty ''to establish physical connections with other carriers,'' and to furnish telecommunications services ''upon reasonable request therefor.'' We conclude, therefore, that if a BOC were to engage in strategic behavior to benefit its section 272 affiliate, in the manner suggested by AT&T, such action may not only violate section 272(c)(1), but would also violate sections 201(a) of the Act.

Finally, we conclude that a complainant will be found to have established a *prima facie* case of unlawful discrimination under section 272(c)(1) if it can demonstrate that a BOC has not provided unaffiliated entities the same goods, services, facilities, and information that it provides to its section 272 affiliate at the same rates, terms, and conditions. To rebut the complainant's case, the BOC may demonstrate, among other things, that rate differentials between the section 272 affiliate and unaffiliated entity reflect differences in cost or that the unaffiliated entity expressly requested superior or less favorable treatment in exchange for paying a higher or lower price to the BOC. We recognize, as Sprint and Time Warner suggest, there will be some instances where the costs of providing certain goods, services, or facilities to its affiliate and to an unaffiliated entity differ. As we stated in the *First Interconnection Order,* where costs differ, rate differences that accurately reflect those differences are not unlawfully discriminatory. Strict application of the section 272(c)(1) prohibition on discrimination would itself be discriminatory if the costs of supplying customers are different. Similarly, we also conclude, as we did

in the *First Interconnection Order,* that ''price differences, such as volume and term discounts, when based upon legitimate variations in costs, are permissible under the 1996 Act when justified.''

C. Definition of ''Goods, Services, Facilities and Information'' in Section 272(c)(1)

1. Background

In the NPRM we sought comment on the interplay among the definitions of the terms ''services,'' ''facilities,'' and ''information'' in various subsections of 272, and between section 272 and section 251(c). We also sought comment on what regulations, if any, are necessary to clarify the types or categories of services, facilities, or information that must be made available under section 272(c)(1). We asked parties to comment on whether further defining the terms ''goods,'' ''services,'' ''facilities,'' and ''information'' would enable competing providers to detect violations of this section by enabling them to compare more accurately a BOC's treatment of its affiliate with a BOC's treatment of unaffiliated competing providers.

2. Discussion

We conclude that any attempt to define exhaustively the terms ''goods, services, facilities, and information'' in section 272(c)(1) may unnecessarily limit the scope of this section's otherwise unqualified nondiscrimination requirement. At the same time, however, we disagree with ITAA that the Commission should refrain from attempting to clarify the meaning of these terms. We find instead that clarifying the types of activities these terms encompass will provide useful guidance to potential competitors that seek to avail themselves of the protections of section 272(c)(1). In enforcing the nondiscrimination requirement of section 272(c)(1), we intend to construe these terms broadly to prevent BOCs from discriminating unlawfully in favor of their section 272 affiliates.

We find that neither the terms of section 272(c)(1), nor the legislative history of this provision, indicates that the terms ''goods, services, facilities, and information'' should be limited in the manner suggested by some commenters. We therefore decline to interpret the terms in section 272(c)(1) as including only telecommunications-related or, even more specifically, common carrier-related ''goods, services, facilities, and information.'' Similarly, we reject arguments set forth by NYNEX, PacTel, and U S West that the term ''services'' should exclude administrative and support services. Although NYNEX contends that, as a practical matter, unaffiliated entities are unlikely to avail themselves of such services, we find that there are certain administrative services, such as billing and collection services, that unaffiliated entities may find useful. Further, as discussed above, we construe the term ''services'' to encompass any service the BOC provides to its section 272 affiliate, including the development of new service offerings.

We conclude therefore that the protection of section 272(c)(1) extends to any good, service, facility, or information that a BOC provides to its section 272 affiliate. For example, we find that if a BOC were to decide to transfer ownership of a unique facility, such as its Official Services network, to its section 272 affiliate, it must ensure that the transfer takes place in an open and nondiscriminatory manner. That is, pursuant to the nondiscrimination requirement of section 272(c)(1), the BOC must ensure that the section 272 affiliate and unaffiliated entities have an equal opportunity to obtain ownership of this facility.

We also conclude that the terms ''services,'' ''facilities,'' and ''information'' in section 272 should be interpreted to include, among other things, the meaning of these terms under section 251(c). The term ''facilities,'' therefore, includes but is not limited to the seven unbundled network elements described in the *First Interconnection Order*. We decline to limit the scope of these terms to their meaning in section 251 because section 272 encompasses a broader range of activities than does section 251. We also emphasize that in contrast to section 251, where an incumbent LEC is prohibited from discriminating against any requesting telecommunications carrier, section 272(c)(1) prohibits BOCs from discriminating against ''any other entity.'' Because section 272 does not define the term ''entity,'' we interpret this unqualified term broadly to ensure that all competitors may benefit from the protections of section 272(c)(1). Thus, we agree with Sprint that this term should include the definition of the term ''entity'' as set forth in the electronic publishing section of the Act; however, we also find it appropriate to include within the meaning of ''entity'' the providers of the activities encompassed by section 272. We conclude, therefore, that the term ''entity'' includes telecommunications carriers, ISPs, and manufacturers.

We disagree with ATSI and CIX, however, that by interpreting ''any other entity'' to include information service providers and by concluding that the term ''facilities'' in section 272(c)(1) encompasses the meaning of that term as it is used in section 251(c), ISPs acquire the right to obtain unbundled access to the local loop and other network elements whenever BOCs provide their section 272 affiliates with such access. Pursuant to section 251(c)(3), only telecommunications carriers providing a telecommunications service are entitled to obtain access to unbundled network elements. Because ISPs may only obtain access to unbundled elements pursuant to section 251 to the extent they are providing telecommunications services, we conclude that they may not attempt to circumvent the limitations of section 251 by virtue of their rights under section 272(c)(1). This conclusion is consistent with our finding in the *Second Interconnection Order* that the inclusion of information services in the definition of ''services'' under section 251(c)(5) ''does not vest information service providers with substantive rights under other provisions of section 251, except to the extent that they are also operating as telecommunications carriers.'' To the extent, however, that a BOC chooses voluntarily to provide facilities, including network elements, to a section 272 affiliate that is solely providing information services (and thus does not qualify as a telecommunications carrier under section 251), we conclude that a BOC must, pursuant to section 272(c)(1), provide such facilities to other requesting ISPs.

We therefore agree with MFS that, if a BOC chooses to allow its information service affiliate to collocate routers, servers, or other equipment, section 272(c)(1) requires that the same accommodations be extended, on a nondiscriminatory basis, to competing ISPs. Collocation is a means of achieving interconnection and access to unbundled network elements that incumbent LECs, including BOCs, must provide to requesting carriers under section 251. Although section 251 does not require incumbent LECs to permit entities other than telecommunications carriers to collocate equipment on an incumbent LEC's premises, sections 251 and 272 do not prohibit BOCs from voluntarily allowing ISPs to collocate equipment on their premises. Thus, we find that, if a BOC permits its section 272 affiliate to collocate facilities used to provide information services, the BOC must permit collocation, under

section 272(c)(1), by similarly situated entities. If the BOC's section 272 affiliate qualifies as a ''telecommunications carrier,'' the BOC need only permit other telecommunications carriers to collocate their equipment. If, however, the BOC's section 272 affiliate only provides information services, the BOC must permit similarly situated ISPs to collocate equipment at the BOCs premises, even if such entities do not qualify as telecommunications carriers.

As Sprint points out, the term ''information'' in section 272(c)(1) is not limited as it is in section 272(e)(2) to information ''concerning [the BOC's] provision of exchange access.'' In fact, as noted above, we find no limitation in the statutory language on the type of information that is subject to the section 272(c)(1) nondiscrimination requirement. For this reason, we reject U S West's assertion that section 272(c)(1) only governs that information which may give a separate affiliate an ''unfair advantage.'' We conclude, however, that the term ''information'' includes, but is not limited to, CPNI and network disclosure information. We therefore reject arguments made by some BOCs that the nondiscrimination provision of section 272(c)(1) does not govern the BOCs use of CPNI. With respect to CPNI, we conclude that BOCs must comply with the requirements of both sections 222 and 272(c)(1). We decline to address parties' arguments raised in this proceeding regarding the interplay between section 272(c)(1) and section 222 to avoid prejudging CPNI issues that will be addressed in a separate proceeding.

D. Establishment of Standards

1. Background

Section 272(c)(1) prohibits a BOC from discriminating between its section 272 affiliate and other entities in the ''establishment of standards.'' In the NPRM we sought comment on what ''standards'' are encompassed by this provision. We observed that a BOC may act anticompetitively by creating standards that require or favor equipment designs that are proprietary to its section 272 affiliate. We sought comment on what procedures, if any, we should implement to ensure that a BOC does not discriminate between its affiliate and other entities in setting standards. We asked parties to comment, for example, on whether BOCs should be required to participate in standard-setting bodies in the development of standards covered by section 272(c)(1).

2. Discussion

We conclude that the term ''standards'' in section 272(c)(1) includes the meaning of this term as it is used in section 273. In the *Manufacturing NPRM*, we sought comment on how the term ''standards'' should be defined ''for purposes of implementation of the 1996 Act to ensure that standards processes are open and accessible to the public.'' We note, however, that unlike the use of the term ''standards'' in sections 273(d)(4) and 273(d)(5), the term ''standards'' in section 272(c)(1) is not limited by the term ''industry-wide.'' We conclude, therefore, that section 272(c)(1) prohibits discrimination in the establishment of *any* standard, not only those that are ''industry-wide.''

As we observed in the *Manufacturing NPRM*, the process by which standards are established may present opportunities for anticompetitive behavior by the BOCs. We decline, however, to implement additional procedures, beyond those outlined in section 273, to ensure that BOCs do not discriminate between their section 272 affiliates and other entities in establishing industry-wide standards. Rather, we agree with Bellcore and PacTel that the procedures for the establishment of industry-wide standards and generic requirements for telecommunications equipment and CPE appear at this time to be adequately addressed by the requirements contained in section 273(d)(4). For example, in response to MCI, we note that section 273(d)(4) already provides for an open standards-setting process whereby all interested parties have the opportunity to fund and participate in the development of industry-wide standards or generic requirements on a ''reasonable and nondiscriminatory basis.'' We find no basis in the record for concluding that the requirements established by section 273, and any regulations adopted thereunder, will not be sufficient to deter discrimination in the establishment of industry-wide standards.

Although we decline at this time to establish additional procedures beyond those required in section 273(d)(4), we recognize that there is a distinct potential competitive danger that a BOC will use standards in its own and its section 272 affiliate's network that are not ''industry-wide'' (that is, not employed by ''at least 30 percent of all access lines'') or established by an accredited standards development organization, but rather specifically tailored to meet its own needs or those of its section 272 affiliate. Because such standards may not be developed in an open and nondiscriminatory process, such as the one required for the establishment of industry-wide standards in section 273(d)(4), we find that those standards may place unaffiliated entities at a competitive disadvantage. For example, if a BOC adopts a particular non-accredited or non-industry-wide protocol or network interface, it may, by virtue of its substantial size and market share, effectively force competing entities to alter their specifications in order to maintain the same level of interoperability with the BOC or the BOC affiliate. We conclude, therefore, that the adoption of *any* standard that has the effect of favoring the BOC's section 272 affiliate and disadvantaging an unaffiliated entity will establish a *prima facie* violation of section 272(c)(1).

We also conclude, on the basis of the record before us, that it is not necessary as a matter of law, nor desirable as a matter of policy, to require BOC participation in the standards-setting process. The language of section 272(c)(1) cannot be read as requiring such participation; moreover, BOCs have an interest in participating voluntarily in standard-setting organizations because standards that are ultimately adopted may materially impact the BOCs' competitive position. Further, we decline to become involved at this time in the standard-setting process, as suggested by AT&T, in order to accomplish the purposes of section 272(c)(1). Unlike section 256, which, among other things, permits the Commission to participate in the development of public telecommunications network interconnectivity standards that promote access, section 272(c)(1) does not contemplate Commission involvement. Moreover, we reject MCI's proposal that we insert ourselves into the dispute resolution process to accomplish the purposes of section 272(c)(1). Section 273(d)(5) requires the Commission to prescribe a dispute resolution process to address the anticompetitive harms that may result from the establishment of industry-wide standards under section 273(d)(4) and expressly prohibits the Commission from becoming a party to this process. As to disputes that may arise in the context of other public standard-setting processes, we find, on the basis of the record before us, that Commission involvement beyond its existing role in the section 208 complaint process is unnecessary.

E. Procurement Procedures

1. Background

Section 272(c)(1) also prohibits the BOCs from discriminating between their section 272 affiliates and other entities in their procurement of goods, services, facilities, and information. In the NPRM, we observed that this provision prohibits a BOC from purchasing manufactured network equipment solely from its affiliate, purchasing the equipment from the affiliate at inflated prices, or giving any preference to the affiliate's equipment in the procurement process and thereby excluding rivals from the market in the BOC's service area. We sought comment on how the BOCs could establish nondiscriminatory procurement procedures designed to ensure that other entities are treated on the same terms and conditions as a BOC affiliate. We invited comment, specifically, on the nature and extent of rules necessary to ensure that such procedures are implemented.

2. Discussion

As stated above, we find that section 272(c)(1) establishes an unqualified prohibition against discrimination by a BOC in its dealings with its section 272 affiliate and unaffiliated entities. We conclude, therefore, that any discrimination with respect to a BOC's procurement of goods, services, facilities, or information between its section 272 affiliate and an unaffiliated entity establishes a *prima facie* case of discrimination under section 272(c)(1). For example, consistent with our observations in the NPRM, we find that a *prima facie* case of discrimination under section 272(c)(1) may be established if a BOC purchases manufactured network equipment solely from its section 272 affiliate, purchases such equipment from its affiliate at inflated prices, or gives any preference to the affiliate's equipment in the procurement process, thereby excluding rivals from the market in the BOC's service area.

Insofar as section 272(c)(1) governs a BOC's procurement of manufacturing services, we find that BOC procurement of telecommunications equipment should be performed in a manner consistent with the manufacturing requirements of section 273. We conclude, therefore, that section 272(c)(1) requires a BOC to adhere to the nondiscrimination and procurement standards governing the procurement of telecommunications equipment set forth in sections 273(e)(1) and 273(e)(2) of the Act. We therefore defer consideration of detailed procurement procedures with respect to telecommunications equipment to the *Manufacturing NPRM*, which specifically addresses the requirements of these sections. We conclude, however, that the BOCs must, at a minimum, comply with any and all regulations adopted to implement the standards of sections 273(e)(1) and 273(e)(2); failure to do so may be evidence of discrimination under section 272(c)(1).

We recognize, however, that the nondiscrimination requirement of section 272(c)(1) encompasses a broader range of activities than those described in sections 273(e)(1) and 273(e)(2). Nevertheless, because the record is largely silent on the nature and extent of rules necessary to ensure that BOCs do not discriminate in their procurement of goods, services, facilities, and information under section 272(c)(1), we decline, at this time, to adopt rules to implement this requirement. In response to TIA's concerns, therefore, we conclude that the record in this proceeding does not support adoption of any concrete procurement procedures beyond those already mandated by sections 273(e)(1) and 273(e)(2). Although we decline to issue rules, we caution BOCs that allegations of discrimination in their procurement of goods, services, facilities, and information under section 272(c)(1) will be evaluated in light of that section's unqualified prohibition on discrimination. Further, we note that allegations of discrimination may more easily be rebutted by demonstrated compliance with pre-existing, publicly available procedures for procurement.

F. Enforcement of Section 272(c)(1)

In the NPRM, we observed that the Commission previously adopted a regulatory scheme to ensure that the BOCs do not discriminate in the provision of basic services used to provide enhanced services or in disclosing changes in the network that are relevant for the competitive manufacture of CPE. We sought comment on whether any of the reporting and other requirements that the Commission applied to the BOCs in the *Computer III* and *ONA* proceedings, which were adopted in lieu of the structural separation requirements of *Computer II*, are sufficient to implement section 272(c)(1) and provide protection against the type of BOC behavior that section 272(c)(1) seeks to curtail. We address this issue, as well as the requirements and mechanisms necessary to facilitate the detection and adjudications of section 272 violations, below in part IX.

VI. Fulfillment of Certain Requests Pursuant to Section 272(e)

A. Section 272(e)(1)

1. Background

Section 272(e)(1) states that a BOC and a BOC affiliate subject to section 251(c) ''shall fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates.'' In the NPRM, we tentatively concluded that the term ''unaffiliated entity'' includes ''any entity, regardless of line of business, that is not affiliated with a BOC'' as defined under section 153(1) of the Act. We sought comment on the scope of the term ''requests'' and on whether it included, *inter alia,* ''initial installation requests, as well as any subsequent requests for improvement, upgrades or modifications of service, or repair and maintenance of * * * services.'' We tentatively concluded that section 272(e)(1) requires the BOCs to treat unaffiliated entities on a nondiscriminatory basis in completing orders for telephone exchange service and exchange access, but does not grant unaffiliated entities any additional rights beyond those otherwise granted by the Communications Act or Commission rules. We also sought comment regarding how to implement section 272(e)(1) and specifically inquired whether reporting requirements for service intervals analogous to those imposed by *Computer III* and *ONA* would be sufficient.

2. Discussion

Based on our analysis of the record, we adopt our tentative conclusion that the term ''unaffiliated entity'' includes ''any entity, regardless of line of business, that is not affiliated with a BOC'' as defined under section 153(1) of the Act. Also based on the record, we conclude that section 272(e)(1) requires the BOCs to treat unaffiliated entities on a nondiscriminatory basis in completing orders for telephone exchange service and exchange access, but does not grant unaffiliated entities any additional rights to make requests beyond those granted by the Communications Act or Commission rules. We conclude that the term ''requests'' should be interpreted broadly, and that it includes, but is not limited to, initial installation requests, subsequent requests for improvement, upgrades or modifications of service, or

repair and maintenance of these services.

Section 272(e)(1) unambiguously states that a BOC must fulfill requests from unaffiliated entities at least as quickly as it fulfills its own or its affiliates' requests. To implement this statutory directive, we conclude that, for equivalent requests, the response time a BOC provides to unaffiliated entities should be no greater than the response time it provides to itself or its affiliates. We are not persuaded by the BOC's argument that variations among individual requests make any comparison between requests meaningless, and thus make such a standard unachievable. The BOC must fulfill equivalent requests within equivalent intervals. Thus, for example, an unaffiliated entity's request of a certain size, level of complexity, or in a specific geographic location must be fulfilled within a period of time that is no longer than the period of time in which a BOC responds to an equivalent request from itself or its affiliates. Because we anticipate that the facts relating to each request will vary, we believe it is appropriate to determine whether requests are equivalent on a case-by-case basis.

Section 272(e)(1) requires a BOC to fulfill the requests of unaffiliated entities within a period no longer than the period in which it fulfills its own or its affiliates requests. Because the statute does not mandate that a BOC follow a particular procedure in meeting this requirement, we decline to adopt the proposals of AT&T and Teleport to require the BOCs to use electronic order processing systems or to use the identical systems that the BOCs use to process their own service requests. We emphasize, however, regardless of the procedures that a BOC employs to process service orders from unaffiliated entities, it must be able to demonstrate that those procedures meet the statutory standard. Under current industry practice, BOCs and interexchange carriers use electronic mechanisms to implement PIC changes; exchange billing information; and, in some instances, provide ordering, repair, and trouble administration information. We believe that these current mechanisms, and the requirement that incumbent LECs provide nondiscriminatory access to operation support systems functions pursuant to sections 251(c)(3) and 251(c)(4) of the Act, will promote the use of electronic interfaces between unaffiliated entities and the BOCs.

We also conclude that the BOCs must make available to unaffiliated entities information regarding the service intervals in which the BOCs provide service to themselves or their affiliates. The statute imposes a specific performance standard on the BOCs in section 272(e)(1), and we conclude that, absent Commission action, the information necessary to detect violations of this requirement will be unavailable to unaffiliated entities. Unlike the information necessary to ensure compliance with other subsections of section 272, there is no requirement that the information necessary to verify compliance with section 272(e)(1) must be disclosed under other provisions of the Act or Commission rules. Without the disclosure requirements imposed here, parties will be unable readily to ascertain how long it takes a BOC to fulfill its own or its affiliates' requests for service. Section 272(b)(5), which requires that all transactions between a BOC and its section 272 affiliate be reduced to writing and made available for public inspection, does not provide parties an adequate mechanism to obtain information necessary to evaluate compliance with section 272(e)(1) because section 272(b)(5) is necessarily prospective in nature. The information disclosed pursuant to section 272(b)(5) will allow unaffiliated entities to determine that a BOC and its section 272 affiliate have reached an agreement and the relevant terms and conditions of that agreement, but the document produced to satisfy section 272(b)(5) will not allow parties to determine the time it actually takes for a BOC to fulfill its own or its affiliates' requests. Section 272(e)(1) governs actual BOC performance, not contractual arrangements. Moreover, section 272(b)(5) by itself is insufficient to implement section 272(e)(1) because it will only make information available about transactions between a BOC and its section 272 affiliate; section 272(e)(1), in contrast, governs requests by the BOC itself and all of the BOC's affiliates. We also conclude that, in order to provide meaningful enforcement of section 272(e)(1), interval response times must be disclosed more frequently than the biennial audit required by section 272(d). Finally, a disclosure obligation will allow all entities to compare, in a timely fashion, their own service intervals with those provided to the BOC or its affiliates. Contrary to the contentions of some BOCs, vendor management programs similar to the one utilized by AT&T would not provide this information. These vendor management programs provide information to a BOC customer about the service intervals the BOC provides to that customer, but do not provide comparative data about the service intervals provided to other entities, such as BOC affiliates.

We do not agree with PacTel that the absence of discrimination found in *ONA* reports indicates that disclosure requirements are of little value in enforcing section 272(e)(1). Disclosure requirements are valuable because they promote compliance and give aggrieved competitors a basis for seeking a remedy directly from a BOC. If competitors can easily obtain data about a BOC's compliance with section 272(e)(1), this increases the likelihood that potential discrimination can be detected and penalized; this, in turn, decreases the danger that discrimination will occur in the first place. Disclosure requirements also minimize the burden on the Commission's enforcement process because entities will have the information needed to resolve disputes informally prior to submitting a complaint to the Commission. We also are not persuaded by NYNEX and Ameritech that the automation and nondiscriminatory design of their provisioning and maintenance procedures obviate the need for disclosure requirements. Although the BOCs' use of nondiscriminatory, automated order processing systems is important for meeting the requirements of section 272(e)(1), the existence of these systems does not guarantee that requests placed via these systems are actually completed within the requisite period of time. Finally, we are not persuaded by the arguments of U S West and PacTel that, because parties are able to incorporate information disclosure requirements into agreements negotiated under sections 251 and 252 of the Act, a separate information disclosure requirement is unnecessary. Section 272(e)(1) and section 251 do not govern similar activities. Section 251 provides a framework that requires incumbent LECs to provide, *inter alia*, interconnection, unbundled network elements, and wholesale services to requesting telecommunications carriers. In contrast, section 272(e)(1) requires BOCs to fulfill requests for telephone exchange service and exchange access from unaffiliated entities on a nondiscriminatory basis. To link compliance with section 272(e)(1) to the outcome of individual negotiations would not adequately implement section 272(e)(1), particularly because the class of entities entitled to nondiscriminatory treatment under section 272(e)(1) is much broader than the class of entities who may make requests under section 251.

In response to the comments raised in the record, we conclude that we should seek further comment on the specific information disclosure requirements proposed by AT&T in an *ex parte* letter filed after the official pleading cycle closed. In the NPRM, we sought comment on whether reporting requirements analogous to the *Computer III* and *ONA* reporting requirements would be sufficient to implement section 272(e)(1). The parties are divided about the usefulness of service interval reporting similar to *ONA* reporting for implementing section 272(e)(1) and on the merits of AT&T's proposal. We agree with NYNEX that we should provide an additional opportunity for parties to comment on the specific aspects of the disclosure requirements needed to implement section 272(e)(1); therefore, we are separately issuing a Further Notice of Proposed Rulemaking regarding these matters.

We reject at this time, however, AT&T's more expansive proposal to require BOCs to submit to the Commission the underlying data for the information they must make publicly available. The submission of data necessary to meet this requirement—including, for example, every trouble report submitted to a BOC for a given period—would impose a substantial administrative burden on the BOCs, and possibly on the Commission as well, and is unnecessary to enforce section 272(e)(1). We also decline to order the BOCs to publicize the response times for all entities, as suggested by AT&T and Teleport, because the standard established by section 272(e)(1) is the response time given to the BOC itself and its affiliates.

B. Section 272(e)(2)

1. Background

Section 272(e)(2) states that a BOC and a BOC affiliate that is subject to section 251(c) ''shall not provide any facilities, services, or information concerning its provision of exchange access to [a section 272(a) affiliate] unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions.'' In the NPRM, we sought comment on the scope of the term ''facilities, services, or information concerning its provision of exchange access'' and the term ''other providers of interLATA services in that market.'' We also sought comment on the relevance of the MFJ and prior Commission proceedings, including our equal access rules, in implementing this provision.

2. Discussion

Definitional issues. We conclude that section 272(e)(2) does not require a BOC to provide facilities, services, or information concerning its provision of exchange access to ISPs, as suggested by ITAA and MFS. Although ISPs are included within the term ''other providers of interLATA services,'' ISPs do not use exchange access as it is defined by the Act, and, therefore, section 272(e)(2)'s requirement that BOCs provide exchange access on a nondiscriminatory basis is not applicable to ISPs. ''Exchange access'' is defined as ''the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.'' ''Telephone toll service'' is defined, in turn, as ''telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.'' This definition makes clear that ''telephone toll service'' is a ''telecommunications service.'' Therefore, by definition, an entity that uses ''exchange access'' is a telecommunications carrier. Because ISPs do not provide telephone toll services, and therefore are not telecommunications carriers, they are not eligible to obtain exchange access pursuant to section 272(e)(2).

We are not persuaded by ITAA's argument that, because section 272(f)(2) states that the requirements of section 272 cease to apply with respect to interLATA information services at sunset, but exempts section 272(e) from the sunset requirement, section 272(e), including section 272(e)(2), must apply to ISPs. Section 272(f)(2) cannot be read to extend the application of section 272(e)(2) beyond its express terms. Similarly, we reject MFS's argument that we should use section 272(e)(2) to grant ISPs rights under section 251 because, as we articulated above, this would expand the scope of section 251 beyond its express limitations.

We agree with U S West that the term ''in that market'' is intended to ensure that, to benefit from section 272(e)(2), an interLATA provider must be operating in the same geographic area as the relevant BOC affiliate. Therefore, we conclude that the term ''providers of interLATA services in that market'' means any interLATA services provider authorized to provide interLATA service in the same state where the relevant section 272 affiliate is providing service. We have designated a state as the relevant geographic area for purposes of section 272(e)(2) because the BOCs will obtain authorization to provide interLATA services on a state-by-state basis.

Implementation of section 272(e)(2). In light of the protections imposed in other portions of the Act and our rules, we conclude that we do not need to adopt rules to implement section 272(e)(2) at this time. In our *First Interconnection Order* and *Second Interconnection Order,* we adopted rules implementing section 251 of the Act, which address, *inter alia,* the provision of exchange access and network disclosure requirements under the Act. In addition, section 251(g) of the Act preserves the equal access requirements in place prior to the passage of the 1996 Act, including obligations imposed by the MFJ and any Commission rules. If, in the future, it appears that additional rules are necessary to enforce the requirements of section 272(e)(2), we will take action at that time.

We conclude that a separate disclosure requirement under section 272(e)(2) is not warranted. Section 272(b)(5) requires that all transactions between a BOC and its section 272 affiliate be reduced to writing and made available for public inspection. Parties will be able to determine the specific services and facilities that a BOC provides to its section 272 affiliate by inspecting the documentation that must be maintained pursuant to section 272(b)(5). In addition, information about a BOC's provision of exchange access to itself or to its affiliates will be available through the information disclosure requirement we are imposing pursuant to section 272(e)(1). Accordingly, we reject AT&T's suggestion that the Commission require the BOCs to disclose publicly all exchange access services and facilities used by their interLATA affiliates and to update these disclosures whenever upgrades are made.

We conclude that our current network disclosure rules are sufficient to meet the requirement of section 272(e)(2) that BOCs disclose any ''information concerning * * * exchange access'' on a nondiscriminatory basis. Therefore, we conclude that AT&T's suggestion that the Commission mandate additional technical disclosure requirements is unnecessary. Section 251(c)(5) imposes on incumbent LECs ''[t]he duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.'' We have adopted detailed rules specifying how this requirement is to be implemented.

Further, the Commission's prior network disclosure requirements are still in place, including the *Computer II* ''all carrier rule'' and the *Computer III* network disclosure requirements. We emphasize that if a BOC preferentially disclosed information to its section 272 affiliate or withheld information from competing providers of interLATA services, that BOC would be in violation of section 272(e)(2). Our rules implementing section 251(c)(5) explicitly prohibit this behavior: they require LECs to make network disclosures according to a specific timetable, and prohibit preferential disclosures in advance of that timetable. We do not address IDCMA's concerns regarding information disclosures for manufacturers because section 273 addresses the needs of manufacturers in detail, and we are addressing the implementation of section 273 in a separate proceeding.

C. Section 272(e)(3)

1. Background

Section 272(e)(3) provides that a BOC and a BOC affiliate that is subject to the requirements of section 251(c) ''shall charge [a section 272(a) affiliate], or impute to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service.'' In the NPRM, we tentatively concluded that a section 272 affiliate's purchase of telephone exchange service and exchange access at tariffed rates, or imputation of tariffed rates to the BOC, would be sufficient to implement section 272(e)(3). We additionally sought comment regarding the appropriate mechanism to enforce this provision in the absence of tariffed rates.

2. Discussion

We adopt our tentative conclusion that a section 272 affiliate's purchase of telephone exchange service and exchange access at tariffed rates, or a BOC's imputation of tariffed rates, will ensure compliance with section 272(e)(3). If a section 272 affiliate purchases telephone exchange service or exchange access at the highest price that is available on a nondiscriminatory basis under tariff, section 272(e)(3)'s requirement that a BOC must charge its section 272 affiliate an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carrier will be fulfilled. In addition, we conclude that other mechanisms are available under the Act to ensure that BOCs charge nondiscriminatory prices in accordance with section 272(e)(3). If a section 272 affiliate were to acquire services or unbundled elements from a BOC at prices that are available on a nondiscriminatory basis under section 251, the terms of section 272(e)(3) would be met. To the extent that a statement of generally available terms filed pursuant to section 271(c)(1)(B) would include prices that are available on a nondiscriminatory basis in a manner similar to tariffing, and a BOC's section 272 affiliate obtains access or interconnection at a price set forth in the statement, this would also demonstrate compliance with section 272(e)(3). We address the appropriate allocation and valuation of these transactions for accounting purposes in our companion *Accounting Safeguards Order.*

We further conclude that section 272(e)(3) requires that a BOC must make volume and term discounts available on a nondiscriminatory basis to all unaffiliated interexchange carriers. We do not agree, however, with those parties that suggest that additional requirements are necessary to implement section 272(e)(3). AT&T, for example, proposes that a BOC or section 272 affiliate pay ''a price per unit of traffic that reflects the highest unit price that any interexchange carrier pays for a like exchange or exchange access service.'' We agree with the BOCs that AT&T's suggested rule would unfairly disadvantage BOC affiliates by preventing them from receiving volume discounts that other interexchange carriers with similar access traffic volumes would receive. We agree with Ameritech that, because the provision of services that fall under section 272(e)(3) must either be tariffed or made publicly available under section 252(h), unaffiliated interexchange carriers will be able to detect discriminatory arrangements. We recognize that a BOC may have an incentive to offer tariffs that, while available on a nondiscriminatory basis, are in fact tailored to its affiliate's specific size, expansion plans, or other needs. Our enforcement authority under section 271(d)(6) and section 208 are available to address this and other forms of potential discrimination by a BOC.

We reject MCI's proposal that the Commission review the BOC section 272 affiliates' prices, or profits, or both, to ensure that the section 272 affiliates' prices cover their access charges and all other costs. MCI's contention that access charges are excessive is more appropriately addressed in the Commission's forthcoming proceeding on access charge reform. We also note that the ability of competing carriers to acquire access through the purchase of unbundled elements (if those unbundled elements are properly priced) will increase pressure on the BOCs to decrease access charges, and will give competing carriers the opportunity to charge retail prices that reflect the lower cost of unbundled elements. We interpret section 272(e)(3) to require the BOCs to charge nondiscriminatory prices, as indicated above, and to allocate properly the costs of exchange access according to our affiliate transaction and joint cost rules, as modified by our companion *Accounting Safeguards Order.* We conclude that further rules addressing predatory pricing by BOC section 272 affiliates are not necessary because adequate mechanisms are available to address this potential problem. A BOC section 272 affiliate that charges a rate for interstate services below its incremental cost of providing such services would be in violation of sections 201 and 202 of the Act. Federal antitrust law also would apply to the predatory pricing of interstate and intrastate services; and the pricing of intrastate services can also be addressed at the state level. Further, as we indicated in the NPRM, the danger of successful predation by BOCs in the interexchange market is small. We also reject MCI's proposal because, as the BOCs argue and MCI concedes, Commission review of affiliates' retail prices would place an enormous administrative burden on the Commission. Such a review would also discourage BOC section 272 affiliates from competing on the basis of service prices. Because we find that adequate remedies exist to address anticompetitive pricing by BOC section 272 affiliates, we believe that regulation of these new interLATA providers' retail prices pursuant to section 272(e)(3) would not conform with the deregulatory, pro-competitive goals of the 1996 Act.

D. Section 272(e)(4)

1. Background

Section 272(e)(4) states that a BOC and a BOC affiliate that is subject to section 251(c) ''may provide any interLATA or intraLATA facilities or services to its interLATA affiliate if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions, and so long as the costs are appropriately allocated.'' In the NPRM, we sought comment regarding the scope of the

term ''interLATA or intraLATA facilities or services'' including, for example, whether it included ''information services and all facilities used in the delivery of such services.''

2. Discussion

We conclude that section 272(e)(4) does not alter the requirements of sections 271 and 272(a). Section 272(e)(4) is not a grant of authority for BOCs to provide ''interLATA or intraLATA facilities or services'' in contravention of the scheme governing BOC provision of in-region interLATA services in section 271 or the requirement that these services must be provided through a separate affiliate in section 272(a). Section 272(e)(4) is intended to ensure the nondiscriminatory provision of services that the BOCs are authorized to offer directly, and not through an affiliate, such as those services exempted from section 271 prior to the sunset of the separate affiliate requirement. Like the other subsections of section 272, section 272(e)(4) prescribes the manner in which a BOC must offer services and facilities it is authorized to provide.

We find no basis in the 1996 Act for the BOCs' argument that section 272(e)(4) is a grant of authority for the BOCs to provide interLATA services and facilities. By its terms, section 272(e)(4) contains no reference to the provisions of section 271 governing BOC entry into in-region interLATA services. Therefore, interpreting section 272(e)(4) as an immediate and independent grant of authority that allows BOCs to provide ''*interLATA* or intraLATA facilities or *services*,'' even where such provision is prohibited by other sections of the statute, would contravene the requirement of section 271 that BOCs receive Commission approval prior to providing these services.

We are also unpersuaded by PacTel's alternative argument that section 272(e)(4) is not a grant of authority, but that section 272 allows the BOCs to provide wholesale, ''carrier to carrier'' interLATA services directly, rather than through the section 272 affiliate. PacTel states that section 271 requires BOCs to obtain authorization from the Commission before providing ''interLATA services,'' but, in contrast, section 272(a)(2)(B) only requires BOCs to offer interLATA ''telecommunications service'' through a separate affiliate. PacTel also states that the definition of ''interLATA service'' is broad and makes no distinction between retail and wholesale offerings, but that ''telecommunications service'' is defined as ''the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.'' PacTel therefore argues that only interLATA telecommunications services offered ''directly to the public'' must be offered through a separate affiliate. PacTel contends that retail services are services offered ''directly to the public'' that must be offered through a section 272 affiliate, but that wholesale services may be offered from the BOC because they are not ''telecommunications services.'' We reject PacTel's argument because it is inconsistent with language of section 251(c)(4) and because the legislative history indicates that the definition of telecommunications services is intended to clarify that telecommunications services are common carrier services, which include wholesale services to other carriers.

A comparison between the definitions relied upon by PacTel and the language of section 251(c)(4) leads us to conclude that wholesale services are not excluded from the definition of ''telecommunications service.'' Unlike the definition of telecommunications service, section 251(c)(4) explicitly uses the terms ''retail'' and ''wholesale.'' Section 251(c)(4) states that incumbent LECs must offer, ''at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers * * *'' This language implicitly recognizes that some telecommunications services are wholesale services. If this were not the case, the qualifying phrase ''that the carrier provides at retail'' would be superfluous.

The legislative history and the definition of common carriage further support this conclusion. The Joint Explanatory Statement states that the definition of telecommunications service ''recognize[s] the distinction between common carrier offerings that are provided to the public * * * and private services.'' Therefore, the term ''telecommunications service'' was not intended to create a retail/wholesale distinction, but rather a distinction between common and private carriage. Common carrier services include services offered to other carriers. For example, exchange access service is offered on a common carrier basis, but is offered primarily to other carriers. In addition, both the Commission's rules and the common law have held that offering a service to the public is an element of common carriage. The Commission's rules define a ''communication common carrier'' as ''any person engaged in rendering communication for hire to the public,'' and the courts have held that the indiscriminate offering of a service to the public is an essential element of common carriage. Neither the Commission nor the courts, however, has construed ''the public'' as limited to end-users of a service. In *NARUC I*, the Court of Appeals for the D.C. Circuit held that an entity may qualify as a common carrier even if ''the nature of the service rendered is sufficiently specialized as to be of possible use to only a fraction of the total population.'' *See NARUC* v. *FCC*, 525 F.2d 630, 641 (D.C. Cir. 1976). In light of the statutory language of section 251(c)(4), legislative history, Commission precedent, and the common law, we decline to limit the definition of telecommunications services to retail services.

If a BOC wishes to utilize the capacity on its Official Services network to provide interLATA services to other carriers or to end-users, it must do so in accordance with the requirements of the 1996 Act and our rules. Specifically, the BOC must provide in-region, interLATA services through a section 272 affiliate as required by section 272(a). If a BOC, therefore, seeks to transfer ownership of its Official Services network to its section 272 affiliate, it must ensure that the transfer takes place in a nondiscriminatory manner, as explained *supra* in part V.C, and must comport with our affiliate transaction rules.

Finally, although the term ''interLATA services'' includes both interLATA information services and interLATA telecommunications services, we conclude that ISPs are not entitled to nondiscriminatory treatment under section 272(e)(4). The definitional sections of the Act make clear that the term ''carriers'' is synonymous with the term ''common carriers,'' which does not include ISPs. Therefore, the requirement that the BOCs provide interLATA or intraLATA facilities or services to ''all carriers'' on a nondiscriminatory basis does not extend to ISPs under section 272(e)(4).

E. Sunset of Subsections 272(e) (2) and (4)

1. Background

The NPRM sought comment regarding how to reconcile an apparent conflict between sections 272(e) and 272(f). We noted that subsections 272(e)(2) and (e)(4) establish standards that refer to BOC affiliates. On the one hand, those sections could be interpreted as subject to sunset because they depend on the existence of a separate affiliate. On the other hand, section 272(f) specifically exempts section 272(e) from the sunset requirements. We sought comment regarding whether Congress intended to eliminate the requirements of sections 272(e)(2) and (e)(4) once the BOCs were no longer required to maintain separate affiliates under section 272(a).

2. Discussion

We find that the plain language of the statute compels us to conclude that sections 272(e)(2) and 272(e)(4) can be applied to a BOC after sunset only if that BOC retains a separate affiliate. The nondiscrimination obligations imposed by subsections (e)(2) and (e)(4) are framed in reference to a BOC's treatment of its affiliates. In contrast, the nondiscrimination obligations imposed by subsections (e)(1) and (e)(3) are framed in reference to the BOC ''itself'' as well as the BOC affiliate. If a BOC does not maintain a separate affiliate, subsections (e)(2) and (e)(4) cannot be applied because there will be no frame of reference for the BOC's conduct. Section 272(f), however, exempts section 272(e) from sunset without qualification. In order to give meaning to section 272(f), we conclude that subsections (e)(2) and (e)(4) will apply to a BOC's conduct so long as that BOC maintains a separate affiliate. Subsections (e)(1) and (e)(3) will continue to apply in all events.

A number of safeguards will be available to prevent discriminatory behavior by BOCs after the separate affiliate requirements of section 272 cease to apply. As we explain in detail above, section 251(c)(5), section 251(g), and the Commission's rules imposing network disclosure and equal access requirements oblige BOCs to provide exchange access on a nondiscriminatory basis. In addition, intraLATA services and facilities must be provided on a nondiscriminatory basis under section 251(c)(3), and the provision of interLATA services and facilities will continue to be governed by the nondiscrimination provisions of sections 201 and 202 of the Act. In addition, once local competition develops, it will provide a check on the BOCs' discriminatory behavior because competitors of the BOC affiliates will be able to turn to other carriers for local exchange service and exchange access.

VII. Joint Marketing

A. Joint Marketing Under Section 271(e)

1. Background

Section 271(e)(1) limits the ability of certain interexchange carriers to market interLATA services jointly with BOC local services purchased for resale. Specifically, the statute states that:

Until a Bell operating company is authorized pursuant to [section 271(d)] to provide interLATA services in an in-region State, or until 36 months have passed since the date of enactment of the Telecommunications Act of 1996, whichever is earlier, a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines may not jointly market in such State telephone exchange service obtained from such company pursuant to section 251(c)(4) with interLATA services offered by that telecommunications carrier.

In the NPRM, we sought comment on whether we should interpret section 271(e) to prohibit, for example, promoting the availability of interLATA services and local exchange services in the same advertisement, making these services available from a single source, or providing bundling discounts for the purchase of both services. We also observed that the clear language of the statute only restricts covered interexchange carriers (*i.e.,* those carriers that fall within the scope of section 271(e) of the Act) from joint marketing interLATA services and BOC local services purchased for resale. Thus, section 271(e) does not preclude these interexchange carriers from jointly marketing local exchange services provided over their own facilities, or through the purchase of unbundled network elements pursuant to section 251(c)(3). Nor does section 271(e) prohibit those interexchange carriers from ''marketing'' BOC resold local exchange services. Rather, the prohibition is limited to ''jointly marketing'' BOC resold local services with interLATA services.

2. Discussion

Scope of section 271(e). We agree with the consensus of the commenters that the language in section 271(e) is clear—the joint marketing prohibition applies only to the marketing of interLATA services together with BOC local exchange services purchased for resale pursuant to section 251(c)(4). We refer to the latter services in the balance of this discussion as ''BOC resold local services.'' In the *First Interconnection Order,* we stated that the terms of section 271(e) do not prevent affected interexchange carriers from marketing interLATA services jointly with local exchange services provided through the use of unbundled network elements obtained pursuant to section 251(c)(3). We affirm that conclusion and, accordingly, reject USTA's suggestion that we extend the section 271(e) restriction to apply to the joint marketing of such services. We find that the express text of the statute limits the prohibition to BOC resold local services obtained pursuant to section 251(c)(4) and we decline to extend the restriction beyond the limits mandated by Congress. We further conclude, for the same reason, that the joint marketing restriction does not apply if the covered interexchange carrier provides local service over its own facilities, or by reselling local exchange services purchased from a local exchange carrier that is not a BOC.

Specific Joint Marketing Restrictions. We conclude that Congress adopted the joint marketing restriction in section 271(e) in order to limit the ability of covered interexchange carriers to provide ''one-stop-shopping'' of certain services until the BOC is authorized to provide interLATA service in the same territory. We agree with the majority of commenters that bundling BOC resold local services and interLATA services (including interLATA telecommunications and interLATA information services) into a package that can be sold in a single transaction constitutes the type of joint marketing that Congress intended to restrict by enacting section 271(e). We define ''bundling'' to mean offering BOC resold local exchange services and interLATA services as a package under an integrated pricing schedule. Thus, we find that section 271(e) restricts covered interexchange carriers from, among other things, providing a discount if a customer purchases both interLATA services and BOC resold local services, conditioning the purchase of one type of service on the purchase of the other, and offering both interLATA services and BOC resold local services as a single combined product. This restriction applies until the BOC receives authorization under section 271 to offer interLATA service in an in-region state, or February 8, 1999, whichever comes first.

We also conclude that section 271(e) bars covered interexchange carriers from marketing interLATA services and BOC resold local services to consumers through a single transaction. We define

a ''single transaction'' to include, at a minimum, the use of the same sales agent to market both products to the same customer during a single communication. Although requiring separate transactions for different types of services might preclude interexchange carriers from taking advantage of economies of scale, we agree with those commenters who argue that such a restriction is an essential element of the joint marketing prohibition in section 271(e) during the period the limitation remains in effect. We reject the suggestion of some BOCs that the section 271(e) restriction requires covered interexchange carriers to establish separate sales forces for marketing interLATA services and BOC resold local services. We agree with the commenting parties that claim neither the statute nor the legislative history indicates that Congress intended to impose such a requirement. Moreover, in our view, requiring a separate sales force is not necessary to accomplish the primary congressional objective of barring the affected interexchange carrier from offering ''one-stop shopping'' for interLATA and BOC resold local services. Thus, a single agent is permitted to market interLATA services in the context of one communication, and to market BOC resold local services to the same potential customer in the context of a separate communication.

The application of the section 271(e) joint marketing restriction to advertising implicates constitutional issues. We are aware of our obligation under Supreme Court precedent to construe the statute ''where fairly possible so as to avoid substantial constitutional questions.'' *See United States* v. *X-Citement Video*, 115 S.Ct. 464, 467, 469 (1994). In the advertising context, the Supreme Court has held that the First Amendment protects ''the dissemination of truthful and nonmisleading commercial messages about lawful products and services.'' *See 44 Liquormart, Inc. v. Rhode Island*, 116 S.Ct. 1495, 1504 (1996) (*44 Liquormart*). We must be careful, therefore, not to construe section 271(e) as imposing an advertising restriction that is overly broad. The fact that section 271(e) permits a covered interexchange carrier to *offer and market separately* both interLATA services and BOC resold services and also permits such carriers to *offer and market jointly* interLATA services and local services provided through means other than BOC resold local services (*e.g.*, through the use of unbundled network elements, over its own facilities, or by reselling local exchange services purchased from a local exchange carrier that is not a BOC) makes the task of crafting an effective advertising restriction particularly difficult. For example, we see no lawful basis for restricting a covered interexchange carrier's right to advertise a combined offering of local and long distance services, if it provides local service through means other than reselling BOC local exchange service. In addition, we cannot adopt a blanket rule that prohibits interexchange carriers from publicizing in one advertisement that they offer interLATA services and publicizing in a separate advertisement that they offer BOC resold local services. As MCI points out, the statute permits interexchange carriers to offer both types of services through the same corporate entity and under the same brand name. Thus, such advertisements would be truthful statements about lawful activities.

A closer question is whether we may ban a covered interexchange carrier from claiming in a single advertisement that it offers both interLATA services and local services in instances where the carrier intends to furnish the latter through BOC resold local services, which it is authorized to market only on a stand-alone basis. On the one hand, such an advertisement would contain truthful statements about services that the interexchange carrier is authorized to provide. On the other hand, such an advertisement may be inconsistent with the section 271(e) prohibition against jointly marketing the two types of services. As some BOCs appear to recognize, however, the principal concern with the promotion of both services in a single advertisement is that it may suggest ''to consumers that the services are available jointly as a package when in fact they are not.'' We agree with these commenters that the First Amendment does not confer the right to deceive the public. Indeed, the Supreme Court has emphasized that the First Amendment does not prevent the government from regulating commercial speech to avoid such deceptions. Further, the Court has held that the government ''may require commercial messages to appear in such a form, or include such additional information, warnings and disclaimers, as are necessary to prevent its being deceptive.'' *See 44 Liquormart*, 116 S.Ct. at 1506 (internal quotation marks omitted). Consistent with this precedent, we conclude that a covered interexchange carrier may advertise the availability of interLATA services and BOC resold local services in a single advertisement, but such carrier may not mislead the public by stating or implying that it may offer bundled packages of interLATA service and BOC resold service, or that it can provide ''one-stop shopping'' of both services through a single transaction. As discussed above, both activities are prohibited under section 271(e).

We further conclude that the joint marketing restriction in section 271(e) applies only to activities that take place prior to the customer's decision to subscribe. We agree with AT&T that, after a potential customer subscribes to both interLATA and BOC resold local services from a covered interexchange carrier, that carrier should be permitted to provide joint ''customer care'' (*i.e.*, a single bill for both BOC resold local services and interLATA services, and a single point-of-contact for maintenance and repairs). Such activities are post-marketing activities. To impose additional prohibitions on post-marketing activities would add additional burdens not required by the statute. Furthermore, a rule that would require a customer to send separate payments to the same corporate entity would be confusing and burdensome, and therefore would not serve the public interest. Customers should also be permitted to make a single phone call for complaints and repairs about both local and long distance services once they have ordered both services. Because we interpret section 271(e) to apply only to activities that take place prior to a customer's decision to subscribe, we conclude that, once a customer subscribes to both local exchange and interLATA services from a carrier that is subject to the restrictions of 271(e), that carrier may market new services to an existing subscriber.

We recognize that the principles we have adopted to implement the requirements of section 271(e) may not address all of the possible marketing strategies that a covered interexchange carrier might initiate to sell BOC resold local services and interLATA services to the public. We emphasize, however, that in enforcing this statutory section, we intend to examine the specific facts closely to ensure that covered interexchange carriers are not contravening the letter and spirit of the congressional prohibition on joint marketing by conveying the appearance of ''one-stop shopping'' BOC resold local services and interLATA services to potential customers.

B. Section 272(g)

1. Marketing Restrictions on BOC Section 272 Affiliates

a. Background. Section 272(g)(1) provides that a BOC affiliate may not market or sell telephone exchange services provided by the BOC ''unless that company permits other entities offering the same or similar service to market and sell its telephone exchange services.'' In the NPRM, we requested comment on what regulations, if any, are necessary to implement this provision.

b. Discussion. We agree with the BOCs that no regulations are necessary to implement section 272(g)(1). We do not adopt the three-month advance notice period proposed by AT&T, because it is not required by the statute. Nor do we believe that such a notice period is necessary in order for other carriers to receive nondiscriminatory treatment. As PacTel notes, any agreement between a BOC and its affiliate that enables the affiliate to market or sell BOC services must be conducted on an arm's length basis, reduced to writing, and made publicly available as required by section 272(b)(5). Thus, under section 272(g)(1), other entities offering services that are the same or similar to services offered by the BOC affiliate would have the same opportunity to market or sell the BOC's telephone exchange service under the same conditions as the BOC affiliate.

We also agree with Sprint that the term ''same or similar service'' in section 272(g)(1) encompasses information services. Thus, a section 272 affiliate may not market or sell information services and BOC telephone exchange services unless the BOC permits other information service providers to market and sell telephone exchange services. Finally, we decline to adopt MCI's requested clarification that 272(g)(1) applies to the international sphere. MCI appears to be concerned about a BOC's discriminatory provision of exchange access to foreign carriers. We conclude, however, that section 272(g)(1) applies only to the provision of ''telephone exchange'' service, not to the provision of ''exchange access.'' Section 202 bars a BOC from unreasonable discrimination in the provision of exchange access services used to originate and terminate domestic interstate and international toll traffic.

2. Marketing Restrictions on BOCs

a. Background. Section 272(g)(2) states that ''[a BOC] may not market or sell interLATA service provided by an affiliate required by this section within any of its in-region States until such company is authorized to provide interLATA services in such State under section 271(d).'' In the NPRM, we sought comment on whether section 272(g)(2) imposes the same types of restrictions on the BOCs that section 271(e) imposes on the interexchange carriers.

b. Discussion. We agree with the BOCs that no regulations are necessary to implement section 272(g)(2). The statute clearly states that BOCs are prohibited from either selling or marketing in-region interLATA services provided by a section 272 affiliate until they have received approval from the Commission under section 271. We note, however, that section 272 does not prohibit a BOC that provides out-of-region interLATA services, or intraLATA toll service, from marketing or selling those services in combination with local exchange services. If such advertisements reach in-region customers, however, the BOC must make it clear to those customers that the advertisements do not apply to in-region interLATA services. This obligation is similar to the obligation discussed above, which requires covered interexchange carriers to disclose to consumers receiving BOC resold local service that bundled packages are not available to them. After a BOC receives authorization under section 271, the restriction in section 272(g)(2) is no longer applicable, and the BOC will be permitted to engage in the same type of marketing activities as other service providers.

Inbound Marketing. We conclude that BOCs must continue to inform new local exchange customers of their right to select the interLATA carrier of their choice and take the customer's order for the interLATA carrier the customer selects. The obligation to continue to provide such nondiscriminatory treatment stems from section 251(g) of the Act, because we have not adopted any regulations to supersede these existing requirements. Specifically, the BOCs must provide any customer who orders new local exchange service with the names and, if requested, the telephone numbers of all of the carriers offering interexchange services in its service area. A customer orders ''new service'' when the customer either receives service from the BOC for the first time, or moves to another location within the BOC's in-region territory. As part of this requirement, a BOC must ensure that the names of the interexchange carriers are provided in random order. We decline to adopt NCTA's request that we extend this obligation to require that BOCs inform inbound callers of other cable operators and providers of video services in the area, however, because no such obligation currently exists, and no new requirement is imposed by the statute. We further conclude that the continuing obligation to advise new customers of other interLATA options is not incompatible with the BOCs' right to market and sell the services of their section 272 affiliates under section 272(g). Thus, a BOC may market its affiliate's interLATA services to inbound callers, provided that the BOC also informs such customers of their right to select the interLATA carrier of their choice.

Teaming. We conclude that section 272(g) is silent with respect to the question of whether a BOC may align itself with an unaffiliated entity to provide interLATA services prior to receiving section 271 approval. We agree with the BOCs that the language of section 272(g) only restricts the BOC's ability to market or sell interLATA services ''provided by an affiliate required by [section 272].'' We note, however, that any equal access requirements pertaining to ''teaming'' activities that were imposed by the MFJ remain in effect until the BOC receives section 271 authorization. Thus, to the extent that BOCs align with non-affiliates, they must continue to do so on a nondiscriminatory basis.

3. Section 272(g)(3)

a. Background. Section 272(g)(3) states that ''[t]he joint marketing and sale of services permitted under this subsection shall not be considered to violate the nondiscrimination provisions of subsection [272](c).''

b. Discussion. Some of the activities identified by the parties appear to fall clearly within the scope of section 272(g)(3) and hence would be excluded from the section 272(c) nondiscrimination requirements. For example, activities such as customer inquiries, sales functions, and ordering, appear to involve only the marketing and sale of a section 272 affiliate's services, as permitted by section 272(g). Other activities identified by the parties, however, appear to be beyond the scope of section 272(g), because they may involve BOC participation in the planning, design, and development of a section 272 affiliate's offerings. In our view, such activities are not covered by the section 272(g) exception to the BOC's nondiscrimination obligations. We see no point to attempt at this time to compile an exhaustive list of the specific BOC activities that would be covered by section 272(g). We recognize

that such determinations are fact specific and will need to be made on a case-by-case basis.

C. Interplay Between Sections 271(e), 272(g) and Other Provisions of the Statute

1. Background

In the NPRM, we sought comment on whether the affiliate may purchase marketing services from the BOC on an arm's length basis pursuant to section 272(b)(5), or whether a BOC and its affiliate should be required to contract jointly with an outside marketing entity for joint marketing of interLATA and local exchange service in order to comply with section 272(b)(3). We also sought comment on the interplay between the marketing restrictions in sections 271 and 272 and the CPNI provisions set forth in section 222 that are the subject of a separate proceeding. In addition, we requested comment on whether the joint marketing provision in section 274(c) has any bearing on how we should apply the joint marketing provisions in sections 271 and 272.

2. Discussion

As discussed above in Part IV.C, we conclude that a BOC and its affiliate are not required to contract jointly with an outside entity in order to comply with section 272(b)(3). Thus, a BOC and its affiliate may provide marketing services for each other, provided that such services are conducted pursuant to an arm's-length transaction, consistent with the requirements of section 272(b)(5). We decline to address parties' arguments raised in this proceeding regarding the interplay between section 272(g) and either section 222 or section 274(c) to avoid prejudging issues in our pending CPNI proceeding, CC Docket No. 96–115, or our electronic publishing proceeding, CC Docket No. 96–152. We emphasize that, if a BOC markets or sells the services of its section 272 affiliate pursuant to section 272(g), it must comply with the statutory requirements of section 222 and any rules promulgated thereunder.

VIII. Provision of Local Exchange and Exchange Access by BOC Affiliates

A. Background

In the NPRM, we expressed concern that a BOC might attempt to circumvent the section 272 safeguards by transferring local exchange and exchange access facilities and capabilities to one of its affiliates. We requested comment on whether we should prohibit all transfers of network capabilities from a BOC to an affiliate. Alternatively, we sought comment on whether a BOC transfer of network capabilities to an affiliate would make that affiliate a successor or assign of the BOC pursuant to section 3(4)(B) of the Act and, consequently, subject the affiliate to the nondiscrimination requirements of section 272(c)(1) and 272(e).

We also requested comment on whether, if a BOC were permitted to transfer local exchange and exchange access capabilities to an affiliate, we should exercise our general rulemaking authority to adopt regulations to prevent such an affiliate from engaging in discriminatory practices, or whether existing statutory prohibitions on discrimination are sufficient. For example, we noted that BOC affiliates that provide interstate interLATA telecommunications services already would be subject to the requirements of sections 201 and 202, which are applicable to all common carriers. Those obligations would not apply to information services affiliates and manufacturing affiliates, however, because they are not ''common carriers'' under the Act. As an additional matter, we tentatively concluded that a BOC affiliate that is classified as an incumbent LEC would also be subject to the nondiscrimination requirements of section 272(c).

B. Discussion

Transfer of local exchange and exchange access capabilities. We conclude that a BOC cannot circumvent the section 272 requirements by transferring local exchange and exchange access facilities and capabilities to an affiliate. As we discussed above, all goods, services, facilities, and information that the BOC provides to its section 272 affiliate are subject to the section 272(c)(1) nondiscrimination requirement. Application of section 272(c)(1) to the BOC's provision of such items should address to a large extent concerns about the BOC ''migrating'' or ''transferring'' key local exchange and exchange access services and facilities to the 272 affiliate. We note, however, that there are still legitimate concerns that a BOC could potentially evade the section 272 or 251 requirements by, for example, first transferring facilities to another affiliate or the BOC's parent company, which would then transfer the facilities to the section 272 affiliate. To address this problem, we conclude that, if a BOC transfers to an affiliated entity ownership of any network elements that must be provided on an unbundled basis pursuant to section 251(c)(3), we will deem such entity to be an ''assign'' of the BOC under section 3(4) of the Act with respect to those network elements. Any successor or assign of the BOC is subject to the section 272 requirements in the same manner as the BOC. Thus, the interLATA and manufacturing operations contemplated by section 272 would need to occur in an affiliate other than the one to which the local exchange and exchange access facilities have been transferred. We also note that, based on the plain language of the statute, section 272(c) only applies to the BOC or an affiliate that is a ''successor or assign'' of the BOC. We agree with Ameritech that, unlike sections 272 (a) and (e), section 272(c) does not apply to BOC affiliates merely because they qualify as incumbent LECs.

We decline to adopt an absolute prohibition on a BOC's ability to transfer local exchange and exchange access facilities and capabilities to an affiliate, because we conclude based on the record before us that such a restriction would be overly broad and exceed the requirements of the Act. We note, however, that our determination does not preclude a state from prohibiting a BOC's transfer of local exchange facilities under its regulatory framework for incumbent LECs.

In view of our decision to treat a BOC affiliate as a ''successor or assign'' of the BOC if the BOC transfers network elements to the affiliate, we find it unnecessary at this time to adopt additional nondiscrimination regulations applicable to section 272 affiliates. A section 272 affiliate that is not deemed a ''successor or assign'' of a BOC would nevertheless be subject to the obligations imposed by section 202—which prohibits common carriers from, among other things, engaging in ''unjust and unreasonable'' practices with respect to the provision of interstate services. Moreover, BOC interLATA services affiliates that offer intrastate interLATA telecommunications services would be subject to corresponding nondiscrimination obligations that state statutes and regulations typically impose on common carriers. We conclude based on the current record that these existing requirements should be adequate to protect competition and consumers against anticompetitive conduct by a BOC section 272 affiliate.

Integrated affiliates. Numerous commenters also request that we address whether the separate affiliate safeguards imposed by section 272 prohibit a section 272 affiliate from offering local exchange service through the same corporate entity. Based on our analysis of the record and the applicable statutory provisions, we conclude that

section 272 does not prohibit a section 272 affiliate from providing local exchange services in addition to interLATA services, nor can such a prohibition be read into this section. Specifically, section 272(a)(1) states that—

> A Bell operating company (including any affiliate) which is a local exchange carrier that is subject to the requirements of section 251(c) may not provide any service described in [section 272(a)(2)] unless it provides that service through one or more affiliates that * * * are separate from any operating company entity that is subject to the requirements of section 251(c) * * *

We find that the statutory language is clear on its face—a BOC section 272 affiliate is not precluded under section 272 from providing local exchange service, provided that the affiliate does not qualify as an incumbent LEC subject to the requirements of section 251(c). Because the text and the purpose of the statute are clear, there is no need, as CCTA suggests, to resort to legislative history. We also agree with Ameritech that a BOC affiliate should not be deemed an incumbent LEC subject to the requirements of section 251(c) solely because it offers local exchange services; rather, section 251(c) applies only to entities that meet the definition of an incumbent LEC under section 251(h). Section 251(h)(1) defines an incumbent LEC as, *inter alia*, a local exchange carrier that: (1) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service, and (2) was a member of the National Exchange Carrier Association (NECA) or becomes a successor or assign of such a member. Because no BOC affiliate was a member of NECA when the 1996 Act was enacted, such affiliates may be classified as incumbent LECs under this statutory provision only if they are successors or assigns of their affiliated BOCs. Alternatively, under section 251(h)(2), if the Commission determines that a carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by the incumbent LEC, and such carrier has substantially replaced an incumbent LEC, such carrier may be treated by rule as an incumbent LEC for purposes of section 251. We find no basis in the record of this proceeding to find that a BOC affiliate must be classified as an incumbent LEC under section 251(h)(2) merely because it is engaged in local exchange activities. Absent such a finding, BOC affiliates that are neither one of the Bell operating companies listed under 153(4)(A), nor a successor or assign of any such company, are not subject to the separation requirements of section 272.

Furthermore, we conclude that section 251 does not preclude section 272 affiliates from obtaining resold local exchange service pursuant to section 251(c)(4) and unbundled elements pursuant to section 251(c)(3), because the statute does not place any restrictions on the types of telecommunications carriers that may qualify as ''requesting carriers.'' We disagree with CCTA's assertion that section 272 affiliates cannot be treated as requesting carriers, because such affiliates are ''part of the standard for determining nondiscriminatory interconnection by the [incumbent LEC] for all other telecommunications carriers.'' The fact that a determination of whether an incumbent LEC provides nondiscriminatory access may be based on a comparison of the access that the incumbent LEC provides itself or its affiliate does not preclude such affiliate from being a ''requesting carrier'' under section 251. There is nothing inconsistent with both requiring nondiscriminatory access and at the same time allowing an affiliate to be a requesting carrier. Moreover, we find nothing in the statute or in the *First Interconnection Order* that limits the definition of ''requesting carrier'' to non-affiliates. Thus, section 272 affiliates cannot be precluded under section 251 from qualifying as ''requesting carriers'' that are entitled to purchase unbundled elements or retail services at wholesale rates from the BOC.

We further conclude that section 272(g)(1) cannot be read as imposing a limitation on the ability of section 272 affiliates to exercise their rights under section 251(c)(3). We are not persuaded by AT&T's argument that, because section 272(g)(1) sets forth limited conditions under which section 272 affiliates may ''market or sell'' local exchange services, allowing those affiliates to purchase unbundled elements is inconsistent with the Act. Rather, we agree with CCTA that section 272(g)(1) speaks only to marketing issues, and does not address the conditions under which a section 272 affiliate may provide local exchange services. Furthermore, we find AT&T's claim that allowing section 272 affiliates to provide local exchange service through unbundled elements will ''artificially and decisively slant [the] playing field in the BOC's favor'' unpersuasive, because other telecommunications carriers will be able to provide local exchange service through unbundled elements on the same terms and conditions. AT&T's concern that the affiliate will be able to avoid access charges by obtaining the unbundled elements appears to be premised on the view that access charges are currently too high. The issue of reforming access charges will, however, be addressed in a separate proceeding. Moreover, we conclude that MCI's argument—that opportunities for discrimination and cross-subsidy are greater when the BOC provides network elements to its affiliate than when it provides resold services—is speculative. To the extent that concerns over discrimination arise, there are safeguards in sections 251 and 252 to address such concerns. We therefore decline to distinguish between a section 272 affiliate's ability to provide local service by reselling BOC local exchange service and its ability to offer such service by purchasing unbundled elements from the BOC.

We also conclude as a matter of policy that regulations prohibiting BOC section 272 affiliates from offering local exchange service do not serve the public interest. The goal of the 1996 Act is to encourage competition and innovation in the telecommunications market. We agree with the BOCs that the increased flexibility resulting from the ability to provide both interLATA and local services from the same entity serves the public interest, because such flexibility will encourage section 272 affiliates to provide innovative new services. To the extent that there are concerns that the BOCs will unlawfully subsidize their affiliates or accord them preferential treatment, we reiterate that improper cost allocation and discrimination are prohibited by existing Commission rules and sections 251, 252, and 272 of the 1996 Act, and that predatory pricing is prohibited by the antitrust laws. Our affiliate transaction rules, as modified by our companion *Accounting Safeguards Order*, address the BOCs' ability to engage in improper cost allocation. The rules in this Order and our rules in our *First Interconnection Order* and our *Second Interconnection Order* ensure that BOCs may not favor their affiliates. In sum, we find no basis in the record for concluding that competition in the local market would be harmed if a section 272 affiliate offers local exchange service to the public that is similar to local exchange service offered by the BOC.

Although we conclude that the 1996 Act authorizes section 272 affiliates to purchase unbundled elements, we emphasize that BOC facilities and services provided to section 272 affiliates must be made available to others on the same terms, conditions, and prices provided to the BOC affiliate

pursuant to the nondiscrimination requirements of sections 272 and 251(c)(3). Thus, if a BOC affiliate is a requesting carrier under section 251, the BOC is required to treat unaffiliated requesting carriers in the same manner that the BOC treats its affiliate, unless the unaffiliated entity has requested different treatment. For example, if a BOC were to provide its section 272 affiliate with access to operational support systems (OSS) functions via a different method or system than it provides to requesting carriers under section 251, we would regard such discriminatory treatment as a violation of section 251(c)(3). We believe such nondiscrimination requirements will prevent BOCs from providing special treatment to their affiliates.

State regulation. As mentioned above, several BOCs have already submitted applications to state regulatory commissions seeking authority to provide both local exchange services and interLATA services from the same affiliate. Although we conclude that the 1996 Act permits section 272 affiliates to offer local exchange service in addition to interLATA service, we recognize that individual states may regulate such integrated affiliates differently than other carriers.

IX. Enforcement

A. Reporting Requirements under Section 272

1. Background

BOCs are required under *Computer III* to provide information to third parties regarding changes to the network and new network services and to report periodically on the quality and timeliness of installation and maintenance. We sought comment in the NPRM on what requirements or mechanisms were necessary to facilitate the detection of violations of the separate affiliate and nondiscrimination requirements of section 272. We asked parties to comment on whether we should impose reporting and other requirements on BOCs analogous to those requirements imposed in the *Computer III* and subsequent *ONA* proceedings to ensure compliance with section 272 requirements. We specifically requested comment on whether these requirements are sufficient to implement the section 272(c)(1) nondiscrimination requirement.

2. Discussion

We conclude that none of the reporting or other requirements of *Computer III/ONA* is necessary to implement the requirements of section 272(c)(1) at this time. For the same reasons, we further conclude that (with the exception of section 272(e)(1)), no reporting requirements are needed to facilitate the detection and adjudication of violations of the separate affiliate and nondiscrimination requirements of section 272. As many commenters observe, reporting requirements serve two primary purposes. First, they act to deter potential anticompetitive behavior by requiring BOCs to provide objective proof of their compliance with the separate affiliate and nondiscrimination requirements. Second, they enable competitors, as well as the Commission, to detect any potential violations of these requirements. We believe, however, that sufficient mechanisms already exist within the 1996 Act both to deter anticompetitive behavior and to facilitate the detection of potential violations of section 272 requirements. Nevertheless, we intend to monitor compliance with section 272 requirements and, of course, reserve the ability to undertake appropriate measures in the event that future developments warrant.

The requirements of section 272(b), as discussed above, discourage anticompetitive behavior by the BOC by requiring the BOC and its section 272 affiliate to adhere to certain structural and transactional requirements, including the requirement to ''operate independently.'' We therefore conclude that it is unnecessary to impose the *Computer III/ONA* reporting requirements in order to implement the separate affiliate and nondiscrimination requirements of section 272. Further, we note that even some commenters that support imposing *Computer III/ONA* reporting requirements on BOCs admit that they do not seem useful or practical.

We find, instead, that several of the disclosure requirements established in the 1996 Act will facilitate the detection of anticompetitive behavior. Section 272(d), for example, requires that a BOC obtain and pay for a biennial joint federal/state audit to determine whether it has ''complied with [section 272] and the regulations promulgated under this section * * *.'' We conclude that this broad audit requirement is intended to verify BOC compliance with the accounting and non-accounting requirements of section 272, as implemented. In addition, we note that, pursuant to section 271(d)(3)(B), a BOC may not receive authorization to provide in-region interLATA services until it shows, among other things, that the ''requested authorization will be carried out in accordance the requirements of section 272.'' In view of these requirements, we reject ITAA's suggestion that BOCs should submit to the Commission section 272 compliance plans, and periodic reports regarding their implementation of those plans, as unnecessarily burdensome.

In addition, the section 272(b)(5) requirement that all transactions between a BOC and its section 272 affiliate be reduced to writing and made publicly available should serve as a powerful mechanism both to detect violations of the section 272 requirements and to deter anticompetitive behavior. Similarly, we find that our interpretation of section 272(c)(1) as a flat prohibition against discrimination will work in conjunction with the section 272(b)(5) disclosure requirement to deter anticompetitive behavior. Under section 272(c)(1), any difference between the goods, services, and facilities given to a section 272 affiliate and those given to an unaffiliated entity may give rise to a claim of discrimination. Some commenters argue that the requirement of section 272(b)(5) should be extended to encompass not only transactions between a BOC and its section 272 affiliate, but also transactions between a BOC and unaffiliated entities. We find, however, that section 272(b)(5), by its terms, applies only to the transactions between the BOC and its section 272 affiliate. Extending such a requirement to transactions between a BOC and unaffiliated entities would expand the scope of this section beyond the statutory requirements and is not necessary to detect the type of discrimination that section 272 is intended to prevent. As discussed below, parties may make a request for such reporting requirements in the context of their interconnection negotiations with BOCs. Presented with such a request, the BOC will have the obligation to negotiate this proposal in good faith pursuant to section 251(c)(1).

In addition to the requirements of section 272, the Act also imposes other disclosure requirements on the BOCs that, in our view, largely address the concerns cited by parties arguing for additional reporting requirements. For example, section 251(c)(5) requires all incumbent LECs, including BOCs, to disclose publicly information about network changes that will affect a competing service provider's performance or ability to provide service or will affect the incumbent LEC's interoperability with other service providers. In implementing this requirement in our *Second Interconnection Order,* we found that this disclosure about network changes ''promotes open and vigorous

competition'' and provides ''sufficient disclosure to insure against anticompetitive acts.'' Similarly, section 273(c)(1) requires BOCs to maintain and file with the Commission full and complete information of the protocols and technical requirements used for network connection, and section 273(c)(4) requires BOCs to provide ''to interconnecting carriers providing telephone exchange service, timely information on the planned deployment of telecommunications equipment.''

We also find that, beyond the reporting requirements mandated under the 1996 Act, there are other avenues by which a telecommunications carrier may obtain information relevant to detecting anticompetitive BOC conduct. For example, competitive telecommunications carriers, on their own initiative, could seek to incorporate certain performance and quality standards into their negotiated or arbitrated interconnection agreements to ensure that BOCs satisfy their obligation to provide service in a nondiscriminatory manner. As noted above, BOCs, like any other incumbent LEC, are obligated to negotiate such requests in good faith pursuant to section 251(c)(1). Through this process, competitive carriers will be able to tailor the interconnection agreement to include only those reporting requirements that they deem necessary or find to be most useful. Further, pursuant to section 252(a), BOCs must file all interconnection agreements with the appropriate state commission and under section 252(h) these agreements must be made publicly available; the terms and conditions of these interconnection agreements, therefore, are on public record and available to competitors. We also note that there are several state utility commissions that, pursuant to state administrative code, require LECs to conform to certain service standards and make service quality reports publicly available. New York and Virginia, for example, require all LECs to file periodic service quality or standard of service reports.

We believe that the reporting requirements required by the 1996 Act, those required under state law, and those that may be incorporated into interconnection agreements negotiated in good faith between BOCs and competing carriers will collectively minimize the potential for anticompetitive conduct by the BOC in its interexchange operations. In addition to deterring potential anticompetitive behavior, these information disclosures will also facilitate detection of potential violations of the section 272 requirements. We, therefore, agree with those parties who argue that there is no need to impose additional reporting requirements at this time. Further, we note that even several parties who advocate the imposition of additional reporting requirements recognize the inherent difficulty of identifying and preventing every type of discrimination through regulatory measures.

Finally, we believe that the complaint process will bring violations of section 272 to the attention of the Commission. Congress has established a mechanism in section 271(d) to facilitate the enforcement of the requirements of section 272. Further, as discussed below, if the information necessary to prove a complainant's claim is not publicly available, the complainant has the opportunity to obtain the necessary documentation from the BOC in the context of an enforcement proceeding. We expect that BOC competitors will be vigilant in detecting BOC deficiencies and will avail themselves of the expedited complaint process established by section 271(d)(6).

B. Section 271(d)(6) Enforcement Provisions

As discussed in the NPRM, section 271(d)(6) of the Communications Act gives the Commission specific authority to enforce the conditions that a BOC is required to meet in order to obtain Commission authorization to provide in-region interLATA services. Specifically, section 271(d)(6) states:

(A) Commission Authority.—If at any time after the approval of an application under [section 271(d)(3)], the Commission determines that a [BOC] has ceased to meet any of the conditions required for such approval, the Commission may, after notice and opportunity for a hearing—

(i) issue an order to such company to correct the deficiency;

(ii) impose a penalty on such company pursuant to title V; or

(iii) suspend or revoke such approval.

(B) Receipt and Review of Complaints.—The Commission shall establish procedures for the review of complaints concerning failures by [BOCs] to meet conditions required for approval under [section 271(d)(3)]. Unless the parties otherwise agree, the Commission shall act on such complaint within 90 days.

1. Commission's Enforcement Authority under Section 271(d)(6)

a. Background. In the NPRM, we sought to clarify the relationship between the Commission's authority under section 271(d)(6) and the Commission's existing enforcement authority under sections 206–209 of the Communications Act. We tentatively concluded that, in the context of ''complaints concerning failures by [BOCs] to meet the conditions required for approval under [section 271(d)(3)],'' section 271(d)(6) generally augments the Commission's existing enforcement authority. We sought comment on whether, in a situation where a complaint alleges that a BOC has ceased to meet the conditions for approval to provide in-region interLATA telecommunications services and seeks damages as a result of the underlying alleged unlawful conduct, a Commission determination that the BOC has ceased to meet the conditions and the imposition of a section 271(d)(6)(A) sanction would fulfill the Commission's duty to ''act on such complaint within 90 days.''

In order to approve a BOC's application to provide in-region interLATA services pursuant to section 271(d)(3), the Commission must determine that the BOC: meets the requirements of section 271(c)(1); satisfies the competitive checklist in section 271(c)(2)(B); complies with the requirements of section 272; and demonstrates that the approval of its application is consistent with the public interest, convenience, and necessity. Section 271(d)(6)(A) sets forth various actions the Commission may take at any time after the approval of an application, and after notice and opportunity for a hearing, if it determines that a BOC has ceased to meet any of these conditions. In the NPRM, we stated that the Commission may determine that a BOC has ceased to meet the conditions of its approval under section 271(d)(3) either via the resolution of an expedited complaint proceeding pursuant to section 271(d)(6)(B) or in a proceeding commenced on its own motion.

b. Discussion. We affirm our tentative conclusion that section 271(d)(6) augments the Commission's existing enforcement authority. We reject both NYNEX's contention that the specific remedies of section 271(d)(6)(A) supersede the general sanctions contained in sections 206–209 of the Act as well as SBC's assertion that there is no statutory basis for applying the provisions of section 206–209 when a violation of section 271(d)(3) has been alleged. As AT&T observes, there is no support in the statute or its legislative history for the assertion that Congress intended to eliminate the damages remedy that applies to all other violations of Title II for violations of sections 271 and 272, especially in light of the competitive concerns that underlie the 1996 Act. We also conclude

that, where a complainant seeks damages as a result of the underlying alleged violative conduct, a Commission determination on whether the BOC has ceased to meet the conditions and the imposition of a section 271(d)(6)(A) sanction, where appropriate, would fulfill the Commission's statutory duty to ''act on such complaint within 90 days.'' Completion of this statutory obligation, however, would not preclude the complainant from filing a supplemental complaint to determine the actual amount of damages.

With respect to imposition of a Title V penalty (*e.g.*, forfeiture and fines) pursuant to section 271(d)(6)(A)(ii), we note that Title V provides for a separate process that is initiated by the issuance of a notice of apparent liability. We find, therefore, that the Commission's obligation under section 271(d)(6) is satisfied with respect to Title V penalties if, within 90 days (or longer if parties agree) of receiving a complaint, the Commission, upon finding a BOC liable for unlawful conduct, issues a notice of apparent liability pursuant to section 503. Finally, we affirm our tentative conclusion that the Commission may make a determination that a BOC has ceased to meet the conditions for entry either in a proceeding commenced on its own motion or via the resolution of a complaint proceeding. We further find, as most commenters suggest, that the Commission is not bound by the 90-day time constraint when it initiates a proceeding on its own motion.

2. Legal and Evidentiary Standards

a. Background. We sought comment in the NPRM on the legal and evidentiary standards necessary to establish that a BOC has ceased to meet the conditions required for its approval to provide in-region interLATA service. The majority of commenters assert that prescribing the elements of every claim that could conceivably be brought before the Commission would, at this point, be a fruitless exercise. USTA maintains that, in order to invoke section 271(d)(6), the complainant's allegations and supporting proof must be of such character that, had it been presented prior to entry, the Commission would not have approved the BOC's application. Similarly, MCI contends that a complainant seeking section 271(d)(6) relief should state that the defendant BOC is no longer meeting the conditions for entry, cite the specific requirements the BOC is violating, and describe how it is violating them.

b. Discussion. MCI and USTA correctly point out that section 271(d)(6) cannot be invoked unless the complainant alleges that the BOC has failed to meet the conditions of entry under section 271(d)(3). We conclude, however, that the procedural aspects of this showing are best addressed in our pending proceeding to adopt expedited complaint procedures. We agree with the majority of commenters and conclude that, beyond the duties and obligations discussed elsewhere in this Order, we need not establish at this time substantive rules that would define the specific legal elements of a claim that a BOC has failed or ceased to meet the conditions for entry under section 271(d)(3). Although we recognize that the establishment of substantive standards or ''bright line'' tests could assist in expediting the ultimate disposition of complaints invoking the 90-day statutory resolution deadline under section 271(d)(6), the conditions for entry include not only compliance with the section 272 requirements, but also satisfaction of the requirements of the competitive checklist in section 271(c)(2)(B), as well as a demonstration that the BOC application is consistent with the public interest, convenience, and necessity. Given the widely varying circumstances that may arise in the context of complaints alleging failure to meet the conditions of entry, we conclude that it is best to determine a BOC's compliance or noncompliance with these requirements on the basis of concrete facts presented in particular cases, rather than by substantive rule in this notice-and-comment proceeding.

For these same reasons, we agree with a majority of the commenters that it would be impractical to prescribe specific evidentiary standards for establishing violations of all of the substantive requirements contained in the competitive checklist. Just as the circumstances that arise in the context of 271(d)(6) complaints are likely to vary from case to case, so too will the information necessary to prove or disprove allegations that the BOC has ceased to meet the conditions of entry. We note as a general matter that, consistent with the requirements of the APA, the Commission's practice in formal complaint proceedings pursuant to section 208 has been to determine compliance or noncompliance with the Act or the Commission's rules and orders according to a ''preponderance of the evidence'' standard of proof. Neither section 271 nor its legislative history prescribe a different standard of proof for establishing a BOC's failure to meet the conditions required for entry; we conclude, therefore, that this evidentiary standard applies equally to section 271(d)(6) complaints. In the paragraphs that follow, we address related issues regarding what constitutes a *prima facie* showing that a BOC has ceased to meet one or more of the conditions for interLATA entry and whether the burden of proof should shift to the defendant BOC once the complainant makes such a showing. Notwithstanding the existence of a *prima facie* showing or any shift in the burden of production, as discussed below, to the extent that a complainant and defendant BOC differ over the material facts underlying a section 271(d)(6) complaint, the preponderance of evidence standard will guide our ultimate disposition of the complaint.

3. Prima Facie Standard

a. Background. We sought comment in the NPRM on what constitutes a *prima facie* showing that a BOC has ceased to meet one or more of the conditions for interLATA entry. We asked parties to comment on whether it is enough for complainants invoking the expedited complaint procedures under section 271(d)(6)(B) to plead, along with proper supporting evidence, ''facts which, if true, are sufficient to constitute a violation of the Act or Commission order or regulation'' in order to establish a *prima facie* showing that the BOC has ceased to meet the conditions for approval in section 271(d)(3).

b. Discussion. We conclude that complainants invoking the expedited complaint procedures of section 271(d)(6)(B) must plead, along with proper supporting evidence, facts which, if true, are sufficient to constitute a violation of the Act or Commission order or regulation in order to establish a *prima facie* showing that a BOC has ceased to meet the conditions for entry. Contrary to the suggestion of NYNEX and others, we did not propose in our NPRM that it would be sufficient for a complainant to establish a *prima facie* case without the submission of ''proper supporting evidence.'' Such a showing is not permissible under either our present pleading requirements or under the rules we propose in the *Enforcement NPRM,* 61 FR 67978 (December 26, 1996), on expedited complaint procedures. Under our present rules, a formal complaint is required to include certain categories of information, including specific facts and legal authorities upon which the complaint is based. In addition, a formal complaint must identify or describe specifically and in detail the carrier conduct that forms the basis for the complaint as well as the nature of injury sustained. Further, in our *Enforcement NPRM,* we recently proposed to

augment these requirements by requiring that a formal complaint include facts supported by relevant documentation or affidavits. Under our proposed rules, a complainant that fails to meet these pleading requirements may face either a dismissal of the complaint or a summary denial of the relief sought. Thus, in light of the pleading requirements that presently exist, as well as those proposed in the *Enforcement NPRM,* we reject allegations by some commenters that the *prima facie* standard we are adopting in this Order will violate the defendant's procedural rights, allow a complainant to file only a ''bare notice-type complaint,'' or invite a flood of frivolous suits designed to harass the BOCs.

We reject the recommendations of AT&T and MCI that we adopt specific criteria the complainant must demonstrate in order to establish a *prima facie* showing. As we stated above, beyond the legal and evidentiary standards established in this proceeding, it would be imprudent for us, at this time, to attempt to propose a comprehensive list of the showings that complainants will be required to make in order to demonstrate violations of the conditions of entry. Rather, we find it more appropriate to establish a generally applicable *prima facie* standard that is suitable for all complaints invoking section 271(d)(6), not just those alleging specific violations of the section 272 requirements.

4. Burden-Shifting and Presumption of Reasonableness

a. Background. In the NPRM, we sought comment on whether the pro-competitive goals of the Act are advanced by shifting the ultimate burden of proof from the complainant to a defendant BOC, not just in complaints alleging discrimination under section 202(a), but in all complaints alleging that a BOC has ceased to meet any of the conditions for its approval to provide interLATA services under section 271(d)(3). We sought comment specifically on whether the burden should shift to the defendant BOC once the complainant makes a *prima facie* showing that a BOC has ceased to meet the conditions of section 271(d)(3).

We also observed in the NPRM that in complaints challenging the rates, terms, and conditions of non-dominant carrier service offerings under sections 201(b) and 202(a), the Commission has effectively established a rebuttable presumption that such rates and practices are lawful. We tentatively concluded that, in the context of complaints alleging that a BOC has ceased to meet the conditions required for the provision of in-region interLATA services, we will not employ a presumption of reasonableness in favor of the BOC or BOC affiliate, regardless of whether the BOC or BOC affiliate is regulated as a dominant or non-dominant carrier.

b. Discussion. For the reasons and in the manner discussed below, we conclude that the burden of production with respect to an issue should shift to the BOC after the complainant has demonstrated a *prima facie* case that a defendant BOC has ceased to meet the conditions of entry. As an initial matter, we note that the term ''burden of proof'' has historically been used to describe two separate but related concepts. First, it has been used to describe the burden of persuasion with respect to a particular issue which, under the traditional view, never shifts from one party to the other at any stage in the proceeding. Second, it has been used to describe the burden of going forward with evidence necessary to avoid an adverse decision on that issue. This burden may shift back and forth between the parties. Under the approach we adopt today, the burden of production or coming forward with evidence will shift to the defendant BOC once the complainant has established a *prima facie* case that the conditions of interLATA entry have been violated. In other words, the defendant BOC will have an affirmative obligation to produce evidence and arguments necessary to rebut the complainant's *prima facie* case or risk an adverse ruling. The complainant, however, will have the ultimate burden of persuasion throughout the proceeding; that is, to show that the ''preponderance of the evidence'' produced in the proceeding weighs in its favor. As explained more fully below, shifting the burden of production to the defendant BOC once a *prima facie* case has been made will require the party most likely to have relevant information in its possession to produce the information at an early stage in the proceeding.

Currently, in a typical complaint proceeding, the complainant has the burden of establishing that a common carrier has violated the Communications Act or a Commission rule or order. This burden of persuasion does not shift to the defendant carrier at any time in the proceeding. As Sprint observes, however, in view of the statutory mandate to resolve section 271(d)(3) complaints in 90 days, the Commission must balance the need for expeditious resolution of the complaint against the need to develop a full record. We recognize, as do many commenters, that, even though some information may be publicly available, in many cases the BOC will be the sole possessor of certain information relevant to the disposition of the complainant's case. Our primary goal, as we expressed in the NPRM, is to give full force and effect to the pro-competitive policies underlying section 271(d)(6) by ensuring the full and fair resolution of complaints challenging a BOC's compliance with the conditions for interLATA entry within the statutory 90-day period. We find that shifting the burden of production to the defendant BOC after a *prima facie* showing has been made by the complainant will facilitate our ability to reach this goal.

Further, as we observed in the NPRM, effective enforcement of the conditions of interLATA entry, including the separate affiliate and nondiscrimination requirements of section 272, is critical to ensuring the full development of competition in the local and interexchange telecommunications markets. Many commenters argue that prompt enforcement of these conditions is essential not only to ensure the advent of true competition, but also to ensure that the BOCs take the conditions of entry seriously, particularly after they enter the in-region interLATA market. We conclude that shifting the burden of production to the BOC will facilitate the detection of anticompetitive behavior by the BOC and will enable us to adjudicate expeditiously complaints alleging violations of section 271(d)(3). Further, as mentioned above, in the context of a complaint proceeding, BOCs will have an affirmative obligation to produce all relevant evidence in their possession to rebut the complainant's claim or face an adverse ruling. Shifting the burden of production, therefore, may ultimately reduce the number of complaints filed against the BOCs by encouraging them to divulge exculpatory evidence before enforcement proceedings begin.

Many commenters that support shifting the burden of proof do not specify whether they advocate shifting the burden of persuasion or the burden of production. It is evident from the context of some comments, however, that a few commenters support a shift in the burden of persuasion, rather than a shift in the burden of production. In response to these commenters, we find that most of the competitive concerns they raise in support of shifting the burden of persuasion are more than adequately addressed by shifting the burden of production. For example, some parties that advocate shifting the burden of persuasion argue that complainants frequently will require

specific information that is within the exclusive possession of the BOC in order to substantiate their claim. These parties contend that requiring the complainant to maintain the burden of proof would result in needless, extensive discovery, and shifting the burden will give BOCs the incentive to produce information necessary to resolve the complaint. We conclude that these concerns, as well as our goal of facilitating the full and fair resolution of claims alleging violations of the conditions of entry within the statutory 90-day period, are satisfied without requiring BOCs to prove a negative in order to avoid liability, i.e., to prove, by a preponderance of the evidence, that they did not violate the conditions of entry. Further, we find it unnecessary to address most of the BOCs' arguments against burden-shifting because they are directed against shifting the ultimate burden of persuasion rather than the burden of production.

We do find it necessary, however, to respond to Ameritech's argument that informational asymmetry between the complainant and defendant is best addressed in the context of the discovery process. Ameritech maintains that, if the Commission's discovery processes are too cumbersome, they ought to be reformed rather than replaced with burden-shifting. Similarly, other commenters propose various procedural requirements that we might impose to enable us to resolve complaints within the 90-day statutory window. Moreover, a few commenters suggest that Alternative Dispute Resolution may be another mechanism by which to facilitate resolution of complaints alleging a violation of section 271(d)(3).

In response to these arguments, we note that purpose of the *Enforcement NPRM* is to streamline our current procedures and pleading requirements so that we may expedite the processing of all formal complaints and resolve complaints within the deadlines imposed by the 1996 Act. We therefore find that it would be inadvisable to attempt to establish any new procedural rules in this proceeding. Moreover, as PacTel points out, we do not have an adequate record on which to base any such rules. In response to Ameritech, we note that in the *Enforcement NPRM* we specifically proposed to reform our discovery process. Specifically, we sought comment on a range of options to eliminate or modify the discovery process, including prohibiting discovery as a matter of right, limiting the amount or scope of discovery, and allowing the state to set timetables for completion of discovery on an individual case basis. By shifting the burden of production to the BOC after a *prima facie* showing has been made by the complainant, we are ensuring that information relevant to the complainant's claim is disclosed early in the process, and thereby providing the Commission a sufficient record on which to make a decision, even in the potential absence of traditional discovery.

Finally, we affirm our tentative conclusion that, in the context of complaints alleging that a BOC has ceased to meet the conditions required for the provision of in-region interLATA services, we will not employ a presumption of reasonableness in favor of the BOC or BOC affiliate, regardless of whether the BOC or BOC affiliate is regulated as a dominant or non-dominant carrier. The presumption of lawfulness given to nondominant carrier rates and practices is employed in the context of complaints alleging violations of sections 201(b) and 202(b), where the complaint must demonstrate that the defendant's rates and practices are ''unjust and unreasonable.'' We agree with MCI that a presumption of reasonableness is an irrelevant concept in the context of complaints alleging violations of the conditions of interLATA approval in section 271(d)(3), particularly given our interpretation of section 272(c)(1) as an unqualified prohibition on discrimination.

5. Enforcement Measures under Section 271(d)(6)(A)

a. Background. Section 271(d)(6)(A) provides that if, at any time after approval of a BOC application, the Commission determines that the BOC has ceased to meet any of the conditions of its approval to provide interLATA services, the Commission may, after notice and opportunity for a hearing: (1) Issue an order to the BOC to ''correct the deficiency;'' (2) impose a penalty pursuant to Title V; or (3) suspend and revoke the BOC's approval to provide in-region interLATA services.

In the NPRM, we tentatively concluded that we will follow the procedures set forth in Title V to impose Title V penalties, including forfeitures, under section 271(d)(6)(A). As to the non-forfeiture enforcement measures, we sought comment on whether the Commission should exercise its enforcement discretion and impose these sanctions on an individual case basis, or whether we should establish specific legal and evidentiary standards for each type of sanction. Further, we sought comment on the appropriate ''notice and opportunity for a hearing'' for the imposition of these non-forfeiture sanctions, both in the context of a complaint proceeding and on the Commission's own motion. We interpreted ''opportunity for hearing'' not to require a trial-type hearing before an Administrative Law Judge (ALJ). We also tentatively concluded that Congress, by imposing a 90-day deadline for complaints, did not intend to afford the BOC trial-type hearings in enforcement proceedings pursuant to section 271(d).

b. Discussion. We affirm our tentative conclusion that we will follow the procedures set forth in Title V to impose Title V penalties in enforcement actions alleging violations of the conditions of entry under section 271(d)(3). As to non-forfeiture enforcement measures, we conclude that it is impractical, at this point in time, to prescribe the specific elements and factors that would warrant issuance of an order to ''correct the deficiency'' or an order suspending or revoking a BOC's approval to provide in-region interLATA service. We agree with AT&T that to do so would limit our remedial flexibility. Nor do we find it appropriate to establish specific evidentiary standards; rather, our determination of which non-forfeiture measure to impose will depend on the specific facts and circumstances presented in a particular case. We find, nevertheless, that a BOC will have a full and fair opportunity to submit evidence and arguments challenging the imposition of a prescribed sanction within the statutory 90-day period.

We conclude that the phrase ''opportunity for hearing'' in section 271(d)(6)(A) does not require a trial-type hearing before an ALJ prior to the imposition of non-forfeiture enforcement measures. Although we recognize, as PacTel and USTA suggest, that hearings may be necessary to resolve material questions of fact, such as when oral testimony or cross-examination is required, we do not agree that trial-type hearings before an ALJ are required before the Commission imposes any non-forfeiture sanction. We find instead that, regardless of whether the Commission is imposing a non-forfeiture sanction in a proceeding commenced on its own motion or in the context of a complaint proceeding, the Commission can satisfy the hearing requirement of section 271(d)(6)(A) through written submissions rather than oral testimony. Finally, we affirm our tentative conclusion that Congress, by imposing a 90-day deadline for complaints, did not intend to afford BOCs trial-type hearings in all enforcement proceedings pursuant to section 271(d)(6)(B).

X. Final Regulatory Flexibility Certification

The Commission certified in the NPRM that the proposed rules would not have a significant economic impact on a substantial number of small entities because the proposed rules did not pertain to small entities. Written public comment was requested on this proposed certification, and only one comment was received. For the reasons stated below, we certify that the rules adopted herein will not have a significant economic impact on a substantial number of small entities. This certification conforms to the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

The RFA incorporates the definition of small business concerns set forth in 15 U.S.C. § 632 (small business concerns are independently owned and operated, not dominant in their field of operations, and meet any additional criteria established by the Small Business Administration (SBA)). The rules we adopt in this Order implement the non-accounting separate affiliate and nondiscrimination provisions of sections 271 and 272 of the Act, and will apply to the BOCs when they enter previously restricted markets. The NPRM stated that, because BOCs are dominant in their field of operations, they are by definition not small entities and therefore no regulatory flexibility analysis is required. We now note as well that none of the BOCs is a small entity because each BOC is an affiliate of a Regional Holding Company (RHC), and all of the BOCs or their RHCs have more than 1,500 employees. The order also clarifies the joint marketing restrictions that will apply to the nation's largest interexchange carriers for an interim period pursuant to section 271. The most recent data shows that only AT&T, MCI, and Sprint meet the statutory threshold. Moreover, these carriers are not small entities under the SBA definition because each has more than 1,500 employees.

NTCA contends that small incumbent LECs should be considered small entities under the SBA's definition, and therefore, the basis of the proposed certification was incorrect. The certification contained in the NPRM applied both to our proposed rules implementing sections 271 and 272 and to our proposed rules addressing LEC interexchange services. This Order implements only sections 271 and 272, and, as we have indicated, affects only the BOCs, AT&T, MCI and Sprint. NTCA's arguments concerning small incumbent LECs are not relevant to this Order, therefore, and will be addressed in a separate Order in this docket.

We therefore certify, pursuant to section 605(b) of the RFA, that the rules adopted in this order do not have a significant economic impact on a substantial number of small entities. The Commission shall provide a copy of this certification to the Chief Counsel for Advocacy of the SBA, and include it in the report to Congress pursuant to the SBREFA. The certification will also be published in the Federal Register.

Report to Congress. The Commission shall send a copy of this FRFA, along with this Order, in a report to Congress pursuant to the SBREFA, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

XI. Ordering Clauses

Accordingly, It is Ordered that pursuant to sections 1, 2, 4, 201–205, 215, 218, 220, 271, 272, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201–205, 215, 218, 220, 271, 272, and 303(r) the REPORT AND ORDER IS ADOPTED, effective 30 days after publication of a summary in the Federal Register. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

It is further Ordered that the MFS Petition to Consolidate Proceedings in CC Docket Nos. 96–149, 85–229, 90–623, 95–20, and CCBPol 96–09 filed on July 25, 1996 is DENIED.

It is further Ordered that Part 53 of the Commission's Rules, 47 CFR § 53 is ADDED as set forth below.

List of Subjects in 47 CFR Part 53

Bell Operating Companies, Communications common carriers, InterLATA services, Separate affiliate safeguards, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 53 of Title 47 of the Code of Federal Regulations is added to read as follows:

PART 53—SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

Subpart A—General Information

Sec.
53.1 Basis and purpose.
53.3 Terms and definitions.

Subpart B—Bell Operating Company Entry into InterLATA Services

53.101 Joint marketing of local and long distance services by interLATA carriers.

Subpart C—Separate Affiliate; Safeguards

53.201 Services for which a section 272 affiliate is required.
53.203 Structural and transactional requirements.
53.205 Fulfillment of certain requests. [Reserved]
53.207 Successor or assign.

Subpart D—Manufacturing by Bell Operating Companies

53.301 [Reserved]

Subpart E—Electronic Publishing by Bell Operating Companies

53.401 [Reserved]

Subpart F—Alarm Monitoring Services

53.501 [Reserved]

Authority: Sections 1–5, 7, 201–05, 218, 251, 253, 271–75, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 218, 251, 253, 271–75, unless otherwise noted.

Subpart A—General Information.

§ 53.1 Basis and purpose.

(a) *Basis.* The rules in this part are issued pursuant to the Communications Act of 1934, as amended.

(b) *Purpose.* The purpose of the rules in this part is to implement sections 271 and 272 of the Communications Act of 1934, as amended, 47 U.S.C. 271 and 272.

§ 53.3 Terms and definitions.

Terms used in this part have the following meanings:

Act. The Act means the Communications Act of 1934, as amended.

Affiliate. An affiliate is a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this part, the term ''own'' means to own an equity interest (or the equivalent thereof) of more than 10 percent.

AT&T Consent Decree. The AT&T Consent Decree is the order entered August 24, 1982, in the antitrust action styled *United States* v. *Western Electric,* Civil Action No. 82–0192, in the United States District Court for the District of Columbia, and any judgment or order with respect to such action entered on or after August 24, 1982.

Bell Operating Company (BOC). The term *Bell operating company*

(1) Means any of the following companies: Bell Telephone Company of Nevada, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, New England

Telephone and Telegraph Company, New Jersey Bell Telephone Company, New York Telephone Company, U S West Communications Company, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, Southwestern Bell Telephone Company, The Bell Telephone Company of Pennsylvania, The Chesapeake and Potomac Telephone Company, The Chesapeake and Potomac Telephone Company of Maryland, The Chesapeake and Potomac Telephone Company of Virginia, The Chesapeake and Potomac Telephone Company of West Virginia, The Diamond State Telephone Company, The Ohio Bell Telephone Company, The Pacific Telephone and Telegraph Company, or Wisconsin Telephone Company; and

(2) Includes any successor or assign of any such company that provides wireline telephone exchange service; but

(3) Does not include an affiliate of any such company, other than an affiliate described in paragraphs (1) or (2) of this definition.

In-Region InterLATA service. In-region interLATA service is interLATA service that originates in any of a BOC's in-region states, which are the states in which the BOC or any of its affiliates was authorized to provide wireline telephone exchange service pursuant to the reorganization plan approved under the AT&T Consent Decree, as in effect on February 7, 1996. For the purposes of this part, 800 service, private line service, or equivalent services that terminate in a BOC's in-region state and allow the called party to determine the interLATA carrier are considered to be in-region interLATA service.

InterLATA Information Service. An *interLATA information service* is an information service that incorporates as a necessary, bundled element an interLATA telecommunications transmission component, provided to the customer for a single charge.

InterLATA Service. An *interLATA service* is a service that involves telecommunications between a point located in a LATA and a point located outside such area. The term ''interLATA service'' includes both interLATA telecommunications services and interLATA information services.

Local Access and Transport Area (LATA). A *LATA* is a contiguous geographic area:

(1) Established before February 8, 1996 by a BOC such that no exchange area includes points within more than one metropolitan statistical area, consolidated metropolitan statistical area, or state, except as expressly permitted under the AT&T Consent Decree; or

(2) Established or modified by a BOC after February 8, 1996 and approved by the Commission.

Local Exchange Carrier (LEC). A *LEC* is any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of commercial mobile service under section 332(c) of the Act, except to the extent that the Commission finds that such service should be included in the definition of such term.

Out-of-Region InterLATA service. Out-of-region interLATA service is interLATA service that originates outside a BOC's in-region states.

Section 272 affiliate. A *section 272 affiliate* is a BOC affiliate that complies with the separate affiliate requirements of section 272(b) of the Act and the regulations contained in this part.

Subpart B—Bell Operating Company Entry Into InterLATA Services

§ 53.101 Joint marketing of local and long distance services by interLATA carriers.

(a) Until a BOC is authorized pursuant to section 271(d) of the Act to provide interLATA services in an in-region State, or until February 8, 1999, whichever is earlier, a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines may not jointly market in such State telephone exchange service obtained from such company pursuant to section 251(c)(4) of the Act with interLATA services offered by that telecommunications carrier.

(b) For purposes of applying section 271(e) of the Act, telecommunications carriers described in paragraph (a) of this section may not:

(1) Market interLATA services and BOC resold local exchange services through a ''single transaction.'' For purposes of this section, we define a ''single transaction'' to include the use of the same sales agent to market both products to the same customer during a single communication;

(2) Offer interLATA services and BOC resold local exchange services as a bundled package under an integrated pricing schedule.

(c) If a telecommunications carrier described in paragraph (a) of this section advertises the availability of interLATA services and local exchange services purchased from a BOC for resale in a single advertisement, such telecommunications carrier shall not mislead the public by stating or implying that such carrier may offer bundled packages of interLATA service and BOC local exchange service purchased for resale, or that it can provide both services through a single transaction.

Subpart C—Separate Affiliate; Safeguards

§ 53.201 Services for which a section 272 affiliate is required.

For the purposes of applying section 272(a)(2) of the Act:

(a) *Previously authorized activities.* When providing previously authorized activities described in section 271(f) of the Act, a BOC shall comply with the following:

(1) A BOC shall provide previously authorized interLATA information services and manufacturing activities through a section 272 affiliate no later than February 8, 1997.

(2) A BOC shall provide previously authorized interLATA telecommunications services in accordance with the terms and conditions of the orders entered by the United States District Court for the District of Columbia pursuant to section VII or VIII(C) of the AT&T Consent Decree that authorized such services.

(b) InterLATA information services. A BOC shall provide an interLATA information service through a section 272 affiliate when it provides the interLATA telecommunications transmission component of the service either over its own facilities, or by reselling the interLATA telecommunications services of an interexchange provider.

(c) *Out-of-region interLATA information services.* A BOC shall provide out-of-region interLATA information services through a section 272 affiliate.

§ 53.203 Structural and transactional requirements.

(a) *Operational independence.*

(1) A section 272 affiliate and the BOC of which it is an affiliate shall not jointly own transmission and switching facilities or the land and buildings where those facilities are located.

(2) A section 272 affiliate shall not perform any operating, installation, or maintenance functions associated with facilities owned by the BOC of which it is an affiliate.

(3) A BOC or BOC affiliate, other than the section 272 affiliate itself, shall not perform any operating, installation, or maintenance functions associated with facilities that the BOC's section 272 affiliate owns or leases from a provider other than the BOC.

(b) *Separate books, records, and accounts.* A section 272 affiliate shall maintain books, records, and accounts, which shall be separate from the books, records, and accounts maintained by the BOC of which it is an affiliate.

(c) *Separate officers, directors, and employees.* A section 272 affiliate shall have separate officers, directors, and employees from the BOC of which it is an affiliate.

(d) *Credit arrangements.* A section 272 affiliate shall not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the BOC of which it is an affiliate.

(e) *Arm's-length transactions.* A section 272 affiliate shall conduct all transactions with the BOC of which it is an affiliate on an arm's length basis, pursuant to the accounting rules described in § 32.27 of this chapter, with any such transactions reduced to writing and available for public inspection.

§ 53.205 Fulfillment of certain requests. [Reserved]

§ 53.207 Successor or assign.

If a BOC transfers to an unaffiliated entity ownership of any network elements that must be provided on an unbundled basis pursuant to section 251(c)(3) of the Act, such entity will be deemed to be an ''assign'' of the BOC under section 3(4) of the Act with respect to such transferred network elements. A BOC affiliate shall not be deemed a ''successor or assign'' of a BOC solely because it obtains network elements from the BOC pursuant to section 251(c)(3) of the Act.

Subpart D—Manufacturing by Bell Operating Companies

§ 53.301 [Reserved]

Subpart E—Electronic Publishing by Bell Operating Companies

§ 53.401 [Reserved]

Subpart F—Alarm Monitoring Services

§ 53.501 [Reserved]

[FR Doc. 97–1390 Filed 1–17–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 96–105; RM–8793 and RM–8852]

Radio Broadcasting Services; Ely, Hermantown & Pine City, MN and Siren, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document substitutes Channel 221C3 for Channel 221A at Hermantown, Minnesota, in response to a petition filed by Harbor Broadcasting, Inc. *See* 61 FR 24262, May 14, 1996. In accordance with Section 1.420(g) of the Commission's Rules we shall also modify the construction permit for Channel 221A to specify operation on Channel 221C3. The coordinates for Channel 221C3 are 46–49–30 and 92–17–00. To accommodate the upgrade at Hermantown, we shall substitute Channel 233A for Channel 221A, Ely, Minnesota, at coordinates 47–53–40 and 91–51–50, and modify the construction permit for Station WELY-FM accordingly. We shall also substitute Channel 265A for Channel 221A at Pine City, Minnesota, at coordinates 45–54–07 and 92–57–25, and modify the license for Station WCMP-FM accordingly. In response to a counterproposal filed by Badger Broadcasting Corporation, we shall allot Channel 289A to Siren, Wisconsin, at coordinates 45–50–56 and 92–27–13. There is a site restriction 8 kilometers (5 miles) northwest of the community. Canadian concurrence has been obtained for each of the above allotments. With this action, this proceeding is terminated.

DATES: Effective February 24, 1997. The window period for filing applications for Channel 289A at Siren, Wisconsin, will open on February 24, 1997, and close on March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 96–105, adopted January 3, 1997, and released January 10, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202)857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 221A and adding Channel 233A at Ely, removing Channel 221A and adding Channel 221C3 at Hermantown, and removing Channel 221A and adding Channel 265A at Pine City.

3. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Siren, Channel 289A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–1095 Filed 1–17–97; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–134; RM 8679, 8720]

Radio Broadcasting Services; Sanford, Robbins, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a counterproposal allotting Channel 276A at Robbins, North Carolina, as the community's first local aural transmission service at the request of WWGP Broadcasting Corp. See 60 FR 44003 (August 24, 1995). This document also denies a petition for rule making filed by Woolstone Corporation requesting allotment of Channel 276A at Sanford, North Carolina and an alternative proposal filed by WWGP Broadcasting requesting substitution of Channel 276A for Channel 288A at Sanford, deletion of Channel 288A from FM Table of Allotments, and modification of license of Station WFJA(FM) to specify Channel 276A. Channel 276A can be allotted at Robbins without a site restriction at coordinates 35–25–48 and 79–34–48.

DATES: Effective February 24, 1997. The window period for filing applications

for Channel 276A at Robbins, North Carolina, will open on February 24, 1997, and close on March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2130. Questions related to the window application filing process for Channel 276A at Robbins, North Carolina, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 95–134, adopted January 3, 1997 and released January 10, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Robbins, Channel 276A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–1098 Filed 1–17–97; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107 and 171

[Docket No. HM–207F; Amdt. Nos. 107–40; 171–152]

RIN 2137–AC96

Hazardous Materials Regulations; Penalty Guidelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: In this final rule, RSPA is increasing the maximum civil penalty, from $25,000 to $27,500, for a knowing violation of Federal hazardous materials transportation law or the Hazardous Materials Regulations. RSPA is also publishing revised baseline assessments for frequently cited violations of the Hazardous Materials Regulations, in order to provide the regulated community and the general public with more current information on RSPA's hazardous material penalty assessment process. These revisions to RSPA's baseline penalty assessments consider the increase in the maximum civil penalty to $27,500.

EFFECTIVE DATE: This rule is effective January 21, 1997.

FOR FURTHER INFORMATION CONTACT: John J. O'Connell, Jr., Office of Hazardous Materials Enforcement, (202) 366–4700; or Edward H. Bonekemper, III, Office of the Chief Counsel, (202) 366–4400, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Increase in Maximum Penalty

Under Section 4 of the Federal Civil Penalties Inflation Act of 1990 (the Act), 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), all Federal agencies must adjust civil penalties they administer to consider the effects of inflation. These adjustments were to be made no later than October 23, 1996, and must be made at least once every 4 years thereafter, and must be published in the Federal Register. A formula for determining the amount of a periodic adjustment in civil penalty amounts is set forth in Section 5 of the Act; however, the 1996 amendment provided that the initial adjustment may not exceed 10 percent. Any increased civil penalty amount applies only to violations that occur after the date the increase takes effect.

The Credit and Debt Management Division of the Department of the Treasury's Financial Management Service has calculated that the new maximum civil penalty for a knowing violation of the Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.* or the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180, is $27,500. To carry out the statutory mandate, RSPA is adding a new § 171.1(c) to the HMR specifying that the maximum civil penalty for violations of the Federal hazardous materials transportation law or the HMR, that occur after January 21, 1997, is $27,500. RSPA is also amending the references to the maximum civil penalty in § 107.329 and Appendix A to Part 107, subpart D, to set forth the increased maximum civil penalty applicable to violations that occur after January 21, 1997. In a future rulemaking, RSPA will propose changes to other sections of the HMR that refer to the maximum civil penalty.

There is no change in the statutory minimum $250 civil penalty for a knowing violation of the Federal hazardous material transportation law or HMR.

II. Revisions to Civil Penalty Baseline Guidelines

On March 6, 1995, RSPA published its hazardous material transportation enforcement civil penalty guidelines as Appendix A to 49 CFR Part 107, subpart D, in response to a request contained in Senate Report 103–150 that accompanied the Department of Transportation and Related Agencies Appropriations Act of 1994. *See* Docket No. HM–207D, 60 FR 12139. Publication of these guidelines provides the regulated community and the general public with information concerning the manner in which RSPA generally begins its hazmat penalty assessment process and the types of information that respondents in enforcement cases should provide to justify reduction of proposed penalties.

At that time, RSPA explained that its enforcement personnel and attorneys use these guidelines as a partial means of determining a baseline civil penalty for selected violations of the HMR or the Federal hazardous material transportation law. RSPA also explained that the penalty guidelines are periodically updated and were being published as they existed on January 18, 1995. As a general statement of agency policy and practice, these guidelines are informational, impose no requirements, are not finally determinative of any issues or rights, and do not have the force of law. For a further discussion of the nature and RSPA's use of these penalty guidelines, as a statement of agency policy for which no notice of proposed rulemaking is necessary, please see the preamble of the March 6, 1995 final rule. 60 FR 12139–40.

This final rule publishes revisions that RSPA has made to the List of Frequently Cited Violations, and their baseline assessments, since publication of the penalty guidelines in March 1995. These revisions to Part II of the guidelines were the result of an overall review RSPA conducted of its penalty

guidelines during the past year. These revisions consider the increase in the maximum civil penalty to $27,500, in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, as discussed above.

RSPA has also changed many of the baseline assessments in an effort to more appropriately reflect the risks posed by, and the likely consequences of, the particular violation of the HMR. For example, the range of penalties applicable to shipping a hazardous material in an unauthorized packaging has been restated as three different numbers for materials in Packing Group I, II, and III, respectively, with the greatest baseline amount for a Packing Group I material in order to reflect the greater hazards posed by that material. Similarly, RSPA has increased the baseline assessment for certain violations that increase the likelihood of a failure of a compressed gas cylinder, with catastrophic results (such as the failure to condemn a cylinder with excessive permanent expansion), while penalties for some violations that appear to have no effect on the actual performance of a cylinder (such as illegible markings) have been reduced. In a few instances where the baseline assessment is stated as a range (*e.g.,* $5,000 to $10,000), the factors generally considered in determining an amount within that range are indicated within the description of the violation (*e.g.,* the length of time that a continuing violation has lasted). Otherwise, RSPA generally uses the middle of the range for the ''normal'' type of violation.

RSPA has also revised, added, deleted or combined individual violations from the List of Frequently Cited Violations, as considered appropriate, in order to make the guidelines a more useful device for both the public and RSPA personnel. Citations to sections of the HMR were supplied for certain violations, and the wording ''Various'' (rather than ''N/A'') is being used when a generally stated violation may be covered by more than one section of the HMR (*e.g.,* the testing requirements applicable to the manufacture of each different DOT specification cylinder are contained in different sections of 49 CFR Part 178). The table has also been reorganized to place offeror violations together, and references to violations of the regulations concerning manufacture and use of packagings have been revised to reflect the fact that, after October 1, 1996, non-bulk packagings manufactured to DOT specifications are no longer authorized (unless filled before October 1, 1996) in place of packagings that must meet the performance-oriented packaging standards adopted in RSPA's rulemaking Docket No. HM–181 and located in 49 CFR Part 178, subpart M. See 49 CFR 171.14(a)(2).

RSPA created and uses these penalty guidelines to promote consistency and provide a standard for imposing similar penalties in similar cases. When a violation not described in the guidelines is encountered, RSPA often determines a baseline assessment by analogy to a similar violation in the guidelines. However, as emphasized in Parts III and IV of the guidelines, the baseline assessments are only the starting point for assessing a penalty for a violation. Because no two cases are identical, rigid use of the guidelines would produce arbitrary results and, most significantly, would ignore the statutory mandate to consider several specific assessment criteria set forth in 49 U.S.C. 5123 and 49 CFR 107.331. Therefore, regardless of whether or not the guidelines are used to determine a baseline amount for a violation, RSPA enforcement and legal personnel must apply the statutory assessment criteria to all relevant information in the record concerning any alleged violation and the apparent violator. Consideration of these criteria often warrants a final penalty that is less or greater than the initial baseline assessment.

These penalty guidelines remain subject to revision, and, in any particular case, RSPA's Office of Hazardous Materials Enforcement (OHME) and Office of the Chief Counsel will use the version of the guidelines in effect at the time a matter is referred by OHME for possible issuance of a notice of probable violation. Questions concerning RSPA's penalty guidelines and any comments or suggested revisions may be addressed to the persons identified above, in **FOR FURTHER INFORMATION CONTACT**.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). The economic impact of this final rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). Because this final rule carries out a statutory mandate without interpretation and revises an informational appendix without imposing any requirements, preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule applies to shippers and carriers of hazardous materials, some of which are small entities; however, there is no economic impact on any person who complies with Federal hazardous materials law and the HMR.

D. Paperwork Reduction Act

There are no new information requirements in this final rule.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in spring and fall of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 107

Administrative practices and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous Waste, Imports, Incorporation by reference, Penalties, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 is revised to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 § 4 (28 U.S.C. 2461 note); Pub. L. 104–134 § 31001.

§ 107.329 [Amended]

2. In § 107.329 (a) and (b), the parenthetical phrase ''($27,500 for a

violation occurring after January 21, 1997)'' is added after ''$25,000.''

3. Appendix A to subpart D of part 107 is amended by replacing the List of Frequently Cited Violations (Part II) to read as follows:

Appendix A—[Amended]

Appendix A to Subpart D of Part 107—Guidelines for Civil Penalties

* * * * *

II. List of Frequently Cited Violations

Violation description	Section or cite	Baseline assessment
PART 107—REQUIREMENTS		
Failure to register as a carrier or shipper of hazardous material	107.608	$1,000 +, $500 each add'l year.
PART 171—REQUIREMENTS		
Failure to give immediate telephone notice of a reportable hazardous materials incident	171.15	$3,000.
Failure to file a DOT 5800.1 Hazardous Materials Incident Report within 30 days following an unintentional release of hazardous materials in transportation.	171.16	$500 to $2,500.
PART 172—REQUIREMENTS		
Shipping Papers (§ 172.200—172.205):		
Failure to execute a shipping paper for a shipment of hazardous materials	172.201	$3,000 to $6,000.
Failure to follow one or more of the three approved formats for listing hazardous materials on a shipping paper.	172.201(a)(1)	$1,200.
Failure to include a proper shipping name in the shipping description or using an incorrect proper shipping name.	172.202	$800 to $1,600.
Failure to include a hazard class/division number in the shipping description	172.202	$1,000 to $2,000.
Using an incorrect hazard class/identification number	172.202.	
-that does not affect compatibility requirements		$800,
-that affects compatibility requirements		$3,000 to $6,000.
Failure to include an identification number in the shipping description	172.202	$1,000 to $2,000.
Using an incorrect identification number	172.202.	
-that does not change the response information		$800,
-that changes the response information		$3,000 to $6,000.
Using a shipping description that includes additional unauthorized information (extra or incorrect words).	172.202	$800.
Using a shipping description not in required sequence	172.202	$500.
Using a shipping description with two or more required elements missing or incorrect	172.202	
-such that the material is misdescribed		$3,000.
-such that the material is misclassified		$6,000.
Failure to include the total quantity of hazardous material covered by a shipping description	172.202(c)	$400.
The letters ''RQ'' are not used in the shipping description to identify materials that are hazardous substances.	172.203(c)(2)	$500.
Using a shipping description for Class 7 (radioactive) material that fails to contain the required additional entries, or contains incorrect information for these additional entries.	172.203(d)	$2,000 to $4,000.
Failure to include a required technical name in parentheses for a listed generic or ''nos'' material	172.203(k)	$1,000.
Failure to list an exemption number in association with the shipping description	172.203(a)	$800.
Failure to include the required shipper's certification on a shipping paper	172.204(a)	$1,000.
Failure to execute the required shipper's certification on a shipping paper	172.204	$800.
Emergency Response Information Requirements (§ 172.600—172.604):		
Providing or listing incorrect emergency response information with or on a shipping paper	172.602.	
-no significant difference in response		$800,
-significant difference in response		$3,000 to $6,000.
Failure to include an emergency response telephone number on a shipping paper	172.604	$2,600.
Failure to have the emergency response telephone number monitored while a hazardous material is in transportation or listing multiple telephone numbers (without specifying the times for each) that are not monitored 24 hours a day.	172.604	$1,300.
Listing a fraudulent emergency response telephone number on a shipping paper	172.604	$2,600 to $4,200.
Listing an incorrect or non-working emergency response telephone number on a shipping paper	172.604	$1,300.
Failure to provide required technical information when the listed emergency response telephone number is contacted.	172.604	$1,300.
Package Marking Requirements (§ 172.300—172.338):		
Failure to mark the proper shipping name on a package or marking an incorrect shipping name on a package.	172.301(a)	$800 to $1,600.

Violation description	Section or cite	Baseline assessment
Failure to mark the identification number on a package	172.301(a)	$1,000 to $2,000.
Marking a package with an incorrect identification number	172.301(a).	
-that does not change the response information		$800,
-that changes the response information		$3,000 to $6,000.
Failure to mark the proper shipping name and identification number on a package	172.301(a)	$3,000 to $6,000.
Marking a package with an incorrect shipping name and identification number	172.301(a).	
-that does not change the response information		$1,500 to $3,000.
-that changes the response information		$3,000 to $6,000.
Failure to include the required technical name(s) in parentheses for a listed generic or ''no'' entry	172.301(c)	$1,000.
Failure to mark a package containing liquid hazardous materials with required orientation marks	172.312	$2,500 to $3,500.
Package Labeling Requirements (§ 172.400–172.450):		
Failure to label a package.	172.400	$5,000.
Placing a label that represents a hazard other than the hazard presented by the hazardous material in the package..	172.400	$5,000.
Placing a label on a package that does not contain a hazardous material.	172.401(a)	$800.
Placing a label on Class 7 (radioactive) material that understates the proper label category.	172.403	$5,000.
Placing a label on Class 7 (radioactive) material that fails to contain, or has erroneous, entries for the name of the radionuclide(s), activity, and transport index..	172.403(g)	$2,000 to $4,000.
Placing a label not conforming to size requirements on a package.	172.407(c)	$800.
Placing a label on a different surface of the package than, or far away from, the proper shipping name..	172.406(a)	$800.
Placing a label that does not meet color specification requirements on a package (depending on the variance)..	172.407(d)	$600 to $2,500.
Failure to place a required subsidiary label on a package.	172.402	$500 to $2,500.
Failure to provide an appropriate class or division number on a label.	172.411	$2,500.
Placarding Requirements (§ 172.500–172.560):		
Failure to properly placard a freight container or vehicle containing hazardous materials when Table 1 is applicable..	172.504	$1,000 to $9,000.
Failure to properly placard a freight container or vehicle containing hazardous materials when Table 2 is applicable..	172.504	$800 to $7,500.
Training Requirements (§ 172.700–172.704):		
Failure to train hazmat employees in the three required areas of training	172.702	
-more than 10 hazmat employees.		$2,400 and up.
-10 hazmat employees or less.		$1,500 and up.
Failure to train hazmat employees in any one of the three required areas of training	172.702	
-more than 10 hazmat employees.		$800 and up.
-10 hazmat employees or less.		$500 and up.
Failure to maintain training records	172.704.	
-more than 10 hazmat employees.		800 and up.
-10 hazmat employees or less.		$500 and up.
PART 173—REQUIREMENTS		
Overpack Requirements (§ 173.25)		
Failure to mark an overpack with a statement indicating that the inside packages comply with prescribed specifications when specification packaging is required..	173.25(a)(4)	$3,000.
Reconditioner Requirements (§173.28):		
Representing, marking, or certifying a drum as a reconditioned UN standard packaging, when the drum did not meet a UN standard..	173.28(c) & (d)	$6,000 to $10,800.
Marking an incorrect registration number on a reconditioned packaging	173.28(b)(2)(ii)	
-incorrect number.		$800.
-fraudulent use of another reconditioner's number.		$7,200.
Failure to properly conduct alternate leakage test	173.28(b)(2)(i)	
-improper test.		$2,000.
-no test at all.		$4,000.
Representing, marking, or certifying a drum as altered from one standard to another, when the drum had not actually been altered..	173.28(d)	$500.
Portable and IM Tank Requirements (§§173.32(e), 173.32c, 173.315)		
Offering hazardous materials for transportation in a DOT specification or exemption portable tank which is out of test..	173.32(a)(1), 173.315(a), Applicable Exemption.	$3,500 to $7,000.
Offering an IM portable tank for transportation that has not been hydrostatically tested within the last 2½ years per 173.32b(a)..	173.32c(c)	$3,500.
Offering an IM portable tank for transportation that has not been visually inspected in last five years per 173.32b(b)..	173.32c(c)	$3,500.

Violation description	Section or cite	Baseline assessment
Offering an IM portable tank for transportation that has not been visually or hydrostatically tested as required, or failing to remove the safety relief valves during testing..	173.32c(c)	$7,000.
Offering a hazardous material for transportation in an IM portable tank equipped with bottom outlets, when the material contained is prohibited from being offered in this type of packaging.	173.32c(g)	
-Packing Group II.		$7,000.
-Packing Group III.		$5,000.
Failure to provide the required outage for a shipment of hazardous materials, that results in the release of hazardous materials..	173.32c(k)	$6,000 to $12,000.
Offering a hazardous material for transportation in an DOT, exemption, or IM portable tank which fails to bear markings that it has been properly retested..	173.32(e)(3), 173.32b(d).	$3,000.
Cylinder Retesters (§§173.23, 173.34, and 173.302):		
Failure to remark as DOT 3AL an aluminum cylinder manufactured under a former exemption.	173.23(c)	$600.
Certifying or marking as retested a nonspecification cylinder	173.34	$800.
Marking a cylinder in or on the sidewall area when not permitted by the applicable specification	173.34(c)(1)	$6,000 to $10,800.
Failure to maintain legible markings on a cylinder	173.34(e)	$800.
Failure to perform hydrostatic retesting at the minimum of 5/3 times the service pressure, or at the minimum specified test pressure.	173.34(e)	$2,100 to $5,200.
Failure to conduct a complete visual external and internal examination	173.34(e)(1)	$2,100 to $5,200.
Failure to have a retester's identification number (RIN)	173.34(e)(1)(i)	$4,000.
Failure to have current authority due to failure to renew a retester's identification number	173.34)(e)(1)(i)	$2,000.
Failure to have a retester's identification number and marking another RIN on a cylinder	173.34(e)(1)(i)	$7,200.
Marking a RIN before successfully completing a hydrostatic retest	173.34(e)(1)(ii)	$800.
Requalifying a DOT cylinder without performing the visual inspection or hydrostatic retest	173.34(e)(1)(ii)	$4,200 to $10,400.
Performing hydrostatic retesting without demonstrating the accuracy of the testing equipment	173.34(e)(3)	$2,100 to $5,200.
Failure to hold hydrostatic test pressure for 30 seconds or sufficiently longer to allow for complete expansion.	173.34(e)(3)	$3,100.
Failure to perform a second retest, after equipment failure, at a pressure of 10% more or 100 psi more, whichever is less (includes exceeding 90% of test pressure prior to conducting a retest).	173.34(e)(3)	$3,100.
Failure to condemn a cylinder with permanent expansion of 10% or greater (5% for certain exemption cylinders); failure to condemn cylinders with evidence of internal or external corrosion, denting, bulging, or rough usage.	173.34(e)(4)	$10,000.
Marking an FRP cylinder with steel stamps in the FRP area of the cylinder such that the integrity of the cylinder is compromised.	Applicable Exemption.	$6,000 to $10,800.
Failure to keep complete and accurate records of cylinder reinspection and retest.		
—No records kept		$4,000.
—Incomplete or inaccurate records	173.34(e)(5)	$1,000 to $3,000.
Improper marking of the RIN or retest date on a cylinder	173.34(e)(5)	$800
Marking a DOT 3HT cylinder with a steel stamp other than a low-stress steel stamp	173.34(e)(13)(iv).	$6,000 to $10,800.
Marking a ''+'' sign on a cylinder without determining the average or maximum wall stress, by calculation or reference to CGA Pamphlet C–5.	173.302(c)(3)	$3,000 to $4,000.
Representing, marking, or certifying a cylinder as meeting the requirements of an exemption, when the cylinder was not maintained or retested in accordance with the exemption.	171.2(c), Applicable Exemption.	$2,000 to $6,000.
Rebuilder Requirements (§173.34):		
Representing a DOT–4 series cylinder as meeting the requirements of the Hazardous Materials Regulations without being authorized to do so by the Associate Administrator for Hazardous Materials Safety.	173.34(l)	$6,000 to $10,800.
Offeror Requirements (General):		
Offering a hazardous material for transportation in an unauthorized non-UN standard or nonspecification packaging (includes the failure to comply with the terms of an exemption authorizing the use of a nonstandard or nonspecification packaging).	Various	
—Packing Group I (includes §172 504 Table 1 materials)		$9,000.
—Packing Group II		$7,000.
-Packing Group III		$5,000.
Offering a hazardous material for transportation in a packaging that has successfully been tested to an applicable UN standard, but is not marked with the required UN marking.	178.3(a), 178.503(a).	$3,600.
Offering a hazardous material for transportation in a packaging that leaks during conditions normally incident to transportation.	173.24(b)	
—Packing Group I (includes §172.504 Table 2 materials)		$12,000.
—Packing Group II		$9,000.
—Packing Group III		$6,000.
Overfilling a package so that the effectiveness is substantially reduced	173.24(b)	
—Packing Group I (includes §172.504 Table 1 materials)		$9,000.
—Packing Group II		$6,000.
—Packing Group III		$3,000.
Offering a hazardous material for transportation after October 1, 1996, in an unauthorized non-UN standard packaging marked as manufactured to a DOT specification.	171.14	

Violation description	Section or cite	Baseline assessment
—packaging meets DOT specification		$3,000.
—packaging does not meet DOT specification		$5,000 to $9,000.
Offeror Requirements (Class 1—Explosives):		
Failing to mark the ''EX'' approval number on a package containing an explosive	172.320	$1,200.
Offering an unapproved explosive for transportation	173.54 and 173.56(b).	
—Div 1.3 & 1.4 fireworks meeting the chemistry requirements (both quantity and type) of APA Standard 87–1.		$5,0000 to $10,000.
—all other explosives (including forbidden explosives)		$10,000 to $27,500.
Offering a leaking or damaged package of explosives for transportation	173.54(c)	$10,000 to $27,500.
Offeror Requirements (Class 7—Radioactive Materials):		
Offering a DOT specification 7A packaging without maintaining complete documentation of tests and an engineering evaluation or comparative data.	173.415(a), 173.461.	
-tests and evaluation not performed		$8,400.
-complete records not maintained		$2,000 to $5,000.
Offering a Type B packaging without holding a valid NRC approval certificate	173.416(b), 173.471(d).	
-never having obtained one		$2,500.
-holding an expired certificate		$1,000.
Offering a limited quantity of radioactive materials without marking the inner (or single) packaging ''Radioactive.''	177.421(d)	$5,000 and up.
Offering low specific activity (LSA) radioactive materials consigned as exclusive use without providing instructions for maintenance of exclusive use shipment controls.	173.425(b)(9) & (c)(7).	$800.
Offering a package that exceeds the permitted limits for surface radiation or transport index	173.441	$10,000 and up.
Offering a package without determining the level of removable external contamination, or that exceeds the limit for removable external contamination.	173.443	$5,000 and up.
Storing packages of radioactive material in a group with a total transport index more than 50	173.447(a)	$5,000 and up.
Offering special form radioactive materials without maintaining a complete safety analysis or Certificate of Competent Authority.	173.476(a) & (b)	$2,500.
Offeror Requirements (Cylinders):		
Offering a compressed gas for transportation in a cylinder that is out of test	173.301(c)	$4,200 to $10,400.
Failure to check each day the pressure of a cylinder charged with acetylene that is representative of that day's compression, after the cylinder has cooled to a settled temperature, or failure to keep a record of this test for at least 30 days.	173.303(d)	$5,000.
Offering a limited quantity of a compressed gas in a metal container for the purpose of propelling a nonpoisonous material and failing to heat the cylinder until the pressure is equivalent to the equilibrium pressure at 130° F, without evidence of leakage, distortion, or other defect.	173.306(a)(3), (h).	$1,500 to $6,000.
PART 178—REQUIREMENTS		
Third-Party Packaging Certifiers (General):		
Issuing a certification that directs the packaging manufacturer to improperly mark a packaging (*e.g.,* steel drum to be marked UN 4G).	1171.2(e), 1178.2(b), 178.3(a), 178.503(a).	$500 per item.
Manufacturers (General):		
Failure to insure a packaging certified as meeting the UN standard is capable of passing the required performance testing.	178.601(b)	
—Packing Group I (includes § 172.504 Table 1 materials)		$10,800.
—Packing Group II		$8,400.
—Packing Group III		$6,000.
Certifying a packaging as meeting a UN standard when design qualification testing was not performed	178.601(d)	
—Packing Group I (includes §172 504 Table 2 materials)		$10,800.
—Packing Group II		$8,400.
—Packing Group III		$6,000.
Failure to conduct periodic retesting on UN standard packaging (depending on length of time and Packing Group).	178.601(e)	$2,000 to $10,800.
Failure to properly conduct testing for UN standard packaging (*e.g.*, testing with less weight than marked on packaging; drop testing from lesser height than required; failing to condition fiberboard boxes before design test).		
—design qualification testing	178.601(d)	$2,000 to $10,800.
—periodic retesting	178.601(e)	$500 to $10,800.

Violation description	Section or cite	Baseline assessment
Marking, or causing the marking of, a packaging with the symbol of a manufacturer or packaging certifier other than the company that actually manufactured or certified the packaging.	178.2(b), 178.3(a), 178.503(a)(8).	$7,200.
Failure to maintain testing records	178.601(1)	
—design qualification testing		$1,000 to $5,000.
—periodic retesting		$500 to $2,000.
Improper marking of UN certification	178.503	$500 per item.
Manufacturing DOT specification packaging after October 1, 1994 that is not marked as meeting a UN performance standard.	171.14	
—if packaging does meet DOT specification		$3,000.
—if packaging does not meet DOT specification		$6,000 to $10,800.
Manufacturing Requirements—Drums		
Failure to properly conduct production leakproofness test	178.604(b)(1)	
—improper testing	173.28	$2,000.
—no testing performed		$2,000 to $10,800.
Manufacturing Requirements—Cylinders		
Manufacturing, representing, marking, certifying, or selling a DOT high-pressure cylinder that was not inspected and verified by an approved independent inspection agency.	Various	$7,500 to $15,000.
Failure to have a registration number or failure to mark the registration number on the cylinder	Various	$800.
Marking another company's number on a cylinder	Various	$7,200.
Failure to mark the date of manufacture or lot number on a DOT–39 cylinder	178 65–14	$3,000.
Failure to have a chemical analysis performed in the US for a material manufactured outside the US/ failure to obtain a chemical analysis from the foreign manufacturer.	Various	$5,000.
Failure to meet wall thickness requirements	Various	$7,500 to $15,000.
Failure to heat treat cylinders prior to testing	Various	$5,000 to $15,000.
Failure to conduct a complete visual internal examination	Various	$2,500 to $6,200.
Failure to conduct a hydrostatic test, or conducting a hydrostatic test with inaccurate test equipment	Various	$2,500 to $6,200.
Failure to conduct a flattening test	Various	$7,500 to $15,000.
Failure to conduct a burst test on a DOT–39 cylinder	178.65–11	$5,000 to $15,000.
Failure to have inspections and verifications performed by an inspector	Various	$7,500 to $15,000.
Failure to maintain a required inspector's reports	Various	
—no reports at all		$5,000.
—incomplete or inaccurate reports		$1,000 to $4,000.
Other Requirements		
Carrier Requirements:		
Transporting packages of hazardous materials that have not been secured against movement within the vehicle.	177.834(a) & (g)	$3,000.
Transporting explosives in a motor vehicle containing metal or other articles or materials likely to damage such explosives or any package in which they are contained, without segregating in different parts of the load or securing them in place in or on the motor vehicle and separated by bulkheads or other suitable means to prevent such damage.	177.835(i)	$5,200.
Transporting railway track torpedoes outside of flagging kits, in violation of E–7991	171.2(b)	$7,000.
Transporting Class 7 (radioactive) material having a total transport index more than 50	177.842(a)	$5,000 and up.
Transporting Class 7 (radioactive) material without maintaining the required separation distance	177.842(b)	$5,000 and up.
Failing to comply with requirements of an exemption authorizing the transportation of Class 7 (radioactive) material having a total transport index more than 50.	171.2(b)	
-failure to have the radiation survey record required by ¶¶ 7(f), 8(b)(3)		$5,000.
-failure to have other accompanying documents required by ¶ 8(b)		$500 each.
-other violations of ¶¶ 7 and 8		$5,000 and up.
Exemptions:		
Offering or transporting hazardous materials, or otherwise performing a function, covered by an exemption after expiration of the exemption.	171.2(a), (b), (c), Various.	$1,000 + $500 each add'l year.

4. In Appendix A to subpart D of part 107, under the section entitled ''Penalty Increase for Multiple Counts'' (Section IV.C.), the parenthetical phrase ''($27,500 for a violation occurring after January 21, 1997)'' is added after ''$25,000.'

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

5. The authority citation for part 171 is revised to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410, § 4 (28 U.S.C. 2461 note); Pub. L. 104–134, § 31001.

6. In § 171.1, as revised in the final rule under Docket No. HM–200 on January 8, 1997 (62 FR 1215), new paragraph (c) is added to read as follows:

§ 171.1 Purpose and scope.

* * * * *

(c) Any person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, subchapter A, an exemption issued under subchapter A, of this subchapter, is liable for a civil penalty of not more than $25,000 ($27,500 for a violation that occurs after January 21, 1997) and not less than $250 for each violation. When the violation is a continuing one and involves the transporting of hazardous materials or the causing of them to be transported or shipped, each day of the violation constitutes a separate offense. Any person who knowingly violates § 171.2(g) of this subchapter or willfully violates a provision of the Federal hazardous material transportation law or an order or regulation issued thereunder shall be fined under Title 18, United States Code, or imprisoned for not more than 5 years, or both.

Issued in Washington, DC on January 14, 1997, under authority delegated in 49 CFR part 1.

Kelley S. Coyner,

Deputy Administrator.

[FR Doc. 97–1398 Filed 1–17–97; 8:45 am]

BILLING CODE 4910–60–P

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1–21, Notice 14]

RIN 2127–AE99

Federal Motor Vehicle Safety Standards; Theft Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Technical amendment.

SUMMARY: This document amends the automatic transmission park position test procedure described in Standard No. 114, ''Theft Protection,'' to clarify an ambiguity. The test procedure is unclear in that it requires the service brakes to be applied once in the beginning of the test and once near the end of the test, but does not specify that they should be released anywhere in between these instructions. In addition, outdated sections, i.e., for vehicle manufactured before September 1, 1996, will be removed.

DATES: Effective date: This rule is effective February 20, 1997.

FOR FURTHER INFORMATION CONTACT: For technical issues: Mr. Chris Flanigan, Office of Safety Performance Standards, NPS–21, the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590. (202) 366–4918. For legal issues: Mr. Paul Atelsek, Office of Chief Counsel, NCC–20, the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590. (202) 366–2992.

SUPPLEMENTARY INFORMATION: On August 22, 1995, Toyota Motor Corporate Services of North America, Inc. (Toyota) requested an interpretation regarding the automatic transmission park position test procedure outlined in Standard No. 114. The test procedure involves these steps: (1) Drive the subject vehicle forward up a ten percent grade, (2) stop the vehicle with the service brakes, (3) apply the parking brake, (4) move the shift lever to the ''park'' position, (5) apply the service brakes, (6) release the parking brake, (7) release the service brakes, (8) remove the key, (9) verify that the transmission is locked in the ''park'' position, and (10) verify that the vehicle has moved no more than 150 millimeters (mm) from its original position.

The standard currently has a test procedure in S5.2 for vehicles manufactured prior to September 1, 1996 and a test procedure in S5.3 for vehicles manufactured on or after September 1, 1996. The only difference between the two test procedures is that for vehicles manufactured on or after September 1, 1996, the third step (apply the parking brake) is only required if there is a parking brake present. The purpose of using the parking brake is for the safety of those conducting the test. If the parking brake is used in conjunction with the service brakes, there is a backup in case the vehicle operator's foot slips off of the service brakes during the test. This could be hazardous if there is someone in close proximity to the wheels perhaps measuring the vehicle's position.

Toyota states that the unclear part of the test procedure concerns the application of the service brakes. The second step in the procedure is to stop the vehicle on the ten percent grade with the service brakes. The fifth step in the procedure is to apply the service brakes. However, the test procedure does not require the service brakes to be released anywhere in between the second and fifth steps. It is, therefore, unclear whether the service brakes should have been released at any point between the two steps.

In its letter requesting an interpretation of the test procedure, Toyota offers two ways to rectify this ambiguity. First, the fifth step (apply the service brakes) could be removed. In this instance, there would only be one instruction in the procedure (the second step) to apply the service brakes. In this case, the service brakes would remain applied until the seventh step, just before the measurement of vehicle movement is taken.

Second, Toyota proposed inserting an additional step after the third step (apply the parking brake) to release the service brakes. In this case, the service brakes would be applied and then released once the vehicle is on the ten percent grade and the parking brake has been set. Then, once the vehicle's shift mechanism has been placed in the ''park'' position, the service brakes would be applied again while the parking brake is released. Once the parking brake is released, the service brakes would then be released. The measurement of vehicle movement could then be made.

NHTSA believes that, rather than adding more steps to the test procedure, the best way to eliminate this ambiguity is to remove the fifth step. Because the second step in the procedure requires application of the service brakes and there is no direction to release the service brakes until the seventh step, there is no need to require that they be applied again in the fifth step.

Regarding the removal of dated sections, the standard makes reference

to vehicles manufactured after September 1, 1983, to vehicles manufactured before September 1, 1996, and to vehicles manufactured on or after September 1, 1996. Since these dates are all in the past, these references will be removed, as there is no need to differentiate between them.

NHTSA finds good cause to make this amendment effective 30 days after publication of this document. This amendment makes minor changes to Standard No. 114 that clarify the standard without affecting its requirements.

NHTSA also finds for good cause that notice and an opportunity for comment on this document are unnecessary. This document does not impose any additional responsibilities on any manufacturer. Instead, this document simply clarifies a test procedure and removes outdated sections in the standard.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' Further, this action has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures. This rule clarifies a test procedure and eliminates outdated sections in Standard No. 114 without changing any of the requirements in the standard. Because this rule does not affect any substantive requirement of the theft prevention standard, its impacts are so minimal as not to warrant preparation of a full regulatory evaluation.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, this rule simply clarifies a test procedure and eliminates outdated sections in Standard No. 114. It has no effect on the manufacture or sale of vehicles or motor vehicle equipment.

National Environmental Policy Act

NHTSA has also analyzed this rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, parts 571 of title 49 of the Code of Federal Regulations are amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.114 is amended as follows:

a. S4.1 is revised.
b. S4.2 is revised.
c. S5.2 is revised.
d. S5.3 is removed.

The revisions will read as follows:

§571.114 Standard No. 114; theft protection.

* * * * *

S4.1 Each truck and multipurpose passenger vehicle having a GVWR of 4536 kilograms or less and each passenger car shall meet the requirements of S4.2, S4.3, S4.4, and S4.5. However, open-body type vehicles that are manufactured for operation without doors and that either have no doors or have doors that are designed to be easily attached to and removed from the vehicle by the vehicle owner are not required to comply with S4.5.

S4.2 Each vehicle shall have a key-locking system which, whenever the key is removed, prevents:

(a) The normal activation of the vehicle's engine or motor; and

(b) Either steering or forward self-mobility of the vehicle or both.

S4.2.1 (a) Except as provided in S4.2.2 (a) and (b), the key-locking system required by S4.2 in each vehicle which has an automatic transmission with a ''park'' position shall, when tested under the procedures in S5.2, prevent removal of the key unless the transmission or transmission shift lever is locked in ''park'' or becomes locked in ''park'' as the direct result of removing the key.

(b) Each vehicle shall not move more than 150 mm on a 10 percent grade when the transmission or transmission shift lever is locked in ''park.''

* * * * *

S5.2 Test procedure. (a) Move the transmission shift lever to any position where it will remain without assistance, including a position between the detent positions, except for the ''park'' position. Try to remove the key from each possible key position in each such shift position.

(b) Drive the vehicle forward up a 10 percent grade and stop it with the service brakes. Apply the parking brake (if present). Move the shift mechanism to the ''park'' position. Note the vehicle position. Release the parking brake. Release the service brakes. Remove the key. Verify that the transmission shift lever or transmission is locked in ''park.'' Verify that the vehicle, at rest, has moved no more than 150 mm from the position noted prior to release of the brakes.

Issued on: January 14, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–1301 Filed 1–17–97; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 62, No. 13
Tuesday, January 21, 1997

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

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 125

Small Business Size Regulations and Government Contracting Assistance Regulations; Very Small Business Concern

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: Small Business Administration (SBA) proposes to amend its size and government contracting assistance regulations to incorporate the Very Small Business Program together with a definition of a very small business concern for purposes of the SBA's small business set-aside program. Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (Pub. L. 103–403) authorized the SBA Administrator to establish and carry out a pilot program for very small business concerns. The Act defines a very small business concern as one that has 15 or fewer employees together with average annual receipts that do not exceed $1 million. The Act establishes September 30, 1998, as the expiration date for this pilot.

DATES: Comments must be submitted on or before March 24, 1997.

ADDRESSES: Send comments to: Nancyellen Gentile, Office of Prime Contracts, U.S. Small Business Administration, 409 Third Street, SW., Mail Code 6250, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Nancyellen Gentile, Office of Government Contracting, (202) 205–6471, or Carl J. Jordan, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION: The Small Business Administration Reauthorization and Amendments Act of 1994 (Act) authorized the SBA to establish a pilot program for very small business concerns. (See Pub. L. 103–403, Section 304) The purpose of this pilot program is to improve access to Federal contract opportunities for concerns that are substantially below SBA's size standards by reserving certain procurements for competition among very small business concerns. Very small business concerns that receive a very small business set-aside contract are eligible for loan application support and assistance under the very small business prequalification component of this pilot program. This pilot program will expire on September 30, 1998, unless extended through legislation.

The Very Small Business Program is being established in § 125.7 of these regulations and the definition of a very small business concern is being established in § 121.413. Under section 304(j)(4) of the Act, a very small business concern is one that has no more than 15 employees and average annual receipts that total no more than $1 million. The size standard requirements applicable to small business concerns contained in Part 121 of this chapter, such as the definitions and calculation of average annual receipts and number of employees, self-certification, and size status protests, also will apply to very small business concerns. Section 125.7 also describes the types of procurements which will be eligible for the pilot program.

Under this pilot, the SBA proposes that procurements of $50,000 or less that could be set-aside for small business will be reserved for concerns meeting the statutory definition of a very small business. Currently, the simplified acquisition procedures apply to all requirements less than $100,000. The SBA has elected $50,000 as the very small business set-aside threshold for the following reasons. The nature of requirements ranging in value between $2,500 and $50,000 is that of standard off-the-shelf products and services which typically lend themselves to performance by very small businesses. The SBA analyzed the fiscal year 1995 Federal procurement activity within the Small Business Competitiveness Demonstration Program and determined that the average dollar value of a contract action awarded to an emerging small business (a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity) was $51,842. Further analysis of this data shows that the average dollar value of a contract action awarded to an emerging small business in the architectural and engineering services industry was $31,317. Smaller requirements will develop the ability of very small business concerns to do business in the federal marketplace at a gradual pace. The dollar size of this requirement will enable a very small business concern to take on the requirement without greatly disrupting operations. It will also allow the very small business concern to take advantage of multiple opportunities. A review of fiscal year 1995 federal procurement data shows that awards of $50,000 or less totaled $544,212,000. This represents 1.3 percent of the total awards received by small business concerns. Therefore, this threshold for very small business set-aside requirements will minimize any adverse impact on existing procurement assistance programs for larger small business concerns. Requirements above the $50,000 threshold will continue to be reserved for small businesses where appropriate. (Note: Procurements of $2,500 and below are processed under new micro-purchase procedures contained in FASA and are not reserved for small business competition. Thus, the proposed rule would not apply.)

The SBA is proposing that to qualify for an award under this program a firm must be an eligible small business concern under 13 CFR part 121 as well as one that has 15 or fewer employees and average annual receipts that do not exceed $1 million. Also, due to the limited number of, and geographical distance between the designated SBA districts, the SBA believes that eligible firms should be those whose headquarters are located within a geographical area serviced by a designated SBA district office where the procurement is offered, as opposed to all very small businesses in the country. This will also serve to ensure that SBA and participating federal agencies are familiar with potential very small business sources. Since very small businesses receiving contract awards are entitled to prequalification financial assistance under this program, the SBA believes that eligibility should be limited to firms located within those SBA districts that offer a prequalification loan program to ensure consistent and efficient administration of both programs.

The Act authorizes administration of this pilot program in not less than five (5) nor more than ten (10) SBA districts. The Act permits SBA to determine the operating details of the program. For informational purposes, the following are the SBA districts where this pilot program will be implemented:

Albuquerque, NM
Boston, MA
Columbus, OH
Detroit, MI
El Paso, TX
Los Angeles, CA
Louisville, KY
New Orleans, LA
Philadelphia, PA
Santa Ana, CA

These SBA districts have the required available resources to implement and administer the pilot. A prequalification loan pilot program is available in each of these designated districts to provide loan application support and assistance. Also, SBA will achieve nationwide geographical coverage by designating at least one pilot site within broad regional areas of the country. Each site will have a procurement center representative to work with the various procuring activities to implement the program. SBA may, from time to time, through notice in the Federal Register, find it necessary to make modifications to this list, provided, however, the total number of participating districts will remain within the legislated number.

Federal agencies will implement this program, working with SBA procurement center representatives to identify opportunities appropriate to be set aside for very small businesses. The SBA district offices and procurement center representatives will assist the buying activities in identifying very small business concerns likely to compete. The contracting officer will advertise very small business set-aside opportunities. The contracting officer will rely on the offeror's self-certification in a specific bid or proposal. If the self-certification of a very small business concern is protested on a very small business set-aside, the size determination will be made using the statutorily imposed size standard of 15 or fewer employees *and* average annual receipts of $1 million or less. If there are not two or more very small business concerns eligible to compete on a specific procurement, then the very small business program will not apply to that contract.

The Act establishes April 30, 1997, as the date by which the Administrator of SBA will report the results of this pilot program to the Congress. Before that date, SBA will obtain from participating agencies a record of all contract awards under this program, after advising them of the manner and frequency of such reporting. At a minimum, reports will include the date of solicitation, the date of an award, the contractor's name and address, the standard industrial classification code or a brief description of the product or service, and the dollar value of the agency's purchase.

Compliance With Executive Orders 12612, 12788 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Paperwork Reduction Act (44 U.S.C. Chapter 3501 et seq.)

The SBA certifies that this rule, if adopted in final form, would not be a significant rule within the meaning of Executive Order 12866. The value of procurements awarded under the Very Small Business Program is expected to be less than $100 million since the program is being implemented as a pilot program in only eight locations and is targeted to businesses that have historically experienced limited participation in the federal market. This rule does not impose costs upon the businesses which might be affected by it. The rule would have no effect on the amount or dollar value of any contract requirement or the number of requirements reserved for the small business set-aside program, since it is administered within the small business set-aside program. Therefore, it would not have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

As required by the Regulatory Flexibility Act, 5 U.S.C. 601–612, the SBA has prepared a regulatory flexibility analysis of this proposed rule. This analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration, and is available upon request.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule would not impose new reporting or record keeping requirements, other than those required of SBA.

For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, the SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of this order.

For the reasons set forth above, Title 13, Code of Federal Regulations (CFR) is amended as set forth below.

List of Subjects in 13 CFR Part 121

Government procurement; Government property; Grant programs—business; Loan programs—business; Small businesses.

13 CFR Part 125

Government contracts, Government procurement, Reporting and record keeping requirements, Small businesses, Technical assistance.

PART 121—[AMENDED]

1. The authority citation for 13 CFR part 121 is revised to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c); Pub. L. 102–486, 106 Stat. 2776, 3133; and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. Section 121.401 is revised to read as follows:

§ 121.401 What procurement programs are subject to size determinations?

The requirements set forth in §§ 121.401 through 121.413 cover all procurement programs for which status as a small business is required, including the small business set-aside program, SBA's Certificate of Competency program, SBA's Minority Enterprise Development program, the Small Business Subcontracting program authorized under section 8(d) of the Small Business Act, the Federal Small Disadvantaged Business programs, and the Very Small Business program.

3. The following new § 121.413 is added after § 121.412 to read as follows:

§ 121.413 What size firm is eligible for the Very Small Business Program?

A concern eligible for the very small business program, as established in § 125.7, is one that, together with its affiliates, has no more than 15 employees and has average annual receipts that do not exceed $1 million.

PART 125—[AMENDED]

1. The authority citation for 13 CFR part 125 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 637, and 644; 31 U.S.C. 9701, 9702; and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. The following new § 125.7 is added after § 125.6 to read as follows:

§ 125.7 What is the Very Small Business Program?

(a) The Very Small Business Program is an extension of the small business set-aside program, administered by the SBA as a pilot to increase opportunities for very small business concerns. The program is limited to contracts of $50,000 or less that could be set aside for small business, and to concerns that

meet the very small business size standard defined in § 121.413.

(b) If there are not two or more very small business concerns eligible to compete on a specific procurement, then the very small business program will not apply to that contract.

(c) This pilot program will be implemented in the following SBA districts: Albuquerque, NM; Los Angeles, CA; Boston, MA; Louisville, KY; Columbus, OH; New Orleans, LA; Detroit, MI; Philadelphia, PA; El Paso, TX; Santa Ana, CA. Only very small businesses whose headquarters are located within the geographical area serviced by a designated SBA district office where the procurement is offered are eligible for award of a contract under this pilot program.

(d) This pilot program terminates on September 30, 1998.

Dated: January 14, 1997.

Philip Lader,

Administrator.

[FR Doc. 97–1308 Filed 1–17–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–239–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 747–100, –200, and –300 series airplanes, that would have required the replacement of certain switches located behind the cabin attendant's panel at door 4 right, with new improved switches. That proposal was prompted by reports indicating that fires have occurred on some airplanes due to the internal failure of some of these switches. This action revises the proposed rule by adding a requirement to replace switches located at door 2 right. The actions specified by this proposed AD are intended to prevent the installation and use of switches that could short circuit when they fail, and consequently cause fire and smoke aboard the airplane.

DATES: Comments must be received by February 3, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–239–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Forrest Keller, Senior Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2790; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–239–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–239–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 747–100, –200, and –300 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the Federal Register on November 29, 1996 (61 FR 60653). That NPRM would have required the replacement of switches S4 and/or S5, or switches S7 and S8 that are installed on the cabin attendant's panel at door 4 right, with new improved switches. That NPRM was prompted by reports indicating that fire and smoke have occurred on some airplanes due to the internal failure of some of these switches.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, the FAA has received a report of the failure of these same switches located at the cabin attendant panel located at door 2 right on at least two airplanes. Failure of the switches at this location presents the same unsafe condition addressed in the previous proposal.

Accordingly, the FAA has determined that, in addition to replacing these switches at the panel at door 4, operators must replace the switches at the panel at door 2, as well.

Requirements of the Revised Proposed Rule

This supplemental NPRM proposes to require removing switches S4 and/or S5, or switches S7 and S8, that are currently installed on the cabin attendant's panel at door 4 right, and the equivalent switches at door 2 right, and replacing them with new improved switches.

The compliance time for accomplishing the replacement would be extended from the previously proposed 6 months to 10 months. The FAA finds that such an extension is appropriate in consideration of the increased number of work hours and required parts that would be necessary to accomplish the proposed actions.

These actions would be required to be accomplished in accordance with the procedures described in Boeing Alert Service Bulletin 747–33A2252, dated August 1, 1996. Although those procedures address replacing only the switches located at door 4, they can be

used just as effectively for replacing the switches located at door 2.

Conclusion

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 648 Boeing Model 747–100, –200, and –300 series airplanes of the affected design in the worldwide fleet. Of this number, the FAA estimates that 167 airplanes are of U.S. registry and would be affected by this proposed AD

The proposed replacement of the switches would take approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,112. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $235,804, or $1,412 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 96–NM–239–AD.

Applicability: Model 747–100, –200, and –300 series airplanes; as listed in Boeing Alert Service Bulletin 747–33A2252, dated August 1, 1996; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the installation and use of switches in the cabin attendant's panel that could short circuit when they fail, and consequently cause fire and smoke aboard the airplane, accomplish the following:

(a) Within 10 months after the effective date of this AD, remove switches S4 and/or S5, or switches S7 and S8, that are installed in the cabin attendant's panel at door 4 right, and the equivalent switches at door 2 right, and replace them with new switches in accordance with the procedures specified in Boeing Alert Service Bulletin 747–33A2252, dated August 1, 1996.

(b) As of the effective date of this AD, no person shall install at door 2 right or at door 4 right of any airplane an attendant's panel having switch part numbers identified in the ''Old Switch'' column of any table contained in Boeing Alert Service Bulletin 747–33A2252, dated August 1, 1996.

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

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

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

Issued in Renton, Washington, on January 13, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–1293 Filed 1–17–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–105–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes. This proposal would require modification of an area on the front spar of the wing center section by installing shims and new fasteners to reinforce pressure floor fittings. This proposal is prompted by a report from the manufacturer indicating that full-scale fatigue testing on the test model revealed fatigue cracking in this area. The actions specified by the proposed AD are intended to prevent fatigue cracking in this area, which can reduce the structural integrity of fuselage frame 36 and the wing center section.

DATES: Comments must be received by February 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–105–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from

Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–105–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–105–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that it has received a report from the manufacturer indicating that full-scale fatigue testing on the test model revealed fatigue cracking in the rib flange on the front spar side of the wing center section. This cracking, which occurred at 83,550 simulated flights, was located perpendicular to vertical posts at fuselage frame 36, and began at the vertical fillets of the rib flange. Such fatigue cracking, if not prevented, could result in reduced structural integrity of fuselage frame 36 and the wing center section.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–57–1013, Revision 1, dated September 29, 1992, which describes procedures for modification of an area on the front spar of the wing center section by installing shims and new fasteners to reinforce pressure floor fittings. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive (C/N) 95–098–066(B), dated May 24, 1995, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of an area on the front spar of the wing center section by installing shims and new fasteners to reinforce pressure floor fittings. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 5 Airbus Model A320 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 13 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Required parts would cost approximately $576 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $6,780, or $1,356 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 96–NM–105–AD.

Applicability: Model A320 airplanes as listed in Airbus Service Bulletin A320–57–1013, Revision 1, dated September 29, 1992; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the rib flange on the front spar side of the wing center section, and consequent reduced structural integrity of fuselage frame 36 and the wing center section, accomplish the following:

(a) Prior to the accumulation of 16,000 total landings, or within 3 months after the effective date of this AD, whichever occurs later, modify the rib flange on the front spar of the wing center section by installing shims and new fasteners to reinforce pressure floor fittings, in accordance with Airbus Service Bulletin A320–57–1013, Revision 1, dated September 29, 1992.

Note 2: Modification of the rib flange accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A320–57–1013, dated April 12, 1989, is considered acceptable for compliance with the modification required by this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on January 3, 1997.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–1352 Filed 1–17–97; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–092–1–9649b; FRL–5653–8]

Approval and Promulgation of Revisions to the Commonwealth of Kentucky's State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State implementation plan (SIP) revision submitted by the Commonwealth of Kentucky through the Kentucky Natural Resources and Environmental Protection Cabinet submitted revisions to the Kentucky SIP. This revision exempts acetone and perchloroethylene (tetrachloroethylene) from the list of compounds regulated as volatile organic compounds (VOC) for ozone control purposes.

In the final rules section of this Federal Register, the EPA is approving the Commonwealth of Kentucky's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by February 20, 1997.

ADDRESSES: Written comments on this action should be addressed to Kimberly Bingham, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Environmental Protection Agency, Region 4, Air Planning Branch, Atlanta Federal Center, 100 Alabama Street SW, Atlanta, GA 30303–3104

Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham of the EPA Region IV Air Programs Branch at (404) 562–9038 and at the above address.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: November 4, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 97–1334 Filed 1–17–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[Region II Docket No. NJ26–1–161, FRL–5678–3]

Approval and Promulgation of Implementation Plans; New Jersey; Consumer and Commercial Products Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the proposed approval of a revision to the New Jersey State Implementation Plan (SIP) for the attainment and maintenance of the national ambient air quality standards for Ozone. The SIP revision was submitted by the New Jersey Department of Environmental Protection and consists of the adopted new rule Subchapter 24, ''Control and Prohibition of Volatile Organic Compounds (VOCs) from Consumer and Commercial Products,'' which establishes limits on the amount of VOCs contained in certain consumer and commercial products. The intended effect is to reduce the emission of VOCs which will assist in attaining the health based ozone air quality standard.

DATES: Comments must be received on or before February 20, 1997.

ADDRESSES: All comments should be addressed to: Ronald J. Borsellino,

Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007–1866.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Environmental Engineer, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

Background

On January 25, 1996, the New Jersey Department of Environmental Protection (NJDEP) submitted to EPA a revision to the New Jersey State Implementation Plan (SIP) for the attainment and maintenance of the national ambient air quality standards (NAAQS) for Ozone. The revisions to the New Jersey Ozone SIP reflect the adoption to New Jersey Administrative Code (N.J.A.C) of 7:27–24 entitled ''Control and Prohibition of Volatile Organic Compounds from Consumer and Commercial Products,'' (Subchapter 24). This new rule was adopted by New Jersey on October 3, 1995, and became effective upon publication in the New Jersey Register on November 6, 1995. This portion of New Jersey's Ozone SIP submittal was found to be complete on March 15, 1996, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V.

State Submittal

New Jersey's January 25, 1996 SIP revision submittal consists of new rule Subchapter 24, which establishes limits on the amount of volatile organic compounds (VOC) or high volatility organic compounds (HVOC) contained in certain consumer and commercial products. Certain products manufactured after April 30, 1996, and sold for use in New Jersey are subject to these VOC content limits. The types of consumer and commercial products regulated by this new rule and the corresponding VOC content limits are listed in the table below.

VOC CONTENT LIMITS FOR CONSUMER PRODUCTS

Consumer product category	Maximum allowable VOC content (percent by weight)
Air Fresheners:	
Single phase aerosol	70
Double-phase aerosol	30
Liquid/pump	18
Solid/gel	3
Antiperspirants:	
Aerosol	HVOC 60
Non-aerosol	HVOC 0
Bathroom and tile cleaners:	
Aerosols	7
All other forms	5
Carburetor choke cleaners	75
Cooking sprays, aerosol	18
Deodorants:	
Aerosol	HVOC 20
Non-aerosol	HVOC 0
Dusting aids:	
Aerosol	35
All other forms	7
Engine degreasers	75
Fabric protectants	75
Floor polishes/waxes:	
Products for flexible flooring material.	7
Products for nonresilient flooring.	10
Wood floor wax	90
Furniture maintenance products, aerosol.	25
General purposes cleaners	10
Glass cleaners:	
Aerosols	12
All other forms	8
Hair mousses	16
Hair sprays	80
Hair styling gels	6
Household adhesives:	
Aerosol	75
Contact	80
Construction and panel	40
General purpose	10
Structural waterproof	([1])
Insecticides:	
Crawling bug	40
Flea and tick	25
Flying bug	35
Foggers	45
Lawn and garden	20
Laundry prewash:	
Aerosol/solids	22
All other forms	5
Laundry starch products	5
Nail polish removers	85
Oven Cleaners:	
Aerosol/pump sprays	8
Liquids	5
Shaving creams	5

[1] Reserved.

In March 1995, EPA published a Report to Congress entitled ''Study of Volatile Organic Compound Emissions from Consumer and Commercial Products,'' (EPA–453/R–94–066–A). Based on the information provided in this report, the NJDEP expects to achieve VOC emission reductions of 7.9 tons per day from the 1990 baseline emissions. This level of emission reductions when achieved, constitutes a 18 percent reduction from the 1990 baseline emissions for the categories regulated in Subchapter 24. These emission reductions reflect a per capita VOC emission reduction of 0.75 pounds of VOC per person per year.

Applicability

Subchapter 24 applies to any person who sells, offers for sale, holds for sale, distributes, supplies, or manufactures any consumer product listed in the table above for use in New Jersey. Consumer products that are sold in New Jersey for shipment and use outside of the State of New Jersey are exempt from the VOC content limits, and administrative and testing requirements of Subchapter 24. This exemption reflects the intent to regulate only the manufacture and distribution of consumer products that are actually used in New Jersey and not to interfere in the transportation of goods that are destined for outside of the State.

The VOC content limits included in Subchapter 24, do not apply to consumer products manufactured prior to April 30, 1996 provided such consumer products have a date of manufacture code on the container or packaging. This provision allows the manufacturers and distributors sufficient notice and a reasonable amount of time, from the state effective date of the rule, to comply with VOC content limits contained in Subchapter 24.

Subchapter 24 excludes certain products from the applicable VOC content limits. The rationale for these exclusions is that the products do not emit VOCs, or there are no existing acceptable alternatives, or because the active ingredient is present in concentrated form resulting in less VOC emissions. Such products that are exempt are: bait station insecticides that contain bait weighing more than 0.5 ounces; household adhesives sold in a container of one fluid ounce or less or a container of more than one United States gallon (128 fluid ounces); air fresheners or insecticides which contain at least 98 percent by weight para-dichlorobenzene; air fresheners consisting entirely of fragrance, inorganic compounds, or compounds excluded from the definition of VOC in Subchapter 24. Generally, these exclusions are consistent with similar regulations in other states and have been approved by EPA.

Certain substances for the purposes of determining the VOC content on consumer products are excluded from the requirements of Subchapter 24, specifically, VOCs with known low vapor pressures of less than 0.1 millimeters of mercury at 20 degrees Celsius, VOCs with unknown vapor pressures consisting of more than 12 carbon atoms per molecule, and VOCs with unknown vapor pressures that have melting points higher than 20 degrees Celsius and do not sublime. Examples of such compounds include high molecular weight resins used in hair sprays and the heavy oils used in furniture polishes. Subsection 24 also excludes fragrances up to a combined two percent by weight contained in any consumer product.

Subchapter 24 also provides for granting exemptions for products that reduce VOC emissions using non-traditional methods, referred to as ''innovative products.'' The concept behind an innovative product provision is to provide an alternative to complying with the specified content standard found in the rule. A product may be exempted from VOC content standards if the manufacturer demonstrates that due to some characteristics of the formulation, design, delivery system or other factor, VOC emissions resulting from the use of the innovative product would be less than the emissions resulting from the use of a representative product that meets the VOC content standard.

If a manufacturer was granted an innovative product exemption pursuant to the California Air Resource Board (CARB) consumer products regulations (Title 17, Subchapter 8.5, article 1, section 94503.5 or article 2, section 94511 of the California Code of Regulations), the manufacturer may also claim this exclusion by submitting a copy of the CARB exemption decision and CARB's statement of the conditions on its approval of the exemption to the NJDEP.

As stated in their response to comments, New Jersey commits to forwarding all innovative product exemptions that New Jersey accepts to EPA, Region 2, in order for EPA to be able to determine compliance with the New Jersey SIP, once it is approved. SIP revisions would not be necessary for such innovative products excluded from complying with the VOC content limits of Subchapter 24, because the VOC emissions from such products have been demonstrated to be less than those from a complying product and because an appropriate level of opportunity for public comment regarding the mechanisms and criteria for such exclusions has been made during New Jersey's proposal of new rule Subchapter 24.

In addition, CARB's rules, measures and procedures for their consumer products regulation have been approved by EPA as part of the California SIP. CARB's consumer products rule includes a ''federal enforceability'' provision which requires that those innovative product exemptions approved by CARB be submitted to EPA Region 9 as SIP revisions after adhering to a specific procedure or mechanism. Since New Jersey is recognizing only those innovative product exemptions approved by CARB, and which are required to be federally enforceable through CARB's rule, it would be redundant to have New Jersey submit those exemptions to EPA Region 2 for EPA approval.

In addition, Subchapter 24 provides relief due to extraordinary reasons that are beyond the reasonable control of the manufacturers of regulated consumer products. The maximum allowable VOC content limits do not apply to any consumer product if an agency of another state, which has an adopted consumer product variance provision in its rules as of December 2, 1995, has granted to the manufacturer of that product a variance. This exclusion shall be effective in New Jersey until the other state agency's approved variance expires or is revoked, at which time the exclusion from the requirements of Subchapter 24 shall automatically expire. This exclusion shall be effective in New Jersey provided that the manufacturer claiming this exclusion submits a copy of the state agency's exemption decision and statement of the conditions of the state agency's approval of the exemption to the NJDEP.

As stated in their response to comments, New Jersey commits to forwarding all variances pursuant to Subchapter 24 to EPA, Region 2, in order for EPA to be able to determine compliance with the New Jersey SIP, once it is approved. Since there is already a specific procedure or mechanism established for making the variances federally enforceable, it is not necessary to go through the process again.

Administrative Requirements

Subchapter 24 requires manufacturers of consumer products subject to Subchapter 24, to submit a registration report to the NJDEP by October 1, 1996 which identifies the categories of products they manufacture and the specific products affected by the rule.

Each manufacturer of a consumer product subject to Subchapter 24 is required to clearly display on each consumer product container or packaging the month and year in which the product was manufactured (or a code indicating such date). This will allow the verification of whether the product was required to meet the VOC content limits specified in Subchapter 24.

Subchapter 24 also requires manufacturers of consumer products to keep records demonstrating compliance with the VOC content limits. These records are required to be kept for a period of at least three years and shall be made available within 30 days upon request. In addition, manufacturers of consumer products are required to submit within 90 days upon request, estimations of the product quantities sold in New Jersey. This provision enables the NJDEP to conduct an emission estimation survey at a future date. Any person who submits information to the NJDEP pursuant to Subchapter 24 may assert a confidentiality claim in accordance with the procedures specified in N.J.A.C. 7:27–1.6.

Test Methods

Compliance is determined using mass balance based on manufacturers' formation data and records of raw material purchase. Further analysis could make use of methods which are shown to accurately determine the concentration of VOCs in a product. Such methods shall include any methods issued by EPA or CARB which have been established for the measurement of VOCs in consumer products. Subchapter 24 does not cite any specific analytical method for determining the VOC content of consumer products as such methods are currently being developed by CARB and EPA. Until specific analytical methods become available, compliance with Subchapter 24 will rely heavily upon manufacturer's records of the constituents used to produce the consumer products.

Federal Supersession

Subchapter 24 includes a provision which addresses any potential conflicts between New Jersey's Subchapter 24 and any national consumer products rule EPA may issue. Generally, Subchapter 24 provides that where a Federal rule establishes a VOC content limit or product applicability criteria that differs from New Jersey's requirement, the Federal rule shall supersede New Jersey's regulation. However, where the Federal rule does not regulate the VOC content of a product category for which Subchapter

24 has established a limit, New Jersey's regulation shall remain in effect. On April 2, 1996, EPA proposed national VOC emission standards for consumer products, 61 FR 14531, which includes similar consumer products and VOC content limits as those approved by New Jersey. It is anticipated that the national rule will be promulgated in 1997.

Conclusion

EPA has evaluated the revisions to the New Jersey Ozone SIP which consists of the adoption of a new rule Subchapter 24, ''Control and Prohibition of Volatile Organic Compounds from Consumer and Commercial Products,'' and has determined that all of the provisions contained in Subchapter 24 are consistent with EPA policy and guidance and are approvable. Therefore, EPA is proposing approval of Subchapter 24.

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

Administrative Requirements

Executive Order 12866

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 (OMB) has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 30, 1996.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 97–1370 Filed 1–17–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[IL143–1b; FRL–5671–4]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve Illinois' January 8, 1996, submittal of a site-specific State Implementation Plan (SIP) revision request for Reynolds Metals Company's McCook Sheet and Plate Plant in McCook, Illinois (in Cook County). The purpose of this request is to amend the State's volatile organic material (VOM) reasonably available control technology (RACT) requirements for Reynolds' aluminum rolling operations to mirror the facility's RACT requirements promulgated under the Chicago area Federal Implementation Plan. In the final rules section of this Federal Register, the EPA is approving this action as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received on or before February 20, 1997.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this Federal Register.

Dated: December 17, 1996.

Michelle D. Jordan,

Acting Regional Administrator.

[FR Doc. 97–1332 Filed 1–17–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 194

RIN 2060–AE30

[FRL–5679–2]

Opportunity To Present Oral Testimony on the DOE's Compliance Certification Application for the Waste Isolation Pilot Plant; Notice of Public Hearings

AGENCY: Environmental Protection Agency.

ACTION: Notice of public hearings.

SUMMARY: The Environmental Protection Agency (EPA) intends to certify whether or not the Waste Isolation Pilot Plant (WIPP) will comply with EPA's environmental radiation protection standards for the disposal of radioactive waste (40 CFR part 191). The WIPP is being constructed by the Department of Energy (DOE) near Carlsbad, New Mexico, as a potential repository for the safe disposal of transuranic radioactive waste. Pursuant to the WIPP Land Withdrawal Act of 1992, as amended, EPA must certify that the WIPP will comply with EPA's radioactive waste disposal standards, as well as other applicable environmental laws and regulations, before DOE may commence disposal of radioactive waste at the WIPP.

EPA will determine whether the WIPP will comply with EPA's disposal standards based on the application submitted by the Secretary of Energy. DOE's Compliance Certification Application was received by the EPA on October 29, 1996. EPA is reviewing the application and has requested supplemental information from DOE. Copies of the application and the letter from EPA to DOE requesting additional information are available for review at each of EPA's WIPP docket locations (see Supplementary Information for specifics). The Administrator will make a determination as to the completeness of the application in the near future and will notify the Secretary of Energy, in writing, when the Agency deems the application ''complete.'' EPA will evaluate the ''Department's'' application in determining whether the WIPP will comply with the Agency's radioactive waste disposal standards. EPA requests public comment on all aspects of the DOE's application.

DATES: EPA will conduct public hearings to receive comments on the Department of Energy's (DOE) Compliance Certification Application for the Waste Isolation Pilot Plant (WIPP) in Carlsbad, NM on February 19, from Noon to 5:00 p.m. and from 7:00 p.m. to 9:00 p.m.; in Albuquerque, NM on February 20 from noon to 5:00 p.m. and from 7:00 p.m. until 9:00 p.m.; and in Santa Fe, NM from Noon to 5:00 p.m. and from 7:00 p.m. to 9:00 p.m.

Testifiers are requested to pre-register. Contact Rafaela Ferguson, EPA, by telephone or fax at (202) 233–9362 or (202) 233–9649 with the following information: Name/Organizational Affiliation (if any)/address/hearing date, location, time(s) available to testify, and a daytime telephone number. Individual speakers will be allocated 5 minutes and individuals testifying as the official representative or spokesperson on behalf of groups and organizations will be allocated 10 minutes for an oral presentation exclusive of any time consumed by questions from the government panel and answers to these questions. In order to guarantee an opportunity to testify, requests must be received by February 14, 1997. Speakers not registered in advance may register at the door and will be scheduled to testify, if openings are still available and time permits.

ADDRESSES: EPA's public hearings to accept comments on DOE's Compliance Certification Application will be held on February 19, at the Pecos River Village Conference Center, Room #5, 302 South Canal Street, Carlsbad, NM; on February 20, at the Albuquerque Convention Center, Cochiti/Taos Room, 401 Second Street, NW, Albuquerque, NM; and on February 21, at the Sweeney Convention Center, Room #1, 201 W. Marcy, Santa Fe, NM.

Information on EPA's radioactive waste disposal standards (40 CFR Part 191), the compliance criteria (40 CFR Part 194), and DOE's compliance certification application is listed under Dockets No. R–89–01, A–92–56, and A–93–02, respectively, and is available for review at the following three EPA WIPP docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Mon–Thu, 10–9, Fri–Sat, 10–6, and Sun 1–5; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: Mon–Thu, 8–9, Fri, 8–5, Sat–Sun, 1–5; and in Santa Fe at the Fogelson Library, College of Santa Fe, Hours: Mon–Thu, 8–12 Midnight, Fri, 8–5, Sat, 9–5, and Sun, 1–9. For purposes of judicial review, EPA's official docket for all rulemaking activities under the Waste Isolation Pilot Plant Land Withdrawal Act, as amended, is located in Washington, DC in the Air Docket, Room M1500, Mailcode 6102, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

Note: The dockets in New Mexico only contain major items from the official docket (WDC) plus all those documents added to the official docket since October 1992 when the WIPP Land Withdrawal Act was enacted.

As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying docket materials.

FOR FURTHER INFORMATION CONTACT: Rafaela Ferguson, Office of Radiation and Indoor Air, (202) 233–9362 or call EPA's 24-hour toll-free WIPP Information Line, 1–800–331–WIPP.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy is developing the Waste Isolation Pilot Plant (WIPP) near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of transuranic (TRU) radioactive waste. TRU wastes are materials containing elements having atomic numbers greater than 92 in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes, with half-lives greater than twenty years, per gram of waste. Most TRU wastes are items that have become associated with the production of nuclear weapons, e.g., rags, equipment, tools, and contaminated organic and inorganic sludges.

On October 30, 1992, the Waste Isolation Pilot Plant Land Withdrawal Act (Pub. L. 102–579) was enacted, and on September 23, 1996, the Act was amended. Among other things, the Act, as amended, specifies the terms and conditions for the DOE's activities at the WIPP and the regulatory requirements which apply throughout various stages of the repository's development including the requirement that before beginning disposal of radioactive wastes at the WIPP, DOE must demonstrate that the WIPP will comply with the Environmental Protection Agency's (EPA) radioactive wastes disposal standards, e.g., ''Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes'' (40 CFR Part 191).

Under the Act, as amended, EPA is required to develop criteria for the Administrator's certification of compliance with the 40 CFR part 191 disposal standards. On February 11, 1993, EPA published an Advance Notice of Proposed Rulemaking, 58 FR 8029, in the Federal Register requesting information and comments pertinent to the development of the compliance criteria.

On January 11, 1995, EPA Administrator Carol Browner signed the proposed compliance criteria rule. The 90-day public comment period began on January 30, the date the proposed compliance criteria rule notice appeared at 60 FR 5766 in Part II of the Federal Register, and ended on May 1, 1995. EPA opened a second public comment period on August 1, which ended on September 15, 1995 (60 FR 39131). EPA issued final compliance criteria on February 9, 1996, at 61 FR 5224–5245, approximately one year after prosposal in the Federal Register. On March 29, 1996, EPA issued the Compliance Application Guidance (CAG) which provided DOE with specific guidelines regarding the format and content of the compliance certification application and a clear description of the information that EPA would need to make its certification decision. The guidance provided in the CAG is within the framework established by 40 CFR parts 194 and 191 and under the authority of the WIPP Land Withdrawl Act, as amended. On November 15, 1996, EPA published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register at 61 FR 58499–58500, entitled ''Decision to Certify Whether the Waste Isolation Pilot Plant Complies With the 40 CFR Part 191 Disposal Regulations and the 40 CFR Part 194 Compliance Criteria.'' The WIPP Land Withdrawal Act, as amended, requires the DOE to demonstrate compliance with EPA's disposal standards and to submit an application for certification of WIPP's compliance to the EPA Administrator. In submitting such an application, the DOE must meet the requirements of the EPA compliance criteria that will be used by the Agency to certify whether or not the WIPP complies with the radioactive waste disposal standards.

If EPA decides that the WIPP meets its radioactive waste disposal standards, then DOE may proceed with the opening of the WIPP. Following the opening of the facility and throughout its operational phase, DOE will be required to submit a re-certification application to EPA every five years. The Agency will review this application and determine whether the WIPP remains in compliance with the disposal standards. The public will be permitted to inspect and comment on any re-certification application. By law, all public comments must be considered by the Agency prior to making a final decsion on WIPP's continued operation.

Dated: January 15, 1997.

Rob Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–1366 Filed 1–17–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 194

[Docket No. PS–130; Notice 4]

RIN 2137–AC30

Notice of Public Hearing; Response Plans for Onshore Oil Pipelines

AGENCY: Research and Special Programs Administration (RSPA), Office of Pipeline Safety (OPS), DOT.

ACTION: Announcement of public hearing; Correction.

SUMMARY: In proposed rule document 96–30316 beginning on page 60674 in the issue of Friday, November 29, 1996, RSPA did not include a full agenda. RSPA anticipates a discussion of the interim final rule 49 CFR part 194 in its entirety, including the issues identified in the following draft agenda. RSPA expects the meeting to be attended by a broad cross-section of the pipeline industry, as well as environmental groups, state environmental agencies, and other federal agencies such as the Environmental Protection Agency and the National Transportation Safety Board. The draft agenda is as follows:

January 29, 1997, 8:30 a.m.–4:30 p.m.

New Orleans Hilton Riverside in New Orleans, Louisiana

Opening Remarks

Definition of significant and substantial harm

Facility response plan requirements for pipelines transporting hazardous substances

Credit for secondary containment around breakout tanks

Update on RSPA breakout tank regulations, and adoption of API standards 650–653

Changing RSPA plan review cycle from three-year cycle to five-year cycle

Regulatory definition of ''oil'' for purposes of response planning

Requirement for secondary communications systems for emergency response

Jurisdictional issues for offshore pipelines

Planning for ''a substantial threat of a discharge''

Distribution of exercise guidance document

Incorporating the PREP guidance into 49 CFR 194 by reference

Developing a tool to measure how pipeline operators implement their FRP

Adopting the National Response Team's Integrated Contingency Plan

Use of NAVIC–72 & EPA guidelines to assess response resources

Elimination of references to high/low volume port tiers

Requirement for response strategies/techniques

Adjourn

Issued in Washington, D.C. on January 14, 1997.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 97–1291 Filed 1–17–97; 8:45 am]

BILLING CODE: 4910–60–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7202]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each

community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Colorado	Colorado Springs (City), El Paso County.	Pine Creek	Approximately 950 feet upstream of Interstate 25.	None	*6,319
			Approximately 480 feet upstream of Academy Boulevard.	None	*6,441
		Pine Creek Tributary	Approximately 225 feet above confluence with Pine Creek.	None	*6,378
			Approximately 2,100 feet upstream of confluence with Pine Creek.	None	*6,398
Maps are available for inspection at the City of Colorado Springs Regional Building Department, 101 West Costilla Street, Colorado Springs, Colorado.					
Send comments to The Honorable Robert M. Isaac, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901–1575.					
	Manitou Springs (City), El Paso County.	Sutherland Creek	Approximately 1,200 feet upstream of confluence with Fountain Creek.	None	*6,267
			Approximately 1,250 feet upstream of Crystal Hills Boulevard.	None	*6,505
Maps are available for inspection at City Hall, 606 Manitou Avenue, Manitou Springs, Colorado.					
Send comments to The Honorable Gherald ''Bud'' Ford, Mayor, City of Manitou Springs, 606 Manitou Avenue, Manitou Springs, Colorado 80829.					
	Monument (Town), El Paso County.	Black Forest-Baptist Road Tributary.	At Baptist Road	None	*7,020
			Approximately 120 feet upstream of Baptist Road.	None	*7,022
		Crystal Creek	Approximately 70 feet upstream of confluence with Monument Lake.	*6,220	*6,923

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 160 feet downstream of Interstate 25.	None	*7,053
		Dirty Woman Creek	At Mitchell Street	*6,883	*6,886
			Just downstream of Westwood Lane	None	*6,995

Maps are available for inspection at the Town Hall, 166 Second Street, Monument, Colorado.

Send comments to The Honorable Si Bell, Mayor, Town of Monument, 166 Second Street, Monument, Colorado 80132.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 10, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–1279 Filed 1–17–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 53

[CC Docket No. 96–149, FCC 96–489]

Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On December 24, 1996, the Commission released a First Report and Order which is published elsewhere in this issue. On the same day, the Commission adopted a Further Notice of Proposed Rulemaking (FNPRM) seeking comment on proposed disclosure requirements to implement section 272(e)(1). The intended effect of this FNPRM is to further the Commission's goal of fostering competition in the telecommunications market.

DATES: Comments are due on or before February 19, 1997 and Reply Comments are due on or before March 21, 1997. Written comments by the public on the proposed and/or modified information collections are due February 19, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before March 24, 1977.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Radhika Karmarker, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. For additional information concerning the information collections contained in this FNPRM contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking adopted December 23, 1996 and released December 24, 1996 (FCC 96–489). This FNPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the OMB for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding. The full text of this FNPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc96489.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

Paperwork Reduction Act: This FNPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collections contained in this FNPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due March 24, 1997. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0736.

Title: Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Information collection	Number of respondents (approximate)	Estimated time per response (hours)	Total annual burden (hours)
Service interval disclosure (information disclosure requirement)	5	24	120
Annual affidavit ...	5	.5	2.5

Total Annual Burden: 122.5 hours.

Respondents: Business or other for profit.

Estimated costs per respondent: $0.

Needs and Uses: The FNPRM seeks comment on a number of issues, the result of which could lead to the imposition of information collections. The FNPRM seeks comment on certain reporting requirements to implement the non-accounting nondiscrimination requirements of Section 272(e)(1) of the Communications Act.

Synopsis of Further Notice of Proposed Rulemaking

A. Information Disclosure Requirements Under Section 272(e)(1)

1. Background

Section 272(e)(1) states that BOCs ''shall fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates.'' In the NPRM, we sought comment on how to implement section 272(e)(1) and specifically inquired whether reporting requirements for service intervals analogous to those imposed by *Computer III* and *ONA* would be sufficient. We concluded above, in Part VI.A, that specific public disclosure requirements are necessary to implement section 272(e)(1) effectively. We also noted that the record does not provide sufficient detail for us to determine whether the current *ONA* disclosure requirements are suitable for assessing compliance with section 272(e)(1), or whether requirements are suitable for assessing compliance with section 272(e)(1), or whether another proposal, such as AT&T's proposed reporting requirements, would be a better approach.

2. Comments

AT&T, Teleport, and MCI support the imposition of reporting requirements to implement section 272(e)(1) and argue that the existing *ONA* installation and maintenance reporting requirements are insufficient. AT&T suggests, for example, that the service interval reporting requirements established in the *ONA* proceeding measure average response times, and would not provide an adequate mechanism for determining whether a BOC is complying with section 272(e)(1).

AT&T proposes a reporting scheme that is based on measures it currently uses to monitor the quality of access services provided to it by LECs. AT&T proposes that the BOCs report data in eleven categories, most of which are broken down into subcategories according to the type of access service provided. AT&T's proposal includes relatively specific units of measure for these categories, such as, for example, the percentage of circuits installed within each successive twenty-four hour period, until a ninety-five percent installation level is reached. According to AT&T, LECs currently track information in these categories to monitor the service they provide to AT&T.

Teleport proposes a reporting format that includes eight service categories for both installation and service performance. MCI proposes categories based on those used in Automated Reporting Management Information Systems (ARMIS), including additional categories for billing disputes and payment intervals. MCI proposes quarterly reporting broken down among the BOC, its affiliate, and all other unaffiliated entities.

The BOCs oppose AT&T's proposal. Bell Atlantic, for instance, states that some of the categories in AT&T's proposal ask for information beyond the information AT&T currently requests from the BOCs. Bell Atlantic further argues that AT&T improperly proposes that the BOCs report on intermediate checkpoints that do not provide information on the ultimate timeliness of the BOCs' provision of service. Several BOCs argue that the information AT&T seeks is already available in existing ARMIS reports. Ameritech opposes the monthly updates proposed by AT&T, favoring quarterly updates instead. Ameritech opposes reporting that would provide detail below a BOC's total service region. Ameritech favors consolidating AT&T's DS0 subcategories into a single DS0 category. PacTel argues that the disclosure of the absolute number of requests placed by its affiliate would reveal competitively sensitive information, and that disclosure of relative data, such as the percentage of missed appointments and average time intervals, would provide sufficient information to monitor BOC behavior.

BOCs also oppose Teleport's proposal. PacTel disagrees with Teleport's suggestion that BOCs provide data for each exchange area in their territory. PacTel also indicates that reporting on DS0 as a separate category would unfairly disadvantage the one interexchange carrier that dominates the DS0 market.

While the BOCs generally oppose reporting requirements, they state that, if the Commission imposes a reporting requirement, the *ONA* format should be utilized because it is currently in place and is well-understood. PacTel provides an example of a modified *ONA* report that reflects the services provided to interLATA telecommunications providers. Ameritech indicates that it would not oppose a reporting requirement that compares data for BOC affiliates with aggregated data for all unaffiliated carriers.

3. Discussion

In order to implement section 272(e)(1) effectively, we concluded that the BOCs must make publicly available the intervals within which they provide service to their affiliates. We concluded that, without this requirement, competitors will not have the information they require to evaluate whether the BOCs are fulfilling their requests for telephone exchange service and exchange access in compliance with section 272(e)(1).

Method of information disclosure. In requiring the BOCs to disclose information regarding the service intervals within which they provide telephone exchange service and exchange access, we seek to avoid imposing any unnecessary administrative burdens on the BOCs, unaffiliated entities, and the Commission. Consequently, we tentatively conclude that the BOCs need not submit directly to the Commission the data that must be disclosed under section 272(e)(1). Instead, we tentatively conclude that, upon receiving permission to provide interLATA services pursuant to section 271, each BOC must submit a signed affidavit stating: (1) the BOC will maintain the required information in a standardized format; (2) the information will be updated in compliance with our rules; (3) the information will be maintained accurately; and (4) how the public will be able to access the information. We

tentatively conclude that, if a BOC makes any material change in the manner in which the information covered by the affidavit is made available to the public, it must submit an updated affidavit within 30 days of the change. Further, we tentatively conclude that each BOC must submit an annual affidavit each year thereafter, affirming that the BOC has complied with the four requirements set out above during the preceding year. We note that, in order to address potential complaints alleging discrimination pursuant to section 272(e)(1), the BOCs are likely to maintain information regarding the service they provide to their affiliates and to unaffiliated entities, regardless of whether they must disseminate such information publicly or file it with the Commission. Therefore, we tentatively conclude that maintaining this information for public dissemination will not impose a significant additional burden on the BOCs. We seek comment on the foregoing tentative conclusions.

We tentatively conclude that the BOCs must make such information available to the public in at least one of their business offices during regular business hours, and must include this information in their annual affidavits. We seek comment on this tentative conclusion. We seek comment on whether this information should also be available electronically. For example, we seek comment on whether the BOCs should make this information available on the Internet, or whether the information should be available through another electronic mechanism. We also seek comment on other methods to facilitate the access and use of this information by unaffiliated entities, including small entities.

Service categories and units of measure. We seek comment on whether the BOCs should maintain the information described below in a standardized format, and seek comment on whether the format in the attachment would be appropriate. Parties favoring an alternative format should submit examples of their proposals.

We seek comment on whether we should require the BOCs to maintain information in the following service categories: (1) successful completion according to desired due date, measured in a percentage; (2) time from the BOC-promised due date to circuit being placed in service, measured in terms of the percentage installed within each successive twenty-four hour period until ninety-five percent complete; (3) time to firm order confirmation, measured in terms of the percentage received within each successive twenty-four hour period until ninety-five percent complete; (4) time from PIC change requests to implementation, measured in terms of percentage implemented within each successive six hour period until ninety-five percent complete; (5) time to restore and trouble duration, measured in terms of the percentage restored within each successive one hour interval until ninety-five percent of incidents are resolved; (6) time to restore PIC after trouble incident, measured by percentage restored within each successive one hour interval until ninety-five percent restored; and (7) mean time to clear network and the average duration of trouble, measured in hours. We seek comment on whether any additional categories proposed by commenters should be included.

We have sought comment on whether the BOCs should disclose the interval between the due date promised by the BOC and the time a circuit is actually placed in service, measured in terms of the percentage of circuits installed within each successive twenty-four hour period. We have sought comment on a category that differs from AT&T's proposed category, which would measure a BOC's response time in relation to a customer's desired due date, because we recognize that the BOCs have no control over a customer's requested due date. We have proposed this category because the BOCs have control over the due date they promise at the time an order is placed. Further, the amount of delay in installing a circuit, and not just whether a due date was missed, may be a significant source of difficulty to a customer. Because our service category differs from the service category proposed by AT&T, we seek comment on whether any corresponding changes to the unit of measure are warranted.

We seek comment on whether we should require the BOCs to disclose the BOC-promised due date itself, *i.e.*, the length of the interval promised by the BOCs to their affiliates at the time an order is placed. Parties favoring such a disclosure should provide a detailed description of the appropriate unit of measure and level of aggregation for these disclosures.

We seek comment on whether our proposed service categories and units of measure for these categories are more appropriate to implement section 272(e)(1) than the categories currently included in the *ONA* installation and maintenance reports or than PacTel's proposed modification of *ONA* installation and maintenance reports. Our proposal addresses the provision of exchange access to interLATA service providers, unlike *ONA* reports, which address the provision of *ONA* unbundled elements to enhanced service providers. The units of measure in our proposal are more precise than the *ONA* intervals. We therefore seek comment on whether these measures will provide a better guide for unaffiliated entities and the Commission to determine whether the BOCs are complying with section 272(e)(1).

We recognize that our proposal is patterned after arrangements regarding the provision of access between interexchange carriers and LECs. We seek comment on whether these categories will also provide sufficient information to ISPs, and whether our proposal is sufficient to implement the nondiscriminatory provision of telephone exchange service in accordance with section 272(e)(1).

We do not believe that the requirements proposed here will impose a significant additional administrative burden on the BOCs, particularly because under our existing price cap rules, the BOCs must track service intervals for end-users as part of their service quality reporting requirements. Nevertheless, we seek comment on whether, and to what extent, the industry or state regulators currently collect data using the service categories and units of measure included in our proposal, and the need for the BOCs to modify their current tracking systems to comply with our proposal.

Several BOCs argue that extensive reporting of their affiliates' requests could cause competitive harm to their affiliates. Specifically, PacTel argues that relative data such as the percentage of missed appointments and average time intervals provide sufficient information to monitor BOC behavior, and that the disclosure of absolute figures for the number of orders placed by an affiliate would reveal competitively sensitive proprietary information. We seek comment on whether our proposal, which uses percentages and averages and does not require disclosure of the absolute number of BOC affiliate requests, adequately protects the competitive interests of BOC affiliates. Any party favoring other levels of aggregation should provide a specific alternative proposal and explain why that alternative proposal is sufficient to implement section 272(e)(1). The party should also explain how its alternative proposal addresses commenters' concerns regarding the inadequacy of *ONA* installation and maintenance reporting requirements.

Frequency of Updates and Length of Retention. We seek comment on how

often the BOCs should be required to update the data that they must maintain. For example, we seek comment on whether the BOCs should update the data quarterly or monthly. Parties should substantiate their positions by comparing the amount of underlying data used to produce *ONA* reports or other reports that are prepared on a quarterly basis, with the amount of data that will be used to produce the information in our proposal. We also seek comment on how long the BOCs must retain the data that they must maintain.

Levels of Aggregation. Because section 272(e)(1) states that the BOCs must fulfill requests for unaffiliated entities in the period of time that the BOCs provide service to ''itself or to its affiliates,'' we seek comment on whether the BOCs should aggregate their own requests and the requests of all of their affiliates for each service category, or whether they should maintain data for each affiliate and themselves separately. We seek comment on whether the BOCs should maintain separate data for each state in their service regions. Parties favoring other levels of aggregation, such as by BOC region, or by exchange area, should provide detailed support for their proposals.

We seek comment on whether the BOCs should provide the information required in service categories four and six, described above, by carrier identification code (CIC). We seek comment on whether the BOCs should provide the information required by service category seven in two subcategories: DS1 Non-Channelized and DS0. We seek comment on whether information in all other service categories should be broken down into three subcategories: DS3, DS1, and DS0. We also seek comment on whether, in the alternative, we should further divide the DS0 subcategory into DS0 Voice Grade and DS0 Digital, as suggested by AT&T.

Consistency with other reporting requirements. We seek comment on the extent of overlap, if any, between the disclosure requirements we propose in this Further NPRM and reporting currently required by state commissions. We also seek comment on whether the information provided under ARMIS form 43–05 provides sufficient information to implement section 272(e)(1), as several BOCs suggest, or whether further disaggregation of the ARMIS service categories is necessary, as MCI suggests. Parties that favor relying on ARMIS data alone, rather than imposing an information disclosure requirement under section 272(e)(1), should explain why ARMIS reports are sufficient, given that ARMIS reports must be filed on an annual basis and that they focus on services provided to the end-user, rather than services provided between carriers. Any parties contending that sufficient information to enforce section 272(e)(1) is available from other sources should explain, in detail, the categories and units of measure included in these alternative sources as compared with our proposal. Finally, we note that much of Teleport's proposal appears directed toward the implementation of local competition by incumbent LECs, and therefore does not address service intervals provided by the BOCs. Teleport has raised many of these same proposals in its petition for reconsideration of the *First Interconnection Order* 61 FR 45476 (August 29, 1996). We tentatively conclude, therefore, that we should limit the scope of the proposals considered in this docket to requirements necessary to implement the service interval requirements of section 272(e)(1). We seek comment on this tentative conclusion.

B. Procedural Matters

1. Ex Parte Presentations

This is a non-restricted notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, in accordance with the Commission's rules, provided that they are disclosed as required.

2. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, (RFA) as amended, requires an initial regulatory flexibility analysis in notice-and-comment rulemaking proceedings, unless we certify that ''the rule will not, if promulgated, have a significant economic impact on a significant number of small entities.'' A ''small entity'' is an entity that is ''independently owned and operated, * * * not dominant in its field of operation,'' and meets any additional criteria established by the Small Business Administration (SBA). SBA regulations define small telecommunications entities in SIC code 4813 (Telephone Companies Except Radio Telephone) as entities with fewer than 1,500 employees. This proceeding pertains to the BOCs which, because they are dominant in their field of operation and have more than 1,500 employees, do not qualify as small entities under the RFA. We now note as well that none of the BOCs is a small entity because each BOC is an affiliate of a Regional Holding Company (RHC), and all of the BOCs or their RHCs have more than 1,500 employees. We therefore certify, pursuant to section 605(b) of the RFA, that the rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The Secretary shall send a copy of this Further NPRM, including this certification and statement, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this certification will also be published in the Federal Register.

3. Initial Paperwork Reduction Act of 1995 Analysis

This Further NPRM contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Further NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due at the same time as other comments on this Further NPRM; OMB comments are due 60 days from date of publication of this NPRM in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

4. Comment Filing Procedures

Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before February 19, 1997, and reply comments on or before March 21, 1997. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, NW., Room 544,

Washington, DC., 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, DC 20554.

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with Section 1.49 and all other applicable sections of the Commission's Rules. We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. Parties may not file more than a total of ten (10) pages of *ex parte* submissions, excluding cover letters. This 10 page limit does not include: (1) written *ex parte* filings made solely to disclose an oral *ex parte* contact; (2) written material submitted at the time of an oral presentation to Commission staff that provides a brief outline of the presentation; or (3) written materials filed in response to direct requests from Commission staff. *Ex parte* filings in excess of this limit will not be considered as part of the record in this proceeding.

Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C., 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

Written comments by the public on the proposed and/or modified information collections are due February 19, 1997, and reply comments must be submitted not later than March 21, 1997. Written comments must be submitted by the OMB on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C., 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, D.C., 20503 or via the Internet to fain__t@al.eop.gov.

C. Ordering Clauses

It is further ordered that pursuant to sections 1, 2, 4, 201–205, 215, 218, 220, 271, 272, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201–205, 215, 218, 220, 271, 272, and 303(r) the further notice of proposed rulemaking is adopted. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

It is further ordered that the Secretary shall send a copy of this further notice of proposed rulemaking, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.*

List of Subjects in 47 CFR Part 53

Bell Operating Companies, Communications common carriers, InterLATA services, Separate affiliate safeguards, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

ATTACHMENT.—FORMAT FOR INFORMATION DISCLOSURES PURSUANT TO SECTION 272(e)(1)

Service category	Types of access	Outcome for BOC and BOC affiliates
(1) Successful Completion According to Desired Due Date (measured in a percentage)	DS3 and above. DS1. DS0.	
(2) Time from BOC Promised Due Date to Circuit being placed in service (measured in terms of percentage installed within each successive 24 hour period, until 95% installation completed).	DS3 and above. DS1. DS0.	
(3) Time to Firm Order Confirmation (measured in terms of percentage received within each successive 24 hour period, until 95% completed).	DS3 and above. DS1. DS0.	
(4) Time from PIC Change request to implementation (measured in terms of percentage implemented within each successive 6 hour period, until 95% completed).	By CIC (10XXX).	
(5) Time to Restore and trouble duration (percentage restored within each successive 1 hour interval, until resolution of 95% of incidents).	DS3 and above. DS1. DS0.	
(6) Time to restore PIC after trouble incident (measured by percentage restored within each successive 1 hour interval, until resolution of 95% restored).	By CIC (10XXX).	
(7) Mean time to clear network / average duration of trouble (measured in hours)	DS1 Non-Channelized. DS0.	

[FR Doc. 97–1389 Filed 1–17–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 96–247, RM–8914]

Radio Broadcasting Services; Pangburn, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Greers Ferry Broadcasting requesting the allotment of Channel 256A to Pangburn, Arkansas, as that community's first local aural transmission service. Coordinates used for Channel 256A at Pangburn are 35–26–52 and 91–48–57.

DATES: Comments must be filed on or before March 10, 1997, and reply comments on or before March 25, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Rick D. Rhodes, Esq., Irwin, Campbell & Tannenwald, P.C., 1730 Rhode Island Avenue, NW., Suite 200, Washington, DC 20036–3101.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 96–247, adopted November 22, 1996, and released December 6, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–1348 Filed 1–17–97; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–246, RM–8904]

Radio Broadcasting Services; Salida, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Cyrus Esphahanian requesting the allotment of Channel 229C3 to Salida, Colorado, as that community's second local FM service. Coordinates used for Channel 229C3 at Salida are 38–29–10 and 105–58–53.

DATES: Comments must be filed on or before March 10, 1997, and reply comments on or before March 25, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Harry C. Martin and Richard J. Estevez, Esqs., Fletcher, Heald & Hildreth, PLC, 1300 N. 17th Street, 11th Floor, Rosslyn, VA 22209.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 96–246, adopted November 22, 1996, and released December 6, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140,Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–1349 Filed 1–17–97; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14, Notice 112]

Federal Motor Vehicle Safety Standards; Occupant Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of technical workshop; request for comments.

SUMMARY: This document announces that NHTSA will be holding a public workshop to explore technical issues relating to the agency's occupant protection standard and smart air bags. The purposes of the workshop are to—

- Review the types of smart air bags (e.g., automatic deactivation based on weight sensors, automatic deactivation based on other or additional types of sensors, and automatic modulation of the speed and force of air bag deployment so as not to seriously injure occupants) and the specific technologies which can be used, singly or in combination, to provide smart capability;
- Assess the suitability of the agency's definitions of smart passenger air bags (provided in the agency's November 27, 1996 labeling final rule), and discuss appropriate definitions for smart driver air bags;
- Assess which types of specific smart air bag technologies or combinations of technologies are best suited for addressing passenger risks

and which are best suited for addressing driver risks;

• Consider what test procedures and test devices should be proposed by the agency to assure the proper performance of each type of smart air bag in the short run, and what procedures and devices would be appropriate for the long term;

• Consider whether, in the interest of promoting the early availability of reliable smart air bags, manufacturers should be encouraged or required to install relatively simple versions of smart air bags in the short term;

• Consider whether, in the interest of minimizing the risk of air bag deaths and preserving or enhancing air bag benefits, manufacturers should be encouraged or required to install more sophisticated smart air bags in the long run;

• Consider whether to use a phase-in and, if so, what phase-in schedule(s) should be proposed for smart passenger and driver air bags; and

• Discuss other issues related to the rapid introduction of smart air bag systems.

DATES: *Public workshop:* The public workshop will be held in Washington DC on February 11 and 12, 1997, from 9:00 a.m. to 5:00 p.m.

Those wishing to participate in the workshop should contact Clarke Harper, at the address or telephone number listed below, by January 31, 1997. Copies of statements to be presented on the first day of the workshop should be provided to Mr. Harper by February 7, 1997.

Written comments: Written comments may be submitted to the agency and must be received by February 21, 1997.

ADDRESSES: *Public workshop:* The public workshop will be held in room 2230 of the Nassif Building, 400 Seventh St. SW., Washington DC 20590.

Written comments: All written comments must refer to the docket and notice number of this notice and be submitted (preferable 10 copies) to the Docket Section, National Highway Traffic Safety Administration (NHTSA), Room 5109, 400 Seventh St., SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Clarke Harper, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590 (telephone 202–366–2264; fax 202–493–2739).

SUPPLEMENTARY INFORMATION:

I. Background

The history of NHTSA's consideration of air bags to address the problem of deaths in frontal vehicle impacts is almost as long as the history of the agency itself. In 1969, three years after the enactment of the National Traffic and Motor Vehicle Safety Act of 1966, the agency held its first public meeting on air bags.

The agency's first requirement for automatic restraints (i.e., automatic belts or air bags) was issued in the early 1970's, but was overturned on judicial review due to several ambiguities in the test procedures. A requirement for automatic restraints was reissued by Secretary Adams in 1977 and rescinded by the agency in the early 1980's because it concluded that the vehicle manufacturers were planning to install a type of automatic belt that the agency regarded as unlikely to be effective in increasing belt use. After the U.S. Supreme Court overturned the rescission, Secretary Dole reissued a requirement for automatic restraints in 1984. The 1984 rule encouraged, but did not require, the installation of air bags. Manufacturers continued under the rule to have the option of installing automatic belts.

Since then, there has been considerable experience with air bags.[1] Manufacturers responded to the agency's third automatic restraint requirement by voluntarily choosing to install significant numbers of driver air bags instead of automatic belts in cars beginning in model year 1986 and in light trucks beginning in model year 1991. Installation of passenger air bags came somewhat later. Manufacturers began voluntarily installing significant numbers of passenger air bags in cars in model year 1989 and in light trucks in model year 1994. As of the end of model year 1996, approximately 56 million driver air bags and 27 million passenger air bags had been installed in cars and light trucks. All were voluntarily installed. The first federally-required air bags appeared after model year 1996. Mandatory installation of air bags in passenger cars began with the current model year, model year 1997, pursuant to section 2508 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), and will begin for light trucks in model year 1998.

While these air bags saved approximately 1,700 lives through the end of 1996 and prevented many more serious injuries, they pose a lethal danger to infants in rear-facing child seats and to some other occupants, primarily unbelted ones, in low speed collisions. Air bags are killing a growing number of children. They have also killed a number of drivers, especially short women, although only one driver is known to have been killed by an air bag in this country in calendar year 1996.[2]

The agency has conducted a series of rulemaking proceedings over the last four years to address the risks posed by air bags. Most recently, the agency issued two final rules on this issue. One required new, attention-getting warning labels for child restraints and for vehicles without a ''smart'' passenger air bag, i.e., an air bag that automatically shuts off or adjusts its deployment so as not to adversely affect children. The other final rule extended the period during which manufacturers may install manual devices for deactivating passenger air bags in vehicles lacking a rear seat that can accommodate child restraints.

The agency also issued two proposals to provide interim solutions to the adverse side effects of air bags. One proposal would permit the deactivation of driver and passenger air bags in existing vehicles and in vehicles manufactured during the next several model years. The other proposal sets forth two alternatives to permit the depowering of air bags.

The first alternative depowering proposal would increase the current limit on the level of chest g's permitted in tests using an unbelted dummy. While Standard 208 does not specify a particular level of power, it does have the effect of limiting the extent to which air bags can be depowered. Many air bags cannot be sufficiently depowered without violating the existing limit or cutting into the compliance margins needed by the manufacturers. The second alternative would allow greater levels of depowering, by simplifying the test procedures and specifying a single crash pulse regardless of vehicle size. It would also allow all air bags in need of

[1] The first installation of air bags occurred a decade earlier. In the mid-1970's, driver and passenger air bags were installed in approximately 10,000 passenger cars by General Motors.

[2] The agency's figures for driver fatalities are based on information that NHTSA has developed through NHTSA's Special Crash Investigation program and are not the result of a census. Studies of Fatal Accident Reporting System data are underway to obtain more precise figures.

depowering to be modified and tested more quickly.

II. Smart Air Bags

There is a consensus among national regulatory authorities in this country and Canada, the vehicle industry and its suppliers, insurance industry and consumer groups that the smart air bag is the best means in the long term for preventing air bag deaths and preserving and even enhancing air bag benefits. In a November 22, 1996 press conference, NHTSA announced that it was considering issuing a proposal to mandate the phasing-in of smart air bags, beginning with 1999 models.

The agency defined smart passenger air bags as follows in its final rule on the new labels (S4.5.5 of Standard No. 208):

For purposes of this standard, a smart passenger air bag is a passenger air bag that:

(a) Provides an automatic means to ensure that the air bag does not deploy when a child seat or child with a total mass of 30 kg or less is present on the front outboard passenger seat, or

(b) Incorporates sensors, other than or in addition to weight sensors, which automatically prevent the air bag from deploying in situations in which it might have an adverse effect on infants in rear-facing child seats, and unbelted or improperly belted children, or

(c) Is designed to deploy in a manner that does not create a risk of serious injury to infants in rear-facing child seats, and unbelted or improperly belted children.

This definition was intended to broadly encompass passenger air bag designs that automatically avoid injuring the two groups of children shown by experience to be at special risk from air bags: infants in rear-facing child seats, and children who are out-of-position (because they are unbelted or improperly belted) when the air bag deploys. The agency has not provided a definition for driver smart air bags.

Vehicle manufacturers and air bag suppliers are working on many different design concepts that could, individually or when used with other concepts, qualify as smart air bags. The simplest concept, for passenger air bags, appears to be a weight sensor that would deactivate the air bag when either no passenger or only a child of less than 30 kilograms or 66 pounds is present. Other concepts include automatic deactivation based on other or additional types of sensors, such as ones which sense occupant position, and automatic modulation of the speed and force of air bag deployment (e.g., using dual or multiple level inflators) so as not to seriously injure occupants.

Vehicle manufacturers have broad flexibility to introduce smart air bags under the existing provisions of Standard No. 208. Smart air bags were permissible under the 1984 requirements and continue to be permissible today, even under the standard as amended pursuant to ISTEA.[3]

III. Air Bag Safety Meeting

On January 6, 1997, the NHTSA and the National Transportation Safety Board co-sponsored an Air Bag Safety Meeting of interested persons from government, industry and consumer groups. The participants focused on behavioral solutions, including public education, legislation regarding safety use laws, and enforcement, and on technological solutions, especially smart air bags.

IV. Public Workshop

A. Purposes

The purposes of the workshop are to—

- Review the types of smart air bags (e.g., automatic deactivation based on weight sensors, automatic deactivation based on other or additional types of sensors, and automatic modulation of the speed and force of air bag deployment so as not to seriously injure occupants) and the specific technologies which can be used, singly or in combination, to provide smart capability;
- Assess the suitability of the agency's definitions of smart passenger air bags (provided in the agency's November 27, 1996 labeling final rule), and discuss appropriate definitions for smart driver air bags;
- Assess which types of specific smart air bag technologies or combinations of technologies are best suited for addressing passenger risks and which are best suited for addressing driver risks;
- Consider what test procedures and test devices should be proposed by the agency to assure the proper performance of each type of smart air bag in the short run, and what procedures and devices would be appropriate for the long term;
- Consider whether, in the interest of promoting the early availability of reliable smart air bags, manufacturers should be encouraged or required to install relatively simple versions of smart air bags in the short term;
- Consider whether, in the interest of minimizing the risk of air bag deaths and preserving or enhancing air bag benefits, manufacturers should be encouraged or required to install more sophisticated smart air bags in the long run;
- Consider whether to use a phase-in and, if so, what phase-in schedule(s) should be proposed for smart passenger and driver air bags; and
- Discuss other issues related to the rapid introduction of smart air bag systems.

NHTSA is especially interested in specific technical input concerning how a regulation, including appropriate test procedures, can be crafted that would ensure that the adverse effects of air bags are addressed by the expeditious implementation of effective, reliable smart air bags, without being unnecessarily design restrictive. The agency notes that there is limited time to develop new test procedures, since the agency expects manufacturers to begin to phase in smart air bags by model year 1999. Therefore, the agency solicits comments on those requirements and test procedures that would be appropriate for the short term (i.e., through model year 2002) and those that would be appropriate in the long term.

At the January 6, 1997 air bag safety meeting, the American Automobile Manufacturers Association recommended that the agency consider the following three principles in developing a proposal for smart air bags: (1) Optimize protection for restrained occupants, (2) Do no harm to children and small-statured adults, and (3) Highest feasible protection for unrestrained adults. The agency requests comments on this recommendation and on possible test

[3] The Standard's automatic protection requirements are performance requirements and do not specify the design of an air bag. Instead, vehicles must meet specified injury criteria, including criteria for the head and chest, measured on properly positioned test dummies, during a barrier crash test, at speeds up to 30 mph.

While the Standard requires air bags to provide protection for properly positioned adult occupants (belted and unbelted) in relatively severe crashes, and very fast air bags may be necessary to provide such protection, the standard does not require the same speed of deployment in the presence of out-of-position occupants, or even any deployment at all. Instead, the standard permits the use of dual or multiple level inflator systems and automatic cut-off devices to protect out-of-position occupants and rear-facing infants. Therefore, regulatory changes are not needed to permit manufacturers to implement these solutions.

The agency also notes that there are many other variables in air bag design and related vehicle design that can affect potential aggressivity. Variables related to air bag design include air bag volume, fold patterns, tethering, venting, mass/material, shape and size of air bag module opening, and module location and deployment path. Related vehicle design variables include such things as recessing the inflator/air bag in the steering wheel assembly or in the dash, pedal adjusters, safety belt pretensioners and webbing clamps. The standard's performance requirements permit manufacturers to adjust all of these variables to minimize adverse effects of air bags.

procedures that could result in air bag designs consistent with these principles.

The agency notes that there are particular challenges in developing test procedures to ensure the proper functioning of smart air bag concepts other than weight sensors. In the case of weight sensors, it appears that a relatively simple, inexpensive static test procedure could be developed. The procedure would check whether the sensor ensured that the air bag was on or off under specified conditions related to the amount of weight on the seat, and perhaps the distribution of that weight.

However, dynamic procedures might be needed to assess the performance of other smart air bag concepts. For example, in order to measure the performance of a system which deactivated the air bag based on occupant position, it might be necessary to check whether the sensor would reliably turn the air bag off in such situations as that of a child who is propelled into the dashboard as a result of pre-crash braking just before a crash. In order to measure the performance of a system which used automatic modulation of the speed and force of air bag deployment, it might be necessary to check whether the forces from the air bag would cause injury to occupants in various conditions, possibly using dummies. NHTSA notes that, given the large number of potential conditions involving out-of-position occupants, a wide array of conditions might need to be tested to ensure adequate performance.

The agency requests comments on whether and how adequate performance can or should be ensured solely by means of dynamic test requirements, and, if not, what other regulatory approaches might be appropriate. NHTSA notes that, in its rulemaking to improve the stability and control of medium and heavy vehicles during braking, it adopted the approach of requiring vehicles to be equipped with antilock brake systems that meet a specific definition, and supplementing that requirement with limited dynamic performance requirements. See 60 FR 13216; March 10, 1995. The agency requests comments on whether an approach along those lines might be appropriate for a proposal for smart air bags, either as an interim measure to get requirements in place quickly or as a longer term approach as well.

NHTSA requests that vehicle manufacturers and air bag suppliers provide written comments describing their recent and anticipated efforts to develop and assess smart air bag technologies. The agency specifically requests that they provide descriptions of their recent and anticipated component and vehicle testing, market surveys, and any other developmental work. NHTSA recognizes the sensitivity of this information and will protect confidentiality as authorized by law.

B. Procedural Matters

February 11

The first day will be devoted to presentations by public participants concerning technical issues. The time available for individual presentations will be determined by the agency based on the number of persons who submit requests to participate by the January 31 deadline. If necessary, parties with similar points of view will be encouraged to coordinate their presentations to avoid duplication.

February 12

The second day will be devoted to an interactive discussion among interested persons. Procedures for encouraging an exchange of ideas during the interactive phase of the workshop will be discussed at the beginning of the session on that day. Those persons interested in actively participating in this phase of the workshop should contact Mr. Harper not later than January 31. The agency will make available an agenda setting forth the sequence of issues to be discussed during the interactive phase.

To facilitate communication, NHTSA will provide auxiliary aids (e.g., sign-language interpreter, braille materials, large print materials and/or a magnifying device) to participants as necessary, during the workshop. Any person desiring assistance of auxiliary aids should contact Ms. Bernadette Millings, NHTSA Office of Crashworthiness Standards, telephone (202) 366–1740, no later than 10 days before the workshop. For any presentation that will include slides, motion pictures, or other visual aids, the presenters should bring at least one copy to the workshop so that NHTSA can readily include the material in the public record.

NHTSA will place a copy of any written statement in the docket for this notice. In addition, the agency will make a verbatim record of the public workshop and place a copy in the docket.

IV. Written Comments

Participation in the workshop is not a prerequisite for the submission of written comments. NHTSA invites written comments from all interested parties. It is requested but not required that 10 copies be submitted.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above will be considered. To the extent possible, comments filed after the closing date will also be considered. Comments will be available for inspection in the docket.

NHTSA will continue to file relevant information as it becomes available in the docket after the closing date. It is therefore recommended that interested persons continue to examine the docket for new material.

Those desiring to be notified upon receipt of their comments in the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on: January 14, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–1292 Filed 1–14–97; 4:28 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 011397D]

South Atlantic Fishery Management Council; Public Hearings

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

ACTION: Public hearing; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) will

hold one public hearing on Draft Amendment 8 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP) and its associated analyses of regulatory and environmental impacts, including a draft supplemental environmental impact statement (DSEIS).

DATES: Written comments on Amendment 8 will be accepted until January 27, 1997. The public hearing will be held on January 24, 1997, at 6 p.m. and will end when business is completed. Council staff members will be available at the hearing location from 5 p.m. to 6.p.m. (1 hour before the hearing) to answer any questions about the amendment.

ADDRESSES: Written comments should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699. Copies of the draft amendment and DSEIS are available from Susan Buchanan at 803–571–4366. The draft amendment and DSEIS will also be available to the public at the hearing. The hearing will be held at the Monroe County Regional Service Center, 2798 Overseas Highway (mile marker 47.5 Gulf side), Marathon, FL 33050; telephone: 305–289–2543.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, 803–571–4366.

SUPPLEMENTARY INFORMATION: The Council is holding a public hearing on Draft Amendment 8 to the FMP and associated analyses of regulatory and environmental impacts, including a DSEIS. A January 10, 1997, hearing at the Banana Bay Resort was previously announced at 61 FR 67294 (December 20, 1996) and 62 FR 384 (January 3, 1997). That hearing was cancelled and this document announces the rescheduled date of January 24, 1997.

Amendment 8 includes the following management measures:

1. Limit permit holders to those who can demonstrate landings of at least 1,000 lb (454 kg) of snapper-grouper species in 2 of the 3 years, 1993, 1994, and 1995, and have held a valid snapper-grouper permit for those years.

2. Control fishing effort by establishing trip limits for identified sub-unit groups of species within the FMP's management unit.

3. Redefine the FMP's definitions of overfishing and optimum yield for all species in the snapper-grouper management unit.

4. Increase the red porgy minimum size limit from 12 inches (30.5 cm) total length (TL) to 14 inches (36 cm) TL for recreational and commercial fishermen and establish a recreational fishery bag limit of two red porgy.

5. Increase the black sea bass minimum size limit from 8 inches (20.3 cm) TL to 10 inches (25.4 cm) TL for both recreational and commercial fishermen.

6. Designate a black sea bass Special Management Zone.

7. Establish a recreational fishery bag limit of 10 black sea bass.

8. Require escape vents and escape panels with degradable fasteners in black sea bass pots.

9. Establish measures for greater amberjack that would extend the April closure throughout the South Atlantic EEZ and prohibit sale during April, reduce the recreational fishery bag limit to one fish per person per day, implement a commercial quota to reduce landings by 21 percent based on average landings from 1986–1995, implement a 500–1,000 lb (227–454 kg) trip limit, change the start of the fishing year from January 1 to July 1, and prohibit coring.

10. Establish, effective January 1, 1998, an annual commercial quota for vermilion snapper of 600,000 lb (272,155 kg), a recreational fishery bag limit of five fish, and a recreational fishery minimum size limit of 12 inches (30.5 cm).

11. Increase the gag minimum size limit from 20 inches (50.8 cm) TL to 24 inches (61 cm) TL for the commercial and recreational fisheries, and prohibit all harvest January through March.

12. Require logbook reporting by the 10th of the month following the month of fishing activity.

13. Establish a zone in the South Atlantic exclusive economic zone (EEZ) through which vessels carrying fish traps could transit if they have valid Gulf reef fish permits and fish trap endorsements.

14. Restrict vessels with bottom longline gear on board to possessing only snowy grouper, warsaw grouper, yellowedge grouper, misty grouper, golden tilefish, blueline tilefish, and sand tilefish.

15. Allow use of one bait net per boat, up to 50 ft (1,524 cm) long by 10 ft (305 cm) high with a stretched mesh size of 1.5 inches (3.75 cm) or smaller; also, allow possession and use of cast nets for catching bait.

16. Allow species within the snapper grouper fishery management unit (whether whole or fillets) caught in Bahamian waters in accordance with Bahamian law, to be possessed on board a vessel in the EEZ and landed in the United States, provided the vessel is in transit from the Bahamas and valid Bahamian fishing and cruising permits are on board.

17. Establish an aggregate snapper-grouper recreational fishery bag limit of 20–25 fish inclusive of all species in the snapper-grouper fishery management unit.

18. The Council is considering a number of options under this action to reduce fishing mortality, including establishing a closure of the South Atlantic EEZ for species in the snapper-grouper fishery management unit, implementing a trip limit for all temperate, mid-shelf snapper-grouper species, or establishing an aggregate temperate mid-shelf species quota.

This hearing is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 14, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–1313 Filed 1–14–97; 4:45 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 13
Tuesday, January 21, 1997

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

Natural Resources Conservation Service

Middle Deep Red Run Watershed, Tillman, Kiowa, and Comanche Counties, Oklahoma

AGENCY: Natural Resources Conservation Service, DOA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969: the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for Middle Deep Red Run Watershed, Tillman, Kiowa, and Comanche Counties, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Ronnie L. Clark, State Conservationist, Natural Resources Conservation Service, 100 USDA, Suite 203, Stillwater, Oklahoma, 74074–2655, telephone: 405–742–1204.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Ronnie L. Clark, State Conservationist, has determined that the preparation and review of an environmental impact statement is needed for this project.

The project concerns a plan for flood prevention and fish and wildlife. Alternatives under consideration to reach these objectives include systems for conservation land treatment and earth dams.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Meetings will be held in Tillman County to evaluate the proposed action. Further information on the proposed action may be obtained from Ronnie L. Clark, State Conservationist, at the above address or telephone number.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: January 9, 1997.

Steven P. Elsener,

Biologist.

[FR Doc. 97–1296 Filed 1–17–97; 8:45 am]

BILLING CODE 3210–16–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Survey of Income and Program Participation—Wave 5 of the 1996 Panel; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 24, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michael McMahon, c/o U.S. Census Bureau, DSD—Room 3319–3, Washington DC 20233–8400, or telephone 301/457–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Survey of Income and Program Participation (SIPP) is a household-based survey designed as a continuous series of national panels, each lasting four years. Respondents are interviewed once every four months, in monthly rotations. Approximately 37,000 households are in the current panel.

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified data base so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits, and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, permitting levels of economic well-being and changes in these levels to be measured over time.

The survey is molded around a central ''core'' of labor force and income questions that will remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs such as obtaining information about the terms of child support agreements and whether they are being fulfilled by the absent parent, examining the program participation status of persons with specific health and disability statuses; and obtaining detailed information needed to understand the current status of the employment-based health care system and changes that have occurred. These supplemental questions are included with the core and are referred to as ''topical modules.''

The topical modules for the 1996 Panel Wave 5 are the following: (1) School Enrollment and Financing; (2) Child Support Agreements; (3) Support for Nonhousehold Members; (4) Functional Limitations and Disability-Adults; (5) Functional Limitations and Disability-Children and (6) Employer

Provided Health Care. Wave 5 interviews will be conducted from August through November 1997.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every 4 years, with each panel having a duration of about 4 years in the survey. All household members 15 years old or older are interviewed using regular proxy-respondent rules. They are interviewed a total of 12 times (12 waves) at 4-month intervals, making the SIPP a longitudinal survey. Sample persons (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP Primary Sampling Unit (PSU) will be followed and interviewed at their new address. Persons 15 years old or older who enter the household after Wave 1 will be interviewed; however, if these persons move, they are not followed unless they happen to move along with a Wave 1 sample person.

III. Data

OMB Number: 0607–0813.
Form Number: SIPP/CAPI Automated Instrument.
Type of Review: Regular.
Affected Public: Individuals or Households.
Estimated Number of Respondents: 77,700.
Estimated Time Per Response: 30 minutes per person
Estimated Total Annual Burden Hours: 117,800.
Estimated Total Annual Cost: $27,690,000.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

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

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 13, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–1359 Filed 1–17–97; 8:45 am]

BILLING CODE 3510–07–P

Economic Development Administration

Area Designations and Overall Economic Development (Formerly Simplification and Streamlining of Regulations of the Economic Development Administration)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 24, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Wendy Tucker, Economic Development Administration, Room 7814B, Washington, DC 20230, and (202) 482–5353.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is needed to ascertain if an area has a planning process in place and has thoroughly thought out what type of economic development needs to take place in the area to alleviate unemployment, underemployment, and to increase incomes. The information is required under the Public Works and Economic Development Act of 1965 (P.L. 89–136), as amended.

II. Method of Collection

State, local, or Tribal governments and not-for-profit organizations respond to guidelines by preparing proposals to determine eligibility for area designations, approval of boundary changes for designated redevelopment areas, and approval of overall economic development programs.

III. Data

OMB Number(s): 0610–0093.

Type of Review: Extension of a currently approved collection.

Burden: 72,000 hours.

Affected Public: State, local or Tribal governments and not-for-profit organizations.

Estimated Number of Respondents: 700.

Estimated Time per Response: 240 hours.

Estimated Total Annual Burden Hours: 176,400.

Estimated Total Annual Cost: $3,360,000.

IV. Request for Comments

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

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 14, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–1357 Filed 1–17–97; 8:45 am]

BILLING CODE 3510–34–P

International Trade Administration

[A–412–801, A–428–801, A–475–801, A–588–804]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany, Italy, Japan, and the United Kingdom: Amended Final Results of Antidumping Duty Administrative Reviews

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

ACTION: Notice of amended final results of antidumping duty administrative reviews.

SUMMARY: On December 17, 1996, the Department of Commerce (the Department) published the final results of administrative reviews of the antidumping duty orders on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom in the Federal Register.

The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). The review period is May 1, 1993, through April 30, 1994. We received allegations of clerical errors from petitioners and respondents regarding subject merchandise from Germany, Italy, Japan, and the United Kingdom. Based on the correction of clerical errors, we have changed the margins for BBs for 5 companies, CRBs for 2 companies, and SPBs for 1 company.

EFFECTIVE DATE: January 21, 1997.

FOR FURTHER INFORMATION CONTACT: Dave Dirstine or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1996, the Department of Commerce (the Department) published the final results of the fifth administrative review of the antidumping duty orders on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom in the Federal Register (61 FR 66472). The classes or kinds of merchandise covered by these reviews are BBs, CRBs, and SPBs. The reviews cover 64 manufacturers/exporters. The review period is May 1, 1993, through April 30, 1994.

After publication of our final results, we received in a timely fashion allegations of clerical errors from petitioners and several respondents: Barden, FAG, NSK, and NSK/RHP. Where we agree with the allegations, we have made corrections as appropriate (see company-specific analysis memoranda).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Amended Final Results of Review

We have determined the following weighted-average margins to exist for the period May 1, 1993, through April 30, 1994:

Country	Company	Class or kind	Rate (percent)
Germany	FAG	BBs	12.93
		CRBs	13.57
		SPBs	*2.00
	SKF	BBs	*2.67
		CRBs	*9.46
		SPBs	14.29
Italy	FAG	BBs	1.37
		CRBs	*0.00
Japan	NSK Ltd.	BBs	18.88
		CRBs	*15.37
United Kingdom	Barden	BBs	1.48
	NSK/RHP	BBs	7.69
		CRBs	7.13

* This rate did not change as a result of the correction.

Because we issued final results of reviews for these firms for the subsequent period, May 1, 1994 through April 30, 1995, on January 6, 1997 (scheduled to be published in the Federal Register on January 15, 1997), we will not change the cash deposit rates for the above firms to reflect these amended final results of reviews.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 14, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–1396 Filed 1–17–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–433–807]

Notice of Postponement of Preliminary Determination of Sales at Less Than Fair Value: Open-End Spun Rayon Singles Yarn From Austria

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

EFFECTIVE DATE: January 21, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Herring or Dana Mermelstein, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4149 or (202) 482–0984, respectively.

Postponement of Preliminary Determination

We have determined that the respondent parties to this proceeding are cooperating, thus far, in this investigation. We also have determined that this case is extraordinarily complicated because of the novel legal and methodological issues in this investigation and that additional time is necessary to make the preliminary determination. In particular, the Department must consider novel questions regarding the appropriate date of sale, differences in quantity adjustments, and affiliation. Therefore, pursuant to section 733(c)(1)(B) of the Act, as amended, we are postponing the date of the preliminary determination as to whether sales of open-end spun rayon singles yarn from Austria have been made at less than fair value until not later than March 18, 1997.

This notice is published pursuant to section 733(c)(2) of the Act, and 19 CFR 353.15(d).

Dated: January 15, 1997.

Jeffery P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 97–1395 Filed 1–17–97; 8:45 am]

BILLING CODE 3510–DS-P

International Trade Administration

University of Connecticut Health Center, 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, NW., Washington, DC.

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: 96–110. *Applicant:* University of Connecticut Health Center, Farmington, CT 06030–3505. *Instrument:* High Intensity Xenon Flashlamp, Model XF–10. *Manufacturer:* Hi-Tech Ltd., United Kingdom. *Intended Use:* See notice at 61 FR 57397, November 6, 1996. *Reasons:* The foreign instrument provides: (1) a three-lens quartz condensor, (2) a flash repetition rate, variable from 0.05–10Hz and (3) pulse length, variable from 400–1500ns. *Advice received from:* The National Institutes of Health, November 22, 1996.

Docket Number: 96–111. *Applicant:* University of North Carolina at Chapel Hill, Chapel Hill, NC 27599–3270. *Instrument:* 4 each Operant Boxes with 9–Hole Nosepoke Wall. *Manufacturer:* Paul Fray Ltd., United Kingdom. *Intended Use:* See notice at 61 FR 57397, November 6, 1996. *Reasons:* The foreign instrument provides: (1) a 9-hole nosepoke panel to permit randomized positioning of stimuli in a 5-choice serial reaction time task for rats and (2) 4.0 cm-deep ports to minimize undesirable head orientation. *Advice received from:* The National Institutes of Health, November 22, 1996.

Docket Number: 96–112. *Applicant:* Harvard University, Boston, MA 02115. *Instrument:* Stopped-Flow Spectrometer, Model SX.18MV. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* See notice at 61 FR 57397, November 6, 1996. *Reasons:* The foreign instrument provides measurement of small-sample enzyme/substrate reactions at temperatures as low as $-5°$ C. *Advice received from:* The National Institutes of Health, November 22, 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. 97–1394 Filed 1–17–97; 8:45 am]

BILLING CODE 3510–DS-P

National Oceanic and Atmospheric Administration

Southwest Region Logbook Family of Forms; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 24, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, California 90802, telephone 310–980–4034.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Federal Fisheries Logbook Program administered by the Southwest Region, NMFS, is the principal mechanism for monitoring the extent and nature of fishing in the pelagic longline, crustacean, bottomfish and precious corals fisheries in the western Pacific region. These fisheries are regulated under fishery management plans prepared by the Western Pacific Fishery Management Council and approved by the Secretary of Commerce. Persons who have permits to participate in these fisheries must maintain and provide to the Southwest Regional Administrator, NMFS, data concerning catch, effort, results of experimental fishing, or other records. These data are needed to ensure the ability to determine the effects of the fishery on the fish stocks, determine the economic and social values associated with the fisheries, evaluate the effectiveness of management and the impacts of potential changes in management, and enforce the regulations governing the fisheries.

II. Method of Collection

Where logbooks are required, permittees are provided with the required forms that are filled out while on a fishing trip and are submitted to the Regional Administrator on the completion of a trip. For experimental fishing, permittees are advised of the information that must be provided to the Regional Administrator at the completion of the experiment, but are left to furnish that information in the manner they see fit. NMFS will provide guidance as requested. Observers may be placed on vessels to ensure that more complete and accurate data are provided to NMFS than could reasonably be expected of the fishing vessel operator. Sales report forms are provided where appropriate. Pre-trip and pre-landings reports are made by radio or by messaging using automated vessel monitoring system equipment. Protected species interaction reports are made in a manner determined by the permittee.

III. Data

OMB Number: 0648–0214.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Individuals and Businesses (commercial fishermen).

Estimated Number of Respondents: 215.

Estimated Time Per Response: 5 minutes per logbook day, 5 minutes for sales reports and notifications, and 4 hours for experimental fishing reports.

Estimated Total Annual Burden Hours: 1,293.

Estimated Total Annual Cost to Public: $0—no capital, operations, or maintenance costs are expected.

IV. Request for Comments

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

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 13, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–1358 Filed 1–17–97; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 010897D]

Marine Mammals

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS has revised the marine mammal stock assessment reports and the guidelines upon which the reports were based in accordance with the Marine Mammal Protection Act (MMPA). Draft revised reports are available for public review and comment. Copies of the revised guidelines are also available for review.

DATES: Comments must be received by April 21, 1997.

ADDRESSES: Send comments and requests for copies of reports or guidelines to: Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Stock Assessments.

FOR FURTHER INFORMATION CONTACT: Thomas C. Eagle, Office of Protected Resources, NMFS, at (301) 713–2322; Douglas P. DeMaster at (206) 526–4045, Alaska Fisheries Science Center (F/AKC), NMFS, 7600 Sand Point Way, NE, BIN 15700, Seattle, WA 98115–0070 regarding Alaska regional stock assessments; James Lecky at (310) 980–4020, Southwest Regional Office (F/SWO3), NMFS, 501 West Ocean Boulevard, Long Beach, CA 90802–4213, regarding Pacific regional stock assessments; or Gordon Waring at (508) 495–2311, Northeast Fisheries Science Center, NMFS, 166 Water Street, Woods Hole, MA 02543–1097 for Atlantic regional stock assessments.

SUPPLEMENTARY INFORMATION: Section 117 of the MMPA (16 U.S.C. 1361 *et seq.*) required NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals that occurs in waters under the jurisdiction of the United States. These reports contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock.

NMFS convened a workshop in April 1996 to evaluate the guidelines upon which stock assessment reports were based and to revise the guidelines as needed. The workshop results indicated that substantive changes to the guidelines were not required; however, several provisions were clarified, primarily to ensure that default values for various parameters were interpreted correctly.

The MMPA also requires NMFS and FWS to update these reports annually for strategic stocks of marine mammals and every 3 years for stocks determined to be non-strategic consistent with any new information. NMFS has revised those reports for which new information is available. Table 1 contains a summary of the information included in the reports. NMFS solicits public comments on the draft revised reports.

Most proposed changes to the stock assessment reports incorporate new information into abundance or mortality estimates. Stock structure was also reexamined, which resulted in revised stock identification for killer whales in the Alaska and Pacific regions and for harbor porpoise in Alaska; none of these stocks is designated as strategic.

Three stocks were identified as special subsistence stocks in the initial stock assessment reports; these included harbor seals in the Gulf of Alaska and beluga whales in Cook Inlet and Norton Sound. After examining new information, and in accordance with advice from the Alaska Scientific Review Group, NMFS proposes to revise these reports to present the full information required under the MMPA. Two of the stocks, Gulf of Alaska harbor seals and Cook Inlet beluga would be identified as strategic stocks because total human-caused mortality exceeds the calculated Potential Biological Removal level (PBR). Norton Sound beluga would be identified as non-strategic. Any management actions concerning these or any other stock that is used for subsistence purposes would be addressed through a co-management process as indicated by section 119 of the MMPA.

New abundance estimates for beaked whales in the Pacific Ocean, which included a recently developed correction factor for animals not seen on the track line, allowed NMFS to determine that human-caused mortality and serious injury of these stocks did not exceed PBR; therefore, these stocks have been designated as nonstrategic. Uncertainty in field identification of these stocks does not allow either mortality or abundance estimates to be

identified to species in all cases, and estimates for these stocks continue to be combined.

New information may become available during the comment period for these stock assessment reports; NMFS anticipates completion of a status review of North Atlantic right whales in the near future. This new information may be incorporated into final stock assessment reports without additional public review and comment if incorporation of the new information does not change the status of the affected stock (e.g., strategic to non-strategic).

Dated: January 13, 1997.

Ann Terbush,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

TABLE 1.—SUMMARY OF MARINE MAMMAL STOCK ASSESSMENT REPORTS FOR STOCKS OF MARINE MAMMALS UNDER NMFS AUTHORITY THAT OCCUPY WATERS UNDER U.S. JURISDICTION

Species	Stock area	SRG region	NMFS center	Nmin	Rmax	Fr	PBR	Total annual mort.	Annual fish. mort.	Strategic status
Steller sea lion	Western U.S.	AKA	AKC	42,536	0.12	0.3	766	518	38	Y
Steller sea lion	Eastern	AKA	AKC	23,533	0.12	0.75	1,059	9	4	Y
Northern fur seal	North Pacific	AKA	AKC	969,595	0.086	0.5	20,846	1,731	18	Y
Harbor seal	Southeast Alaska	AKA	AKC	35,226	0.12	1.0	2,114	1,630	34	N
Harbor seal	Gulf of Alaska	AKA	AKC	22,427	0.12	0.5	673	966	35	Y
Harbor seal	Bering Sea	AKA	AKC	12,648	0.12	0.5	379	242	30	N
Spotted seal	Alaska	AKA	AKC	N/A[1]	0.12	0.5	N/A	N/A	2	N
Bearded seal	Alaska	AKA	AKC	N/A	0.12	0.5	N/A	N/A	2	N
Ringed seal	Alaska	AKA	AKC	N/A	0.12	0.5	N/A	N/A	1	N
Ribbon seal	Alaska	AKA	AKC	N/A	0.12	0.5	N/A	N/A	1	N
Beluga	Beaufort Sea	AKA	AKC	39,039	0.04	1.0	781	168	0	N
Beluga	Eastern Chukchi Sea.	AKA	AKC	3,710	0.04	1.0	74	63	0	N
Beluga	Norton Sound	AKA	AKC	6,439	0.04	1.0	129	109	0	N
Beluga	Bristol Bay	AKA	AKC	1,526	0.04	1.0	31	21	1	N
Beluga	Cook Inlet	AKA	AKC	981	0.04	1.0	20	40	0	Y
Killer whale	Eastern North Pacific, Northern Resident.	AKA	AKC	764	0.04	0.5	7.6	1.2	1.2	N
Killer whale	Eastern North Pacific, Transient.	AKA	AKC	314	0.04	0.5	3.1	1.2	1.2	N
Pacific white-sided dolphin.	North Pacific	AKA	AKC	486,719	0.04	0.5	4,867	2	2	N
Harbor porpoise	Southeast Alaska	AKA	AKC	8,156	0.04	0.5	82	4	4	N
Harbor porpoise	Gulf of Alaska	AKA	AKC	7,085	0.04	0.5	71	27	27	N
Harbor porpoise	Bering Sea	AKA	AKC	8,549	0.04	0.5	86	2	2	N
Dall's porpoise	Alaska	AKA	AKC	76,874	0.04	1.0	1,537	42	42	N
Sperm whale	Alaska	AKA	AKC	N/A	0.04	0.1	N/A	0.0	0.0	Y
Baird's beaked whale.	Alaska	AKA	AKC	N/A	0.04	0.5	N/A	0.0	0.0	N
Cuvier's beaked whale.	Alaska	AKA	AKC	N/A	0.04	0.5	N/A	0.0	0.0	N
Stejnerger's beaked whale.	Alaska	AKA	AKC	N/A	0.04	0.5	N/A	0.0	0.0	N
Gray whale	Eastern North Pacific.	AKA	AKC	21,597	0.04	1.0	432	47	3	N
Humpback whale	Western North Pacific.	AKA	AKC	N/A	0.04	0.1	N/A	0.0	0.0	Y
Humpback whale	Central North Pacific.	AKA	AKC	1,407	0.04	0.1	2.8	1.6	1.6	Y
Fin whale	N. Pacifc	AKA	AKC	N/A	0.04	0.1	N/A	0.0	0.0	Y
Minke whale	Alaska	AKA	AKC	N/A	0.04	0.5	N/A	0.0	0.0	N
Northern right whale.	North Pacific	AKA	AKC	N/A	0.04	0.1	N/A	0.0	0.0	Y
Bowhead whale	Western Arctic	AKA	AKC	7,738	0.04	0.5	77[2]	51	0.0	Y
Harbor seal	Western North Atlantic.	ATL	NEC	28,810	0.12	1.0	1,729	476	476	N
Gray seal	Northwest North Atlantic.	ATL	NEC	2,035	0.12	1.0	122	4.5	4.5	N
Harp seal	Northwest North Atlantic.	ATL	NEC	N/A	N/A	N/A	N/A	0.0	0.0	N
Hooded seal	Northwest North Atlantic.	ATL	NEC	N/A	N/A	N/A	N/A	0.0	0.0	N
Harbor porpoise	Gulf of Maine/Bay of Fundy.	ATL	NEC	48,289	0.04	0.5	483	1,834	1,834	Y
Risso's dolphin	Western North Atlantic.	ATL	NEC	11,140	0.04	0.5	111	68	68	N
Atlantic white-sided dolphin.	Western North Atlantic.	ATL	NEC	19,196	0.04	0.5	192	181	181	N

TABLE 1.—SUMMARY OF MARINE MAMMAL STOCK ASSESSMENT REPORTS FOR STOCKS OF MARINE MAMMALS UNDER NMFS AUTHORITY THAT OCCUPY WATERS UNDER U.S. JURISDICTION—Continued

Species	Stock area	SRG region	NMFS center	Nmin	Rmax	Fr	PBR	Total annual mort.	Annual fish. mort.	Strategic status
White-beaked dolphin.	Western North Atlantic.	ATL	NEC	N/A	0.04	N/A	N/A	0.0	0.0	N
Common dolphin ...	Western North Atlantic.	ATL	NEC	3,996	0.04	0.5	40	234	234	Y
Atlantic spotted dolphin.	Western North Atlantic.	ATL	NEC	[3] 1,617	0.04	0.5	16	[3] 22	[3] 22	Y
Pantropical spotted dolphin.	Western North Atlantic.	ATL	NEC	[3] 1.617	0.04	0.5	16	[3] 22	[3] 22	Y
Striped dolphin	Western North Atlantic.	ATL	NEC	18,220	0.04	0.45	164	47	47	N
Spinner dolphin	Western North Atlantic.	ATL	NEC	N/A	N/A	N/A	N/A	1.0	1.0	N
Bottlenose dolphin	Western North Atlantic, offshore.	ATL	NEC	[4] 8,794	0.04	0.5	88	82	82	N
Bottlenose dolphin	Western North Atlantic, coastal.	ATL	SEC	2,482	0.04	0.5	25	29	29	Y
Dwarf sperm whale	Western North Atlantic.	ATL	NEC	N/A	0.04	N/A	N/A	0.2	0.2	Y
Pygmy sperm whale.	Western North Atlantic.	ATL	NEC	N/A	0.04	N/A	N/A	N/A	N/A	Y
Killer whale	Western North Atlantic.	ATL	NEC	N/A	0.04	N/A	N/A	0.0	0.0	N
Pygmy killer whale	Western North Atlantic.	ATL	SEC	6	0.04	0.5	0.1	0.0	0.0	N
Northern bottlenose whale.	Western North Atlantic.	ATL	NEC	N/A	0.04	N/A	N/A	0.0	0.0	N
Cuvier's beaked whale.	Western North Atlantic.	ATL	NEC	[6] 895	0.04	0.5	8.9	9.7	[6] 9.7	Y
Nesopldont beaked whale.	Western North Atlantic.	ATL	NEC	[5] 895	0.04	0.5	8.9	9.7	[6] 9.7	Y
Pilot whale, long-finned (*Globiephala* spp.).	Western North Atlantic.	ATL	NEC	[7] 4,968	0.04	0.5	50	42	[8] 42	Y
Pilot whale, short-finned.	Western North Atlantic.	ATL	NEC	457	0.04	0.5	3.7	42	[8] 42	Y
Sperm whale	Western North Atlantic.	ATL	NEC	1,617	0.04	0.1	3.2	0.2	0.2	Y
North Atlantic right whale.	Western North Atlantic.	ATL	NEC	295	0.025	0.1	0.4	2.7	0.4	Y
Humpback whale ...	Western North Atlantic.	ATL	NEC	4,884	0.04	0.1	9.7	0.7	0.7	Y
Fin whale	Western North Atlantic.	ATL	NEC	1,704	0.04	0.1	3.4	0.0	0.0	Y
Sei whale	Western North Atlantic.	ATL	NEC	N/A	0.04	0.1	N/A	0.0	0.0	Y
Minke whale	Canadian east coast.	ATL	NEC	2,053	0.04	0.5	21	2.5	2.5	N
Blue whale	Western North Atlantic.	ATL	NEC	N/A	0.04	0.1	N/A	0.0	0.0	Y
Bottlenose dolphin	Gulf of Mexico, outer continental shelf.	ATL	SEC	43,233	0.04	0.5	432	2.8	[9] 2.8	N
Bottlenose dolphin	Gulf of Mexico, continental shelf edge and slope.	ATL	SEC	4,530	0.04	0.5	45	2.8	[9] 2.8	N
Bottlenose dolphin	Western Gulf of Mexico coastal.	ATL	SEC	2,938	0.04	0.5	29	13	[10,11] 13	N
Bottlenose dolphin	Northern Gulf of Mexico coastal.	ATL	SEC	3,518	0.04	0.5	35	10	[11] 10	N
Bottlenose dolphin	Eastern Gulf of Mexico coastal.	ATL	SEC	8,963	0.04	0.5	90	8	[11] 8	N
Bottlenose dolphin	Eastern Gulf of Mexico bay, sound, and estuarine[12].	ATL	SEC	3,934	0.04	0.5	39.7	30	[11] 30	Y
Atlantic spotted dolphin.	Northern Gulf of Mexico.	ATL	SEC	2,255	0.04	0.5	23	[3] 1.5	[3] 1.5	N

TABLE 1.—SUMMARY OF MARINE MAMMAL STOCK ASSESSMENT REPORTS FOR STOCKS OF MARINE MAMMALS UNDER NMFS AUTHORITY THAT OCCUPY WATERS UNDER U.S. JURISDICTION—Continued

Species	Stock area	SRG region	NMFS center	Nmin	Rmax	Fr	PBR	Total annual mort.	Annual fish. mort.	Strategic status
Pantropical spotted dolphin.	Northern Gulf of Mexico.	ATL	SEC	26,510	0.04	0.5	265	[3]1.5	[3]1.5	N
Striped dolphin	Northern Gulf of Mexico.	ATL	SEC	3,409	0.04	0.5	34	0.0	0.0	N
Spinner dolphin	Northern Gulf of Mexico.	ATL	SEC	4,465	0.04	0.5	45	0.0	0.0	N
Rough-toothed dolphin.	Northern Gulf of Mexico.	ATL	SEC	660	0.04	0.5	6.6	0.0	0.0	N
Clymene dolphin	Northern Gulf of Mexico.	ATL	SEC	4,120	0.04	0.5	41	0.0	0.0	N
Fraser's dolphin	Northern Gulf of Mexico.	ATL	SEC	66	0.04	0.5	0.7	0.0	0.0	N
Killer whale	Northern Gulf of Mexico.	ATL	SEC	197	0.04	0.5	2.0	0.0	0.0	N
False killer whale ...	Northern Gulf of Mexico.	ATL	SEC	236	0.04	0.5	2.4	0.0	0.0	N
Pygmy killer whale	Northern Gulf of Mexico.	ATL	NEC	285	0.04	0.05	2.8	0.0	0.0	N
Dwarf sperm whale	Northern Gulf of MExico.	ATL	SEC	N/A	0.04	N/A	N/A	0.0	0.0	Y
Pygmy sperm whale.	Northern Gulf of Mexico.	ATL	NEC	N/A	0.04	N/A	N/A	0.0	0.0	Y
Melon-headed whale.	Northern Gulf of Mexico.	ATL	SEC	2,888	0.04	0.5	29	0.0	0.0	N
Risso's dolphin	Northern Gulf of Mexico.	ATL	SEC	2,199	0.04	0.5	22	19	19	N
Cuvier's beaked whale.	Northern Gulf of Mexico.	ATL	SEC	20	0.04	0.5	0.2	0.0	0.0	N
Blainville's beaked whale.	Northern Gulf of Mexico.	ATL	SEC	N/A	N/A	N/A	N/A	0.0	0.0	N
Gervais' beaked whale.	Northern Gulf of Mexico.	ATL	SEC	N/A	N/A	N/A	N/A	0.0	0.0	N
Pilot whale, short-finned.	Northern Gulf of Mexico.	ATL	SEC	186	0.04	0.5	1.9	0.3	0.3	Y
Sperm whale	Northern Gulf of Mexico.	ATL	SEC	411	0.04	0.1	0.8	0.0	0.0	Y
Bryde's whale	Northern Gulf of Mexico.	ATL	SEC	17	0.04	0.5	0.2	0.0	0.0	N
California sea lion ..	U.S.	PAC	SWC	106,825	0.12	1.0	6,410	1,294	1,242	N
Guadalupe fur seal	Mexico to California	PAC	SWC	3,028	0.137	0.5	104	0.0	0.0	Y
Northern fur seal ...	San Miguel Island	PAC	AKC	5,018	0.086	1.0	216	1	1	N
Habor seal	California	PAC	SWC	27,962	0.12	1.0	1,678	325	316	N
Habor seal	Oregon/Washington.	PAC	AKC	25,665	0.12	1.0	1,540	15	15	N
Habor seal	Washington inland waters.	PAC	AKC	15,349	0.12	1.0	921	36	36	N
Northern elephant breeding.	California breeding	PAC	SWC	48,000	0.083	1.0	1,992	151	151	N
Hawaiian monk seal.	Hawaii	PAC	SWC	1,366	0.07	0.1	[13]4.8	N/A	N/A	Y
Habor porpoise	Central California ..	PAC	SWC	3,431	0.04	0.48	33	14	14	N
Habor porpoise	Northern California	PAC	SWC	7,640	0.04	0.5	76	0.0	0.0	N
Habor porpoise	Oregon/Washington coast.	PAC	AKC	22,046	0.04	0.5	220	13	13	N
Dall's porpoise	California/Oregon/Washington.	PAC	SWC	34,393	0.04	0.48	330	28	28	N
Pacific white-sided dolphin.	California/Oregon/Washington.	PAC	SWC	82,939	0.04	0.48	796	13	13	N
Risso's dolphin	California/Oregon/Washington.	PAC	SWC	22,388	0.04	0.48	215	32	32	N
Bottlenose dolphin	California coastal ..	PAC	SWC	121	0.04	0.5	1.2	0.0	0.0	N
Bottlenose dolphin	California/Oregon/Washington offshore.	PAC	SWC	1,904	0.04	0.5	19	0.0	0.0	N
Striped dolphin	California/Oregon/Washington.	PAC	SWC	19,248	0.04	0.4	154	2.0	2.0	N
Common dolphin, short-beaked.	California/Oregon/Washington.	PAC	SWC	309,717	0.04	0.5	3,097	183	183	N

TABLE 1.—SUMMARY OF MARINE MAMMAL STOCK ASSESSMENT REPORTS FOR STOCKS OF MARINE MAMMALS UNDER NMFS AUTHORITY THAT OCCUPY WATERS UNDER U.S. JURISDICTION—Continued

Species	Stock area	SRG region	NMFS center	Nmin	Rmax	Fr	PBR	Total annual mort.	Annual fish. mort.	Strategic status
Common dolphin, long-beaked.	California	PAC	SWC	5,504	0.04	0.48	53	15	15	N
Northern right whale dolphin.	California/Oregon/Washington.	PAC	SWC	15,080	0.04	0.5	151	50	50	N
Killer whale	Southern Resident Stock.	PAC	AKC	96	0.04	1.0	1.9	0.0	0.0	N
Killer whale	California/Oregon/Washington.	PAC	SWC	436	0.04	0.4	3.5	2.0	2.0	N
Pilot whale, short-finned.	California/Oregon/Washington.	PAC	SWC	741	0.04	0.48	7.1	20	20	Y
Baird's beaked whale.	California/Oregon/Washington.	PAC	SWC	252	0.04	0.4	2.02	2.00	2.00	N
Mesoplodont beaked whales.	California/Oregon/Washington.	PAC	SWC	[14] 1,169	0.04	0.48	[15] 11	5.7–7.7	5.7–7.7	N
Cuvier's beaked whale.	California/Oregon/Washington.	PAC	SWC	6,070	0.04	0.5	61	29	29	N
Pygmy sperm whale.	California/Oregon/Washington.	PAC	SWC	2,059	0.04	0.4	16	2.3	2.3	N
Dwarf sperm whale	California/Oregon/Washington.	PAC	SWC	N/A	0.04	0.5	N/A	0.0	0.0	N
Sperm whale	California to Washington.	PAC	SWC	896	0.04	0.1	1.8	5	5	Y
Humpback whale	California/Mexico	PAC	SWC	563	0.04	0.1	0.5	1.0	0.0	Y
Blue whale	California/Mexico	PAC	SWC	1,463	0.04	0.1	1.5	<1	0.0	Y
Fin whale	California to Washington.	PAC	SWC	747	0.04	0.1	1.5	<1	0.0	Y
Bryde's whale	Eastern Tropical Pacific.	PAC	SWC	11,163	0.04	0.5	[16] 0.2	N/A	0.0	N
Sei whale	Eastern North Pacific.	PAC	SWC	N/A	0.04	0.1	N/A	N/A	0.0	Y
Minke whale	California/Oregon/Washington.	PAC	SWC	122	0.04	0.4	1.0	2.0	2.0	Y
Rough-Toothed dolphin.	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Risso's dolphin	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Bottlenose dolphin	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Pantropical spotted dolphin.	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Spinner dolphin	Hawaii	PAC	SWC	677	0.04	0.5	6.8	N/A	N/A	N
Striped dolphin	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Melon-headed whale.	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Pygmy killer whale	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
False killer whale	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Killer whale	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Pilot whale, short-finned.	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Blainville's beaked whale.	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Cuvier's beaked whale.	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Pygmy sperm whale.	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Dwarf sperm whale	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Sperm whale	Hawaii	PAC	SWC	N/A	0.04	0.1	N/A	N/A	N/A	Y
Blue whale	Hawaii	PAC	SWC	N/A	0.04	0.1	N/A	N/A	N/A	Y
Fin whale	Hawaii	PAC	SWC	N/A	0.04	0.1	N/A	N/A	N/A	Y
Bryde's whale	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N

[1] N/A means that an estimate for the affected value is not available.
[2] The IWC subsistence quota is not affected by the calculation of PBR using the formula specified in the MMPA.
[3] This value includes either or both of *Stenella frontalis* or *Stenella attenuata*.
[4] Estimates may include sightings of the coastal form.
[5] This estimate includes Cuvier's beaked whales and mesoplodont beaked whales.
[6] This is the average mortality of beaked whales (*Mesoplodon* sp.) based on 5 years of observer data. This annual mortality rate includes an unknown number of Cuvier's beaked whales.
[7] This estimate includes both long-finned and short-finned pilot whales.
[8] Mortality data are not separated by species; therefore, species-specific estimates are not available. The mortality estimate represents both short- and long-finned pilot whales.
[9] This value may include either or both of the Gulf of Mexico, continental shelf edge and slope and the outer continental shelf stocks of bottlenose dolphins.

[10] Low levels of bottlenose dolphin mortality (0–4 per year) incidental to commercial fisheries have been reported. It is unknown to which stock this mortality can be attributed.
[11] Estimates derived from stranded animals with signs of fishery interactions, and these could be either coastal or estuary stocks.
[12] This entry encompasses 33 stocks of bottlenose dolphins. All stocks are considered strategic; see the full report for information on individual stocks. The listed estimates for abundance, PBR and mortality are sums across all bays, sounds, and estuaries.
[13] Although the calculated PBR is 5.0, the allowable take is zero due to findings under the ESA.
[14] This value includes a species-specific minimum abundance estimate of 249 Blainville's beaked whales, *Mesoplodon densirostris*.
[15] This PBR includes 2.5 Blainville's beaked whales.
[16] This PBR has been adjusted because only 0.2% of this stock is estimated to be in U.S. waters.

[FR Doc. 97–1312 Filed 1–17–97; 8:45 am]
BILLING CODE 3510–25–P

[I.D. 011097B]

North Pacific Fishery Management Council; Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory bodies will meet in Anchorage, Alaska the week of February 3, 1997. Other committee and workgroup meetings may be held on short notice during the week; notices will be posted at the meeting site. All meetings are open to the public with the exception of Council executive sessions to discuss personnel, international issues, and litigation. An executive session is tentatively scheduled for noon on February 7, 1997.

ADDRESSES: The meetings will be held at the Anchorage Hilton Hotel, 500 W. 3rd Avenue, Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

DATES: The Advisory Panel (AP) will begin on February 3, 1997 at 8:00 a.m.; the Scientific and Statistical Committee (SSC) will begin on February 3, 1997 at 1:00 p.m. The AP and SSC should conclude their meetings by February 6. The Council will meet jointly with the Alaska Board of Fisheries beginning at 8:00 a.m. on February 4, 1997, and begin their normal plenary session on February 5, 1997 at 8:00 a.m., concluding by February 9, 1997.

FOR FURTHER INFORMATION CONTACT: Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The agenda for the meetings will include the following subjects:

1. Reports from NMFS on the current status of the fisheries off Alaska, the status of Steller sea lions, and marine mammal research, and a special progress report on the Alaska Sealife Center.
2. Reports on halibut stocks, actions taken by the International Pacific Halibut Commission, consideration of the need for revisions to the Halibut Area 4 Catch Sharing Plan, and discussion of seabird avoidance for the halibut individual fishery quota (IFQ) fishery.
3. Review and consider approval of initial analysis for halibut charterboat management.
4. Review of tasking mandated by the Magnuson-Stevens Act, including:
(a) Review development of a central title registry for IFQs;
(b) Review development of IFQ/Community Development Quota (CDQ) fee and loan programs; and
(c) Status report on National Academy of Sciences study of IFQ/CDQ programs and make-up of Secretary of Commerce's IFQ panel for the western United States.
5. Discussion of further direction on vessel bycatch allowances.
6. Final review of research priorities for 1997.
7. Discuss and comment on NMFS guidelines for describing and identifying essential fish habitat.
8. Approve revisions to the Council Standard Operating Procedures in response to Magnuson-Stevens Act amendments.
9. Groundfish issues to be discussed include:
(a) Final review of management options for the Gulf of Alaska pelagic shelf rockfish fisheries to be managed by the State of Alaska; and
(b) Discussion paper on rolling closures at sablefish survey sites in the Gulf of Alaska.
10. Staff tasking.
11. The agenda for the joint meeting of the Council and the Alaska Board of Fisheries will include:
(a) Discussion of state crab management, including Adak pot limits, Bristol Bay red king crab size reductions and other Bristol Bay red king crab management options; and
(b) Discussion of the State's groundfish management plan.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: January 14, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–1309 Filed 1–17–97; 8:45 am]
BILLING CODE 3510–22–F

[I.D. 011397A]

North Pacific Fishery Management Council; Committee Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council's Ecosystem Committee will meet in Seattle, WA.

DATES: The meeting will be held on January 23–24, 1997. The meeting will begin at 9:00 a.m. on January 23, and will continue until 5:00 p.m. On January 24, the meeting will begin at 8:30 a.m. and will conclude by 5:00 p.m.

ADDRESSES: The meeting will be held at the Alaska Fisheries Science Center, Room 2979, Building 4, 7600 Sand Point Way, NE, Seattle, WA 98115.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Committee will receive reports on various ecosystem-related programs and management regimes, research gaps, and current and potential links to fishery management.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: January 14, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–1311 Filed 1–17–97; 8:45 am]
BILLING CODE 3510–22–F

[I.D. 010997D]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will convene a meeting of its Snapper Grouper Assessment Group to review biological and fishery data on the condition of wreckfish (*Polyprion Americanus*) in the management unit, and to make recommendations to the Council for Wreckfish Framework Actions (e.g. 1997/98 Wreckfish total allowable catch - TAC).

DATES: The meeting will be held on January 28 from 1:30 p.m. to 5:00 p.m., and on January 29, 1997 from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Town & Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: (803) 571–1000.

Council address: One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366; fax: (803) 769-4520; email: safmc@safmc.nmfs.gov

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: (803) 571-4366; fax: (803) 769-4520.

SUPPLEMENTARY INFORMATION:

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by January 21, 1997.

Dated: January 14, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–1310 Filed 1–17–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Specialized Treatment Services (STS) Program

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This notice is to advise interested parties that Keesler Medical Center, Keesler Air Force Base, Biloxi, MS, has been designated as a Specialized Treatment Service (STS) Facility for Neonatal Intensive Care for TRICARE Region 4. This designation covers the following Diagnosis Related Group (DRGs):

370 Cesarian section with comorbidity/complications
372 Vaginal delivery with complicating diagnoses
383 Other antepartum diagnoses with medical complications
604 Neonate, birth weight 750–999g, discharged alive
607 Neonate, birth weight 1000–1499g, without significant operating room procedures, discharged alive
611 Neonate, birth weight 1500–1999g, without significant operating room procedures, with multiple major problems
612 Neonate, birth weight 1500–1999g, without significant operating room procedures, with major problem
613 Neonate, birth weight 1500–1999g, without significant operating room procedures, with minimal problems
617 Neonate, birth weight 2000–2499g, without significant operating room procedures, with multiple major problems
618 Neonate, birth weight 2000–2499g, without significant operating room procedures, with major problem
622 Neonate, birth weight over 2499g, with significant operating room procedures, with multiple major problems
626 Neonate, birth weight over 2499g, without significant operating room procedures, with multiple major problems
636 Neonatal diagnosis, age over 28 days

Travel and lodging for the patient and, if stated to be medically necessary by a referring physician, for one nonmedical attendant, will be reimbursed by Keesler Medical Center in accordance with the provisions of the Joint Federal Travel Regulation. All DoD beneficiaries who reside in the STS Catchment Area for TRICARE Region 4 must be evaluated by Keesler Medical Center before receiving CHAMPUS cost sharing for procedures that fall under the above Diagnosis Related Groups. Evaluation in person is preferred, and travel and lodging expenses for the evaluation will be reimbursed as stated above. It is possible to conduct the evaluation telephonically if the patient is unable to travel to Keesler Medical Center. If the procedure cannot be performed at Keesler Medical Center, the facility will provide a medical necessity review in order to support issuance of a Nonavailability Statement.

The Region 4 Regional STS Catchment Area is defined by zip code in the Defense Medical Information System STS Facilities Catchment Area Directory. The Catchment Area includes zip codes within TRICARE Region 4 that fall within a 200 mile radius of Keesler Medical Center.

EFFECTIVE DATE: March 1, 1997.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Colonel Ellen Lewis, TRICARE Region 4, (601) 377–9627; or Captain Margaret Orcutt, OSD (Health Affairs), at (703) 695–6800.

SUPPLEMENTARY INFORMATION: In FR DOC 93–27050, appearing in the Federal Register on November 5, 1993 (Vol. 58, FR 58995–58964), the final rule on the STS Program was published. Included in the final rule was a provision that a notice of all military and civilian STS facilities be published in the Federal Register annually.

Dated: January 15, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–1346 Filed 1–17–97; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Notice of Available Surplus Buildings and Land at Ontario Air National Guard Station Located in Ontario, CA

SUMMARY: This notice provides information regarding the redevelopment authority that has been established to plan the reuse of Ontario Air National Guard Station (ANGS), Ontario, CA and the surplus property that is located at the Station. The property is located approximately 3 miles southeast of downtown Ontario and 35 miles east of downtown Los Angeles. Ontario International Airport is located immediately north and west of the Station. Access to the property is provided by Jurupa Street in the City of Ontario which approaches the southeastern Station boundary.

FOR FURTHER INFORMATION CONTACT: Ms. Shari McTiver, Site Manager, Air Force Base Conversion Agency, March Air Force Base, CA, telephone (909) 697–6722.

SUPPLEMENTARY INFORMATION: This surplus property is available under the provisions of the Federal Property and Administrative Services Act of 1949 and the Base Closure Community Redevelopment and Assistance Act of 1994.

Notice of Surplus Property

Pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–421), the following information regarding the local redevelopment authority and surplus property at Ontario ANGS, Ontario, CA is published in the Federal Register.

Redevelopment Authority

The redevelopment authority for Ontario ANGS, CA for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended is the City of Ontario, CA. The redevelopment authority point of contact is the Mr. Byron L. Woosley, Office of the City Manager, City of Ontario, CA, telephone (909) 986–1151, extension 4302.

Surplus Property Descriptions

The following is a listing of the land and facilities at Ontario ANGS, Ontario, CA that are surplus to the federal government.

Land: There are approximately eight (8) acres of surplus property at Ontario ANGS. The property will be available October 1, 1997.

Buildings: Improvements consist of nine (9) structures totaling approximately 35,300 square feet of building space, associated roads, parking lots, and open areas. The structures can be classified as industrial and commercial.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. State and local governments, representatives of the homeless, and other interested parties located in the vicinity of Ontario ANGS shall submit to the City of Ontario a notice of interest of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraph 7(C) of said section 2905 (b), the City of Ontario shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in CA the date by which expressions of interest must be submitted.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–1299 Filed 1–17–97; 8:45 am]

BILLING CODE 3910–01–P

USAF Scientific Advisory Board Meeting

The 1997 Science & Technology (S&T) Panel Chairs Meeting of the HQ USAF Scientific Advisory Board will meet on 19–21 February 1997 at the Arnold & Mabel Beckman Center, Irvine, CA from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to assess the general direction and scope of the S&T program; advise on technical areas; recommend guidance for the annual AFAE S&T Executive Guidance Memorandum; and rate the technical quality of each TAP thrust.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–1297 Filed 1–17–97; 8:45 am]

BILLING CODE 3910–01–P

USAF Scientific Advisory Board Meeting

The Conventional Weapons Panel Meeting, relating to the DDR&E Technology Area Review and Assessment (TARA) Team, in support of the HQ USAF Scientific Advisory Board will meet on 24–28 February 1997 at Dahlgren, VA from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to assess the progress being made toward achieving S&T objectives stated in the Defense S&T Strategy, the Joint Warfighting S&T Plan and the Defense Technology Area Plans (DTAP's).

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–1298 Filed 1–17–97; 8:45 am]

BILLING CODE 3910–01–P

Corps of Engineers

Department of the Army

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Dade County Erosion Control and Hurricane Protection Project, Project Modification at Sunny Isles

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers intends to prepare a Draft Environmental Impact Statement for the Dade County Erosion Control and Hurricane Protection Project, Project Modification at Sunny Isles. The study is a cooperative effort between the U.S. Army Corps of Engineers and the Dade County Department of Environmental Resources Management (DERM) which is also a cooperating agency for this DEIS.

FOR FURTHER INFORMATION CONTACT: Kenneth Dugger, 904–232–1686, Environmental Branch, Planning Division, P.O. Box 4970, Jacksonville, Florida 32232–0019.

SUPPLEMENTARY INFORMATION: The Beach Erosion Control and Hurricane Protection (BEC & HP) Project for Dade County, Florida was authorized by the Flood Control Act of 1968. The Supplemental Appropriations Act of 1985 and the Water Resources Development Act of 1986 (Public Law 99–662) provided authority for extending the northern limit of the authorized project to include the construction of a protective beach along the 2.5 mile reach of shoreline north of Haulover Beach Park (Sunny Isles) and for periodic nourishment of the new beach.

Beach fill placed along the northern portion of Sunny Isles rapidly erodes due to spreading (end) losses. Following each beach fill placement, a large discontinuity in berm widths exists at the Sunny Isles/Golden Beach city limit. Material from the wide post-nourishment Sunny Isles shoreline diffuses rapidly northward into Golden Beach, which is offset approximately 150 feet further landward immediately following beach fill placement.

To resolve the problem of end losses and to increase storm protection along the Sunny Isles coastline, a combination of interacting and interdependent shore protection measures have been studied. The proposed action consists of construction of a 120 foot wide advance maintenance berm (along Sunny Isles Beach), a 1500 foot beach fill transition (offshore Golden Beach), and two 400 ft

segments of submerged geotextile breakwater (offshore Sunny Isles). All construction of the beach fill transition offshore of Golden Beach would occur on State of Florida lands, which are located below the mean high water line. The transition would taper from 120 feet wide at the Sunny Isles/Golden Beach city limit to zero feet, over a length of 1500 feet offshore of Golden Beach. The planned source of borrow for this action is a southerly extension of an offshore borrow site south of Government Cut. The forecast completion date for the proposed project modification would be by the end of 1998.

The 2nd Periodic Renourishment at Sunny Isles was addressed in a final Environmental Assessment dated May 1995. The proposed modification primarily differs from the 2nd Periodic Renourishment in that it uses a different borrow source, places additional material on the beach (an advance maintenance berm), and it also involves two project features not previously used at this location. These are a geotextile breakwater (offshore of Sunny Isles) and a transition fill (offshore of Golden Beach). The proposed action including the above was described in the feasibility study and final Environmental Impact Statement for the ''Coast of Florida Erosion and Storm Effects Study, Region III'' dated November 1996 but was not proposed for authorization in that document.

Alternatives: Alternatives considered include no action, non-structural measures, the construction of revetments, perched beaches, breakwaters, beach fills of varying widths, construction of submerged nearshore berms, beach fill transitions, and a beach fill/groin combination. Alternative sand sources in addition to the use of the proposed borrow area for nourishment, include the use of other local offshore sand sources, the use of other sand sources such as upland sources, Bahamian sand, other foreign sands, or other distant sources.

Issues: The EIS will consider impacts on coral reefs and other hardbottom communities, protected species, shore protection, health and safety, water quality, aesthetics and recreation, fish and wildlife resources, cultural resources, energy conservation, socio-economic resources, and other impacts identified through scoping, public involvement, and interagency coordination.

Scoping: A scoping letter was sent to interested parties on April 21, 1993. In addition, all parties are invited to participate in the scoping process by identifying any additional concerns on issues, studies needed, alternatives, procedures, and other matters related to the scoping process. At this time there are no plans for a public scoping meeting.

Public Involvement: We invite the participation of affected Federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties.

Coordination: The proposed action is being coordinated with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service under Section 7 of the Endangered Species Act, with the FWS under the Fish and Wildlife Coordination Act, and with the State Historic Preservation Officer.

Other Environmental Review and Consultation: The proposed action would involve evaluation for compliance with guidelines pursuant to Section 404(b) of the Clean Water Act; application (to the State of Florida) for Water Quality Certification pursuant to Section 401 of the Clean Water Act; certification of state lands, easements, and rights of way; and determination of Coastal Zone Management Act consistency.

Agency Role: As cooperating agency, non-Federal sponsor, and leading local expert; DERM will provide extensive information and assistance on the resources to be impacted, mitigation measures, and alternatives.

DEIS Preparation: It is estimated that the DEIS will be available to the public on or about February 1, 1997.

Dated: December 31, 1996.

Hanley K. Smith,

Acting Chief, Planning Division.

[FR Doc. 97–1335 Filed 1–17–97; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 20, 1977.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202)708–8196. 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.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: January 14, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of the Under Secretary

Type of Review: NEW.

Title: Longitudinal Evaluation of School Change and Performance (LESCP).

Frequency: Annually.

Affected Public: State, local or Tribal Government, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 18,620 Burden Hours: 64,310.

Abstract: The LESCP is being conducted in response to the legislative requirement in P.L. 103–382, Section 1501 to assess the implementation of Title I and related education reforms. The information will be used to examine changes—over a 3-year period—that are occurring in schools and classrooms. Teachers and teacher aides will complete a mail survey, and district Title I administrators, principals, school-based staff, and parents will be interviewed during on-site field work.

[FR Doc. 97–1307 Filed 1–17–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Record of decision for the Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Record of Decision.

SUMMARY: The Department of Energy (DOE) has decided to implement a program to provide for safe and secure storage of weapons-usable fissile materials (plutonium and highly enriched uranium [HEU]) and a strategy for the disposition of surplus weapons-usable plutonium, as specified in the Preferred Alternative in the Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact Statement (S&D Final PEIS, DOE/EIS–0229, December 1996). The fundamental purpose of the program is to maintain a high standard of security and accounting for these materials while in storage, and to ensure that plutonium produced for nuclear weapons and declared excess to national security needs (now, or in the future) is never again used for nuclear weapons.

DOE will consolidate the storage of weapons-usable plutonium by upgrading and expanding existing and planned facilities at the Pantex Plant in Texas and the Savannah River Site (SRS) in South Carolina, and continue the storage of weapons-usable HEU at DOE's Y–12 Plant at the Oak Ridge Reservation (ORR) in Tennessee, in upgraded and, as HEU is dispositioned, consolidated facilities. After certain conditions are met, most plutonium now stored at the Rocky Flats Environmental Technology Site (RFETS) in Colorado will be moved to Pantex and SRS. Plutonium currently stored at the Hanford Site (Hanford), the Idaho National Engineering Laboratory (INEL), and the Los Alamos National Laboratory (LANL) will remain at those sites until disposition (or movement to lag storage at the disposition facilities).

DOE's strategy for disposition of surplus plutonium is to pursue an approach that allows immobilization of surplus plutonium in glass or ceramic material for disposal in a geologic repository pursuant to the Nuclear Waste Policy Act, and burning of some of the surplus plutonium as mixed oxide (MOX) fuel in existing, domestic, commercial reactors, with subsequent disposal of the spent fuel in a geologic repository pursuant to the Nuclear Waste Policy Act. DOE may also burn MOX fuel in Canadian Deuterium Uranium [CANDU] reactors in the event of an appropriate agreement among Russia, Canada, and the United States, as discussed below. The timing and extent to which either or both of these disposition approaches (immobilization or MOX) are ultimately deployed will depend upon the results of future technology development and demonstrations, follow-on (tiered) site-specific environmental review, contract negotiations, and detailed cost reviews, as well as nonproliferation considerations, and agreements with Russia and other nations. DOE's program will be subject to the highest standards of safeguards and security throughout all aspects of storage, transportation, and processing, and will include appropriate International Atomic Energy Agency verification.

Due to technology, complexity, timing, cost, and other factors that would be involved in purifying certain plutonium materials to make them suitable for potential use in MOX fuel, approximately 30 percent of the total quantity of plutonium (that has or may be declared surplus to defense needs) would require extensive purification to use in MOX fuel, and therefore will likely be immobilized. DOE will immobilize at least 8 metric tons (MT) of currently declared surplus plutonium materials that DOE has already determined are not suitable for use in MOX fuel. DOE reserves the option of using the immobilization approach for all of the surplus plutonium.

The exact locations for disposition facilities will be determined pursuant to a follow-on, site-specific disposition environmental impact statement (EIS) as well as cost, technical and nonproliferation studies. However, DOE has decided to narrow the field of candidate disposition sites. DOE has decided that a vitrification or immobilization facility (collocated with a plutonium conversion facility) will be located at either Hanford or SRS, that a potential MOX fuel fabrication facility will be located at Hanford, INEL, Pantex, or SRS (only one site), and that a ''pit'' disassembly and conversion facility will be located at Hanford, INEL, Pantex, or SRS (only one site). (''Pits'' are weapons components containing plutonium.) The specific reactors, and their locations, that may be used to burn the MOX fuel will depend on contract negotiations, licensing, and environmental reviews. Because there are a number of technology variations that could be used for immobilization, DOE will also determine the specific immobilization technology based on the follow-on EIS, technology developments, cost information, and nonproliferation considerations. Based on current technological and cost information, DOE anticipates that the follow-on EIS will identify, as part of the proposed action, immobilizing a portion of the surplus plutonium using the ''can-in-canister'' technology at the Defense Waste Processing Facility (DWPF) at the Savannah River Site.

The use of MOX fuel in existing reactors would be undertaken in a manner that is consistent with the United States' policy objective on the irreversibility of the nuclear disarmament process and the United States' policy discouraging the civilian use of plutonium. To this end, implementing the MOX alternative would include government ownership and control of the MOX fuel fabrication facility at a DOE site, and use of the facility only for the surplus plutonium disposition program. There would be no reprocessing or subsequent reuse of spent MOX fuel. The MOX fuel would be used in a once-through fuel cycle in existing reactors, with appropriate arrangements, including contractual or licensing provisions, limiting use of MOX fuel to surplus plutonium disposition.

The Department of Energy also retains the option of using MOX fuel in Canadian Deuterium Uranium (CANDU) reactors in Canada in the event a multilateral agreement is negotiated among Russia, Canada, and the United States to use CANDU reactors for surplus United States' and Russian plutonium. DOE will engage in a test and demonstration program for CANDU MOX fuel as appropriate and consistent with future cooperative efforts with Russia and Canada.

These efforts will provide the basis and flexibility for the United States to initiate disposition efforts either multilaterally or bilaterally through negotiations with other nations, or unilaterally as an example to Russia and

other nations. Disposition of the surplus plutonium will serve as a nonproliferation and disarmament example, encourage similar actions by Russia and other nations, and foster multilateral or bilateral disposition efforts and agreements.

EFFECTIVE DATE: The decisions set forth in this Record of Decision (ROD) are effective upon issuance of this document, in accordance with DOE's National Environmental Policy Act (NEPA) Implementing Procedures and Guidelines (10 CFR Part 1021) and the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR Parts 1500-1508).

ADDRESSES: Copies of the S&D Final PEIS, the Technical Summary Report For Long-Term Storage of Weapons-Usable Fissile Materials, the Technical Summary Report for Surplus Weapons-Usable Plutonium Disposition, the Nonproliferation and Arms Control Assessment of Weapons-Usable Fissile Material Storage and Plutonium Disposition, and this ROD may be obtained by writing to the U.S. Department of Energy, Office of Fissile Materials Disposition, MD–4, 1000 Independence Avenue, SW., Washington, DC 20585, or by calling (202) 586–4513. The 56-page Summary of the S&D Final PEIS, the other documents noted above (other than the full PEIS), and this ROD are also available on the Fissile Materials Disposition World Wide Web Page at: http://web.fie.com/htdoc/fed/DOE/fsl/pub/menu/any/

FOR FURTHER INFORMATION CONTACT: For information on the storage and disposition of weapons-usable fissile materials program or this ROD contact: Mr. J. David Nulton, Director, NEPA Compliance and Outreach, Office of Fissile Materials Disposition (MD–4), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone (202) 586–4513.

For information on the DOE NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585, telephone (202) 586–4600 or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

The end of the Cold War has created a legacy of surplus weapons-usable fissile materials both in the United States and the former Soviet Union. Further agreements on disarmament may increase the surplus quantities of these materials. The global stockpiles of weapons-usable fissile materials pose a danger to national and international security in the form of potential proliferation of nuclear weapons and the potential for environmental, safety, and health consequences if the materials are not properly safeguarded and managed.

In September 1993, President Clinton issued a Nonproliferation and Export Control Policy in response to the growing threat of nuclear proliferation. Further, in January 1994, President Clinton and Russia's President Yeltsin issued a Joint Statement Between the United States and Russia on Nonproliferation of Weapons of Mass Destruction and the Means of Their Delivery. In accordance with these policies, the focus of the U.S. nonproliferation efforts in this regard is five-fold: (i) To secure nuclear materials in the former Soviet Union; (ii) to assure safe, secure, long-term storage and disposition of surplus weapons-usable fissile materials; (iii) to establish transparent and irreversible nuclear arms reductions; (iv) to strengthen the nuclear nonproliferation regime; and (v) to control nuclear exports. The policy also states that the United States will not encourage the civil use of plutonium and that the United States does not engage in plutonium reprocessing for either nuclear power or nuclear explosive purposes.

To demonstrate the United States' commitment to these objectives, President Clinton announced on March 1, 1995, that approximately 200 metric tons of U.S.-origin weapons-usable fissile materials, of which 165 metric tons are HEU and 38 metric tons are weapons-grade plutonium, had been declared surplus to the United States' defense needs.[1] The safe and secure storage of weapons-usable plutonium and HEU, and the disposition of surplus weapons-usable plutonium, consistent with the Preferred Alternative in the S&D Final PEIS and the decisions described in section V of this ROD, are consistent with the President's nonproliferation policy.

II. Decisions Made in This ROD

This ROD encompasses two categories of decisions: (1) The sites and facilities for storage of non-surplus weapons-usable plutonium and HEU, and storage of surplus plutonium and HEU pending disposition; and (2) the programmatic strategy for disposition of surplus weapons-usable plutonium. This ROD does not encompass the final selection of sites for plutonium disposition facilities, nor the extent to which the two plutonium disposition approaches (immobilization or MOX) will ultimately be implemented. Those decisions will be made pursuant to a follow-on EIS. However, DOE does announce in this ROD that the slate of candidate sites for plutonium disposition has been narrowed. This ROD does not include decisions about the disposition of surplus HEU, which were made in July 1996 in the separate ROD for the Disposition of Surplus Highly Enriched Uranium Final Environmental Impact Statement, 61 FR 40619 (Aug. 5, 1996).[2]

III. NEPA Process

A. S&D Draft PEIS

On June 21, 1994, DOE published a Notice of Intent (NOI) in the Federal Register (59 FR 31985) to prepare a Storage and Disposition of Weapons-Usable Fissile Materials Programmatic Environmental Impact Statement (S&D PEIS), which was originally to address the storage and disposition of both plutonium and HEU. DOE subsequently concluded that a separate EIS on surplus HEU disposition would be appropriate. Accordingly, DOE published a notice in the Federal Register (60 FR 17344) on April 5, 1995, to inform the public of the proposed plan to prepare a separate EIS for the disposition of surplus HEU.

DOE published an implementation plan (IP) for the S&D PEIS in March 1995 (DOE/EIS–0229–IP). The IP recorded the issues identified during the scoping process, indicated how they would be addressed in the S&D PEIS, and provided guidance for the preparation of the S&D PEIS. DOE issued the Storage and Disposition of Weapons-Usable Fissile Materials Draft Programmatic Environmental Impact Statement (S&D Draft PEIS, DOE/EIS–0229–D) for public comment in February 1996. On March 8, 1996, both DOE and the Environmental Protection

[1] The Secretary of Energy's Openness Initiative announcement of February 6, 1996, announced that the United States has about 213 metric tons of surplus fissile materials, including the 200 metric tons the President announced in March, 1995. Of the 213 metric tons of surplus materials, the Openness Initiative announcement indicated that about 174.3 metric tons are HEU and about 38.2 metric tons are weapons-grade plutonium. Additional quantities of plutonium may be declared surplus in the future; therefore, the S&D Final PEIS analyzes the disposition of a nominal 50 metric tons of plutonium, as well as the storage of 89 metric tons of plutonium and 994 metric tons of HEU.

[2] The material considered in the S&D Final PEIS, and covered by the decisions in this ROD, does not include spent nuclear fuel, irradiated targets, uranium-233, plutonium-238, plutonium residues of less than 50-percent plutonium by weight, or weapons program materials-in-use.

Agency (EPA) published Notices of Availability of the S&D Draft PEIS in the Federal Register (61 FR 9443 and 61 9450), announcing a public comment period from March 8 until May 7, 1996. In response to requests from the public, DOE on May 13, 1996 published another Notice in the Federal Register (61 FR 22038) announcing an extension of the comment period until June 7, 1996. Eight public meetings on the S&D Draft PEIS were held during March and April 1996 in Washington, DC and in the vicinity of the DOE sites under consideration for the proposed actions.

During the 92-day public comment period, the public was encouraged to provide comments via mail, toll-free fax, electronic bulletin board (Internet), and toll-free telephone recording device. By these means, DOE received 8,442 comments from 6,543 individuals and organizations for consideration. In addition, 250 oral comments were recorded from some of the 734 individuals who attended the eight public meetings. All of the comments received, and the Department's responses to them, are presented in Volume IV (the Comment Response Document) of the S&D Final PEIS. All of the comments were considered in preparation of the S&D Final PEIS, and in many cases resulted in changes to the document. The Notice of Availability for the S&D Final PEIS was published by EPA in the Federal Register on December 13, 1996 (61 FR 65572). DOE published its own Notice of Availability for the S&D Final PEIS in the Federal Register on December 19, 1996 (61 FR 67001).

B. Alternatives Considered

The S&D PEIS analyzes the reasonable action alternatives in addition to the Preferred Alternative and the No Action Alternative. The Preferred Alternative, which is described below in section V, Decisions, and which DOE has decided to implement, represents a combination of alternatives for both storage and disposition.

1. The Proposed Action

The proposed action, as described in the S&D PEIS, would involve the following actions for U.S. weapons-usable fissile materials:

- Storage—provide a long-term storage system (for up to 50 years) for nonsurplus plutonium and HEU that meets the Stored Weapons Standard [3] and applicable environmental, safety, and health standards while reducing storage and infrastructure costs.
- Storage Pending Disposition—provide storage that meets the Stored Weapons Standard for inventories of weapons-usable plutonium and HEU [4] that have been or may be declared surplus.
- Disposition—convert surplus plutonium and plutonium that may be declared surplus in the future to forms that meet the Spent Fuel Standard,[5] thereby providing evidence of irreversible disarmament and setting a model for proliferation resistance.

2. Long-Term Storage Alternatives and Related Activities

a. No Action. Under the No Action Alternative, all weapons-usable fissile materials would remain at existing storage sites. Maintenance at existing storage facilities would be done as required to ensure safe operation for the balance of the facility's useful life. Sites covered under the No Action Alternative included Hanford, INEL, Pantex, the ORR, SRS, RFETS, and LANL. Although there are no weapons-usable fissile materials within the scope of the S&D PEIS stored currently at Nevada Test Site (NTS), it was also analyzed under No Action to provide an environmental baseline against which impacts of the storage and disposition action alternatives were analyzed.

b. Upgrade at Multiple Sites. Under this alternative for storage, DOE would either modify certain existing facilities or build new facilities, depending on the site's ability to meet standards for nuclear material storage facilities, and would utilize existing site infrastructure to the extent possible. These modified or new facilities would be designed to operate for up to 50 years. Plutonium materials currently stored at Hanford, INEL, Pantex, and SRS would remain at those four sites (in upgraded or new facilities), and HEU would remain at ORR (in upgraded, consolidated facilities). This alternative does not apply to NTS because NTS does not currently store weapons-usable fissile materials.

A sub-alternative of relocating portions of the plutonium inventory (a total of 14.4 metric tons according to DOE's Openness Initiative announcements of December 7, 1993, and February 6, 1996, respectively) from RFETS and LANL to one or more of the four existing plutonium storage sites is analyzed. Storage of surplus materials without strategic reserve and weapons research and development (R&D) materials is also included as a sub-alternative. Within some of the five candidate storage sites under this alternative, there are also multiple storage options.

c. Consolidation of Plutonium. Under this alternative, plutonium materials at existing sites would be removed, and the entire DOE inventory of plutonium would be consolidated at one site, while the HEU inventory would remain at ORR. Again, Hanford, INEL, Pantex and SRS would be candidate sites for plutonium consolidation. In addition, NTS would be a candidate site for this alternative. Consolidation of plutonium at ORR would result in a situation in which inventories of plutonium and HEU were collocated at one site; this alternative was therefore analyzed as one option under the Collocation Alternative (see below). A sub-alternative to account for the separate storage of surplus materials without strategic reserve and weapons R&D materials was also included.

d. Collocation of Plutonium and Highly Enriched Uranium. Under the Collocation Alternative, the entire DOE inventory of plutonium and HEU would be consolidated and collocated at the same site. The six candidate sites would be Hanford, NTS, INEL, Pantex, ORR, and SRS. A sub-alternative for the separate storage of surplus materials without strategic reserve and weapons R&D materials was also included.

3. Plutonium Disposition Alternatives and Related Activities

The disposition technologies analyzed in the S&D PEIS were those that would convert surplus plutonium into a form that would meet the Spent Fuel Standard. For the purpose of environmental impact analyses of the various disposition alternatives, both generic and specific sites were used to provide perspective on these

[3] The ''Stored Weapons Standard'' for weapons-usable fissile materials storage was initially defined in Management and Disposition of Excess Weapons Plutonium, National Academy of Sciences, 1994. DOE defines the Stored Weapons Standard as follows: The high standards of security and accounting for the storage of intact nuclear weapons should be maintained, to the extent practical, for weapons-usable fissile materials throughout dismantlement, storage, and disposition.

[4] The S&D PEIS covers long-term storage of nonsurplus HEU and storage of surplus HEU pending disposition. Until storage decisions are implemented, surplus HEU that has not gone to disposition will continue to be stored pursuant to, and not to exceed the 10-year interim storage time period evaluated in, the Environmental Assessment for the Proposed Interim Storage of Enriched Uranium Above the Maximum Historical Storage Level at the Y–12 Plant, Oak Ridge, Tennessee (Y–12 EA) (DOE/EA–0929, September 1994) and Finding of No Significant Impact (FONSI).

[5] The ''Spent Fuel Standard'' for disposition was also initially defined in Management and Disposition of Excess Weapons Plutonium, National Academy of Sciences, 1994. DOE defines the Spent Fuel Standard as follows: The surplus weapons-usable plutonium should be made as inaccessible and unattractive for weapons use as the much larger and growing quantity of plutonium that exists in spent nuclear fuel from commercial power reactors.

alternatives. Under each alternative, there are various ways to implement the alternative. These ''variants'' (such as the can-in-canister[6] approach) are shown in Table 1 to provide a range of available options for consideration.

TABLE 1.—DESCRIPTION OF VARIANTS UNDER PLUTONIUM DISPOSITION ALTERNATIVES

Alternatives analyzed	Possible variants
• Deep Borehole Direct Disposition	• Arrangement of plutonium in different types of emplacement canisters.
• Deep Borehole Immobilized Disposition	• Emplacement of pellet-group mix.
	• Pumped emplacement of pellet-grout mix.
	• Plutonium concentration loading, size and shape of ceramic pellets.
• New Vitrification Facilities	• Collocated pit disassembly/conversion, plutonium conversion, and immobilization facilities.
	• Use of either Cs–137 from capsules or HLW as a radiation barrier.
	• Wet or dry feed preparation technologies.
	• An adjunct melter adjacent to the DWPF at SRS, in which borosilicate glass frit with plutonium (without highly radioactive radionuclides) is added to borosilicate glass containing HLW from the DWPF.
	• A can-in-canister approach at SRS in which cans of plutonium glass (without highly radioactive radionuclides) are plaed in DWPF canisters which are then filled with borosilicate glass containing HLW in the DWPF (see Appendix O of the Final PEIS).
	• A can-in-canister approach similar to above but using new facilities at sites other than SRS.
• New Ceramic Immobilization Facilities	• Collocated pit disassembly/plutonium conversion, and immobilization facilities.
	• Use of either Cs–137 from capsules or HLW as a radiation barrier.
	• Wet or dry feed preparation technologies.
	• A can-in-canister approach at SRS in which the plutonium is immobilized without highly radioactive radionuclides in a ceramic matrix and then placed in the DWPF canisters that are then filled with borosilicate glass containing HLW (See Appendix O of the Final PEIS).
	• A can-in-canister approach similar to above but using new facilities at sites other than SRS.
• Electrometallurgical Treatment (glass-bonded zeolite form)	• Immobilize plutonium into metal ingot form.
	• Locate at DOE sites other than ANL–W at INEL.
• Existing LWR With New MOX Facilities	• Pressurized or Boiling Water Reactors.
	• Different numbers of reactors.
	• European MOX fuel fabrication.
	• Modification/completion of existing facilities for MOX fabrication.
	• Collocated pit disassembly/conversion, plutonium conversion, and MOX facilities.
	• Reactors with different core management schemes (plutonium loadings, refueling intervals).
• Partially Completed LWR With New MOX Facilities	• Same as for existing LWR (except that MOX fuel would not be fabricated in Europe).
• Evolutionary LWR With New MOX Facilities	• Same as for partially completed LWR.
• Existing CANDU Reactor With New MOX Facilities	• DIfferent numbers of reactors.
	• Modification/completion of existing facilities for MOX fabrication.
	• Collocated pit disassembly/conversion, plutonium conversion, and MOX facilities.
	• Reactors with different core management schemes (plutonium loadings, refueling intervals).

Note: ANL–W=Argonne National Laboratory-West; Cs–137=cesium-137; HLW=high-level waste; LWR=light water reactor

The first step in plutonium disposition is to remove the surplus plutonium from storage, then process this material in a pit disassembly/conversion facility (for pits) or in a plutonium conversion facility (for non-pit materials). The processing would convert the plutonium material into a form suitable for each of the disposition alternatives described in the following sections. The pit disassembly/conversion facility and the plutonium conversion facility would be built at a DOE site. The six candidate sites for long-term storage were evaluated for the potential environmental impacts of constructing and operating these facilities.

a. No Disposition Action. A ''No Plutonium Disposition'' action means disposition would not occur, and surplus plutonium-bearing weapon components (pits) and other forms, such as metal and oxide, would remain in storage in accordance with decisions on the long-term storage of weapons-usable fissile materials.

b. Deep Borehole Category. Under this category of alternatives, surplus weapons-usable plutonium would be disposed of in deep boreholes that would be drilled at least 4 kilometers (km) (2.5 miles [mi]) into ancient, geologically stable rock formations beneath the water table. The deep borehole would provide a geologic barrier against potential proliferation. A generic site was evaluated for the construction and operation of a borehole complex where the surplus plutonium would be prepared for emplacement in the borehole. This complex would consist of five major facilities: Processing; drilling; emplacing/sealing; waste management; and support (security, maintenance, and utilities).

(1) Direct Disposition (Borehole). Under the Direct Disposition Alternative, surplus plutonium would be removed from storage, processed as necessary, converted to a form suitable for emplacement, packaged, and placed in a deep borehole. The deep borehole would be sealed to isolate the

[6] In the can-in-canister variant, cans of plutonium in a glass or ceramic matrix would be placed in a canister. This canister would then be filled with borosilicate glass containing high-level radioactive waste (HLW) or highly radioactive material such as cesium. This variant, at an existing facility (the Defense Waste Processing Facility [DWPF] at SRS), is described in Appendix O of the S&D Final PEIS.

plutonium from the accessible environment. Long-term performance of the deep borehole would depend on the stability of the geologic system. A generic site was used for the borehole complex to analyze the environmental impact of this alternative.

(2) Immobilized Disposition (Borehole). Under the Immobilized Disposition Alternative, the surplus plutonium would be removed from storage, processed, and converted to a suitable form for shipment to a ceramic immobilization facility. The output of this facility would be spherical ceramic pellets containing plutonium, facilitating handling during transportation and emplacement. The ceramic pellets (about 2.54 centimeters [cm] [1 inch {in}] in diameter and containing 1 percent plutonium by weight) would then be placed in drums and shipped to the borehole complex. At the deep borehole site, the ceramic pellets would be mixed with non-plutonium ceramic pellets and fixed with grout during emplacement. The deep borehole would be sealed to isolate the plutonium from the accessible environment. Long-term performance of the deep borehole would depend on the stability of the geologic system.

Although a generic site was used for analyses of the borehole complex in this alternative, the ceramic immobilization facility would be built at a DOE site. Therefore, the six candidate sites for long-term storage were used to evaluate the environmental impacts of the borehole immobilization facility.

c. Immobilization Category. Under this category of alternatives, surplus plutonium would be immobilized to create a chemically stable form for disposal in a geologic repository pursuant to the Nuclear Waste Policy Act (NWPA).[7] The plutonium material would be mixed with or surrounded by high-level waste (HLW) or other radioactive isotopes and immobilized to create a radiation field that could serve as a proliferation deterrent, along with safeguards and security comparable to those of commercial spent nuclear fuel, thereby achieving the Spent Fuel Standard. All immobilized plutonium would be encased in stainless steel canisters and would remain in onsite vault-type storage until a geologic repository pursuant to the NWPA is operational.

(1) Vitrification. Under the Vitrification Alternative, surplus plutonium would be removed from storage, processed, packaged, and transported to the vitrification facility. In this facility, the plutonium would be mixed with glass frit and highly radioactive cesium-137 (Cs-137) or HLW to produce borosilicate glass logs (a slightly different process, using HLW, would be used for the can-in-canister variant, as discussed in Appendix O of the S&D Final PEIS). The Cs-137 isotope could come from the cesium chloride (CsCl) capsules currently stored at Hanford or from existing HLW if the site selected for vitrification already manages HLW. Each glass log produced from the vitrification facility would contain about 84 kilograms (kg) (185 pounds [lb]) of plutonium. The vitrification facility would be built at a DOE site. The six candidate sites for long-term storage were analyzed for this alternative.

(2) Ceramic Immobilization. Under the Ceramic Immobilization Alternative, surplus plutonium would be removed from storage, processed, packaged, and transported to a ceramic immobilization facility. In this facility, the plutonium would be mixed with nonradioactive ceramic materials and Cs-137 or HLW to produce ceramic disks (a slightly different process, using HLW, would be used for the can-in-canister variant, as discussed in Appendix O of the S&D Final PEIS). Each disk would be approximately 30 cm (12 in) in diameter and 10 cm (4 in) thick, and would contain approximately 4 kg (9 lb) of plutonium. The Cs-137 or HLW would be provided as previously described. The ceramic immobilization facility would be built at a DOE site. The six candidate sites for long-term storage were analyzed for this alternative.

(3) Electrometallurgical Treatment. Under the Electrometallurgical Treatment Alternative, surplus plutonium would be removed from storage, processed, packaged, and transported to new or modified facilities for electrometallurgical treatment. This process could immobilize surplus fissile materials into a glass-bonded zeolite (GBZ) form. With the GBZ material, the plutonium would be in the form of a stable, leach-resistant mineral that is incorporated in durable glass materials.[8] Existing electrometallurgical facilities at INEL were used as a representative site for analysis of potential environmental impacts.

d. Reactor Category. Under the reactor alternatives considered in the S&D PEIS, DOE would fabricate surplus plutonium into MOX fuel for use in reactors. The irradiated MOX fuel would reduce the proliferation risks of the plutonium material, and the reactors would also generate electricity. MOX fuel would be used in a once-through fuel cycle, with no reprocessing or subsequent reuse of spent fuel. The spent nuclear fuel generated by the reactors would then be sent to a geologic repository pursuant to the NWPA.

Because the United States does not have a MOX fuel fabrication facility or capability, a new dedicated MOX fuel fabrication facility would be built at a DOE or commercial site.[9] The surplus plutonium from storage would be processed, converted to plutonium dioxide (PuO_2), and transferred to the MOX fuel fabrication facility. In this facility, PuO_2 and uranium dioxide (UO_2) (from existing domestic sources) would be blended and fabricated into MOX pellets, loaded into fuel rods, and assembled into fuel bundles suitable for use in the reactor alternatives under consideration.

(1) Existing Light Water Reactors. Under the Existing Light Water Reactor (LWR) Alternative, the MOX fuel containing surplus plutonium would be fabricated and transported to existing commercial LWRs in the United States, where the MOX fuel would be used instead of conventional UO_2 fuel. The LWRs employed for domestic electric power generation are pressurized water reactors (PWRs) and boiling water reactors (BWRs). Both types of reactors use the heat produced from nuclear fission reactions to generate steam that drives turbines and generates electricity. Three to five reactor units would be needed.[10]

[7] Also referred to as a permanent, or HLW repository. Pursuant to the Nuclear Waste Policy Act, DOE is currently characterizing the Yucca Mountain Site in Nevada as a potential repository for spent nuclear fuel and HLW. Legislative clarification, or a determination by the Nuclear Regulatory Commission that the immobilized plutonium should be isolated as HLW, may be required before the material could be placed in Yucca Mountain should DOE and the President recommend, and Congress approve, its operation. No Resource Conservation and Recovery Act (RCRA) wastes would be immobilized unless the immobilization would constitute adequate treatment under RCRA. The immobilized product would be consistent with the repository's waste acceptance criteria.

[8] In May 1996, the Department issued a Finding of No Significant Impact (FONSI) (61 Fed. Reg. 25647) and decision to proceed with the limited demonstration of the electrometallurgical treatment process at Argonne National Laboratory-West (ANL–W) at INEL for processing up to 125 spent fuel assemblies from the Experimental Breeder Reactor II (100 drivers and 25 blanket assemblies). Although this alternative could be conducted at other DOE sites, ANL–W is described in the S&D PEIS as the representative site for analysis.

[9] Although a generic commercial site was evaluated in the S&D PEIS, it is not part of the Preferred Alternative or the decisions in this ROD.

[10] It is possible that an existing LWR can be configured to produce tritium, consume plutonium as fuel, and generate revenue through the production of electricity. This configuration is called a multipurpose reactor. Environmental

(2) Partially Completed Light Water Reactors. Under the Partially Completed LWR Alternative, commercial LWRs on which construction has been halted would be completed. The completed reactors would use MOX fuel containing surplus plutonium. The characteristics of these LWRs would be the same as those of the existing LWRs discussed in the Existing LWR Alternative. The Bellefonte Nuclear Plant located along the west bank of the Tennessee River in Alabama was used as a representative site for the environmental analysis of this alternative. Two reactor units (such as those at the Bellefonte Nuclear Plant) would be needed to implement this alternative.

(3) Evolutionary Light Water Reactors. The evolutionary LWRs are improved versions of existing commercial LWRs. Two design approaches were considered in the S&D PEIS. The first is a large PWR or BWR similar to the size of the existing PWR and BWR. The second is a small PWR approximately one-half the size of the large PWR. Two large or four small evolutionary LWRs would be needed to implement this alternative.

Under each design approach for this alternative, evolutionary LWRs would be built at a DOE site. Therefore, the six candidate sites for long-term storage were used to evaluate the environmental impacts of this alternative.

(4) Canadian Deuterium Uranium Reactor. Under the CANDU Reactor Alternative, the MOX fuel containing surplus plutonium would be fabricated in a U.S. facility, then transported for use in one or more commercial heavy water reactors in Canada. The Ontario Hydro Bruce-A Nuclear Generating Station identified by the Government of Canada was used as a representative site for evaluation of this alternative. This station is located on Lake Huron about 300 km (186 mi) northeast of Detroit, Michigan. Environmental analysis of domestic activities up to the U.S./Canadian border is presented in the S&D PEIS. The use of CANDU reactors would be subject to the policies, regulations, and approval of the Federal and Provincial Canadian Governments. Pursuant to Section 123 of the Atomic Energy Act, any export of MOX fuel from the United States to Canada must be made under the agreement for cooperation between the two countries. Spent fuel generated by a CANDU reactor would be disposed under the Canadian spent fuel program.

C. Preferred Alternative

The S&D Final PEIS presented the Department's Preferred Alternative for both storage and disposition. DOE has decided to implement the Preferred Alternative as described in the S&D Final PEIS. Thus, the Preferred Alternative is described in Section V of this ROD, Decisions.

D. Environmental Impacts

Chapter 4 and the appendices of the S&D Final PEIS analyzed the potential environmental impacts of the storage and disposition alternatives in detail. The S&D Final PEIS also evaluated the maximum site impacts that would result at Hanford, INEL, Pantex, and SRS from combining the Preferred Alternative for storage with the Preferred Alternative for disposition. Consistent with the Preferred Alternative, Hanford, INEL, Pantex, and SRS are each a possible location for all or some plutonium disposition activities. The siting, construction, and operation of disposition facilities will be covered in a separate, follow-on EIS. The S&D Final PEIS described the total life cycle impacts that would result from the Preferred Alternative at the DOE sites identified for potential placement of the disposition facilities.

Based on analyses in the S&D Final PEIS, the areas where impacts might be significant are as follows:

- The use of groundwater at the Pantex Plant for storage and disposition facilities could contribute to the overall declining water levels of the Ogallala Aquifer. The projected No Action Alternative water usage at Pantex in the year 2005 reflects a reduction from current usage due to planned downsizing over the next few years. The Preferred Alternative would require a 72-percent increase in the projected No Action Alternative water use; the total amount (428 million liters per year) is considerably less than what is currently being withdrawn (836 million liters per year) at Pantex.
- A set of postulated accidents was used for each plutonium disposition alternative over the life of the campaign to obtain potential radiological impacts at the four DOE sites where disposition facilities could be built. The PEIS analyzes the risk of latent cancer fatalities (reflecting the probability of accident occurrence and the latent cancer fatalities potentially caused by the accident) for accidents that have low probabilities of occurrence and severe consequences, as well as those that have higher probabilities and low consequences. For potential severe accidents, the risk of latent cancer fatalities to the population located within 80 kilometers (50 miles) of the accident for the ''front-end'' disposition process campaign would range from $4.5x10^{-16}$ (that is, approximately 1 chance in 2 quadrillion) to $1.7x10^{-4}$ (approximately 1 chance in 6,000) for the pit disassembly/conversion facility, and from $1.5x10^{-16}$ to $1.3x10^{-4}$ for the plutonium conversion facility. This risk would range from $2.8x10^{-14}$ to $1.8x10^{-5}$ for the vitrification facility, from $7.0x10^{-16}$ to $1.9x10^{-7}$ for the ceramic immobilization facility, and from $4.6x10^{-16}$ to $4.3x10^{-4}$ for the MOX fuel fabrication facility. To estimate the change in risk associated with using MOX fuel instead of uranium fuel in existing LWRs, the severe accident scenarios assumed a large population distribution near a generic existing LWR and extreme meteorological conditions for dispersal, leading to large doses that were not necessarily reflective of actual site conditions. The resultant change in risk of cancer fatalities to a generic population located within 80 km (50 mi) of the severe accidents was estimated to range from $-2.0x10^{-4}$ to $3.0x10^{-5}$ per year[11], reflecting a postulated risk of using MOX fuel that ranges from seven percent lower to eight percent higher than the risk of using uranium fuel. Under the Preferred Alternative, the estimated risk of cancer fatalities under severe accident conditions using MOX fuel in existing LWRs ranges from 0.01 to 0.098 for an 11-year campaign.
- Under the Preferred Alternative, HEU would continue to be stored at the Y–12 Plant at ORR in existing facilities that would be upgraded to meet requirements for withstanding natural phenomena, including earthquakes and tornadoes. This upgrade would reduce the expected risk for the design basis accidents analyzed in the Y–12 EA (for example, Building 9212) by approximately 80 percent, resulting in a latent cancer fatality risk of 7.4×10^{-6} (approximately 7 in a million) to the maximally exposed individual, 5.7×10^{-8} (approximately 6 in 100

analysis of the multipurpose reactor is included in Chapter 4 of the Final Programmatic Environmental Impact Statement for Tritium Supply and Recycling (TSR PEIS) (DOE/EIS–0161, October 1995) and Appendix N of the S&D PEIS. In the TSR PEIS ROD (December 1995), the multipurpose reactor was preserved as an option for future consideration. The Fast Flux Test Facility (FFTF) at Hanford has been under consideration for tritium production, and could also use surplus plutonium as reactor fuel if it were shown to be useful for tritium production. This ROD does not preclude use of the FFTF for tritium production or the potential use of surplus plutonium as fuel for the FFTF.

[11] Accidents severe enough to cause a release of plutonium involved combinations of events that are highly unlikely. Estimates and analyses presented in Chapter 4 and summarized in Table 2.5–3 of the PEIS indicate a range of latent cancer fatalities of 5,900 to 7,300 and a risk of 0.016 to 0.15 of a fatality in the population for the 17-year campaign analyzed under the Existing LWR Alternative.

million) to a non-involved worker, and 5.1×10^{-7} (approximately 5 in 10 million) to the 80-km offsite population.

• Under the Preferred Alternative, safe, secure storage would continue for materials at Hanford, INEL, and ORR, pending disposition. Therefore, there would be no transportation impact at these sites until disposition. The storage transportation impact would come from movement of the RFETS materials to Pantex and SRS. If, following the EIS for construction and operation of plutonium disposition facilities, potential plutonium disposition activities were added to Hanford, INEL, Pantex, and SRS, the estimated total health effects for the life of the project from transportation of surplus plutonium (including transportation of those materials from RFETS to Pantex and SRS) would range from 0.193 fatalities for transportation to Pantex, to 1.87 fatalities for transportation to SRS (primarily from normal expected traffic accidents, not from radiological releases). In addition to the disposition activities at DOE sites, there would be transportation of the MOX fuel from the DOE fuel fabrication site to existing LWRs. The location of the LWRs and the destination of the MOX fuel could be either the eastern or western United States. For 4,000 km (2,486 mi) of such transportation, there could be up to an additional 3.61 potential fatalities (primarily from normal expected traffic accidents, not from radiological releases) for the life of the campaign, assuming 100 percent of the surplus plutonium would be used in commercial reactors. The actual amount would be smaller, and therefore potential fatalities would be lower, under the Preferred Alternative.

• At Hanford, INEL, Pantex, and SRS the Preferred Alternative would slightly increase regional employment and income. At RFETS, phaseout of plutonium storage would result in the loss of approximately 2,200 direct jobs. Compared to the total employment in the area, the loss of these jobs and the impacts to the regional economy would not be severe.

DOE has fully considered all of the environmental analyses in the S&D Final PEIS in reaching the decisions set forth in Section V, below.

E. Avoidance/Minimization of Environmental Harm

For the long-term storage of fissile material, there are four sites (Hanford, NTS, INEL, and LANL) where the Preferred Alternative is ''no action''; that is, no plutonium would be stored at NTS, and at Hanford, INEL, and LANL, DOE would continue storage at existing facilities, using proven nuclear materials safeguards and security procedures, until disposition. These existing facilities would be maintained to ensure their safe operation and compliance with applicable environmental, safety and health requirements. At RFETS, the Preferred Alternative is to phase out storage of weapons-usable fissile materials, thus mitigating environmental impacts at RFETS. There are three sites (Pantex, ORR, and SRS) where the Preferred Alternative is to upgrade existing and planned new facilities. Site-specific mitigation measures for storage at these sites have been described in the S&D Final PEIS, and are summarized as follows:

• At Pantex, to alleviate the effects from using groundwater from the Ogallala Aquifer, the city of Amarillo is considering supplying treated wastewater to Pantex from the Hollywood Road Wastewater Treatment Plant for industrial use; the Department will use such treated wastewater to the extent possible. Radiation doses to individual workers will be kept low by maintaining comprehensive badged monitoring and programs to keep worker exposures ''as low as reasonably achievable'' (ALARA).

• At ORR, radiation doses to individual workers will be kept low by maintaining comprehensive badged monitoring and ALARA programs, including worker rotations. Upgrades for HEU storage to meet performance requirements will include seismic structural modifications as documented in Natural Phenomena Upgrade of the Downsized/Consolidated Oak Ridge Uranium/Lithium Plant Facilities. These modifications will reduce the risk of accidents to workers and the public.

• At SRS, to minimize soil erosion impacts during construction, storm water management and erosion control measures will be employed. Mitigation measures for potential Native American resources will be identified through consultation with the potentially affected tribes. Radiation doses to individual workers will be kept low by maintaining comprehensive badged monitoring and ALARA programs including worker rotations. The modified Actinide Packaging and Storage Facility (APSF) will be designed and operated in accordance with contemporary DOE Orders and regulations to reduce risks to workers and the public.

From a nonproliferation standpoint, the highest standards for safeguards and security will be employed during transportation, storage, and disposition. With respect to transportation, DOE will coordinate the transport of plutonium and HEU with State officials, consistent with current policy. Although the actual routes will be classified, they will be selected to circumvent populated areas, maximize the use of interstate highways, and avoid bad weather. DOE will continue to coordinate emergency preparedness plans and responses with involved states through a liaison program. The packaging, vehicles, and transport procedures being used are specifically designed and tested to prevent a radiological release under all credible accident scenarios.

For the Preferred Alternative for disposition, site-specific mitigation measures will be addressed in the follow-on, site-specific EIS. In the Nonproliferation and Arms Control Assessment of Weapons-Usable Fissile Material Storage and Plutonium Disposition Alternatives, measures are proposed to reduce the possibility of the theft or loss of material. For both immobilization and MOX fuel fabrication, bulk processing is the point in the disposition process when the material is most vulnerable to covert attempts to steal or divert it. A variety of opportunities for improving safeguards, some of which are already implemented at large, modern facilities, include near real-time accounting, increased automation in the process design, and improved containment and surveillance.

The security risks posed by transportation can be reduced by minimizing the amount of transportation required (for example, putting the plutonium processing and MOX fabrication operations at the same site), minimizing the number of sites to which material has to be shipped, and minimizing the distance between those sites.

F. Environmentally Preferable Alternatives

The environmental analyses in Chapter 4 of the S&D Final PEIS indicate that the environmentally preferable alternative (the alternative with the lowest environmental impacts over the 50 years considered in the PEIS) for storage of weapons-usable fissile materials would be the Preferred Alternative, which consists of No Action at Hanford, NTS, INEL, and LANL pending disposition, phaseout of storage at RFETS, and upgrades that would ultimately reduce environmental vulnerabilities at ORR, SRS, and Pantex.

For disposition of surplus plutonium, the environmentally preferable alternative would be the No Disposition Action alternative, because the

plutonium would remain in storage in accordance with decisions on the long-term storage of weapons-usable fissile materials, and there would be no new Federal actions that could impact the environment. For normal operations, analyses show that immobilization would be somewhat preferable to the existing LWR and preferred alternatives, although these alternatives, with the exception of waste generated, would be essentially environmentally comparable.[12]

Severe facility accident considerations indicate that immobilization options would be environmentally preferable to the existing reactor and preferred alternatives, although the likelihood of occurrence of severe accidents and the risk to the public are expected to be fairly low. Although No Disposition Action would be environmentally preferable, it would not satisfy the purpose and need for the Proposed Action, because the stockpile of surplus plutonium would not be reduced, and the Nonproliferation and Export Control Policy would not be implemented.

The hybrid approach (pursuing both reactors/MOX and immobilization) is being chosen over immobilization alone because of the increased flexibility it will provide by ensuring that plutonium disposition can be initiated promptly should one of the approaches ultimately fail or be delayed. Establishing the means for expeditious plutonium disposition will also help provide the basis for an international cooperative effort that can result in reciprocal, irreversible plutonium disposition actions by Russia. (See discussion in sections IV and V, below.)

IV. Non-Environmental Considerations

A. Technical Summary Reports

To assist in the preparation of this ROD, DOE's Office of Fissile Materials Disposition prepared and in July 1996 issued a *Technical Summary Report for Surplus Weapons-Usable Plutonium Disposition and a Technical Summary Report for Long-Term Storage of Weapons-Usable Fissile Materials.* These Technical Summary Reports (TSRs) summarize technical, cost, and schedule data for the storage and disposition alternatives that are considered in the S&D PEIS. After receiving comments on each of the TSRs, DOE issued revised versions of the reports in October and November, 1996, respectively.

1. Storage Technical Summary Report

This report provides technical, cost and schedule information for long-term storage alternatives analyzed in the S&D PEIS. The cost information for each alternative is presented in constant 1996 dollars and also discounted or present value dollars. It identifies both capital costs and life cycle costs. The following costs are in 1996 dollars.

The cost analyses show that the combination (preferred) alternative for the storage of plutonium would provide advantages to the Department with respect to implementing disposition technologies and would be the least expensive compared to other storage alternatives. The cost of the combination (preferred) alternative would be approximately $30 million in investment and $360 million in operating costs from inception until disposition occurs. The cost of the upgrade at multiple sites alternative would be approximately $380 million in investment and $3.2 billion in operating costs for 50 years. The costs for the consolidation alternative could range from approximately $40 million to $360 million in investment and $600 million to $1.1 billion for operating costs for 50 years, depending on the extent to which existing facilities and capabilities can be shared with other programs at the sites.

The schedule analysis shows that the upgraded storage facilities for plutonium under the combination (preferred) alternative could be operational by 2004 at Pantex (Zone 12), and by 2001 at SRS. The upgrade for the storage of HEU could be completed by 2004 (or earlier). RFETS pits could be received at Pantex beginning in 1997 in Zone 4 on a temporary basis until Zone 12 upgrades are completed. The other analyzed alternatives (upgrade and consolidation) would require about six years to complete.

2. Disposition Technical Summary Report

This report provides technical viability, cost, and schedule information for plutonium disposition alternatives and variants analyzed in the S&D PEIS. The variants analyzed in the report are based on pre-conceptual design information in most cases.

a. Technical Viability Estimates. The report indicates that each of the alternatives appears to be technically viable, although each is currently at a different level of technical maturity. There is high confidence that the technologies are sufficiently mature to allow procurement and/or construction of facilities and equipment to meet plutonium disposition technical requirements and to begin disposition in about a decade.[13]

Reactor Alternatives—Light water reactors (LWRs) can be readily converted to enable the use of MOX fuels. Many European LWRs currently operate on MOX fuel cycles. Although some technical risks exist, they are all amenable to engineering resolution. Sufficient existing domestic reactor capacity exists, unless significant delays occur in the disposition mission. CANDU reactors appear to be capable of operating on MOX fuel cycles, but this has never been demonstrated on any industrial scale. Therefore, additional development would be required to achieve the level of maturity for the CANDU reactors that exists for light water reactors. Partially complete and evolutionary LWRs would involve increased technical risk relative to existing LWRs, as well as the need to complete or build (and license) new reactor facilities. The spent MOX fuel waste form that results from reactor disposition of surplus plutonium will have to satisfy waste acceptance criteria for the geologic repository.

Immobilization Alternatives—All vitrification alternatives require additional research and development prior to implementation of immobilization of weapons-usable plutonium. However, a growing experience base exists relating to the vitrification of high-level waste. These existing technologies can be adapted to the plutonium disposition mission, though different equipment designs and glass formulations will generally be necessary due to criticality considerations and chemical differences between plutonium and HLW that may affect the stability of the glass matrix. Vitrification and ceramic immobilization alternatives are similar with regard to the technical maturity of incorporating plutonium in their respective matrices. The technical viability of electrometallurgical treatment has not yet been established for the plutonium disposition mission. The experimental data base for this alternative is limited, and critical questions on waste form performance are not yet resolved. This alternative is considered practical only if the underlying technology is further

[12] The potential risk of latent cancer fatality for a maximally exposed individual of the public from lifetime accident-free operation under the various alternatives are: $1.2x10^{-9}$ to $1.2x10^{-7}$ for boreholes, $1.2x10^{-9}$ to $1.2x10^{-7}$ for immobilization (vitrification or ceramic immobilization), $1.3x10^{-6}$ to $2.6x10^{-6}$ for existing LWRs, and $9.0x10^{-7}$ to $1.7x10^{-6}$ for the Preferred Alternative.

[13] Actual timing would depend on technical demonstrations, follow-on site-specific environmental review, detailed cost estimates, and international agreements.

developed for spent nuclear fuels.[14] All of the immobilization alternatives will require qualification (to meet acceptance criteria) of the waste form for the geologic repository, and may require legislative clarification or NRC rulemaking.

Deep Borehole Alternatives—Uncertainties for the deep borehole alternatives relate to selecting and qualifying a site; additional legislation and regulations, or legislative and regulatory clarification, may be required. The front-end feed processing operations for the deep borehole alternatives are much simpler than for other alternatives because no highly radioactive materials are processed, thus avoiding the need for remote handling operations. Emplacement technologies are comprised of largely low-technology operations which would be adaptations from existing hardware and processes used in the oil and gas industry.

Hybrid Approaches—Two hybrid approaches that combine technologies were considered as illustrative examples, using existing LWR or CANDU reactors in conjunction with a can-in-canister (immobilization) approach. Hybrids provide insurance against technical or institutional hurdles which could arise for a single technology approach for disposition. If any significant roadblock is encountered in any one area of a hybrid, it would be possible to simply divert the feed material to the more viable technology. In the case of a single technology, such roadblocks would be more problematic.

b. Cost Estimates. The following discussion is in constant 1996 dollars unless otherwise stated.

(1) Investment Costs.

• The investment costs for existing reactor variants tends to be about $1 billion; completing or building new reactors increases the investment cost to between $2 billion and $6 billion.

• The investment cost for the immobilization alternatives ranges from approximately $0.6 billion for the can-in-canister variants to approximately $2 billion for new greenfield variants.[15]

• Hybrid alternatives (combining both immobilization and reactor alternatives) require approximately $200 million additional investment over the existing light water reactor stand-alone alternatives.

• Investment costs for the deep borehole alternatives range from about $1.1 billion for direct emplacement to about $1.4 billion for immobilized emplacement.

• Alternatives that utilize existing facilities for plutonium processing, immobilization, or fuel fabrication would realize significant investment cost savings over building new facilities for the same function.

• Large uncertainties in the cost estimates exist, relating to both engineering and institutional factors.

• A significant fraction of the investment cost for an alternative/variant is related to the front-end facilities for the extraction of the plutonium from pits and other plutonium-bearing materials and for other functions that are common to all alternatives.

(2) Life Cycle Costs.

• The life cycle costs for hybrid alternatives are similar to the stand-alone reactor alternatives. For the existing LWR/immobilization hybrid alternative (preferred alternative), the cost is $260 million higher than the stand-alone reactor alternative; for the CANDU/immobilization hybrid alternative, the cost is $70 million higher.

• The combined investment and net operating costs for MOX fuel are higher than for commercial uranium fuel; thus, the cost of MOX fuel cannot compete economically with low-enriched uranium fuel for LWRs or natural uranium fuel for CANDU reactors.

• The can-in-canister approaches are the most attractive variants for immobilization based on cost considerations.

• The deep borehole alternatives are more expensive than the can-in-canister and existing reactor alternatives. The immobilized borehole alternative life cycle cost is $1 billion greater than that for the direct emplacement alternative ($3.6 billion vs. $2.6 billion).

• Large uncertainties in the cost estimates exist, relating to engineering, regulatory, and policy considerations.

c. Schedule Estimates. The key conclusions of the Disposition Technical Summary Report with respect to schedules are as follows:

• Significant schedule uncertainties exist, relating to both engineering and institutional factors.

• Opportunities for compressing or expanding schedules exist.

(1) Reactor Alternatives. • The rate at which MOX fuel is consumed in reactors will depend on the rate that MOX fuel is provided and fabricated, and the rate that plutonium oxide is provided to the MOX fuel fabrication facility.

• The time to attain production scale operation in existing LWRs and CANDU reactors could be about 8–12 years, depending on the need for and source of test assemblies that might be required.

• The time to complete the disposition mission is a function of the number of reactors committed to the mission, among other factors. For the variants considered, the time to complete varies from about 24 to 31 years.

(2) Immobilization Alternatives.

• The time to start the disposition mission ranges from 7 to 13 years, depending on the technology used and whether existing facilities are used.

• The operating campaign for the immobilization alternatives at full-scale operation would be about 10 years; it is possible to compress or expand the operating schedule by several years, if desired, by resizing the immobilization facility designs selected for analysis in this study. The overall mission duration (including research and development, construction, and operation) is expected to be about 18 to 24 years.

• Potential delays for start-up of the immobilization alternatives involve completing process development and demonstration, and qualifying the waste form for a geologic repository.

(3) Deep Borehole Alternatives. • The time to start-up is expected to be 10 years.

• The operating duration of the mission would be about 10 years, although completing all burial operations at the borehole site in 3 years is possible. Therefore, the overall mission duration is estimated to be 20 years with accelerated emplacement reducing the duration by about 7 years.

• The schedule for the deep borehole alternatives would depend in part on selecting and qualifying a site, and obtaining legislative and regulatory clarification as well as any necessary permits.

(4) Hybrid Approaches. • In general, the schedule data that apply to the component technologies apply to the hybrid alternatives as well.

• Confidence in an early start-up and an earlier completion can both be improved with a hybrid approach, relative to stand-alone alternatives.

• Hybrid alternatives provide an inherent back-up technology approach to enhance confidence in attaining schedule goals.

[14] A recent study by the National Research Council concludes that the electrometallurgical treatment technology is not sufficiently mature to provide a reliable basis for timely plutonium disposition. ''An Evaluation of the Electrometallurgical Approach for Treatment of Excess Weapons Plutonium'' (National Academy Press, Washington, D.C., 1996).

[15] ''Greenfield'' means a variant involving a new facility, with no existing plutonium-handling infrastructure.

B. Nonproliferation Assessment

To assist in the development of this ROD, DOE's Office of Arms Control and Nonproliferation, with support from the Office of Fissile Materials Disposition, prepared a report, Nonproliferation and Arms Control Assessment of Weapons-Usable Fissile Material Storage and Plutonium Disposition Alternatives. The report was issued in draft form in October 1996, and following a public comment period, was issued in final form in January 1997. It analyzes the nonproliferation and arms reduction implications of the alternatives for storage of plutonium and HEU, and disposition of excess plutonium. It is based in part on a Proliferation Vulnerability Red Team Report prepared for the Office of Fissile Materials Disposition by Sandia National Laboratory. The assessment describes the benefits and risks associated with each option. Some of the ''options'' and ''alternatives'' discussed in the Nonproliferation Assessment are listed as ''variants'' (such as can-in-canister) in the S&D Final PEIS. The key conclusions of the report, as presented in its Executive Summary, are reproduced below.

1. Storage. • Each of the options under consideration for storage of U.S. weapons-usable fissile materials has the potential to support U.S. nonproliferation and arms reduction goals, if implemented appropriately.

• Each of the storage options could provide high levels of security to prevent theft of nuclear materials, and could provide access to excess materials for international monitoring.

• Making excess plutonium and HEU available for bilateral U.S.-Russian monitoring and International Atomic Energy Agency (IAEA) safeguards, while protecting proliferation-sensitive information, would help demonstrate the U.S. commitment never to return this material to nuclear weapons, providing substantial arms reduction and nonproliferation benefits in the near-term.

2. Disposition of U.S. Excess Plutonium

a. In General. • Each of the options for disposition of excess weapons plutonium that meets the Spent Fuel Standard would, if implemented appropriately, offer major nonproliferation and arms reduction benefits compared to leaving the material in storage in directly weapons-usable form. Taking into account the likely impact on Russian disposition activities, the no-action alternative appears to be by far the least desirable of the plutonium disposition options from a nonproliferation and arms reduction perspective.

• Carrying out disposition of excess U.S. weapons plutonium, using options that ensured effective nonproliferation controls and resulted in forms meeting the Spent Fuel Standard, would:

• reduce the likelihood that current arms reductions would be reversed, by significantly increasing the difficulty, cost, and observability of returning this plutonium to weapons;

• increase international confidence in the arms reduction process, strengthening political support for the nonproliferation regime and providing a base for additional arms reductions, if desired;

• reduce long-term proliferation risks posed by this material by further helping to ensure that weapons-usable material does not fall into the hands of rogue states or terrorist groups; and

• lay the essential foundation for parallel disposition of excess Russian plutonium, reducing the risks that Russia might threaten U.S. security by rebuilding its Cold War nuclear weapons arsenal, or that this material might be stolen for use by potential proliferators.

• Choosing the ''no-action alternative'' of leaving U.S. excess plutonium in storage in weapons-usable form indefinitely, rather than carrying out disposition:

• would represent a clear reversal of the U.S. position seeking to reduce excess stockpiles of weapons-usable materials worldwide;

• would make it impossible to achieve disposition of Russian excess plutonium;

• could undermine international political support for nonproliferation efforts by leaving open the question of whether the United States was maintaining an option for rapid reversal of current arms reductions; and

• could undermine progress in nuclear arms reductions.

• The benefits of placing U.S. excess plutonium under international monitoring and then transforming it into forms that met the Spent Fuel Standard would be greatly increased, and the risks of these steps significantly decreased, if Russia took comparable steps with its own excess plutonium on a parallel track. The two countries need not use the same plutonium disposition technologies, however.

• As the 1994 NAS committee report [16] concluded, options for disposition of U.S. excess weapons plutonium will provide maximum nonproliferation and arms control benefits if they:

• minimize the time during which the excess plutonium is stored in forms readily usable for nuclear weapons;

• preserve material safeguards and security during the disposition process, seeking to maintain to the extent possible the same high standards of security and accounting applied to stored nuclear weapons (the Stored Weapons Standard);

• result in a form from which the plutonium would be as inaccessible and unattractive for weapons use as the larger and growing quantity of plutonium in commercial spent fuel (the Spent Fuel Standard).

• In order to achieve the benefits of plutonium disposition as rapidly as possible, and to minimize the risks and negative signals resulting from leaving the excess plutonium in storage, it is important for disposition options to begin, and to complete the mission as soon as practicable taking into account nonproliferation, environment, safety, and health, and economic constraints. Timing should be a key criterion in judging disposition options. Beginning the disposition quickly is particularly important to establishing the credibility of the process, domestically and internationally.

• Each of the options under consideration for plutonium disposition has its own advantages and disadvantages with respect to nonproliferation and arms control, but none is clearly superior to the others.

• Each of the options under consideration for plutonium disposition can potentially provide high levels of security and safeguards for nuclear materials during the disposition process, mitigating the risk of theft of nuclear materials.

• Each of the options under consideration for plutonium disposition can potentially provide for effective international monitoring of the disposition process.

• Plutonium disposition can only reduce, not eliminate, the security risks posed by the existence of excess plutonium, and will involve some risks of its own:

• Because all plutonium disposition options would take decades to complete, disposition is not a near-term solution to the problem of nuclear theft and smuggling. While disposition will make a long-term contribution, the near-term problem must be addressed through programs to improve security and safeguarding for nuclear materials, and to ensure adequate police, customs, and intelligence capabilities to interdict nuclear smuggling.

[16] See footnote 3, above.

• All plutonium disposition options under consideration would involve processing and transport of plutonium, which will involve more risk of theft in the short term than if the material had remained in heavily guarded storage, in return for the long-term benefit of converting the material to more proliferation-resistant forms.

• Both the United States and Russia will still retain substantial stockpiles of nuclear weapons and weapons-usable fissile materials even after disposition of the fissile materials currently considered excess is complete. These weapons and materials will continue to pose a security challenge regardless of what is done with excess plutonium.

• None of the disposition options under consideration would make it impossible to recover the plutonium for use in nuclear weapons, or make it impossible to use other plutonium to rebuild a nuclear arsenal. Therefore, disposition will only reduce, not eliminate, the risk of reversal of current nuclear arms reductions.

• A U.S. decision to choose reactor alternatives for plutonium disposition could offer additional arguments and justifications to those advocating plutonium reprocessing and recycle in other countries. This could increase the proliferation risk if it in fact led to significant additional separation and handling of weapons-usable plutonium. On the other hand, if appropriately implemented, plutonium disposition might also offer an opportunity to develop improved procedures and technologies for protecting and safeguarding plutonium, which could reduce proliferation risks and would strengthen U.S. efforts to reduce the stockpiles of separated plutonium in other countries.

• Large-scale bulk processing of plutonium, including processes to convert plutonium pits to oxide and prepare other forms for disposition, as well as fuel fabrication or immobilization processes, represents the stage of the disposition process when material is most vulnerable to covert theft by insiders or covert diversion by the host state. Such bulk processing is required for all options, however; in particular, initial processing of plutonium pits and other forms is among the most proliferation-sensitive stages of the disposition process, but is largely common to all the options. More information about the specific process designs is needed to determine whether there are significant differences between the various immobilization and reactor options in the overall difficulty of providing effective assurance against theft or diversion during the different types of bulk processing involved, and if so, which approach is superior in this respect.

• Transport of plutonium is the point in the disposition process when the material is most vulnerable to overt armed attacks designed to steal plutonium. With sufficient resources devoted to security, however, high levels of protection against such overt attacks can be provided. International, and particularly overseas, shipments would involve greater transportation concerns than domestic shipments.[17]

b. Conclusions Relating to Specific Disposition Options.

• The reactor options, homogeneous immobilization[18] options, and deep borehole immobilized emplacement option can all meet the Spent Fuel Standard. The can-in-canister options are being refined to increase the resistance to separation of the plutonium cans from the surrounding glass, with the goal of meeting the Spent Fuel Standard. The deep borehole direct emplacement option substantially exceeds the Spent Fuel Standard with respect to recovery by sub-national groups, but could be more accessible and attractive for recovery by the host state than spent fuel.

• The reactor options have some advantage over the immobilization options with respect to perceived irreversibility, in that the plutonium would be converted from weapons-grade to reactor-grade, even though it is possible to produce nuclear weapons with both weapons and reactor-grade plutonium. The immobilization and deep borehole options have some advantage over the reactor options in avoiding the perception that they could potentially encourage additional separation and civilian use of plutonium, which itself poses proliferation risks.

• Options that result in accountable ''items'' (for purposes of international safeguards) whose plutonium content can be accurately measured (such as fuel assemblies or immobilized cans without fission products in the ''can-in-canister'' option) offer some advantage in accounting to ensure that the output plutonium matches the input plutonium from the process. Other options (such as homogeneous immobilization or immobilized emplacement in deep boreholes) would require greater reliance on containment and surveillance to provide assurance that no material was stolen or diverted—but in some cases could involve simpler processing, easing the task of providing such assurance.

• The principal uncertainty with respect to using excess weapons plutonium as MOX in U.S. LWRs relates to the potential difficulty of gaining political and regulatory approvals for the various operations required.

• Compared to the LWR option, the CANDU option would involve more transport and more safeguarding issues at the reactor sites themselves (because of the small size of the CANDU fuel bundles and the on-line refueling of the CANDU reactors). Demonstrating the use of MOX in CANDU reactors by carrying out this option for excess weapons plutonium disposition could somewhat detract from U.S. efforts to convince nations operating CANDU reactors in regions of proliferation concern not to pursue MOX fuel cycles, but these nations are likely to base their fuel cycle decisions primarily on factors independent of disposition of this material. Disposing of excess weapons plutonium in another country long identified with disarmament could have significant symbolic advantages, particularly if carried out in parallel with Russia. Disposition of Russian plutonium in CANDU reactors, however, would require resolving additional transportation issues and additional questions relating to the likely Russian desire for compensation for the energy value of the plutonium.

• The immobilization options have the potential to be implemented more quickly than the reactor options. They face somewhat less political uncertainty but somewhat more technical uncertainty than the reactor options.

• The likelihood of very long delays in gaining approval for siting and construction of deep borehole sites represents a very serious arms reduction and nonproliferation disadvantage of the borehole option, in either of its variants. While the deep borehole direct-emplacement option requires substantially less bulk processing than the other disposition options, that option may not meet the Spent Fuel Standard for retrievability by the host state, as mentioned above. Any potential

[17] International shipments would be involved (from the United States to Canada) if the CANDU option were pursued as a result of international agreements among the U.S., Canada, and Russia. Overseas shipments would be involved if European MOX fuel fabrication were utilized in the interim before a domestic MOX fabrication facility were completed. The Preferred Alternative and the decisions in this ROD do not involve European MOX fuel fabrication.

[18] The term ''homogeneous immobilization'' refers to mixing of solutions of plutonium and either HLW or cesium in liquid form, followed by solidification of the mixture in either glass or ceramic matrices. This contrasts with the ''can-in-canister'' variant, in which the plutonium and HLW or cesium materials are never actually mixed together.

advantage from the reduced processing is small compared to the large timing uncertainty and the potential retrievability disadvantage.

• Similarly, the electrometallurgical treatment option, because it is less developed than the other immobilization options, involves more uncertainty in when it could be implemented, which represents a significant arms reduction and nonproliferation disadvantage. It does not appear to have major compensating advantages compared to the other immobilization options.

• The ''can-in-canister'' immobilization options have a timing advantage over the homogeneous immobilization options, in that, by potentially relying on existing facilities, they could begin several years sooner. As noted above, however, modified systems intended to allow this option to meet the Spent Fuel Standard are still being designed.

C. Comments on the S&D Final PEIS

After issuing the Final PEIS, DOE received approximately 100 letters from organizations and individuals commenting on the alternatives addressed in the PEIS. Many of these letters expressed opposition to the MOX fuel approach for surplus plutonium disposition. The major concern raised in these letters was the contention that the use of MOX fuel is associated with proliferation risk as well as additional delays, costs, and safety and environmental risks. One of these letters was from a coalition of 14 national organizations recommending that the Department decide to utilize immobilization for the disposition of all surplus plutonium and that MOX be retained for use, if at all, only as an ''insurance policy'' if immobilization should prove infeasible. Several of those 14 organizations also wrote separately making similar points. Conversely, many of the letters provided comments in support of the use of MOX fuel and/or a dual path, while a few expressed opposition to the immobilization alternatives.

Seven of the letters received suggested the use of disposition approaches that were not analyzed in the PEIS. Three of these approaches (dropping plutonium into volcanoes, burying it in the sea at the base of a volcano, and storing it in large granite or marble structures) are similar to options that were either considered (but found to be unreasonable) in a screening process that preceded the PEIS, or were addressed in the PEIS Comment Response Document. These approaches were considered to be potentially damaging to the environment, among other things, and were therefore dismissed as unreasonable. Three other alternatives (plasma technology, binding and neutralizing plutonium with a new organic material, and use in rocket engines) recommended in these letters would require a substantial amount of development and could not be accomplished in the same time frame as alternatives analyzed in the PEIS. One commentor suggested adding the plutonium to the radioactive sludge being stored at Hanford for eventual disposal. The Department views this as unreasonable because of delays and increased costs that would be incurred in the program to manage the wastes in the Hanford tanks. One commentor was opposed to the utilization of Hanford's Fuels and Materials Examination Facility for MOX fuel fabrication and the Fast Flux Test Facility for MOX fuel burning.

All of the issues raised in these letters are covered in the body of the Final PEIS, in the Comment Response Document, the Summary Report of the Screening Process (DOE/MD–0002, March 19, 1995), the Technical Summary Report for Surplus Weapons-Usable Plutonium Disposition, or the Nonproliferation and Arms Control Assessment of Weapons-Usable Fissile Material Storage and Plutonium Disposition Alternatives, which have each been considered in reaching this ROD.

The Department's decision for surplus plutonium disposition is to pursue both the existing LWR (MOX fuel) and immobilization approaches. DOE recognizes that the estimated life-cycle cost of immobilization alone would be less than that of the hybrid approach (pursuing both), but the additional expense would be warranted by the increased flexibility should one of the approaches ultimately fail, and the increased ability to influence Russian plutonium disposition actions. (The lowest cost approach would be the No Disposition Action alternative; however, as noted in section III.F, above, that option would not satisfy the purpose and need for this program.) DOE also recognizes that analyses in the PEIS indicated that, for normal operation, the environmental and health impacts would be somewhat lower for immobilization, although, with the exception of waste generation, impacts for the preferred, immobilization, and existing LWR (MOX) alternatives would be essentially comparable (see prior discussion).

Potential latent cancer fatalities for members of the public under the MOX approach would be significantly higher than under the immobilization approach only under highly unlikely facility accident scenarios; the risk (taking into account accident probabilities) to the public of latent cancer fatalities from accidents would be fairly low for both approaches.

From the nonproliferation standpoint, results of the Nonproliferation and Arms Control Assessment of Weapons-Usable Fissile Material Storage and Plutonium Disposition Alternatives (see section IV.B) indicated that each of the options under consideration for plutonium disposition has its own advantages and disadvantages, and each can potentially provide high levels of security and safeguards for nuclear materials during the disposition process, mitigating the risk of theft of nuclear materials. Initial processing of plutonium pits and other forms is among the most proliferation-sensitive stages of the disposition process, but is largely common to all the options. Although the Assessment also concluded that none of the approaches is clearly superior to the others, both the Nonproliferation Assessment and a letter from the Secretary of Energy Advisory Board Task Force on the Non-proliferation and Arms Control Implications of Weapons-Usable Fissile Materials Disposition Alternatives (included as Appendix B to the Nonproliferation Assessment) concluded that the hybrid approach (both reactors/MOX and immobilization) is preferable because of uncertainties in each approach and because it would minimize potential delays should problems develop with either approach. Numerous comment letters have made similar points.

One such letter was received from five individuals who were the U.S. participants on the U.S.-Russian Independent Scientific Commission on Disposition of Excess Weapons Plutonium. This letter supported the dual-track approach on the grounds that ''ruling out reactors and thus depending solely on vitrification as the only approach to plutonium disposition that might be implementable anytime soon, would have far bigger nonproliferation liabilities then would the two-track approach.'' These commentors argued that designating only immobilization as the preferred approach, with MOX as a back-up, would have essentially all the nonproliferation and arms reduction liabilities of a one-track approach, which would weaken the U.S. position and have severe consequences for the likely success of programs to carry out permanent disposition of weapons plutonium in Russia, and therefore jeopardize the success of programs to

carry out U.S. disposition. These commentors stated that without the dual-track approach, the U.S. will lose any leverage it might have over the conditions and safeguards accompanying the use of Russian plutonium in their reactors. They also pointed out that pursuing both the MOX option and immobilization in the U.S. may be the best way to convince Russia, which currently favors converting its own plutonium to MOX fuel, of the value of immobilization for a portion of its excess plutonium. These commentors argued that the dual-track approach would not undermine U.S. nonproliferation policy, would not increase the risk of nuclear theft and terrorism, and would not lead to a new domestic plutonium recycle industry since it would not significantly affect the huge economic barriers to using MOX fuel on a commercial basis.

Two commentors expressed opposition to plutonium recycling (reprocessing), citing the Final Generic Environmental Statement on the Use of Recycle Plutonium in Mixed Oxide Fuel in Light Water Cooled Reactors (GESMO), NUREG–0002, which was issued by the NRC in 1976, and President Carter's decision to ban plutonium recycling. DOE notes that plutonium recycling is not part of the plutonium disposition program or the decisions in this ROD; on the contrary, this ROD includes conditions on the use of MOX fuel that are intended to prevent the use of recycled plutonium.

The use of MOX fuel in existing reactors would be undertaken in a manner that is consistent with the United States' policy objective on the irreversibility of the nuclear disarmament process and the United States' policy discouraging the use of plutonium for civil purposes. To this end, implementing the MOX alternative would include government ownership and control of the MOX fuel fabrication facility at a DOE site, and use of the facility only for the surplus plutonium disposition program. There would be no reprocessing or subsequent reuse of spent MOX fuel. The MOX fuel would be used in a once-through fuel cycle in existing reactors, with appropriate arrangements, including contractual or licensing provisions, limiting use of MOX fuel to surplus plutonium disposition.

One commentor, who opposed MOX fuel use, urged DOE not to use European MOX fuel fabrication capability if the MOX approach is pursued. In this ROD, DOE has not decided to use European MOX fuel fabrication.

V. Decisions

A. Storage of Weapons-Usable Fissile Materials

Consistent with the Preferred Alternative in the S&D Final PEIS, the Department has decided to reduce, over time, the number of locations where the various forms of plutonium are stored, through a combination of storage alternatives in conjunction with a combination of disposition alternatives. DOE will begin implementing this decision by moving surplus plutonium from RFETS as soon as possible, transporting the pits to Pantex beginning in 1997, and non-pit plutonium materials to SRS upon completion of the expanded Actinide Packing and Storage Facility (APSF), anticipated in 2001. Over time, DOE will store this plutonium in upgraded facilities at Pantex and in the expanded APSF. Surplus and non-surplus HEU will be stored in upgraded facilities at ORR. Storage facilities for the surplus HEU will also be modified, as needed, to accommodate international inspection requirements consistent with the President's Nonproliferation and Export Control Policy. Accordingly, DOE has decided to pursue the following actions for storage:

- Phase out storage of all weapons-usable plutonium at RFETS beginning in 1997; move pits to Pantex, and non-pit materials to SRS upon completion of the expanded APSF. At Pantex, DOE will repackage pits from RFETS in Zone 12, then place them in existing storage facilities in Zone 4, pending completion of facility upgrades in Zone 12. At SRS, DOE will expand the planned new APSF, and move separated and stabilized non-pit plutonium materials from RFETS to the expanded APSF upon completion. The small number of pits currently at RFETS that are not in shippable form will be placed in a shippable condition in accordance with existing procedures prior to shipment to Pantex. Additionally, some pits and non-pit plutonium materials from RFETS could be used at SRS, LANL, and Lawrence Livermore National Laboratory (LLNL) for tests and demonstrations of aspects of disposition technologies (see disposition decision, below). All non-pit weapons-usable plutonium materials currently stored at RFETS are surplus.

The Department's decision to remove plutonium from RFETS is based on the cleanup agreement among DOE, EPA, and the State of Colorado for RFETS, the proximity of RFETS to the Denver metropolitan area, and the fact that some of the RFETS plutonium is currently stored in buildings 371 and 376, two of the most vulnerable facilities as defined by and identified in DOE's Plutonium Working Group Report on Environmental, Safety, and Health Vulnerabilities Associated With the Department's Plutonium Storage (DOE/EH–0414, November, 1994).

- Upgrade storage facilities at Zone 12 South (to be completed by 2004) at Pantex to store those surplus pits currently stored at Pantex, and surplus pits from RFETS, pending disposition. Storage facilities at Zone 4 will continue to be used for these pits prior to completion of the upgrade.
- In accordance with the preferred alternative in the Final Programmatic Environmental Impact Statement for Stockpile Stewardship and Management (Stockpile Stewardship and Management PEIS), store Strategic Reserve pits at Pantex in other upgraded facilities in Zone 12.

The Department's decision to consolidate pit storage at Pantex places the pits at a central location where most of the pits already reside and where the expertise and infrastructure are already in place to accommodate pit storage.[19] Pantex has more than 40 years of experience with the handling of pits. Zone 12 facilities would be modified for long-term storage of the Pantex plutonium inventory and the small number of pits transferred from RFETS and SRS for a modest cost (about $10 million capital cost). Pursuant to the Final EIS for the Continued Operation of the Pantex Plant and Associated Storage of Nuclear Weapon Components (DOE/EIS–0225), DOE is proposing to continue nuclear weapons stockpile management operations and related activities at the Pantex Plant, including interim storage of up to 20,000 pits.[20] Consequently, the storage of surplus pits at Pantex would offer the opportunity to share trained people and other resources, and a decreased cost could be realized over other sites without similar experience. Using the Pantex Plant for pit storage would also involve the lowest cost and the least new construction relative to other sites.

- Expand the planned APSF at SRS (Upgrade Alternative) to store those surplus, non-pit plutonium materials currently at SRS and surplus non-pit plutonium materials from RFETS, pending disposition (see disposition decision, below). DOE analyzed the

[19] A small number of research and development pits located at RFETS that have been and will continue to be packaged and returned to LANL and LLNL are outside the scope of the S&D PEIS and this ROD.

[20] The pits that are to be moved to Pantex pursuant to this ROD fall within the 20,000 pit limit.

potential impacts of constructing and operating the APSF in the Final Environmental Impact Statement, Interim Management of Nuclear Materials (DOE/EIS–0220) and announced the decision to build the facility in the associated ROD (60 FR 65300, December 19, 1995). DOE, pursuant to the decisions announced here to store surplus non-pit plutonium at SRS, will likely design and build the APSF and the expanded space to accommodate the RFETS material as one building,[21] which DOE plans to complete in 2001. The RFETS surplus non-pit plutonium materials[22] will be moved to SRS after stabilization is performed at RFETS under corrective actions in response to Defense Nuclear Facilities Safety Board Recommendation 94–1; and after the material is packaged in DOE-approved storage and shipping containers pursuant to existing procedures. The surplus plutonium already on-site at SRS and the movement of separated and stabilized non-pit plutonium from RFETS would result in the storage of a maximum of 10 metric tons of surplus plutonium in the new, expanded APSF at SRS. In addition, shipment of the non-pit plutonium from RFETS to SRS, after stabilization, would only be implemented if the subsequent ROD for a plutonium disposition site (see Section V.B., below) calls for immobilization of plutonium at SRS. Placement of surplus, non-pit plutonium materials in a new storage facility at SRS will allow utilization of existing expertise and plutonium handling capabilities in a location where disposition activities could occur (see disposition decision, below). The decision to store non-pit plutonium from RFETS at SRS places most non-pit material at a plutonium-competent site with the most modern, state-of-the-art storage and processing facilities, and at a site with the only remaining large-scale chemical separation and processing capability in the DOE complex.[23] Pits currently located at SRS will be moved to Pantex for storage consistent with the Preferred Alternative in the Stockpile Stewardship and Management PEIS. There are no strategic non-pit materials currently located at SRS.

- Continue current storage (No Action) of surplus plutonium at Hanford and INEL, pending disposition (or movement to lag storage[24] at disposition facilities when selected).[25] This action will allow surplus plutonium to remain at the sites with existing expertise and plutonium handling capabilities, and where potential disposition activities could occur (see disposition decision, below). There are no non-surplus weapons-usable plutonium materials currently stored at either site.
- Continue current storage (No Action) of plutonium at LANL, pending disposition (or movement to lag storage at the disposition facilities). This plutonium will be stored in stabilized form with the non-surplus plutonium in the upgraded Nuclear Material Storage Facility pursuant to the No Action alternative for the site.
- Take No Action at the NTS. DOE will not introduce plutonium to sites that do not currently have plutonium in storage.
- Upgrade storage facilities at the Y–12 Plant (Y–12) (to be completed by 2004 or earlier) at ORR to store non-surplus HEU and surplus HEU pending disposition. Existing storage facilities at Y–12 will be modified to meet natural phenomena requirements, as documented in Natural Phenomena Upgrade of the Downsized/Consolidated Oak Ridge Uranium/Lithium Plant Facilities (Y/EN–5080, 1994). Storage facilities will be consolidated, and the storage footprint will be reduced, as surplus HEU is dispositioned and blended to low-enriched uranium, pursuant to the ROD for the Disposition of Surplus Highly Enriched Uranium Final Environmental Impact Statement (61 FR 40619, August 5, 1996). Consistent with the Preferred Alternative in the Stockpile Stewardship and Management PEIS, HEU strategic reserves will be stored at the Y–12 Plant.

B. Plutonium Disposition

Consistent with the Preferred Alternative in the S&D Final PEIS, DOE has decided to pursue a strategy for plutonium disposition that allows for immobilization of surplus weapons plutonium in glass or ceramic forms and burning of the surplus plutonium as mixed oxide fuel (MOX) in existing reactors. The decision to pursue disposition of the surplus plutonium using these approaches is supported by the analyses in the Disposition Technical Summary Report (section IV.A.2 above) and the Nonproliferation Assessment (section IV.B above), as well as the S&D Final PEIS. The results of additional technology development and demonstrations, site-specific environmental review, detailed cost proposals, nonproliferation considerations, and negotiations with Russia and other nations will ultimately determine the timing and extent to which MOX as well as immobilization is deployed. These efforts will provide the basis and flexibility for the United States to initiate disposition efforts either multilaterally or bilaterally through negotiations with other nations, or unilaterally as an example to Russia and other nations.

Pursuant to this decision, the United States policy not to encourage the civil use of plutonium and, accordingly, not to itself engage in plutonium reprocessing for either nuclear power or nuclear explosive purposes, does not change. Although under this decision some plutonium may ultimately be burned in existing reactors, extensive measures will be pursued (see below) to ensure that federal support for this unique disposition mission does not encourage other civil uses of plutonium or plutonium reprocessing. The United States will maintain its commitments regarding the use of plutonium in civil nuclear programs in western Europe and Japan.

The Disposition Technical Summary Report (section IV.A.2 above) concluded that the lowest cost option for plutonium disposition would be immobilization using the can-in-canister variant and existing facilities to the maximum extent possible, with a net life-cycle cost of about $1.8 billion. The Disposition Technical Summary Report also estimated that the net life-cycle cost of the hybrid immobilization/MOX approach would be about $2.2 billion. The additional expense of pursuing the hybrid approach would be warranted by

[21] Building the APSF in this way, rather than as originally configured plus an expansion, will not increase the potential impacts of constructing and operating the facility beyond those analyzed in the S&D Final PEIS in conjunction with the analyses in the Final Environmental Impact Statement, Interim Management of Nuclear Materials.

[22] This decision does not include residues at RFETS that are less than 50-percent plutonium by weight, or scrub alloys. The management and disposition of those materials has been or is being considered in separate NEPA reviews. See Environmental Assessment for Solid Residue Treatment, Repackaging, and Storage (DOE/EA–1120, April 1996); Notice of Intent to Prepare an EIS on the Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site (61 FR 58866, November 19, 1996).

[23] SRS is one of the preferred candidate sites for plutonium disposition facilities, including the potential for the early start of disposition by immobilization using the can-in-canister option at the DWPF.

[24] Lag storage is temporary storage at the applicable disposition facility.

[25] Lawrence Livermore National Laboratory (LLNL) currently stores 0.3 metric tons of plutonium, which are primarily research and development and operational feedstock materials not surplus to government needs. Adequate storage facilities for this material currently exist at LLNL, where it will be stored and used for research and development activities. None of the plutonium stored at LLNL falls within the scope of the disposition alternatives in the S&D Final PEIS or the disposition decisions in this ROD.

the increased flexibility it would provide, as noted in the Nonproliferation Assessment, to ensure that plutonium disposition could be initiated promptly should one of the approaches ultimately fail or be delayed. Establishing the means for expeditious plutonium disposition will also help provide the basis for an international cooperative effort that can result in reciprocal, irreversible plutonium disposition actions by Russia. This disposition strategy signals a strong U.S. commitment to reducing its stockpile of surplus plutonium, thereby effectively meeting the purpose of and need for the Proposed Action.

To accomplish the plutonium disposition mission, DOE will use, to the extent practical, new as well as modified existing buildings and facilities for portions of the disposition mission. DOE will analyze and compare existing and new buildings and facilities, and technology variations, in a subsequent, site-specific EIS. In addition, all disposition facilities will be designed or modified, as needed, to accommodate international inspection requirements consistent with the President's Nonproliferation and Export Control Policy. Accordingly, DOE has decided to pursue the following strategy and supporting actions for plutonium disposition:

- Immobilize plutonium materials using vitrification or ceramic immobilization at either Hanford or SRS, in new or existing facilities. Immobilization could be used for pure or impure forms of plutonium. In the subsequent EIS (referenced above), DOE anticipates that the preferred alternative for vitrification or ceramic immobilization will include the can-in-canister variant, utilizing the existing HLW and the DWPF at SRS (see below). Alternatively, new immobilization facilities could be built at Hanford or SRS. The immobilized material would be disposed of in a geologic repository. Pursuant to appropriate NEPA review, DOE will continue the research and development leading to the demonstration of the can-in-canister variant at the DWPF using surplus plutonium and the development of vitrification and ceramic formulations.
- Convert surplus plutonium materials into mixed oxide (MOX) fuel for use in existing reactors. Pure surplus plutonium materials including pits, pure metal, and oxides could be converted without extensive processing into MOX fuel for use in existing commercial reactors. Other, already separated forms of surplus plutonium would require additional purification. (This purification would not involve reprocessing of spent nuclear fuel.) The Government-produced MOX fuel (from plutonium declared surplus to defense needs) would be used in existing LWRs with a once-through fuel cycle, with no reprocessing or subsequent reuse of the spent fuel. In addition, DOE will explore appropriate contractual limits to ensure that any reactor license modification for use of the MOX fuel is limited to governmental purposes involving the disposition of surplus, weapons-usable plutonium, so as to discourage general civil use of plutonium-based fuel. The spent MOX fuel would be disposed of in a geologic repository. If partially completed LWRs were to be completed by other parties, they would be considered for this mission. The MOX fuel would be fabricated in a domestic, government-owned facility at one of four DOE sites (SRS, Hanford, INEL, or Pantex).

The Department reserves as an option the potential use of some MOX fuel in CANDU reactors in Canada in the event that a multilateral agreement to deploy this option is negotiated among Russia, Canada, and the United States. DOE will engage in a test and demonstration program for CANDU MOX fuel consistent with ongoing and potential future cooperative efforts with Russia and Canada.

The test and demonstration activities could occur at LANL and at sites in Canada, potentially beginning in 1997, and will be based on appropriate NEPA review. Fabrication of MOX fuel for CANDU reactors would occur in a DOE facility, as would be true in the case of domestic LWRs. Strict security and safeguards would be employed in the fabrication and transport of MOX fuel to CANDU reactors, as well as domestic reactors. Whether, and the extent to which, the CANDU option is implemented will depend on multi-national agreements and the results of the test and demonstration activities.

Due to technology, complexity, timing, cost, and other factors that would be involved in purifying certain plutonium materials to make them suitable for potential use in MOX fuel, approximately 30 percent of the total quantity of plutonium that has been or may be declared surplus to defense needs would require extensive purification for use in MOX fuel, and therefore will likely be immobilized. Of the plutonium that is currently surplus, DOE will immobilize at least 8 metric tons that it has determined are not suitable for use in MOX fuel.[26] DOE reserves the option of using the immobilization approach for all of the surplus plutonium.

The timing and extent to which either option is ultimately utilized will depend on the results of international agreements, future technology development and demonstrations, site-specific environmental review, detailed cost proposals, and negotiations with Russia and other nations. In the event both technologies are utilized, because the time required for plutonium disposition using reactors would be longer than that for immobilization, it is probable that some surplus plutonium would be immobilized initially, prior to completion of reactor irradiation for other surplus plutonium. Implementation of this strategy will involve some or all of the following supporting actions:

- Construct and operate a plutonium vitrification facility or ceramic immobilization facility at either Hanford or SRS. DOE will analyze alternative locations at these two sites for constructing new buildings or using modified existing buildings in subsequent, site-specific NEPA review. SRS has existing facilities (the DWPF) and infrastructure to support an immobilization mission, and at Hanford, DOE has proposed constructing and operating immobilization facilities for the wastes in Hanford tanks.[27] DOE will not create new infrastructure for immobilizing plutonium with HLW or cesium at INEL, NTS, ORR, or Pantex. Due to the substantial timing and cost advantages associated with the can-in-canister option, as discussed in the Technical Summary Report For Surplus Weapons-Usable Plutonium Disposition and summarized in section IV.A.2, above, DOE anticipates that the proposed action for immobilization in the follow-on plutonium disposition EIS will include the use of the can-in-canister option at the DWPF at SRS for immobilizing a portion of the surplus, non-pit plutonium material.[28]

[26] The S&D Final PEIS, for purposes of analysis of impacts of the preferred alternative (using both reactors and immobilization), assumed that about 30 percent (approximately 17 MT) of the surplus plutonium materials might be immobilized because they are impure. DOE's decision here that immobilization will be used for at least 8 MT currently located at SRS and RFETS is based on DOE's current assessment that that quantity of material is so low in quality that its purification for use in MOX fuel would not be cost-effective. This decision does not preclude immobilizing all of the surplus plutonium, but it does preclude using the MOX/reactor approach for all of the material.

[27] See Final Environmental Impact Statement for the Tank Waste Remediation System, Hanford Site, Richland, Washington (DOE/EIS–0189, August 1996); ROD expected early in 1997.

[28] DOE expects to issue a Notice of Intent to prepare the follow-on EIS shortly following this ROD. Reasonable alternatives for the proposed

• Construct and operate a plutonium conversion facility for non-pit plutonium materials at either Hanford or SRS. DOE will collocate the plutonium conversion facility with the vitrification or ceramic immobilization facility discussed above. In subsequent, site-specific NEPA review, DOE will analyze alternative locations at Hanford and SRS for constructing new buildings or using modified existing buildings for the plutonium conversion facility.

• Construct and operate a pit disassembly/conversion facility at Hanford, INEL, Pantex, or SRS (only one site). DOE will not introduce plutonium to sites that do not currently have plutonium in storage. Therefore, two sites analyzed in the S&D PEIS, NTS and ORR, will not be considered further for plutonium disposition activities. DOE will analyze alternative locations at Hanford, INEL, Pantex, and SRS for constructing new buildings or using modified existing buildings in subsequent, site-specific NEPA review. Based on appropriate NEPA review, DOE anticipates demonstrating the Advanced Recovery and Integrated Extraction System (ARIES) concept at LANL for pit disassembly/conversion beginning in fiscal year 1997.

• Construct and operate a domestic, government-owned, limited-purpose MOX fuel fabrication facility at Hanford, INEL, Pantex, or SRS (only one site). As noted above, NTS and ORR will not be considered further for plutonium disposition activities. In follow-on NEPA review, DOE will analyze alternative locations at Hanford, INEL, Pantex, and SRS, for constructing new buildings or using modified existing buildings. The MOX fuel fabrication facility will serve only the limited mission of fabricating MOX fuel from plutonium declared surplus to U.S. defense needs, with shut-down and decontamination and decommissioning of the facility upon completion of this mission.[29]

DOE's program for surplus plutonium disposition will be subject to the highest standards of safeguards and security for storage, transportation, and processing (particularly during operations that involve the greatest proliferation vulnerability, such as during MOX fuel preparation and transportation), and will include International Atomic Energy Agency verification as appropriate. Transportation of all plutonium-bearing materials under this program, including the transportation of prepared MOX fuel to reactors, will be accomplished using the DOE Transportation Safeguards Division's ''Safe Secure Transports'' (SSTs), which affords these materials the same level of transportation safety, security, and safeguards as is used for nuclear weapons.

Pursuant to appropriate NEPA review(s), DOE will continue research and development and engage in further testing and demonstrations of plutonium disposition technologies which may include: dissolution of small quantities of plutonium in both glass and ceramic formulation; experiments with immobilization equipment and systems; fabrication of MOX fuel pellets for demonstrations of reactor irradiation at INEL; mechanical milling and mixing of plutonium and uranium feed; and testing of shipping and storage containers for certification, in addition to the testing and demonstrations previously described for the can-in-canister immobilization variant, the ARIES system, and other plutonium processes.

DOE has decided not to pursue several disposition alternatives that were evaluated in the S&D PEIS: two deep borehole alternatives, electrometallurgical treatment, evolutionary reactors, and partially-completed reactors (unless they were completed by others, in which case they would qualify as existing reactors). Although the deep borehole options are technically attractive, the institutional uncertainties associated with siting of borehole facilities make timely implementation of this alternative unlikely. To implement the borehole alternatives, new legislation and regulations, or clarification of existing regulations, may be necessary. DOE has decided not to pursue the electrometallurgical treatment option for immobilization because its technology is less mature than vitrification or ceramic immobilization.[30] DOE has decided not to pursue evolutionary reactors or partially-completed reactors because they offer no advantages over existing reactors for plutonium disposition and would involve higher costs, greater regulatory uncertainties, higher environmental impacts from construction, and less timely commencement of disposition actions.

VI. Conclusion

DOE has decided to implement a program to provide for safe and secure storage of weapons-usable fissile materials and for disposition of weapons-usable plutonium that is declared excess to national security needs (now or in the future), as specified in the Preferred Alternative in the S&D Final PEIS. DOE will consolidate the storage of weapons-usable plutonium by upgrading and expanding existing facilities at the Pantex Plant in Texas and SRS in South Carolina, continuing storage of surplus plutonium currently onsite at Hanford, LANL, and INEL pending disposition, and continuing storage of weapons-usable HEU at DOE's Y–12 Plant in Tennessee, in upgraded and, as surplus HEU is down-blended under the ROD for Disposition of Surplus Highly Enriched Uranium Final Environmental Impact Statement, consolidated facilities. DOE will provide for disposition of surplus plutonium by pursuing a strategy that allows: (1) Immobilization of surplus plutonium for disposal in a repository pursuant to the Nuclear Waste Policy Act, and (2) fabrication of surplus plutonium into MOX fuel, for use in existing domestic commercial reactors (and potentially CANDU reactors, depending on future agreements with Russia and Canada). The timing and extent to which each of these disposition technologies is deployed will depend upon the results of future technology development and demonstrations, site-specific environmental review, detailed cost proposals, and the results of negotiations with Russia, Canada, and other nations. This programmatic decision is effective upon being made public, in accordance with DOE's regulations implementing NEPA (10 CFR 1021.315). The goals of this program are to support U.S. nuclear weapons nonproliferation policy by reducing global stockpiles of excess fissile materials so that they may never be used in weapons again. This program will demonstrate the United States'' commitment to its nonproliferation goals, as specified in the President's Nonproliferation and Export Control Policy of 1993, and provide an example for other nations, where stockpiles of surplus weapons-usable fissile materials may be less secure from potential theft or diversion than those in the United

action will be considered in the follow-on disposition EIS.

[29] DOE supports external regulation of its facilities, and in the Report of Department of Energy Working Group on External Regulation (DOE/UF–0001, December 1996), DOE proposed to seek legislation that would generally require NRC licenses for new DOE facilities. Therefore, DOE anticipates seeking an NRC license for the MOX fuel fabrication facility, which would be limited to a license to fabricate MOX fuel from plutonium declared surplus to defense needs. DOE may also seek legislation that would by statute limit the MOX fuel fabrication facility to disposition of surplus plutonium.

[30] An evaluation by the National Research Council in a recent report (see footnote 12, above) concluded that the electrometallurgical treatment process is not sufficiently mature to provide a reliable basis for timely plutonium disposition.

States, to encourage them to take similar actions.

The decision process reflected in this Notice complies with the requirements of the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) and its implementing regulations at 40 CFR Parts 1500–1508 and 10 CFR Part 1021.

Issued in Washington, D.C., January 14, 1997.

Hazel R. O'Leary,

Secretary.

[FR Doc. 97–1355 Filed 1–17–97; 8:45 am]

BILLING CODE 6450–01–P

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the proposed three-year extension of existing form DOE–887, ''Department of Energy Customer Surveys.''

DATES: Written comments must be submitted on or before March 24, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Herbert T. Miller, Office of Statistical Standards, EI–73, Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585, (Phone 202–426–1103, FAX 202-426–1081, or e-mail hmiller@eia.doe.gov).

FOR FURTHER INFORMATION: Requests for additional information should be directed to Herbert Miller at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93–275) and the Department of Energy Organization Act (Pub. L. No. 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The Energy Information Administration, as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13)), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Also, EIA will later seek approval by the Office of Management and Budget (OMB) for the collections under Section 3507(h) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, Title 44, U.S.C. Chapter 35).

On September 11, 1993, the President signed Executive Order No. 12862 aimed at ''* * * ensuring the Federal government provides the highest quality service possible to the American people.'' The Order discusses surveys as a means for determining the kinds and qualities of service desired by Federal Government customers and for determining satisfaction levels for existing services. These voluntary customer surveys will be used to ascertain customer satisfaction with the Department of Energy in terms of services and products. Respondents will be individuals and organizations that are the recipients of the Department's services and products. Previous customer surveys have provided useful information to the Department for assessing how well the Department is delivering its services and products and for making improvements. The results are used internally and summaries are provided to the Office of Management and Budget on an annual basis, and are used to satisfy the requirements and the spirit of Executive Order No. 12862.

II. Current Actions

The request to OMB will be for a three-year extension of the expiration date of approval for DOE to conduct customer surveys. During the past clearance cycle, over 20 customer surveys have been conducted by telephone and mail. (Examples of previously conducted customer surveys are available upon request.) Our planned activities in the next 3 fiscal years reflect our increased emphasis on and expansion of these activities, including an increased use of electronic means for obtaining customer input (CD–ROM and World Wide Web).

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of responses.

General Issues

A. Is the proposed collection of information necessary, taking into account its accuracy, adequacy, and reliability, and the agency's ability to process the information it collects in a useful and timely fashion?

B. What enhancements can EIA make to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Average public reporting burden for a customer survey is estimated to be .25 hours per response (8,333 respondents per year x 15 minutes per response = 2,083 hours annually). Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

Please comment on (1) the accuracy of our estimate and (2) how the agency could minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology.

B. EIA estimates that respondents will incur no additional costs for reporting other than the hours required to complete the collection. What is the estimated (1) total dollar amount annualized for capital and start-up costs and (2) recurring annual dollar amount of operation and maintenance and purchase of services costs associated with this data collection? The estimates should take into account the costs associated with generating, maintaining, and disclosing or providing the information.

C. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Are there alternate sources of data and do you use them? If so, what are their deficiencies and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC on January 13, 1997.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 97–1353 Filed 1–17–97; 8:45 am]

BILLING CODE 6450–01–P

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response x proposed frequency of response per year x estimated number of likely respondents.)

DATES: Comments must be filed on or before February 20, 1997. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION: Requests for additional information should be directed to Herbert Miller, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Miller may be telephoned at (202) 426–1103, FAX (202) 426–1081, or e-mail at hmiller@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. EIA–457A/G, ''Residential Energy Consumption Survey''

2. Energy Information Administration, OMB No. 1905–0092, Revision of a currently approved collection, Mandatory

3. EIA–457A/G is used to collect comprehensive national and regional data on both the consumption of and expenditures for energy in the residential sector of the economy. Data are used for analyzing and forecasting residential energy consumption. Housing, appliance, and demographic characteristics data are collected via personal interviews with households, and consumption and expenditures billing data are collected from the energy suppliers.

4. Individuals or households, Business or other for-profit, Federal Government, and State, Local or Tribal Government.

5. 2,005 hours (.4899 hours per response x .25 responses per year x 16,370 respondents). The EIA–457 A/G will be conducted on a quadrennial basis.

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, January 13, 1997.

Yvonne M. Bishop,

Office of Statistical Standards, Energy Information Administration.

[FR Doc. 97–1354 Filed 1–17–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP97–187–000]

Honeoye Storage Corporation; Notice of Application

January 14, 1997.

Take notice that on January 8, 1997, Honeoye Storage Corporation (Honeoye), One State Street, Suite 1200, Boston, Massachusetts, 02109, filed in Docket No. CP97–187–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon storage service of 6,814 MMBtu per day of Average Daily Withdrawal Quantity (ADWQ) for Long Island Lighting Company (Lilco), and pursuant to Section 7(c) of the Natural Gas Act, to authorize the allocation of the abandoned service to two new customers, Providence Gas Company (Providence), and ProMark Energy, Inc. (ProMark), all as more fully set forth in the application on file with the Commission and open to public inspection.

Honeoye states that on March 21, 1996, Lilco notified Honeoye that Lilco was terminating its Service Agreement with Honeoye effective March 31, 1997 in accordance with Article Five of its Service Agreement. Honeoye indicates that currently Lilco is entitled to 1,226,400 MMBtu of Maximum Quantities Storage (MQS), and a Maximum Daily Withdrawal Quantity (MDWQ) of 10,220 MMBtu per day. Honeoye hereby requests authorization to abandon such service in accordance with Lilco's wishes.

Honeoye also states that it conducted an open season, offering potential customers the service to be relinquished by Lilco under the terms, conditions, and rate of Honeoye's existing tariff. Honeoye further states that as a result of such open season, Honeoye proposes to provide the abandoned service in equal proportions to Providence and ProMark.

Any person desiring to be heard or to make protest with reference to said application should on or before January 24, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR

385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Honeoye to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1314 Filed 1–17–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–109–007, et al.]

Duke Energy Marketing Corp., et al.; Electric Rate and Corporate Regulation Filings

January 13, 1996.

Take notice that the following filings have been made with the Commission:

1. Duke Energy Marketing Corp.

[Docket No. ER96–109–007]

Take notice that on December 20, 1996, Duke Energy Marketing Corp. tendered for filing Notification of Change in Status relating the proposed combination of Duke Power Company and PanEnergy Corp.

2. Southwestern Public Service Company v. El Paso Electric Company

[Docket No. EL97-18-000]

Take notice that on December 20, 1996, Southwestern Public Service Company tendered for filing a complaint against El Paso Electric Company. Southwestern requests that the Commission order El Paso to enter into an agreement with Southwestern for the provision of firm point-to-point transmission service.

Comment date: February 12, 1997, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before February 12, 1997.

3. Eclipse Energy, Inc., Lambda Energy Marketing Company, Mid-American Natural Resources, Inc., Seagull Power Services, Inc., Wheeled Electric Power Company, Southern Energy Marketing Corp., Inc., and SDS Petroleum Products, Inc.

[Docket No. ER94–1099–010, Docket No. ER94–1672–008, Docket No. ER95–1423–003, Docket No. ER96–342–003, Docket No. ER96–1150–002, Docket No. ER96–1516–001, and Docket No. ER96–1724–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On November 26, 1996, Eclipse Energy, Inc. filed certain information as required by the Commission's June 15, 1994, order in Docket No. ER94–1099–000.

On October 21, 1996, Lambda Energy Marketing Company filed certain information as required by the Commission's December 14, 1994, order in Docket No. ER94–1672–000.

On October 7, 1996, Mid-American Natural Resources, Inc. filed certain information as required by the Commission's August 25, 1995, order in Docket No. ER95–1423–000.

On December 5, 1996, Seagull Power Services, Inc. filed certain information as required by the Commission's February 15, 1996, order in Docket No. ER96–342–000.

On December 19, 1996, Wheeled Electric Power Company filed certain information as required by the Commission's April 17, 1996, order in Docket No. ER96–1150–000.

On December 16, 1996, Southern Energy Marketing Corp., Inc. filed certain information as required by the Commission's May 8, 1996, order in Docket No. ER96–1516–000.

On November 15, 1996, SDS Petroleum Products, Inc. filed certain information as required by the Commission's June 6, 1996 order in Docket No. ER96–1724–000.

4. Duke/Louis Dreyfus Energy Services (New England) L.L.C.

[Docket No. ER96–1121–003]

Take notice that on December 20, 1996, Duke/Louis Dreyfus, Energy Services (New England) L.L.C. tendered for filing Notification of Change in Status relating the proposed combination of Duke Power Company and PanEnergy Corp.

5. Lykes-Duke/Louis Dreyfus, Ltd.

[Docket No. ER96–2919–001]

Take notice that on December 20, 1996, Lykes-Duke/Louis Dreyfus, Ltd. tendered for filing Notification of Change in Status relating the proposed combination of Duke Power Company and PanEnergy Corp.

6. Central Maine Power Company

[Docket No. ER97–956–000]

Take notice that on December 27, 1996, Central Maine Power Company (CMP), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission service entered into with Baltimore Gas & Electric Company. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 3, as supplemented.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Maine Electric Power Company

[Docket No. ER97–957–000]

Take notice that on December 27, 1996, Maine Electric Power Company (MEPCO), tendered for filing a Non-Firm Point-to-Point Transmission service agreement entered into with Baltimore Gas & Electric Company. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Maine Electric Power Company

[Docket No. ER97–958–000]

Take notice that on December 27, 1996, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission service entered into with Northeast Utilities Service Company. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Co. (re: Holyoke Water Power Co.

[Docket No. ER97–959–000]

Take notice that on December 27, 1996, Northeast Utilities Service Company (NUSCO), on behalf of its operating affiliate, Holyoke Water Power Company (HWP), tendered for filing, pursuant to § 205 of the Federal Power Act and Part 35 of the Commission's Regulations, a Water Use Agreement between HWP, O'Connell Engineering & Financial, Inc. (O'Connell), and the City of Holyoke (Gas & Electric Department), dated as of January 2, 1996. The Water Use Agreement entitles HWP to operate its hydro-electric generating facilities with water to which O'Connell is contractually entitled through a sub-lease with the City of Holyoke. In exchange, the City of Holyoke will receive a certain amount of energy from HWP based on the amount of energy O'Connell's hydro-electric facility could have generated with the water used by HWP. NUSCO requests that the Agreement be made effective sixty days following its filing.

NUSCO states that a copy of this filing has been provided to HWP, O'Connell and the City of Holyoke.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. The Washington Water Power Company

[Docket No. ER97–960–000]

Take notice that on December 27, 1996, The Washington Water Power Company, tendered for filing pursuant to § 205 of the Federal Power Act experimental Direct Access Delivery Service Tariffs for the state of Washington and the state of Idaho. WWP requests that the Commission defer to local state regulation.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Idaho Public Utilities Commission.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Central Illinois Public Service Company

[Docket No. ER97–961–000]

Take notice that on December 27, 1996, Central Illinois Public Service Company (CIPS), filed the Second Amendment, dated November 27, 1996 (Second Amendment), to the Power Supply and Transmission Services Agreement, dated January 2, 1992, between CIPS and Wabash Valley Power Association, Inc. (Wabash Valley). The Second Amendment provides for a rate decrease.

CIPS requests an effective date for the Second Amendment of January 1, 1997. Accordingly, CIPS requests waiver of the Commission's notice requirements. A copy of the filing, with privileged information redacted, has been served on the Illinois Commerce Commission and the Indiana Utility Regulatory Commission. A copy of the complete filing has been served on Wabash Valley.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Consumers Power Company

[Docket No. ER97–963–000]

Take notice that on December 30, 1996, Consumers Power Company (Consumers), filed a new Power Sales Agreement with Edison Sault Electric Company.

Consumers states the Power Sale Agreements will take effect January 1, 1997, and provide for the sale of both firm and interruptible wholesale power on an unbundled basis. The Power Sales Agreement will replace earlier wholesale power agreements presently in effect.

Copies of the filing were served upon Edison Sault Electric Company and the Michigan Public Service Commission.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Consumers Power Company

[Docket No. ER97–964–000]

Take notice that on December 30, 1996, Consumers Power Company d.b.a. Consumers Energy Company (Consumers), submitted for filing a wholesale power sales tariff (PST–1) to permit Consumers to make wholesale electric generation sales to eligible customers at up to cost-based ceiling rates.

Consumers requests an effective date of January 1, 1997 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon the Michigan Public Service Commission.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Duke Power Company

[Docket No. ER97–965–000]

Take notice that on December 30, 1996, Duke Power Company (Duke), tendered for filing a Market Rate Service Agreement between Duke and Sonat Power Marketing, L.P., dated as of September 30, 1996. Duke requests that the Agreement be made effective as of December 30, 1996.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Western Resources, Inc.

[Docket No. ER97–966–000]

Take notice that on December 30, 1996, Western Resources, Inc. on behalf of its wholly owned subsidiary Kansas Gas and Electric Company (KGE) filed a notice of cancellation of Service Schedule C—Economy Energy Service and Service Schedule I—Power Interchange Service, designated by the Commission as Service Schedule C to KGE's Rate Schedule No. 97 and Supplement No. 7 to KGE's Rate Schedule FPC No. 97 respectively. Western Resources requests a cancellation date of March 1, 1997.

Notice of the proposed cancellation has been served upon Oklahoma Gas and Electric Company, the Oklahoma Corporation Commission, and the Kansas Corporation Commission.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Central Vermont Public Service Corporation

[Docket No. ER97–967–000]

Take notice that on December 30, 1996, Central Vermont Public Service Corporation (Central Vermont), tendered for filing 14 Notices of Termination of existing rate schedules.

Central Vermont requests waiver of the Commission's Regulations to permit the Terminations to become effective 30 days from the date Notice of Termination is provided by Central Vermont.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Kansas City Power & Light Company

[Docket No. ER97–968–000]

Take notice that on December 30, 1996, Kansas City Power & Light Company (KCPL), tendered for filing Service Schedules for nine municipalities. KCPL proposes the schedules become effective upon acceptance by the Commission. These Schedules provide for the sale of Term energy.

The Schedules are for the municipalities listed below: Baldwin City, Kansas, FERC No. 85; Carrollton, Missouri, FERC No. 86; Gardner,

Kansas, FERC No. 105; Garnett, Kansas, FERC No. 78; Higginsville, Missouri, FERC No. 108; Marshall, Missouri, FERC No. 83; Osawatomie, Kansas, FERC No. 77; Ottawa, Kansas, FERC No. 90; and Salisbury, Missouri, FERC No. 109.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Wisconsin Public Service Corporation

[Docket No. ER97–969–000]

Take notice that on December 30, 1996, Wisconsin Public Service Corporation (WPS), tendered for filing a set of contract and rate schedule documents under which Morgan Stanley Capital Group, Inc. (MS) will take over certain of WPS' power supply commitments to Oconto Electric Cooperative (Oconto) beginning on January 1, 1997. Both MS and Oconto have consented to the restructured power supply arrangement.

WPS requests an effective date of January 1, 1997 for its filing, assuming that necessary transmission service arrangements are in place. WPS states that it has served copies of its filing on MS, Oconto and the Public Service Commission of Wisconsin.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Southern Indiana Gas and Electric Company

[Docket No. ER97–970–000]

Take notice that on December 30, 1996, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing eight (8) service agreements for non-firm transmission service under Part II of its Transmission Services Tariff with the following entities:

1. Intercoast Power Marketing.
2. Heartland Energy Services.
3. Northern Indiana Public Service Company.
4. Duke/Louis Dreyfus L.L.C.
5. Wabash Valley Power Association, Inc.
6. Louisville Gas & Electric Company.
7. SIGECO Wholesale Power Marketing.
8. PECO Energy Company.

Copies of the filing were served upon each of the parties to the service agreements.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Southwestern Public Service Company

[Docket No. ER97–971–000]

Take notice that on December 30, 1996, Southwestern Public Service Company (Southwestern), submitted an executed service agreement under its open access transmission tariff with Electric Clearinghouse, Inc. The service agreement is for umbrella non-firm transmission service.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Southern Indiana Gas and Electric Company

[Docket No. ER97–974–000]

Take notice that on December 30, 1996, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing five (5) service agreements for market based rate power sales under its Market Based Rate Tariff with the following entities:

1. Intercoast Power Marketing.
2. Heartland Energy Services.
3. Northern Indiana Public Service Company.
4. Duke/Louis Dreyfus, L.L.C.
5. Wabash Valley Power Association, Inc.

Copies of the filing were served upon each of the parties to the service agreements.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Baltimore Gas and Electric Company

[Docket No. ER97–975–000]

Take notice that on December 30, 1996, Baltimore Gas and Electric Company (BGE), filed Service Agreements with: LG&E Power Marketing, Inc., dated November 27, 1996; Federal Energy Sales, Inc., dated September 10, 1996; Carolina Power & Light Company, dated November 27, 1996; Vitol Gas & Electric L.L.C., dated November 1, 1996; and VTEC Energy Inc., dated November 27, 1996 under BGE's FERC Electric Tariff Original Volume No. 3 (Tariff). Under the tendered Service Agreements, BGE agrees to provide services to the parties to the Service Agreements under the provisions of the Tariff. BGE requests an effective date of December 1, 1996 for the Service Agreements. BGE states that a copy of the filing was served upon the Public Service Commission of Maryland.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Southern Company Services, Inc.

[Docket No. ER97–976–000]

Take notice that on December 30, 1996, Southern Company Services, Inc. (SCS), acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as the Southern Company System), submitted for filing Amendment No. 7 to The Southern Company System Intercompany Interchange Contract (IIC) dated October 31, 1988, as amended. By means of the amendment, the Southern Company Systems is complying with the Commission's requirement that transactions among members be placed under the open access transmission tariff. In addition, the amendment removes certain transmission related provisions of the IIC as a consequence of the separation of functions required by the Commission's Order Nos. 888 and 889. SCS states that the amendment will have no effect on rates under the IIC.

SCS requests an effective date of March 1, 1997 for this submittal.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. UtiliCorp United Inc.

[Docket No. ER97-977-000]

Take notice that on December 30, 1996, UtiliCorp United Inc. (UtiliCorp) filed service agreements with UtiliCorp Energy Group for service under its non-firm point-to-point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Inland Power Pool

[Docket No. ER97-978-000]

Take notice that on December 30, 1996, Public Service Company of Colorado (Public Service), on behalf of itself and the other members of the Inland Power Pool tendered for filing an Amended and Restated Inland Power Pool Agreement. The primary purpose of the Amended and Restated Agreement is to amend and restate the Revised Inland Power Pool Agreement to bring it into compliance with the requirements of FERC Order No. 888. It is requested that the Agreement be made effective on December 31, 1996.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. New York Power Authority

[Docket No. NJ97-4-000]

Take notice that on December 30, 1996, the New York Power Authority (NYPA) tendered for filing a petition for Declaratory Order. NYPA asserts that it seeks the Declaratory Order necessary to implement its open access transmission tariff that it has filed with the Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Green Mountain Power Corporation

[Docket No. OA96-37-002]

Take notice that on January 2, 1997, Green Mountain Power Corporation tendered for filing its modified Pro Forma Tariff in the above-referenced docket.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Dayton Power & Light Company

[Docket No. OA96-64-001]

Take notice that on January 2, 1997, Dayton Power & Light Company tendered for filing an amendment to Open Access Transmission Tariff.

The modifications are being made to comply with FERC's Order Granting in Part, and Denying in Part, Waivers of Non-Rate Terms and Conditions of Open Access Tariffs and Directing Modifications issued December 18, 1996.

Copies of the filing were served on the intervenors to this docket and the Public Utilities Commission of Ohio.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Puget Sound Power & Light Company

[Docket No. OA96-161-001]

Take notice that on January 2, 1997, Puget Sound Power & Light Company tendered for filing its proposed Open Access Transmission Tariff, in accordance with the Commission's Rule No. 888 issued April 26, 1996 in Docket No. RM95-8-000 and Docket No. RM94-74-001.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Indiantown Cogeneration, L.P.

[Docket No. QF90-214-002]

On January 3, 1997, Indiantown Cogeneration, L.P. (Applicant), of 7500 Old Georgetown Road, Bethesda, Maryland 20814-6161 submitted for filing an application for recertification of a facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility is located in Indiantown, Florida. The Commission previously certified the facility as a qualifying cogeneration facility, *Indiantown Cogeneration, L.P.*, 60 FERC ¶ 62,133 (1992). A notice of self-certification was filed on August 22, 1990. The instant request for recertification is due to the reconfiguration of the facility.

Comment date: February 5, 1997 in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1341 Filed 1–17–97; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 8296–043]

Malacha Hydro Limited Partnership; Notice of Availability of Environmental Assessment

January 14, 1997.

An environmental assessment (EA) is available for public review. The EA is for an amendment of license application for the Muck Valley Hydroelectric Project, located in Lassen County, California. The amendment application concerns minor structural modifications to the project's existing diversion and intake structures. The EA finds that the modifications to the project would not constitute a major federal action significantly affecting the quality of the human environment.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA are available for review at the Commission's Reference and Information Center, Room 2–A, 888 First Street, NE., Washington, D.C. 20426. Additional information can be obtained by calling the project manager, Jon Cofrancesco at (202) 219–0079.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1315 Filed 1–17–97; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11500–001, Tennessee]

Armstrong Energy Resources; Notice of Surrender of Preliminary Permit

January 14, 1997.

Take notice that Armstrong Energy Resources, permittee for the Reynolds Creek Pumped Storage Project No. 11500, located on the Reynolds Creek and Big Brush Creek in Sequatchie County, Tennessee, has requested that its preliminary permit be terminated. The preliminary permit was issued on December 16, 1994, and would have expired on November 30, 1997. The permittee states that it has decided to concentrate its efforts on another project.

The permittee filed the request on January 3, 1997, and the preliminary permit for Project No. 11500 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1316 Filed 1–17–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

Toxic Chemicals; PCBs; Submission of ICR No. 1000 to OMB; Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) entitled: Polychlorinated Biphenyls (PCBs): Use in Electrical Equipment and

Transformers [EPA ICR # 1000.06; OMB Control # 2070–0003] has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden. The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which is scheduled to expire on April 30, 1997. A Federal Register notice announcing the Agency's intent to seek the renewal of this ICR and the 60 day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on August 8, 1996 (61 FR 41404). EPA received two comments in response to that notice and has considered the comments in developing the final ICR. A copy of the comments received, along with a summary response, are appended to the ICR submitted to OMB and available in the docket.

DATES: Additional comments may be submitted on or before February 20, 1997.

FOR FURTHER INFORMATION OR A COPY CONTACT: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1000.06 and OMB Control No. 2070–0003.

ADDRESSES: Send comments, referencing EPA ICR No. 1000.06 and OMB Control No. 2070–0003, to the following addresses:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Management Division (Mailcode: 2136), 401 M Street, SW., Washington, DC 20460; and to

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 1000.06; OMB Control No. 2070–0003.

Current Expiration Date: Current OMB approval expires on April 30, 1997.

Title: Polychlorinated Biphenyls (PCBs): Use in Electrical Equipment and Transformers

Abstract: Section 6(e) of the Toxic Substances Control Act (TSCA) generally prohibits the manufacture, processing, distribution in commerce and use of PCBs. EPA has authority, however, to allow a use of PCBs to continue if it determines that the use will not present unreasonable risks to public health and the environment. In the case of regulating PCB electrical equipment, EPA has promulgated a series of rules since the 1978 prohibition on the use of PCBs (see 40 CFR part 761).

EPA imposed the reporting requirements contained in these rules to ensure that the National Response Center is informed immediately of fires involving PCB transformers. PCB transformer fires generate hazardous dioxins and furans, substances many times more toxic than PCBs. The recordkeeping requirements are used to document the use, location and condition of PCB equipment. The reporting and recordkeeping requirements are essential to prevent adverse effects to human health and the environment from leaks or spills of PCB fluids or from potential exposures to dioxins and furans during transformer fires. Without such recordkeeping and reporting safeguards, EPA would not be able to fulfill its responsibility under TSCA of preventing unreasonable risk to human health and the environment from exposure to PCBs. Responses to the collection of information are mandatory (see 40 CFR parts 761). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average approximately 1.0 hours per response for six respondents. The annual recordkeeping burden is estimated to average approximately 0.166 hours per respondent for 150,000 respondents. These estimates include 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. No person is 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 displayed in 40 CFR Part 9.

Respondents/Affected Entities: Entities potentially affected by this action are owners of PCB-containing transformers used in industry, utilities, government and private buildings or elsewhere.

Estimated No. of Respondents: 150,000.

Estimated Total Annual Burden on Respondents: 24,906 hours.

Frequency of Collection: On occasion.

Changes in Burden Estimates: There is a decrease of 8,300 hours in the total estimated respondent burden as compared with that identified in the information collection request most recently approved by OMB, from 33,206 hours currently to an estimated 24,906 hours. This reflects the fact that EPA estimates that there are fewer transformers to be inspected than was the case at the time this collection was last approved by OMB, and therefore a smaller total respondent burden.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted as described above.

Dated: January 13, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–1368 Filed 1–17–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5678–7]

Proposal for Using Voluntary Environmental Management Systems in State Water Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of competitive funding proposal to support the use of voluntary environmental management systems in water pollution control programs administered by States. Request for applications.

SUMMARY: The Office of Water at the Environmental Protection Agency (EPA) announces its intention to provide financial support, through a competitive grant process, for States that encourage and support the use of voluntary environmental management systems (EMS), using the ISO 14001 International Standard as a baseline, for facilities under State water programs in either delegated or non-delegated States. States should also consider more specific requirements necessary to ensure that the EMS contain measurable performance objectives and targets that address: (1) continual improvement of environmental performance, (2)

pollution prevention, and (3) improved compliance. Facilities would need to have a history of good compliance and compliance management programs in place that are consistent with EPA's Self Policing Policy, issued in December, 1995. Facilities would also need to implement outreach programs with relevant external stakeholders as they develop and implement their EMS.

Grants will be provided to States on a competitive basis to assist in the implementation of this program. The EPA anticipates that 5–7 States will be accepted initially for participation in this program. While the specific amount of grant funds to be provided to each State have not been decided, EPA will try to make as much as $100,000 available to each participating state. States could use grant funds provided by EPA for a variety of activities, including training, technical assistance, or overall project management.

After final selection, States would be asked to develop a more detailed workplan, including specific milestones, for implementing their program covering an initial period of two years.

DATES: Applications from States wishing to be considered for this program should be submitted no later than March 13, 1997.

ADDRESSES: Applications should be submitted to: James Horne, U.S. Environmental Protection Agency, Office of Wastewater Management, 401 M Street, S.W., Washington, D.C. 20460. *Mail Code:* 4201.

States should also send copies of each application to the appropriate EPA Regional Water Management Division Director.

FOR FURTHER INFORMATION CONTACT: James Horne, U.S. Environmental Protection Agency, Office of Wastewater Management, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–5802. *Mail Code:* 4201.

SUPPLEMENTARY INFORMATION:

I. Background

Around the world, the use of voluntary EMS's is increasing as organizations try to improve their overall environmental performance and demonstrate this performance to outside parties, including regulatory agencies. While EMS's per se do not guarantee improved performance or set specific performance standards, they do provide organizations with a mechanism to systematically analyze the impacts of their activities on the environment, including compliance with regulatory requirements, and take steps to reduce these impacts through pollution prevention, effective compliance management, and continual improvement of overall environmental performance, including activities that may not be regulated.

Environmental management systems, if properly implemented, could potentially support a number of key reinvention activities underway in both EPA and the States. These include reductions in unnecessary reporting and monitoring, focusing more on environmental results instead of levels of activity, and using market-based approaches to complement ongoing regulatory, compliance, and enforcement programs.

In the future, regulatory agencies can also expect organizations with EMS's in place to seek greater flexibility from current regulatory or other requirements for achieving environmental protection. Thus, it is appropriate for regulatory agencies, in key areas like permitting and monitoring to consider ways in which they could respond favorably to organizations that can demonstrate that they have and can maintain a record of good compliance and can implement management systems that, over time, will improve environmental performance.

The use of comprehensive EMS's as a supplement to traditional approaches for ensuring environmental protection has not been a major point of discussion in developing public policy. Therefore, Federal and State agencies must proceed carefully in evaluating whether these systems are indeed a useful tool for improving environmental performance, including compliance. This evaluation must also take place through a transparent and inclusive process with all key stakeholders.

The initiative described in more detail below represents an effort to support and encourage State agencies, through their water programs, to evaluate the use of EMS's as a tool to promote improved environmental performance and, as appropriate, identify more flexible ways for regulators to work with the regulated community. The initiative is also meant to support long-term integration of these management systems into the ongoing operations of a major regulatory program that is jointly administered by EPA and States.

Based on a series of general requirements described below, it gives States discretion in the way they incorporate EMSs into their water programs. Finally, this initiative provides financial assistance for those States selected to participate.

The ISO 14001 International Standard for EMS's has recently been issued in its final form. Over time, organizations around the world are expected to seek to become certified to the standard, through the use of accredited third-party auditors. Certification to the standard may also become a *de facto* requirement of doing business in certain countries, as has been the case with the ISO 9000 standards for quality management.

Under this initiative, third party certification by accredited registrars is clearly one option that States may consider when evaluating facility EMS's. However, States will be allowed to consider other approaches as long as these approaches include mechanisms for the conduct of an initial audit of the management system by qualified personnel and a process for conducting ongoing evaluations of individual facility's systems based on their *performance* against stated objectives and targets.

Within EPA, the Office of Water (OW) has represented the Agency, through the EPA Standards Network, on the U.S. Technical Advisory Group (TAG) charged with developing a consensus U.S. position on the ISO 14001 standard. In addition, OW has sponsored a number of demonstration projects designed to educate organizations on the standard and encourage their use of it, including small and medium-sized organizations. Finally, the water program, which is jointly administered by EPA and States, regulates well in excess of 70,000 individual facilities, both industrial and municipal, the majority of which are small or medium-sized.

II. Guidelines for Participation

When submitting applications for participation under this program, States are asked to adhere to the following guidelines:

1. States should use the ISO 14001 EMS Standard, which has just been issued in final form, as the baseline for evaluating EMS's implemented by regulated facilities.

2. States can also consider more specific EMS requirements, if necessary. These more specific requirements should help ensure that individual facility systems:

(a) have measurable performance objectives and targets that include pollution prevention, improved compliance, and continual improvement of overall environmental performance;

(b) have compliance management programs in place that include environmental audits or objective, documented, and systematic procedures to detect violations, promptly correct these violations, analyze the root causes

of these violations, and take steps to prevent the violations from recurring;

(c) are developed through an open process for communicating with relevant external stakeholders, including representatives from the surrounding community. Facilities are also asked to share information on the performance of their management systems with these stakeholders.

(d) are comprehensive in scope in order to address all significant environmental impacts, not just water impacts.

3. States should ensure that facilities have an acceptable level of historical compliance, as follows:

(a) No criminal convictions ever under any Federal or State environmental statute for falsifying monitoring data or violations within the past three years which presented an imminent and substantial endangerment to public health or welfare;

(b) No criminal actions pending or under investigation;

(c) For civil judicial actions, completion of all injunctive relief and payment of penalties;

(d) For administrative enforcement actions, in compliance with all Administrative Penalty Orders (APOs) or Administrative Orders (AOs) and payment of any assessed penalty; and

(e) No repeat violations as defined by EPA's Incentives for Self-Policing Policy (60 FR 66706) or similar State policy.

However, these conditions, with the exception of criminal convictions, could be waived for facilities that demonstrate an exceptional commitment to implementing an environmental system, based on the discretion of the State and applicable EPA Regional office.

While States could use this program to facilitate entry into the Environmental Leadership Program (ELP) by individual facilities, participation in the ELP is *not* a requirement for facilities to participate in this program.

4. As part of their participation in this program, States are asked to undertake a dialogue with interested stakeholders to determine the type and timing of incentives and flexibility that would be appropriate to offer to facilities that implement EMS's based on the guidelines outlined above. The results of these discussions and recommendations on specific incentives are to be submitted to EPA within one year from the initiation of each State's program.

5. Finally, each participating State will be asked to share common sets of information on their experiences with other States and EPA. EPA will consider holding a conference after States are selected but before their programs are initiated to bring together all participants and identify the common information that is to be shared among the participants and with other stakeholders, including EPA.

III. Process for Submitting Applications and Matching Requirements

States are requested to submit their applications to the Office of Wastewater Management at the address listed above no later than March 13, 1997. A copy of the application should also be sent to Director of the Water Management Division in the relevant EPA Regional office.

While there is no prescribed format for submitting applications, States are asked to address, to the extent possible, all of the items identified under Guidelines for Participation above. The primary basis for evaluating each application will be the degree to which each State can address these items. In addition, States should indicate clearly a commitment to integrate this initiative into their ongoing water programs. Finally, States should indicate a willingness to provide matching resources of not less than 10% of the total grant amount provided by EPA to support this program. These matching resources could be provided either through in-kind services or cash. Specific questions that each State should address in its application are included below in Section IV.

Once all applications are received, a panel comprised of individuals from both EPA Headquarters and Regional offices, will be convened to make final decisions on each application.

EPA will make every effort to complete the final selection process and notify the individual States selected by April 18, 1997.

Grant awards will then be made to each State by the relevant EPA Regional Office within 45 days after this notification. States selected will then be asked to develop workplans, including specific milestones, for their programs covering a period of two years as part of the formal grant application.

IV. Questions To Be Addressed by Applicants

In order to assist States wishing to apply for participation in this program, EPA is providing the following list of questions to be addressed in each application.

1. Who in your organization will be responsible for managing your participation in this initiative? If that person is not in the water program, how will that person work with persons in the water program?

2. What are the major activities that will be supported with the grants provided to your State?

3. Similarly, what level of matching resources will be provided and what major activities will be supported with these resources?

4. What approach will the State employ to determine that each of the guidelines for State and facility participation in Section II are met?

5. How will the State integrate this initiative into its on-going water program?

6. Finally, how will the State integrate this initiative into other EMS's pilot projects it plans to undertake?

Dated: January 14, 1997.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 97–1371 Filed 1–17–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5678–6]

Common Sense Initiative Council (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory CSIC Automobile Manufacturing, Computers and Electronics, and Iron and Steel Sector Subcommittee Meetings; Open Meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Automobile Manufacturing, Computers and Electronics, and Iron and Steel Sector Subcommittees of the Common Sense Initiative Council will meet on the dates and times described below. All meetings are open to the public. Seating at all three meetings will be on a first-come basis and limited time will be provided for public comment. For further information concerning specific meetings, please contact the individuals listed with the three announcements below.

(1) Automobile Manufacturing Sector Subcommittee Meeting—February 6, 1997

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the Automobile Manufacturing Sector Subcommittee on Thursday, February 6, 1997, from 9:30 a.m., EST until 3:30 p.m., EST. The meeting will be at the Omni Shoreham Hotel, 2500 Calvert Street, N.W., Washington, DC. The telephone number is (202) 234–0700.

The purpose of the meeting is to review and discuss workplans and

reports from the Life Cycle Management Supplier Partnership Team and the Alternative Strategies Regulatory Systems and Community Team. In particular, the Regulatory Initiatives Team will update the Subcommittee on their progress in developing alternative strategies and their work on the Louisville, Kentucky community project. The Subcommittee will continue exploring other regulatory change opportunities presented in the December meeting.

For further information concerning this Automobile Manufacturing Sector Subcommittee meeting, please contact either Alan W. Powell, Designated Federal Officer (DFO), at EPA, Region 4, by telephone on (404) 562–9045, by fax on (404) 562–9068 or by mail at 100 Alabama Street, S.W., Atlanta, Georgia 30303; or Keith Mason, Alternate DFO, at EPA (202) 260–1360.

(2) Computers and Electronics Sector Subcommittee—February 11 and 12, 1997

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the Computers and Electronics Sector Subcommittee on Tuesday, February 11, 1997, from 8:30 a.m. PST until 5:00 p.m. PST and on Wednesday, February 12, 1997, from 8:30 a.m. PST to 3:00 p.m. PST, at the Cathedral Hill Hotel, 1101 Van Ness Avenue, San Francisco, California 94109.

Both days, February 11 and 12 will be devoted partly to breakout sessions for the three subcommittee workgroups (Reporting and Information Access; Overcoming Barriers to Pollution Prevention, Product Stewardship, and Recycling; and Integrated and Sustainable Alternative Strategies for Electronics) and partly to plenary session. Over the course of the two days, the Subcommittee will be discussing management of consumer electronics product recycling and recovery and alternative strategies for environmental protection in the computers and electronics industry. Opportunity for public comment on major issues under discussion will be provided at intervals throughout the meeting.

For further information concerning this meeting of the Common Sense Initiative's Computers and Electronics Sector Subcommittee, please contact John J. Bowser, Acting DFO, U.S. EPA on (202) 260–1771, by fax on (202) 260–1096, by e-mail at bowser.john@epamail.epa.gov., or by mail at U.S. EPA (MC 7405), 401 M Street, S.W., Washington, DC 20460; Mark Mahoney, U.S. EPA Region 1 on (617) 565–1155; or David Jones, Region 9, U.S. EPA on (415) 744–2266.

(3) Iron and Steel Sector Subcommittee—February 27, 1997

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the Iron and Steel Sector Subcommittee of the Common Sense Initiative Council on Thursday, February 27, 1997, in Chicago, Illinois. The meeting will begin at 8:00 a.m. CST and will run until 4:00 p.m. CST. The meeting will be held at the Metcalf Federal Building, Great Lakes Conference Center, 12th floor, 77 West Jackson Boulevard, Chicago, Illinois 60604.

For the past two years, the Iron and Steel Sector Subcommittee has been working on nine projects (Brownsfields, Permit Recommendations, Multi-media Permit, Consolidated Reporting, Alternative Compliance, Community Advisory Committee, Electronic Web Site, Spent Pickle Liquor Work Shop, and Innovative Technology Barriers) through four workgroups (Brownsfields, Permits, Compliance, and Innovative Technology) and an *ad hoc* task force (Community Involvement). The workgroups have been responsible for proposing to the full Subcommittee for its review and approval potential activities or projects that the Iron and Steel Sector Subcommittee would undertake, and for carrying out projects once approved. Most of these projects are reaching completion or are going through the pilot testing phase and require only relatively limited Subcommittee oversight. The purpose of this meeting is for the Subcommittee to discuss what it wants to accomplish over the next year, how it wants to accomplish it, and what kind of agenda it wants to set for itself. Additionally, the Subcommittee will address any recommendations that its current workgroups propose for Subcommittee action. The four workgroups will meet the preceding day, Wednesday, February 26, 1997, from approximately 10:00 a.m. CST to 5:00 p.m. CST, at the Metcalf Building.

For further information concerning this meeting of the Iron and Steel Sector Subcommittee, please contact Judith Hecht, Alternate DFO, on (202) 260–5682 in Washington, DC., or Ms. Uylaine McMahan on (312) 886–4454.

Inspection of Subcommittee Documents

Documents relating to the above Sector Subcommittee announcements, will be publicly available at the meeting. Thereafter, these documents, together with the official minutes for the meetings, will be available for public inspection in room 2821M of EPA Headquarters, Common Sense Initiative Staff, 401 M Street, SW, Washington, DC 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically through contacting Daria Willis at willis.daria@epamail.epa.gov.

Dated: January 14, 1997.

Prudence Goforth,

Designated Federal Officer.

[FR Doc. 97–1369 Filed 1–17–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5678–8]

Meeting of the Local Government Advisory Committee

The Local Government Advisory Committee will conduct its next meeting on February 6–7, 1997. Members will hear presentations on sustainability and creating livable cities from two panels, one presenting the experiences of San Francisco-area local government officials and one presenting experiences at the Presidio. The Roles and Responsibilities and the Tools for Local Decision-Makers Subcommittees will meet in subcommittee sessions to continue work on their recommendations to the Agency.

The meeting will be held at EPA's Region IX Office located at 75 Hawthorne Street in San Francisco, California. The meeting will begin at 8:30 a.m., on Thursday, February 6th and conclude at 4:00 p.m. on the 7th. From 10:45–11:00 a.m. on the 6th, the Committee will hear comments from the public. Each individual or organization wishing to address the Committee will be allowed three minutes. Please contact the Designated Federal Officer at the number listed below to schedule agenda time. Time will be allotted on a first come, first serve basis.

The Designated Federal Officer (DFO) for this Committee is Denise Zabinski Ney. She is the point of contact for information concerning any Committee matters and can be reached by calling (202) 260–0419 or by writing to 401 M Street, S.W. (1502), Washington, DC 20460.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the above number if planning to attend so that arrangements can be made to comfortably accommodate attendees

as much as possible. However, seating will be on a first come, first serve basis.

Denise Zabinski Ney,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 97–1372 Filed 1–17–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5677–9]

Meeting of the Ozone Transport Commission for the Northeast United States

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the Winter meeting of the Ozone Transport Commission to be held on January 28, 1997.

This meeting is for the Ozone Transport Commission to deal with appropriate matters within the transport region, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The meeting will be held on January 28, 1997 from 10:00 a.m. to 4:00 p.m.

ADDRESSES: *Place:* The meeting will be held at: The Gideon-Putnam Hotel and Conference Center, The Avenue of the Pines, Saratoga Springs, NY 12866, (518) 584–3000.

FOR FURTHER INFORMATION CONTACT:

EPA: Susan Studlien, Region I, U.S. Environmental Protection Agency, John F. Kennedy Federal Building, Boston, MA 02203, (617) 565–3800.

The State Contact: Host Agency: Lisa Cerniglia, New York State Dept. of Environmental Conservation, 50 Wolf Road, Albany, NY 12233–1010, (518) 457–1415.

For Documents and Press Inquiries Contact: Stephanie A. Cooper, Ozone Transport Commission, 444 North Capitol Street, N.W., Suite 638, Washington, DC 20001, (202) 508–3840, e-mail: ozone@sso.org.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the ''Control of Interstate Ozone Air Pollution.'' Section 184(a) establishes an ozone transport region comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia.

The Assistant Administrator for Air and Radiation of the Environmental Protection Agency convened the first meeting of the commission in New York City on May 7, 1991. The purpose of the Transport Commission is to deal with appropriate matters within the transport region.

The purpose of this notice is to announce that this Commission will meet on January 28, 1997. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of Transport Commissions are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

TYPE OF MEETING: Open.

AGENDA: Copies of the final agenda will be available from Stephanie Cooper of the OTC office (202) 508–3840 (or by e-mail: ozone@sso.org) on Tuesday, January 21, 1997. The purpose of this meeting is to review air quality needs within the Northeast and Mid-Atlantic States, including reduction of motor vehicle and stationary source air pollution. The OTC is also expected to address issues related to the transport of ozone into its region, and to discuss market-based programs to reduce pollutants that cause ozone.

Dated: December 24, 1996.

John DeVillars,

Regional Administrator, EPA Region I.

[FR Doc. 97–1367 Filed 1–17–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 97–60]

Federal-State Joint Board on Universal Service: Staff Workshops on Proxy Cost Models on January 14–15, 1997

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On January 9, 1997, the Federal Communications Commission released a public notice regarding the staff workshop on proxy cost models that will be held on January 14 and 15, 1997. The purpose of the notice is announce the agenda and the panelists for the workshops.

FOR FURTHER INFORMATION CONTACT: Astrid Carlson, Universal Service Branch, Accounting and Audits Division, Common Carrier Bureau, at (202) 530–6023.

SUPPLEMENTARY INFORMATION: The federal and state staff of the Federal-State Joint Board on Universal Service will hold workshops on proxy cost models on Tuesday, January 14, 1997 and Wednesday, January 15, 1997. The workshops will be held in the Commission's room 856 at 1919 M Street, N.W, Washington, D.C. beginning at 9 a.m. each day, and are open to the public. The workshops will consist of four round table discussions on issues relating to the selection of a proxy cost model for determining the cost of providing the service supported by the universal service support mechanism. The first panel will discuss modeling network investment; the second panel will discuss modeling operating and support expenses; the third panel will discuss modeling capital expenses; and the fourth panel will discuss validation of the models.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Bureau Chief, Common Carrier Bureau.

[FR Doc. 97–1273 Filed 1–17–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed collection of information. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the collection of floodplain data from communities participating in the National Flood Insurance Program (NFIP). *Supplementary Information.* Under 44 CFR 59.22(b)(2), FEMA requires that communities participating in the NFIP submit an annual or biennial report describing the progress made during the year in the implementation and enforcement of floodplain management regulations. Currently, FEMA has determined that this data will be collected on a biennial reporting cycle and the data collection is now referred to as the Biennial Report. The NFIP Biennial Report enables FEMA to meet its regulatory

requirement under 59.22(b)(2). It also enables FEMA to be more responsive to the on-going changes that occur in each participating community's flood hazard area. These changes include, but are not limited to, new corporate boundaries, changes in flood hazard areas, new floodplain management measures, and changes in rate of floodplain development. It is also used to evaluate the effectiveness of the community's floodplain management activities. The evaluation is accomplished by analyzing information provided by the community, such as the number of variances and floodplain permits granted by each community in relationship to other information contained in the Biennial Report, as well as other data available in FEMA's Community Information System (CIS).

Collection of Information

Title. National Flood Insurance Program Biennial Report.

Type of Information Collection. Extension of a currently approved collection.

OMB Number: 3067–0018.

Abstract. FEMA requests that communities participating in the NFIP submit a biennial report on progress made in the implementation and enforcement of their floodplain management regulations. The information provided by communities using FEMA Forms 81–28, 81–29, or 81–29A enables FEMA to be more responsive to the ongoing changes which occur in each participating community's flood hazard area, as well as to evaluate the effectiveness of the community's floodplain management activities.

Affected Public: State, Local or Tribal Governments.

Estimated Total Biennial Burden Hours. 8,215.

FEMA forms	Form titles	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Biennial burden hours (AxBxC)
81–28	Biennial Report for Emergency and Regular Program (Minimally Floodprone).	5,011	Biennial	.4	2,004
81–29	Biennial Report for Regular Program (With Base Flood Elevations).	11,914	Biennial	.5	5,957
81–29A	Biennial Report for Regular Program (No Special Flood Hazard Area.	1,270	Biennial	.2	1,270
Total ...		18,195	Biennial	8,215	.....

Estimated Cost. $72,500.

Comments

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received on or before March 24, 1997.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 311, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

FOR FURTHER INFORMATION CONTACT: Contact Robert Shea, Division Director, Program Implementation Division, Mitigation Directorate, 202–646–4621 for additional program information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed forms and OMB clearance package.

Dated: January 9, 1997.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 97–1274 Filed 1–17–97; 8:45 am]

BILLING CODE 6718–01–P

[FEMA–1155–DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California, (FEMA–1155–DR), dated January 4, 1997, and related determinations.

EFFECTIVE DATE: January 7, 1997

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of California, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 4, 1997:

Contra Costa, Fresno, Marin, Mariposa and Tulare Counties, and the City of Morgan Hill for Individual Assistance and debris removal and emergency protective measures under the Public Assistance program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–1278 Filed 1–17–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1148–DR]

New York; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York, (FEMA–1148–DR), dated December 9, 1996, and related determinations.

EFFECTIVE DATE: December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New York, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a

major disaster by the President in his declaration of December 9, 1996:

Chemung and Delaware Counties for Individual Assistance (already designated for Public Assistance and Hazard Mitigation).

Franklin County for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–1275 Filed 1–17–97; 8:45 am]

Billing Code 6718–02–P

[FEMA–1149–DR]

Oregon; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oregon (FEMA–1149–DR), dated December 23, 1996, and related determinations.

EFFECTIVE DATE: December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 23, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Oregon, resulting from flooding, land and mud slides, wind and severe storms beginning on November 17, 1996, and continuing through December 11, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Oregon.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert C. Freitag of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oregon to have been affected adversely by this declared major disaster:

Coos, Douglas, and Lane Counties for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 97–1276 Filed 1–17–97; 8:45 am]

BILLING CODE 6718–01–P

[FEMA–1150–DR]

Pennsylvania; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA–1150–DR), dated December 23, 1996 and related determinations.

EFFECTIVE DATE: December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 23, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Commonwealth of Pennsylvania, resulting from severe thunderstorms, high winds, rain, and flooding on November 8–15, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the Commonwealth of Pennsylvania.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert J. Gunter of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the Commonwealth of Pennsylvania to have been affected adversely by this declared major disaster:

Tioga County for Individual Assistance, Public Assistance, and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 97–1277 Filed 1–17–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Carnival Corporation, Hyundai Carnival Cruise Lines, Inc. and Cruise Ship Leasing Company Trust, 3655 N.W. 87th Avenue, Miami, Florida 33178–2193

Vessel: TROPICALE

Isabel Cortes Ferry Service Limited, International Shipping Partners, Inc. and St. Thomas Cruises Limited, 1250 Port Road, Port Isabel, Texas 78578

Vessel: REGAL VOYAGER

Norwegian Cruise Line Limited (d/b/a Norwegian Cruise Line) and Actinor Cruise AS, Two Alhambra Plaza, 95 Merrick Way, Coral Gables, Florida 33134

Vessel: ROYAL ODYSSEY

Radisson Wilmington Corporation (d/b/a Radisson Seven Seas Cruises), Radisson Worldwide Inc. and Diamond Cruise Ltd., 600 Corporate Drive, Suite 410, Fort Lauderdale, Florida 33334

Vessel: RADISSON DIAMOND

Royal Caribbean Cruises Ltd. and Grandeur of the Seas Inc., 1050 Caribbean Way, Miami, Florida 33132

Vessel: GRANDEUR OF THE SEAS

Dated: January 13, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–1321 Filed 1–17–97; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Glacier Bay Park Concessions, Inc. and Glacier Bay Marine Services, Inc., 520 Pike Street, Suite 1400, Seattle, Washington 98101

Vessel: WILDERNESS ADVENTURER

Holland America Line-Westours Inc. (d/b/a Holland America Line and Holland America) and HAL Cruises Limited, 300 Elliott Avenue West, Seattle, Washington 98119

Vessel: ROTTERDAM VI

Isabel Cortes Ferry Service Limited, 1250 Port Road, Port Isabel, Texas 78578

Vessel: REGAL VOYAGER

Radisson Wilmington Corporation (d/b/a Radisson Seven Seas Cruises) and Radisson Worldwide Inc., 600 Corporate Drive, Suite 410, Fort Lauderdale, Florida 33334

Vessel: RADISSON DIAMOND

Dated: January 13, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–1322 Filed 1–17–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. 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 February 4, 1997.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Joseph Lowrie Dean, Jr., Opelika, Alabama; to acquire an additional .08 percent, for a total of 12.68 percent, of the voting shares of The First Corporation, Opelika, Alabama, and thereby indirectly acquire The First National Bank of Opelika, Opelika, Alabama.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. S.C. Investments, L.P., Palatine, Illinois, Gerald F. Fitzgerald, Jr., Inverness, Illinois, Otis Road Investments, L.P., Inverness, Illinois, Julie F. Schauer, Glen Ellyn, Illinois, Thomas G. Fitzgerald, Inverness, Illinois, Gerald F. Fitzgerald IRA Rollover, Palatine, Illinois, Fitzgerald Children 1992 Trust, Peter G. Fitzgerald, Trustee, Palatine, Illinois, Fitzgerald Descendants 1992 Trust, Peter G. Fitzgerald, Trustee, Palatine, Illinois; acting in concert to acquire 87.9 percent of the voting shares of LaSalle Bancorp, Inc., LaSalle, Illinois, and thereby indirectly acquire LaSalle National Bank, LaSalle, Illinois.

Board of Governors of the Federal Reserve System, January 14, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1343 Filed 1-17-97; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking

activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 14, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. River Falls Bancshares, Inc., River Falls, Wisconsin; to become a bank holding company by acquiring 99.18 percent of the voting shares of River Falls State Bank, River Falls, Wisconsin.

Board of Governors of the Federal Reserve System, January 14, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1345 Filed 1-17-97; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 4, 1997.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. NationsBank Corporation, Charlotte, North Carolina; to acquire First Federal Savings Bank of Brunswick, Brunswick, Georgia, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. TB&C Bancshares, Inc., and Synovus Financial Corp., both of Columbus, Georgia; to engage *de novo* through their subsidiary, Golden Retriever Systems, L.L.C., Chandler, Arizona, in a joint venture in providing comprehensive information management and reporting services for the bankcard industry, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 14, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1344 Filed 1-17-97; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–97–01]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. AIDS Prevention and Surveillance Project Reports, (0920–0208)—Extension—CDC funds cooperative agreements for 65 HIV Prevention Projects (50 states, 6 cities, 7 territories, Washington, D.C., and Puerto Rico). The cooperative agreements support counseling, testing, referral, and partner notification programs conducted by official public health agencies of states, territories, and localities (project areas). HIV counseling and testing in STD clinics, Women's Health Centers, Drug Treatment Centers, and other health agencies has been described as a primary prevention strategy of the national HIV Prevention Program. These project areas have increased HIV counseling and testing activities to specifically reach more minorities and women of child bearing age.

CDC is responsible for monitoring and evaluating HIV prevention activities conducted under the cooperative agreement. Counseling and testing programs are a major component of the HIV Prevention Program. Without data to measure the impact of counseling and testing programs, priorities cannot be assessed and redirected to prevent further spread of the virus in the general population. CDC needs information from all project areas on the number of at-risk persons tested and the number positive for HIV. The HIV Counseling and Testing Report Form provides a simple yet complete means to collect this information. We are requesting a three year extension for this study. The estimated cost to the respondents is $10,320 per year.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Manual Form Project Areas	21	4	2	168
Scan Form Project Areas	44	4	0.25	44
Total				212

2. Multi-Center Cohort Study to Assess the Risk and Consequences of Hepatitis C Virus Transmission from Mother to Infant (0920–0344)—Extension—The purpose of the study is to determine the incidence of vertical hepatitis C virus (HCV) transmission, to assess risk factors for vertical HCV transmission, to assess the clinical course of disease among infants with HCV infection, and to assess diagnostic methods for detecting HCV infection in infants. Respondents for the study will be anti-HCV positive mothers.

There is no cost to the respondents. They will be remunerated for travel costs; provided well-child visits and free vaccinations for infants enrolled in the study; and, provided anti-HCV testing to all family members free of charge. The total response burden for the study, over a 3 year period, is as follows:

Respondents	Form name	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Individual Mothers	Form A	300	1	0.25	75
Mothers	Form B	1200	1	0.25	300
Mothers	Form C	300	1	0.10	30
Mothers	Form D	300	1	0.25	75
Family members	Form E	700	1	0.25	175
Mothers	Form F	300	1	0.25	75
Mothers	Form G	300	8	0.10	240
Total					*970

*The annualized response burden is estimated to be 970 hours/3 years=323 hours.

(Target enrollment in the study is 300; the target population will be drawn from those who complete Form B. Family members will complete Form E.)

3. Continuing Medical Education (CME) Activity Registration Form—(0923–0013)—Extension—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from the exposure to hazardous substances into the environment. As stated in CERCLA, the Administrator of ATSDR is charged to ''assemble, develop as necessary, and distribute to the states, and upon request to medical colleges, physicians, and other health professionals, appropriate educational materials (including short courses) on this topic''.

The development and use of activity registration forms for documenting participation in these activities at these meetings is an integral part of this process. This attendance documentation process is required by the Accreditation Council for Continuing Medical Education (ACCME), the body that authorizes agencies and institutions to award nationally recognized continuing medical education (CME) credit. As a condition of relicensure, physicians in 40 states are required to participate in CME courses. Individual physicians in these states are required to submit the number of hours of CME credit to state boards of professional registration at the time of relicensure. Failure by the physician to provide this information in a timely fashion will result in suspension of professional licensure.

This request is for a 3-year extension of the current OMB approval of uniform CME activity registration forms—one machine entry form and the other manually entered—to serve as the initial step in the development of an attendance documentation system. Other than their time, there will be no cost to the respondents.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Manual Entry Registration Form	2,000	1	0.066	132
Scantron Registration form	3,000	1	0.083	250
Total				382

4. National Surveillance System for Hospital Health Care workers (NASH)—New—CDC has developed surveillance system that focuses on surveillance of exposures and infections among hospital-based health care workers (HCWs). This system, modeled after the National Nosocomial Infections Surveillance (NNIS) system for patient infections, includes standardized methodology for various occupational health issues (OMB 0920–0012). The Hospital Infections Program, National Center for Infectious Diseases (NCID) has developed this system in

collaboration with the Hepatitis Branch, Division of Viral and Rickettsial Diseases, NCID; the Division of Tuberculosis (TB) Elimination, National Center for HIV, STD, and TB Prevention; the National Immunization Program (NIP), and the National Institute for Occupational Safety and Health (NIOSH).

The NASH system consists of modules for collection of data about various occupational issues. Baseline information about each HCW such as demographics, immune-status for vaccine-preventable diseases, and TB status is collected when the HCW is enrolled in the system. Results of routine tuberculin skin test (TST) are collected and entered in the system every time a TST is placed and read. In the event that an HCW is exposed to blood/bloodborne pathogen, to a vaccine-preventable disease, or to a TB infectious patient/HCW, epidemiologic data will be collected about the exposure. For HCWs exposed to a bloodborne pathogen (i.e. HIV, HCV, or HBC), follow-up data will be collected during the follow-up visits. Once a year, the hospitals will perform a survey to assess the level of underreporting of needlesticks (HCW survey) and will complete a hospital survey to provide denominator data. Data will be sent entered into the software and diskettes will be sent to CDC. No identifiers of the HCW will be sent to CDC. This system is protected by the Assurance of Confidentiality (308d).

Data collected in this surveillance system will assist hospitals, HCWs, HCW organizations, and public health agencies. This system will allow CDC to monitor national trends, to identify newly emerging hazards for HCWs, to assess the risk of occupational infection, and to evaluate preventive measures, including engineering controls, work practices, protective equipment, and postexposure prophylaxis to prevent occupationally acquired infections. Hospitals who volunteer to participate in this system will benefit by receiving technical support and standardized methodologies, including software, for conducting surveillance activities on occupational health.

This system has been developed and piloted in large teaching hospitals. Prior to implementation in a nationwide network of hospitals, an expansion of this pilot project to include more medium/small size hospitals is essential for further refinement of protocols and software. The first pilot project ran from October 1994 to September 1996 (RFP–200–94–0834(p)) and included four hospitals; the second pilot started in October 1996 (RFP–200–96–0524(P)) and includes five hospitals. Fifteen hospitals are expected to participate in this proposed project, including the five currently participating. Once the expanded pilot project is completed, the system will be made available to all short-term care hospitals in the United States who wish to voluntarily participate in this project. The total estimated maximum cost to respondents is $201,840 ($15 an hour for hospital personnel who will collect/input the data).

Respondents	No. of respondents	No. of responses/respondents	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Baseline Information (form)	22,500	1	0.3333	7,500
TST Result Form	22,500	1	0.1666	3,750
Exposure Form	1,500	1	0.416	625
Follow-up Form	750	1	0.25	188
Exposure to vaccine-prv. dis Summary Form	120	1	0.333	40
HCW Form	240	1	0.333	80
Exposure to TB Form	45	1	0.50	23
HCW Survey	7,500	1	0.166	1,250
Total				13,456

*The same 15 hospitals will be completing the 8 separate forms listed above. The number of respondents includes x number of employees time each of 15 hospitals.

5. Information Collection Procedures for Requesting Public Health Assessments—(0923–0002)—Extension—The Agency for Toxic Substances and Disease Registry is announcing the request for a 3-year extension of the OMB approval for the Information Collection Procedures for Requesting Public Health Assessments. ATSDR is authorized to accept and respond to petitions from the public that request public health assessments of sites where there is a threat of exposure to hazardous substances (42 USC 9604(i)(6)(B)). The Agency conducts public health assessments of releases or facilities for which individuals provide information that people have been exposed to a hazardous substance, and for which the source of such exposure is a release, as defined under CERCLA. The general administrative procedures for conducting public health assessments, including the information that must be submitted with each request, is described at 42 CFR 90.3, 90.4, and 90.5. Procedures for responding to petitions, decision criteria, and methodology for determining priorities may be found at 57 FR 37382–89.

ATSDR anticipates approximately 36 requests will be received each year. This estimate is based on the number of requests received since the enabling legislation was enacted and the expressions of interest (via telephone, letter, etc.) from members of the public, attorneys, and industry representatives. There is no cost to the respondents other than their time.

Respondent	No. of respondents	No. of responses respondents	Avg. burden response (in hrs.)	Total burden (in hrs.)
General Public	3	1	.50	18

Respondent	No. of respondents	No. of responses respondents	Avg. burden response (in hrs.)	Total burden (in hrs.)
Total				18

Dated: January 14, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–1340 Filed 1–17–97; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Dental Products Panel of the Medical Devices Advisory Committee

Date, time, and place. February 12, 1997, 9 a.m., Gaithersburg Marriott Washingtonian Center, Ballroom, 9751 Washingtonian Blvd., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the hotel. Attendees requiring overnight accommodations may contact the hotel at 301–590–0044 and reference the FDA Dental Products Panel meeting block. Reservations may be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Christie Wyatt, KRA Corp., 301–495–1591, ext. 267. The availability of appropriate accommodations cannot be assured unless prior notification is received.

Type of meeting and contact person. Open public hearing for the reclassification of over-the-counter (OTC) denture cushions or pads, 9 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 11:30 a.m.; open public hearing for the reclassification of temporary mandibular condyle implant prostheses, 11:30 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 5:30 p.m.; Pamela D. Scott, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8879, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Dental Products Panel, code 12518. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 5, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss two petitions for the reclassification of OTC denture cushions or pads that are prefabricated or noncustom made disposable devices intended to improve the fit of loose or uncomfortable dentures. (This does not include OTC denture cushions or pads made of wax-impregnated cotton cloth that are to be applied to the base or inner surface of a denture and are to be discarded following 1 day's use; this device is presently class I). The committee will also discuss a petition for the reclassification of mandibular condyle implant prostheses for temporary use in the treatment of patients following tumor resection.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of the meeting(s) shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the

contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: January 13, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–1337 Filed 1–17–97; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

National Practitioner Data Bank; Change in User Fee

The Health Resources and Services Administration (HRSA), Department of Health and Human Services (DHHS), is announcing the elimination of the discount fee charged to entities authorized to request information from the National Practitioner Data Bank (Data Bank) for queries which meet all requirements for fully automated processing.

The current fee structure was announced in the Federal Register on February 8, 1996 (61 FR 4788). The user fee is $3.00 less $1.00 discount per name per query fee for queries submitted via telecommunications network and paid via an electronic funds transfer or credit card, with query response sent via the telecommunications network. Six dollars is charged for queries submitted electronically on a diskette to pay for the extra handling and mailing costs for these queries. An additional $4.00 is charged for all queries which are paid for by check or money order rather than by electronic funds transfer or credit card to cover the cost of debt management.

The Data Bank is authorized by the Health Care Quality Improvement Act of 1986 (the Act), title IV of Public Law 99–660, as amended (42 U.S.C. 11101 *et seq.*). Section 427(b)(4) of the Act authorizes the establishment of fees for the costs of processing requests for disclosure and of providing such information.

Final regulations at 45 CFR part 60 set forth the criteria and procedures for information to be reported to and disclosed by the Data Bank. Section 60.3 of these regulations defines the terms used in this announcement.

In determining any changes in the amount of the user fee, the Department uses the criteria set forth in §60.12 (b) of the regulations, as well as allowable costs pursuant to the DHHS Appropriations Act of 1997, P.L. 104–208, enacted September 30, 1996. This Act requires that the Department recover the full costs of operating the Data Bank through user fees. Paragraph (b) of the regulations states:

''The amount of each fee will be determined based on the following criteria:

(1) Use of electronic data processing equipment to obtain information—the actual cost for the service, including computer search time, runs, printouts, and time of computer programmers and operators, or other employees,

(2) Photocopying or other forms of reproduction, such as magnetic tapes—actual cost of the operator's time, plus the cost of the machine time and the materials used,

(3) Postage—actual cost, and

(4) Sending information by special methods requested by the applicant, such as express mail or electronic transfer—the actual cost of the special service.''

Based on analysis of the comparative costs of the various methods for filing and paying for queries, the Department is eliminating the $1.00 discount fee for users who: (1) query and receive responses via the telecommunications network, and (2) pay query fees by credit card, electronic funds transfer or such other electronic transfer options as may be offered in the future.

Despite the elimination of the discount, electronic querying (telecom network) and electronic payment continue to be the most cost-effective methods for requesting information from the Data Bank. Consequently, the fee for querying the Data Bank by diskette with electronic payment continues to be $6.00. The new fee for electronic queries (telecom network) with electronic payment will be $3.00. This change is effective February 20, 1997.

When a query is for information on one or more physicians, dentists, or other health care practitioners, the appropriate total fee will be $3.00 (plus a $3.00 and/or a $4.00 surcharge for submission and payment as described above) multiplied by the number of individuals about whom information is being requested. All other fees remain the same. For examples, see the table below.

The Department will review the user fee periodically, and will revise it as necessary. Any changes in the fee and their effective date will be announced in the Federal Register.

Query method	Fee per name in query, by method of payment	Examples
Electronic query (Telecom network) with electronic payment.	$3.00 (if paid electronically via credit card or other electronic means and response received electronically).[1].	10 names in query. 10x$3 = $30.00.
Electronic query (Diskette) with electronic payment.	$6.00 (if paid electronically via credit card or other electronic means and response received on paper) ($3.00 fee plus $3.00 surcharge).	10 names in query. 10x$6 = $60.00.
Electronic query (Telecom network) with non-electronic payment.	$7.00 (if not paid via credit card or other electronic means) ($3.00 fee plus $4.00 surcharge).	10 names in query. 10x$7 = $70.00.

Query method	Fee per name in query, by method of payment	Examples
Electronic query (Diskette) with non-electronic payment.	$10.00 (if not paid via credit card or other electronic means) ($3.00 fee plus $3.00 and $4.00 surcharges).	10 names in query. 10x$10 = $100.00.

[1] This new fee represents the elimination of the $1.00 discount.

Dated: January 14, 1997.

Ciro V. Sumaya,

Administrator.

[FR Doc. 97–1404 Filed 1–17–97; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Center for Research Resources, 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 Center for Research Resources Special Emphasis Panel (SEP) meeting:

Name of SEP: Comparative Medicine.

Date: February 24, 1997.

Time: 5:00 p.m.

Place: The Latham Hotel, Washington/Jefferson Conference Room, 3000 M Street, NW., 7965, Washington, DC 20007, (202) 726–5000.

Contact Person: Dr. Bela Gulyas, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0811.

Purpose/Agenda: To evaluate and review grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b (c)(6), Title 5, U.S.C. 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 No. 93.306, Laboratory Animal Sciences and Primate Research, National Institutes of Health, HHS)

Dated: January 13, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1469 Filed 1–17–97; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood 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 Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

Name of SEP: Planning, Developing, Implementing, and Evaluating Health Communication Products and Activities for NHLBI Education Programs and Other Technology Transfer Activities.

Date: February 18, 1997.

Time: 9:00 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Contact Person: Louise P. Corman, Ph.D., Two Rockledge Center, Room 7180, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0270.

Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Demonstration and Education Research Applications.

Date: March 4–5, 1997.

Time: 9:00 a.m.

Place: Washington National Airport Hilton, 2399 Jefferson Davis Highway, Arlington, Virginia.

Contact Person: Louise P. Corman, Ph.D., Two Rockledge Center, Room 7180, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0270.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. 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. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: January 14, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1378 Filed 1–17–97; 8:45 am]

BILLING CODE 4140–01–M

Notice of Meeting of the National Advisory Council for Nursing Research and its Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Council for Nursing Research, National Institute of Nursing Research, National Institutes of Health and its Planning Subcommittee on February 11–12, 1997, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, Maryland.

The Council meeting will be open to the public on February 11 from 1:00 p.m. to recess and on February 12 from approximately 9:00 a.m. to 11:00 a.m. for discussion of program policies and issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the Council meeting will be closed to the public from 11:00 a.m. to adjournment on February 12. There will also be a meeting, closed to the public, of the Planning Subcommittee on February 11 from 9:00 a.m. to 11:00 a.m. in Building 31, Room 5B03. These meetings are closed for the review, discussion and evaluation of individual grant applications. These applications and 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.

A summary of the meetings, rosters of committee members, and other information may be obtained from the Executive Secretary, Dr. Lynn Amende, NINR, NIH, Building 45, Room 3AN–12, Bethesda, Maryland 20892, 301/594–5968. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health)

Dated: January 10, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1373 Filed 1–17–97; 8:45 am]

BILLING CODE 4140–01–M

Meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and Its Subcommittees

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on February 12–13, 1997. The meeting of the full Council will be open to the public on February 12, from 8:30 a.m. to 12:00 p.m. in Conference Room 10, Building 31C National Institutes of Health, Bethesda, Maryland, to discuss administrative issues relating to Council business and special reports. The following subcommittee meetings will be open to the public February 12th from 1:00 p.m. to 2:00 p.m.: Diabetes, Endocrine and Diseases Subcommittee meeting will be held in Conference Room 10, Building 31C: Digestive Diseases and Nutrition Subcommittee meeting will be held in Conference Room 7, Building 31C; and Kidney, Urologic and Hematologic Diseases Subcommittee meeting will be held in Conference Room 8, Building 31C. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meetings of the subcommittees and full Council will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittee will be closed to the public on February 12, from 2:00 p.m. to 5:00 p.m.: Diabetes, Endocrine and Metabolic Diseases Subcommittee; and Digestive Diseases and Nutrition Subcommittee; and Kidney, Urologic and Hematologic Diseases Subcommittee. The full Council will meet in closed session on February 13 from 8:30 a.m. to 10:00 a.m. in Conference Room 10, Building 31C. These deliberations, whether held in a subcommittee or in the full council, could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion for personal privacy.

A final open session of the full Council will be held from 10:00 a.m. to 12:00 p.m. to hear reports from the Division Directors.

For any further information, and for individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Natcher Building, Room 6AS–25C, Bethesda, Maryland 20892, (301) 594–8834, in advance of the meeting.

In addition, upon request, a summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 45, Room 6AS–37J, National Institutes of Health, Bethesda, Maryland 20892, (301) 594–8892.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: January 14, 1997.

Paula Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1374 Filed 1–17–97; 8:45 am]

BILLING CODE 4140–01–M

Notice of Meeting of Board of Scientific Counselors, National Institute of Environmental Health Services

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Environmental Health Sciences, February 9–11, 1997, in Building 101, Main Conference Room, South Campus, National Institute of Environmental Health Services (NIEHS), Research Triangle Park, North Carolina.

This meeting will be open to the public from 8:00 a.m. to approximately 4:30 p.m. on February 10, for the purpose of presenting an overview of the organization and conduct of research in the Laboratory of Signal Transduction. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6) of Title 5, U.S. Code and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 9 from approximately 8:00 p.m. to recess and will be held at the Siena Hotel, 1505 E. Franklin Street, Chapel Hill, North Carolina, and on February 11 at the NIEHS South Campus address above, from 8:30 a.m. to adjournment, for the evaluation of the programs of the laboratories listed above, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Exeuctive Secretary, Dr. Carl Barrett, Scientific Director, Division of Intramural Research, NIEHS, Research Triangle Park, N.C. 27709, telephone (919) 541–3205, will furnish rosters of committee members and program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dated: January 14, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1375 Filed 1–17–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meetings:

Name of SEP: Chemistry Support Services for the Environmental Toxicology Program (Telephone Conference Call).

Date: February 6, 1997.

Time: 1:00 p.m.–3:30 p.m.

Place: National Institute of Environmental Health Sciences, Building 17, Rm. 1713, Research Triangle Park, NC 27709.

Contact Person: Mr. David P. Brown, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

Purpose/Agenda: To review and evaluate contract proposals.

This notice is being published less than fifteen days prior to this meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Better Nitrone Spin Traps for Oxygen Centered Radicals—SBIR (Telephone Conference Call)

Date: February 27, 1997.

Time: 1:00 p.m.–4:00 p.m.

Place: National Institute of Environmental Health Sciences, Building 1, Rm. 103, Research Triangle Park, NC 27709.

Contact Person: Mr. David P. Brown, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964..

Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Methods of Assessing the Estrogenicity and Other Endocrine, Activity of Environmental Chemicals—SBIR (Telephone Conference Call).

Date: March 3, 1997.

Time: 1:00 p.m.–3:00 p.m.

Place: National Institute of Environmental Health Sciences, Building 17, Rm. 1713, Research Triangle Park, NC 27709.

Contact Person: Mr. David P. Brown, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Device/Capability for Quantitative Assessment of Bone Strength in Rodents—SBIR (Telephone Conference Call).

Date: March 7, 1997.

Time: 1:00 p.m.–4:00 p.m.

Place: National Institute of Environmental Health Sciences, Building 17, Rm. 1713, Research Triangle Park, NC 27709.

Contact Person: Mr. David P. Brown, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

Purpose/Agenda: To review and evaluate contract proposals.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: January 14, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1376 Filed 1–17–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Communication Disorders Review Committee

Date: February 19–21, 1997

Time: 8 am–5:30 pm, February 19; 8 am–5:30 pm, February 20; 8 am–adjournment February 21

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852

Contact Person: Mary V. 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 grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. 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 would 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: January 14, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1377 Filed 1–17–97; 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: Transplantation Tolerance.

Date: February 5–7, 1997.

Time: 7:00 p.m.

Place: Holiday Inn-Gaithersburg, 2 Montgomery Village Avenue, Gaithersburg, MD 20879 (301–948–8900).

Contact Person: Dr. Allen Stoolmiller, Scientific Review Adm.,6003 Executive Boulevard, Solar Bldg., Room 4C05, Bethesda, MD 20892, (301) 496–7966.

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 Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: January 14, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1380 Filed 1–17–97; 8:45 am]

BILLING CODE 4140–01–M

Notice of Meeting of the Board of Governors of the Warren Grant Magnusen Clinical Center and its Executive Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center and its Executive Committee, February 9–10, 1997. The Executive Committee will meet on February 9 at the Bethesda Hyatt, One Metro Center, Bethesda, Maryland, from 6:00 p.m. to adjournment, and the Board of Governors will meet on February 10 at the National Institutes of Health, Clinical Center (Building 10), Medical Board Room, 9000 Rockville Pike, Bethesda, Maryland, at 1:00 p.m. until approximately 3:30 p.m.

Both meetings will be entirely open to the public and will discuss issues related to the Clinical Center Strategic Plan, including cost savings plans and relations with insurers. The Board of Governors will also review the report of the Executive Committee. Attendance by the public will be limited to space available.

For further information, contact Ms. Maggi Stakem, Office of the Director, Warren Grant Magnuson Clinical Center, Building 10, Room 2C146, Bethesda, Maryland 20892, (301) 496–4114.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Stakem in advance of the meeting.

Dated: January 14, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1379 Filed 1–17–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Special Trustee for American Indians; Office of Trust Funds Management

ACTION: Notice is hereby given that the Office of the Special Trustee (OST), Office of Trust Funds Management (OTFM), will conduct four (4) consultation meetings with all Indian Tribes, bands, nations, or other organized groups or communities, including any Alaska Native villages or regional or village corporations as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the trust programs and services provided by the United States

to Indians because of their status as Indians.

SUMMARY: The purpose is to consult with and obtain oral and/or written comments regarding the review of the Special Trustee's draft comprehensive strategic plan for all phases of the trust management business cycle that will ensure proper and efficient discharge of the Secretary's trust responsibilities. The assessment, opinions and plan are a work in progress which is subject to modification and change before it becomes final and is recommended to the Secretary of the Interior, the Office of Management and Budget and the Congress.

DATES (1997): Four (4) consultation sessions will be conducted:

- February 25: Radisson Hotel Seattle Airport, 17001 Pacific Highway S., Seattle, Washington, 98188, (206) 244–6000.
- February 27: Adam's Mark Denver, 1550 Court Place, Denver, Colorado 80202, (303) 893–3333.
- March 6: Holiday Inn Airport North, 1380 Virginia Avenue, East Point, Georgia, 30344, (404) 762–8411.
- March 12: Sheraton Uptown Albuquerque, 2600 Louisiana NE, Albuquerque, New Mexico, (505) 881–0000.

All sessions will begin at 9 a.m. and adjourn at 5 p.m. Comments, oral or written, will be taken until all are received or 5 p.m., whichever comes first.

FOR FURTHER INFORMATION: Contact Shelly Farmer, Staff Assistant, Department of the Interior, Office of the Special Trustee, Office of Trust Funds Management, 505 Marquette N.W., Suite 1000, Albuquerque, New Mexico 87102, telephone number (505) 248–5736 and fax number (505) 248–5741.

SUPPLEMENTARY INFORMATION: All oral and written comments that are presented at the consultation meetings, will be recorded and transcribed. Summaries of the meetings will be available for public inspection after the final meeting or after March 17, 1997.

Dated: January 16, 1997.

Bonnie Cohen,

Assistant Secretary—Policy, Management & Budget.

[FR Doc. 97–1239 Filed 1–17–97; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[CA–063–00–1150–00]

Draft Rangewide Strategy; CA and AZ, Flat-tailed Horned Lizard

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Draft Flat-tailed Horned Lizard Rangewide Management Strategy.

SUMMARY: An interagency working group has prepared a Draft Flat-tailed Horned Lizard Rangewide Strategy (Draft Rangewide Strategy) to provide guidance for the conservation and management of sufficient habitat to maintain viable populations of flat-tailed horned lizards (Phrynosoma mcallii). The species is found only in southwestern Arizona, southeastern California, and adjacent portions of Sonora and Baja California Norte, Mexico. The species was proposed for listing as a threatened species by the U.S. Fish and Wildlife Service (USFWS) on November 29, 1993.

The Draft Rangewide Strategy calls for the establishment of five flat-tailed horned lizard management areas—four in California and one in Arizona. Surface disturbing activities would be limited in these areas. Activities would not be restricted outside of these management areas, but mitigation and compensation measures would be applied. In addition, one research area is proposed.

The Draft Rangewide Strategy was prepared by representatives from Federal, state, and local governments. It is intended to be used as the basis for a conservation agreement among the agencies. Signatory agencies will incorporate measures in the final Rangewide Strategy into their management plans. If the final Rangewide Strategy is adequate in removing threats, listing of the species may not be required.

The Draft Rangewide Strategy is available for review at or may be obtained by writing the following offices:

BLM Desert District Office, 6221 Box Springs Boulevard, Riverside, CA 92509;

BLM Yuma Field Office, 2555 Gila Ridge Road, Yuma, AZ 85365

USFWS Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, CA 92008

USFWS Phoenix State Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021–4951.

DATES: Written comments must be submitted or postmarked no later than February 26, 1997. Two public meetings have been scheduled at the following times and locations:

February 19—7:00–9:00 p.m. PST—BLM El Centro Office, 1661 South 4th Street, El Centro, California; (619) 337–4400

February 20—7:00–9:00 p.m. MST—BLM Yuma Field Office, 2555 Gila Ridge Road, Yuma, AZ 85365; (520) 317–3200

ADDRESSES: Written comments on the Draft Rangewide Strategy should be addressed to: Flat-tailed Horned Lizard Rangewide Management Strategy, 6221 Box Spring Boulevard, Riverside, California 92507.

FOR ADDITIONAL INFORMATION CONTACT: Larry Foreman, BLM California Desert District, (909) 697–5387, or Brenda Smith, BLM Yuma Field Office, (520) 317–3216.

Dated: January 14, 1997.

Molly Brady,

Acting District Manager.

[FR Doc. 97–1338 Filed 1–17–97; 8:45 am]

BILLING CODE 4310–01–M

Bureau of Land Management, Interior

[CA–920–1310–03; CACA 20391]

California: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease CACA 20391 for lands in Kern County, California, was timely filed and was accompanied by all required rentals and royalties accruing from July 1, 1996, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at the rate of $5.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500.00 administrative fee and has reimbursed the Bureau of Land Management (BLM) for the cost of this Federal Register notice.

The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective July 1, 1996, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

For further information contact: Bonnie Edgerly, Land Law Examiner, Bureau of Land Management, 2135 Butano Drive, Sacramento, California 95825–0451, (916) 979–2860.

Dated: January 9, 1997.

Leroy M. Mohorich,

Chief, Branch of Energy and Mineral Science and Adjudication.

[FR Doc. 97–1294 Filed 1–17–97; 8:45 am]

BILLING CODE 4310–40–P

[ID–943–1430–01; IDI–15535]

Public land order No. 7236; Revocation of the Executive Order dated July 2, 1910; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in its entirety an Executive order as it affects 5,063.30 acres of public lands withdrawn for Phosphate Reserve No. 2. Of the lands being revoked, 108.73 acres have been conveyed out of Federal ownership. The 4,954.57-acre balance remains closed to surface entry and mining due to overlapping withdrawals, but these lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: January 21, 1997.

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. The Executive Order dated July 2, 1910, which established Phosphate Reserve No. 2, is hereby revoked in its entirety:

Boise Meridian

T. 5 S., R. 41 E.,
Sec. 35, NW¼ and S½.
T. 14 S., R. 44 E.,
Secs. 20, 27, 28, 29, 32, 33, and 34.
T. 2 S., R. 45 E.,
Sec. 13, lots 2, 3, 6, and 7, and W½SW¼.

The areas described aggregate 5,063.30 acres in Caribou, Bonneville, and Bear Lake Counties.

2. The surface and mineral estate of the following described land has been conveyed out of Federal ownership:

T. 2 S., R. 45 E.,
Sec. 13, lots 2 and 3.

The area described contains 108.73 acres in Bonneville County.

3. The lands described in paragraph 1, except those described in paragraph 2, are within overlapping withdrawals and will not be opened to surface entry or mining.

Dated: January 3, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–1324 Filed 1–17 97; 8:45 am]

BILLING CODE 4310–GG-P

[ID–957–1420–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. January 8, 1997.

The plat representing the dependent resurvey of a portion of lot 1 in section 35 and the survey of lot 7 in section 35, T. 7 N., R. 6 E., Boise Meridian, Idaho, Group No. 876, was accepted January 8, 1997. This survey was executed to meet certain administrative needs of the USDA Forest Service, Region IV, Payette National Forest.

All inquires concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 S. Vinnell Way, Boise, Idaho, 83709–1657.

Dated: January 8, 1997.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 97–1295 Filed 1–17–97; 8:45 am]

BILLING CODE 4310–GG–M

[CA–066–1050–00, CACA 35556]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Riverside County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 19.83 acres of public land in Riverside County to protect the archaeological and Native American Religious values of the Pechanga Historic Site. This notice closes the land for up to 2 years from settlement, sale, location, or entry under the general land laws, including the mining laws, and to the operations of the mineral leasing laws and the Materials Act of 1947.

DATES: Comments and request for a public meeting must be received by April 21, 1997.

ADDRESSES: Comments and meeting requests should be sent to the California State Director, BLM California State Office (CA–931), 2135 Butano Drive, Sacramento, California 95825–0451.

FOR FURTHER INFORMATION CONTACT: Mike Mitchell, BLM, Palm Springs-South Coast Resource Area Office, (619) 251–4821.

SUPPLEMENTARY INFORMATION: On January 3, 1997, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, and to the operations of the mineral leasing laws and the Material Act of 1947, subject to valid existing rights:

San Bernardino Meridian

T. 5 S., R. 4 W.,
Sec. 22, lot 5

The area described contains 19.83 acres in Riverside County.

The purpose of the proposed withdrawal is to protect the archaeological and Native American Religious values of the Pechanga Historic Site.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the California State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the California State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are those which are compatible with the use of land, as determined by BLM.

Dated: January 9, 1997.

David McIlnay,

Chief, Lands Section.

[FR Doc. 97–1304 Filed 1–17–97; 8:45 am]

BILLING CODE 4310–40–P

[CA–330–1430–01; CACA 36364]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 308.49 acres of public lands in Humboldt County to protect the Mattole Estuary. This notice closes the lands for up to 2 years from surface entry and mining. The lands will remain open to mineral leasing and the Materials Act of 1947. Up to approximately 514 acres of non-federally owned lands would be subject to this withdrawal if they are acquired by the United States in the future by exchange, donation, or purchase.

DATES: Comments and requests for a public meeting must be received by April 21, 1997.

ADDRESSES: Comments and meeting requests should be sent to the California State Director, BLM California State Office (CA–931), 2135 Butano Drive, Sacramento, California 95825–0451.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 916–979–2858 or Charlotte Hawks, BLM Arcata Resource Area Office, 707–825–2319.

SUPPLEMENTARY INFORMATION: On January 3, 1997, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Humboldt Meridian

T. 2 S., R. 2 W.,
Sec. 17, NE¼NW¼ and W½NW¼;
Sec. 18, NW¼SE¼.
T. 2 S., R. 3 W.,
Sec. 12, lot 3;
Sec. 13, lots 1 and 2.

The areas described aggregate 308.49 acres in Humboldt County.

In addition, if any of the non-federally owned land within the area described below are acquired by the United States in the future by exchange, donation, or purchase, that land will be subject to this withdrawal:

Humboldt Meridian

T. 2 S., R. 2 W.,
Sec. 16, N½SW¼, SW¼SW¼, SE¼, and that portion described as Parcels 1, 2, and 3 of Parcel Map No. 1369 recorded under Document No. 18699 on August 23, 1976, in Book 12 of Parcel Maps on page 32, Humboldt County Records;
Sec. 21, N½NE¼, SE¼NE¼, and NE¼SE¼.

The areas described aggregate approximately 514 acres in Humboldt County.

The purpose of the proposed withdrawal is to protect the fragile aquatic and estuary resources and critical wildlife habitat on and adjacent to the Mattole River.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the California State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the California State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are those which are compatible with the use of the lands, as determined by BLM.

Dated: January 9, 1997.

David McIlnay,

Chief, Branch of Lands.

[FR Doc. 97–1305 Filed 1–17–97; 8:45 am]

BILLING CODE 4310–40–P

[ID–933–1430–01; IDI–31261]

Opening of Land in a Proposed Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The temporary 2-year segregation of a proposed withdrawal of 3,805.87 acres of National Forest System land for the Forest Service's Howell Canyon Recreation Complex expires March 30, 1997, after which the land will be opened to mining. The land is located in the Boise National Forest. The land has been and will remain open to surface entry and mineral leasing.

EFFECTIVE DATE: March 30, 1997.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3864.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the Federal Register (60 FR 62, March 31, 1995), which segregated the land described therein for up to 2 years from the mining laws, subject to valid existing rights, but not from the general land laws and the mineral leasing laws. The 2-year segregation expires March 30, 1997. The withdrawal application will continue to be processed unless it is canceled or denied. The land is described as follows:

Boise Meridian

T. 12 S., R. 24 E.,
Sec. 36, SW¼,NW¼, W½SW¼ and S½SE¼.
T. 12 S., R. 25 E.,
Sec. 31, lot 4, NE¼,NE¼, SW¼NE¼, W½SE½NE¼, SE¼SW¼ and SE¼;
Sec. 32, S½,SE¼SW¼NW¼, SE¼NW¼ and N½SW¼.
T. 13 S., R. 24 E.,
Sec. 1, N½ lot 1, lots 2 to 4 inclusive, S½NW¼ and SW¼;
Sec. 2;
Sec. 3, lots 1 to 4 inclusive, S½N½, N½S½, SW¼SW¼; and SE¼SW¼;
Sec. 4, lots 1 and 2, S½NE¼, NE¼SW¼, NW¼SW¼, S½SW¼ and SE¼;
Sec. 5, SE¼;
Sec. 9, N½NE¼, SW¼NE¼, E½NW¼, NW¼NW¼, NE¼SW¼, N½SE¼ and SE¼NE¼;
Sec. 10, W½NW¼;
Sec. 11, NE¼;
Sec. 12, NW¼.

The area described aggregate 3,805.87 acres in Cassia County,

At 9 a.m. on March 30, 1997, the land shall be opened to 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. 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: January 10, 1997.

Jimmie Buxton,

Branch Chief, Lands and Minerals.

[FR Doc. 97–1323 Filed 1–17–97; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF INTERIOR

National Park Service

Indian Memorial Advisory Committee; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a scheduled meeting of the Little Bighorn Battlefield National Monument Advisory Committee (a.k.a. Indian Memorial Advisory Committee.) Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: February 15–16, 1997, 9:00 a.m.–5:00 p.m. on 02/15/97, 1:00 p.m.–5:45 p.m. on 02/16/97.

ADDRESSES: Radisson Northern Hotel, Broadway & 1st Avenue North, Billings, Montana 59101. (406) 252–7400.

THE AGENDA OF THIS MEETING WILL BE: Introductions and agenda changes, approve minutes of last meeting, symposium results, budget report, fundraising strategy, future role of NPS support team, jury sub-committee report on design competition, recommendation to Secretary of Interior, development of winning design, plans for traveling exhibit, set schedule and agenda for next meeting.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with: Superintendent, Little Bighorn Battlefield National Monument, P.O. Box 39, Crow Agency, Montana 59022, telephone (406) 638–2621. Minutes of the meeting will be available for public inspection four weeks after the meeting at the Office of the Superintendent of Little Bighorn Battlefield National Monument.

SUPPLEMENTARY INFORMATION: The Advisory Committee was established under Title II of the Act of December 10, 1991, for the purpose of advising the Secretary on the site selection for a memorial in honor and recognition of the Indians who fought to preserve their land and culture at the Battle of Little Bighorn, on the conduct of a national design competition for the memorial, and ''* * * to ensure that the memorial designed and constructed as provided in section 203 shall be appropriate to the monument, its resources and landscape, sensitive to the history being portrayed and artistically commendable.''

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Sutteer, Chief, Office of American Indian Trust Responsibilities, Intermountain Field Area Office, National Park Service, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225–0287, (303) 969–2511.

Dated: January 10, 1997.

Gerard A. Baker,

Designated Federal Officer, Little Bighorn Battlefield National Monument, National Park Service.

[FR Doc. 97–1356 Filed 1–17–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *Air Products and Chemicals, et al.*, Civil Action No. 92–3860 (JBS) (consolidated with Civil Action No. 84–0152 (JBS)), was lodged on January 2, 1997 with the United States District Court for the District of New Jersey. The Settlers are 273 defendants in the pending litigation related to the Gloucester Environmental Management Services (''GEMS'') Landfill Superfund Site (''Site'') in Gloucester Township, Camden County, New Jersey.

Under the terms of the proposed decree, 21 Reopener Settling Defendants will perform certain remedial activities involving the construction and operation of a groundwater extraction system and an on-site groundwater pre-treatment system. In addition, the Reopener Settling Defendants and the 252 *De Minimis* Settling Defendants will pay the United States and the State of New Jersey $9.6 million in settlement of past costs, of which the United States receives $3.275 million, and for natural resource damages.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Air Products and Chemicals, et al.* D.J. reference #90–11–2–292A.

The proposed consent decree may be examined at the Office of the United States Attorney for the District of New Jersey, 970 Broad Street, Room 502, Newark, New Jersey; the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please enclose a check in the amount of $17.50 for solely the consent decree text and an additional $241.25 if copies of the appendices are also requested, or a total of $258.75 for both the text and the appendices (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–1320 Filed 1–17–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to Federal Water Pollution Control Act as Amended by the Oil Pollution Control Act

In accordance with Departmental policy, notice is hereby given that a proposed consent decree in *United States* v. *Conoco Pipe Line Company*, Civil Action No. 96–1482–WEB, was lodged on December 31, 1996 with the United States District Court for the District of Kansas. In a complaint filed contemporaneously with the lodging of the proposed consent decree, the United States alleges that Defendant Conoco Pipe Line Company (''CPL''), pursuant to Sections 301, 309 and 311 of the Clean Water Act (''CWA''), as amended by the Oil Pollution Act of 1990 (OPA), 33 U.S.C. §§ 1311, 1319 and 1321, spilled 594 barrels of oil on five separate occasions into navigable waters in Kansas and Missouri between March 1991 and August 1994.

The proposed consent decree provides that the Defendant will conduct pipe-to-soil surveys, inspect its pipelines, and replace and bury approximately 960 feet of existing pipeline at three water crossings as measures to prevent future oil spills into navigable waters. CPL will also pay a civil penalty of $112,500.

The Department of Justice will receive, for a period of thirty (30) days

from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Conoco Pipe Line Company,* DOJ Ref #90–5–1–1–4208.

The proposed consent decree may be examined at the Office of the United States Attorney, 1200 Epic Center, 301 North Main, Wichita, Kansas 67202; the Region VII Office of the Environmental Protection Agency, Office of Regional Counsel, Air, Water, Toxics and General Law Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.00 (25 cents per page reproduction costs), for a copy of the consent decree, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section.

[FR Doc. 97–1318 Filed 1–17–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v.*Yaffe Iron and Metal Company, Inc.*, Civil Action No. 95–308–B, was lodged on December 30, 1996 with the United States District Court for the Eastern District of Oklahoma.

The proposed consent decree relates to Yaffe's twenty-acre metal reclamation facility located in Muskogee, Oklahoma. This facility is used to recover aluminum and copper from scrap metal. The complaint in this civil action alleges that Yaffe discharges process waste water to an unnamed, intermittent creek, (''UI Creek'') which is connected to Coody Creek, a tributary of the Arkansas River.

The proposed consent decree requires Yaffe to pay a civil penalty of $150,000.00, complete its application for a NPDES permit, and have performed, by an independent company, an environmental audit and correct all violations of environmental statutes disclosed by such audit.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Yaffee Iron and Metal Company, Inc.*, DOJ Ref. #90–5–1–1–5019.

The proposed consent decree may be examined at the office of the United States Attorney, 33 U.S. Courthouse, 5th & Okmulgee Streets, Muskogee, Oklahoma 74401; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of $26.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–1319 Filed 1–17–97; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 94–54]

Rocco's Pharmacy; Revocation of Registration

On May 23, 1994, the then-Director, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Rocco's Pharmacy (Respondent) of Bristol, Pennsylvania, notifying the pharmacy of an opportunity to show cause as to why DEA should not revoke its DEA Certificate of Registration, AR8587125, and deny any pending applications for registration as a retail pharmacy under 21 U.S.C. 823(f), for reason that the pharmacy's continued registration would be inconsistent with the public interest pursuant to 21 U.S.C. 824(a)(4).

On July 5, 1994, the Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Philadelphia, Pennsylvania on March 22, 1995, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify, and introduced documentary evidence.

Following the hearing, but before post-hearing briefs were filed, on April 10, 1995, Respondent filed a Motion to Reopen the Record to Permit Testimony Regarding the Accuracy of the Pill Count (Motion to Reopen the Record), a Motion to Permit Oral Argument at the Conclusion of the Briefing Schedule (Motion for Oral Argument), and a Motion to Admit Character Reference Testimony into the Record. On April 19, 1995, the Government filed a Motion in Opposition to Respondent's Motion to Reopen the Record to Permit Testimony Regarding the Accuracy of the Pill Count, and on April 24, 1995, the Government filed a Motion in Opposition to Respondent's Motion to Permit Oral Argument. On May 10, 1995, the Administrative Law Judge issued a Memorandum to Counsel and Ruling on Motions granting Respondent's Motion to Admit Character Reference Testimony into the Record, and denying Respondent's Motion to Reopen the Record and Motion for Oral Argument.

Subsequently, both parties filed proposed findings of fact, conclusions of law and argument. Then on June 20, 1995, Respondent filed a Motion for Disqualification of Chief Administrative Law Judge Mary Ellen Bittner and Memorandum of Law in Support of Motion (Motion for Disqualification). On March 26, 1996, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, denying Respondent's Motion for Disqualification and recommending that Respondent's DEA Certificate of Registration be revoked. Thereafter, on April 18, 1996, Respondent filed its Exceptions to Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, and on April 30, 1996, the record of these proceedings was transmitted to the Deputy Administrator.

Subsequently, on May 9, 1996, Respondent submitted a Motion for Leave to File Supplemental Exceptions as well as Supplemental Exceptions to Opinion and Recommended Rulings, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge. Judge Bittner forwarded these filings to the Deputy Administrator on May 9, 1996. By letter dated May 10, 1996, the then-Deputy Administrator accepted for consideration Respondent's Supplemental Exceptions and provided the Government an opportunity to file a response to these exceptions. The Government filed its Response to

Respondent's Supplemental Exceptions on May 20, 1996.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, except as specifically noted below, the Findings of Fact, Conclusions of Law and Recommended Ruling of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds James Rocco, Jr. has been a registered pharmacist since 1965, and has owned Respondent pharmacy since 1976. In August 1989, a confidential informant indicated to the Bristol Township Pennsylvania Police Department (Bristol P.D.) that an individual named Ozzie Willis was his source for pharmaceutical drugs and that Mr. Willis was obtaining controlled substances from Respondent without a prescription. Subsequently, Mr. Willis, while under surveillance, obtained controlled substances from Respondent without presenting a prescription and then gave the drugs to the confidential informant in exchange for money. Mr. Willis was then arrested in April 1990. At the time of his arrest, Mr. Willis' car was searched, revealing two empty prescription vials indicating that they had been filled with Percocet, a Scheduled II controlled substance, at another pharmacy, an envelope with 31 Tylenol with codeine #4 (Tylenol #4), a Schedule III controlled substance, a vial from another pharmacy containing 27 Percocet tablets and several loose pills.

Prior to 1990, Ozzie Willis had been found guilty in 1984 and 1986 of the unlawful sale of controlled substances. At the time of his arrest in April 1990, Mr. Willis agreed to cooperate in an investigation of Respondent. Mr. Willis was told that the Bristol P.D. could not promise him anything in exchange for his cooperation, but would testify on his behalf in any proceedings regarding his recent arrest. As part of his agreement with the Bristol P.D., Ozzie Willis was not to purchase controlled substances elsewhere or to go into Respondent pharmacy except when under police surveillance.

Consequently, Mr. Willis, while under surveillance, went to Respondent pharmacy on 15 occasions between April 30 and June 29, 1990 attempting to obtain controlled substances. On each occasion, Mr. Willis was equipped with a recording device and he and his car were thoroughly searched before he entered Respondent. He was under constant police surveillance from the time of the search until he entered the pharmacy and again from the time he left until he was searched again. He was not given advance notice of when an attempted controlled buy would occur.

Mr. Willis' first attempted buy was on April 30, 1990, when he went into Respondent with $40.00 and a prescription vial for prescription number 377809 dated April 18, 1989 for Ozzie Willis. Mr. Willis came out of Respondent with 90 tablets of Tylenol #4 in the prescription vial he brought into the pharmacy. The transcript of this visit reflects that Ozzie Willis stated, ''* * * so this is 40 here for a hundred for today, Social Security check come in I'll pay you 40 right? I didn't bother you last week remember that?'' to which Mr. Rocco replied, ''Yea, O.K.'' Mr. Rocco testified that he dispensed Tylenol #4 to Ozzie Willis pursuant to a telephone prescription from Dr. N. However, Dr. N testified at Mr. Rocco's subsequent criminal trial that while Ozzie Willis had previously been a patient of his, he no longer practiced in the area; he had last treated Ozzie Willis in August 1986; and had not authorized the April 30, 1990 prescription.

Ozzie Willis returned to Respondent on May 3, 1990. While Mr. Willis did not obtain any controlled substances on this occasion the transcript indicates that Mr. Willis asked for Percocet and Mr. Rocco replied, ''* * * I'll tell you what, I'll get a script tonight from a doctor, pick it up tomorrow * * *.'' Mr. Rocco testified at both his criminal trial and at the hearing before Judge Bittner that he would say anything to Mr. Willis to get him to leave the pharmacy because he was rude and obnoxious.

Mr. Willis went back to Respondent pharmacy the next day, May 4, 1990, and came out of Respondent with 30 Percocet tablets in a bottled marked UNI–ACE, a nonprescription pain reliever. Respondent introduced into evidence at the hearing a copy of a prescription for a J.C. dated May 2, 1990 for Percocet, and a copy of a receipt dated May 4, 1990 made out to Ozzie Willis listing two prescriptions for J.C. The transcript of this visit indicates that Ozzie Willis paid Mrs. Rocco $30.00, however there was no mention of J.C. and his prescriptions. Mr. Rocco testified at the hearing that he sold UNI–ACE to Ozzie Willis on May 4, 1990. However, there is nothing on the receipt introduced into evidence by Respondent indicating such a sale.

Ozzie Willis returned to Respondent on May 7, 1990. According to the Bristol police detective who testified at the hearing, Mr. Willis was given $40.00 and the same prescription bottle used on April 30, 1990. Mr. Willis came out of Respondent with 101 Tylenol #4 in the prescription bottle. A receipt introduced into evidence by Respondent indicated that Ozzie Willis picked up a prescription for S.C. and paid $40.00 on his account. Mr. Rocco testified at the criminal trial that he did not provide Tylenol #4 to Ozzie Willis on May 7, 1990.

According to the transcript, on May 9, 1990, Ozzie Willis went to Respondent and asked Mrs. Rocco to ''* * * ask Rocco if I can, can get some more Percs one day next week, either that or either Placidyls.'' Ozzie Willis did not obtain any controlled substances on this occasion.

Mr. Willis returned to Respondent pharmacy on May 16, 1990 with $40.00 and the prescription bottle used on April 30, 1990. He came out of Respondent without the $40.00 and with 100 Tylenol #4 in the prescription bottle. Respondent introduced into evidence a copy of call-in prescription number 409233 from Dr. N for Ozzie Willis for 100 APAP with codeine 60 mg. and a copy of a receipt dated May 16, 1990, indicating that Ozzie Willis paid $20.00 for ''Rx 409233'' and $20.00 for lottery tickets. According to the transcript of this visit, Ozzie Willis told Mr. Rocco, ''* * * I really need them Percs * * *. I done got part of the guy's money.'' Mr. Rocco replied, ''* * * I just got a script from that doctor, thought I'd get you 30 and that would be it. Thirty I got.'' Mr. Rocco told Ozzie Willis to check back with him in two weeks.

On May 18, 1990, Mr. Willis went to Respondent and asked Mr. Rocco if he had obtained ''the script from that other doctor,'' to which Mr. Rocco replied, ''No, not til the end of the month.'' Mr. Rocco testified that he assumed that at the time of this conversation that Ozzie Willis was showing him a bottle for a prescription that could not be filled until the following week.

Ozzie Willis returned to Respondent on May 24, 1990 with $100.00 and emerged with $60.00 and a prescription vial bearing prescription number 410166, indicating that Dr. N was the prescriber, and containing 30 Placidyl, a Schedule IV controlled substance. Respondent placed into evidence a copy of such a call-in prescription. The doctor testified at Mr. Rocco's criminal trial and denied ever having called in any of the prescriptions in question to Respondent.

On May 30, 1990, another controlled buy was attempted, but Ozzie Willis did not obtain any controlled substances.

While in the pharmacy, Mr. Willis told Mr. Rocco, ''I thought you said Percocet, on the first.'' Mr. Rocco replied, ''I'll let you know when I get that * * * from the doctor.''

On June 4, 1990, Ozzie Willis visited Respondent and asked Mr. Rocco, ''* * * did you see that doctor?'' to which Mr. Rocco replied, ''No, not yet.'' Mr. Willis then asked, ''You don't know when?'' and ultimately Mr. Rocco responded, ''Thursday morning, come in and see me then.''

Ozzie Willis then went to Respondent on June 7, 1990, with $60.00 and when he exited the pharmacy, he had a white plastic bottle marked ''Pfeiffer 3+weight loss supplement'' which contained 100 Tylenol #4. The transcript indicates that Mrs. Rocco refers to a $40.00 charge. Respondent introduced into evidence a copy of a call-in prescription number 411301 from Dr. N for Ozzie Wills for 100 APAP with codeine 60 mg. and copy of a receipt dated June 7, 1990 indicating that Ozzie Willis paid $40.00 on account, including $20.00 for prescription number 411301. Again, Dr. N testified earlier that he had not called not called in any of the prescriptions for Ozzie Willis during the time period in question.

While in Respondent on June 12, 1990, Ozzie Willis said to Mrs. Rocco, ''He [apparently referring to Mr. Rocco] told me I could get Percocets the first of this month.'' Mrs. Rocco then told Mr. Willis to call Mr. Rocco the next day.

Ozzie Willis telephoned Respondent on June 13, 1990. During the conversation, Mr. Willis told Mr. Rocco, ''I was in yesterday and Mrs. Rocco told me to call you this morning about the Percocets I was supposed to get the first of the month.'' Mr. Rocco replied, ''yea, if I can get the script.'' Mr. Rocco indicated that the doctor was in the hospital and Ozzie Willis then asked, ''You got any idea when, cause I got people, got three guys waiting for them.'' Mr. Rocco responded, ''it probably won't be till the end of the month, he's supposed to be back the 25th, to work.'' Mr. Willis then asked if he could get some ''4's'' next week, apparently referring to Tylenol #4. Mr. Rocco replied, ''Yea, next week's fine.''

On June 20, 1990, Mr. Willis visited Respondent but did not obtain any controlled substances. During the conversation there was some discussion of whether Mr. Willis could ''get these this week.'' Mr. Rocco said, ''No sooner than Thursday,'' and then asked Mr. Willis, ''You gonna hold it or not?'' Mr. Willis responded affirmatively, and Mr. Rocco said, ''Yea cause it goes by days, everything's finally computerized, you can't, you know * * *.''

According to the transcript, on June 28, 1990 Ozzie Willis asked Mr. Rocco, ''Did the doctor, you tell me the 25th * * *'' and Mr. Rocco replied, ''yea, tomorrow morning come back * * *.'' According to Respondent's prescription log book, Ozzie Willis picked up two prescriptions for non-controlled substances for S.C.

On June 29, 1990, Ozzie Willis went into Respondent with $60.00 and returned with $30.00 and 30 Percocet in a small unlabeled box in a brown bag. Mr. Rocco testified that he did not dispense Percocet to Ozzie Willis on this occasion and that he never provided medication to Ozzie Willis, or to anyone else, in other than a properly labeled container. There was no prescription for Percocet for Ozzie Willis dated June 29, 1990 found at Respondent pharmacy.

Subsequent to the completion of the investigation, it was learned that Ozzie Willis was in Respondent on several occasions when he was not under surveillance by the Bristol P.D., and that he obtained controlled substances from other pharmacies between April 30 and June 29, 1990, both in violation of his agreement with the Bristol P.D. In addition, evidence was introduced into the record which indicated that both before and after the dates of the investigation, Ozzie Willis obtained controlled substances from other pharmacies pursuant to doctors' prescriptions.

Mr. Rocco testified that he had known Ozzie Willis for approximately 6–7 years before the investigation; that Mr. Willis was a very rude person; that he never came into the pharmacy as frequently as he did between April 30 and June 29, 1990; and that Ozzie Willis' prescriptions indicated that the medication was for back pain and perhaps arthritis. Mr. Rocco testified that because Ozzie Willis was so loud and obnoxious when he was in Respondent, Mr. Rocco would say anything and agree with Mr. Willis in order to get him out of the store. However, Mr. Rocco testified that he never provided Ozzie Willis with controlled substances except pursuant to what Mr. Rocco believed to be a proper prescription.

On July 23, 1990, a search warrant was executed at Respondent pharmacy by a number of officers of the Bristol P.D., an agent of the Pennsylvania Bureau of Narcotics Investigation (BNI), and an assistant district attorney. Given the number of people in Respondent during the execution of the warrant, it was very crowded and chaotic. Respondent's records pertaining to controlled substances, as well as its computer, were seized. No biennial inventory was found. Mr. and Mrs. Rocco cooperated with the search and showed the officers the various locations where the controlled substances and controlled substance records were kept. The BNI agent conducted a count of the Schedule II controlled substances on hand, however Mr. Rocco testified that it was not done under his ''direct supervision'' because he was getting things for the other officers.

Subsequent to the execution of the search warrant, a DEA investigator conducted an accountability audit of Respondent's handling of Percocet and its generic equivalents for the period May 1, 1989 through July 23, 1990. Since Respondent did not have a biennial inventory, the investigator first used a zero initial inventory figure for May 1, 1989. However, after reviewing Respondent's records, the investigator determined that while Respondent had not received any Percocet or its generic equivalents between May 1, and May 28, 1990 (the date of its first record of receipt), it had dispensed 1,708 dosage units. Therefore, the investigator used 1,708 as the initial inventory figure on the premise that Respondent could not have dispensed what it did not have. In its post-hearing filings, Respondent argued that the investigator's premise was incorrect because it contended that Respondent's first receipt of Percocet was May 25, 1990 and not May 28, 1990, and that it had dispensed 278 dosage units between May 25 and May 27, 1990. The Acting Deputy Administrator concludes that the investigator's interpretation of the records was correct. Pursuant to 21 CFR 1305.09(e), a purchaser of controlled substances (in this instance Respondent) is required to indicate the date of receipt of Schedule II controlled substances on the appropriate copy of the order form. Respondent introduced into evidence a copy of the order form signed by Mr. Rocco which indicates that the Percocet was received on May 28. It is possible that Respondent is confused and that May 25 is the date the Percocet was shipped by the wholesaler, but it was not the date received. Accordingly, the Acting Deputy Administrator finds that the initial inventory figure of 1,708 was proper.

Respondent's records, as well as summaries from the wholesaler, indicated that Respondent received 27,000 dosage units of Percocet and its generic equivalents during the audit period. Therefore, Respondent was accountable for 28,708 dosage units.

The DEA investigator did not conduct the closing inventory, but used the

figure provided to her by the BNI agent who conducted the count of drugs on hand during the execution of the search warrant. The BNI agent testified at the hearing that it was unusual to conduct a pill count during execution of a warrant and both Mr. and Mrs. Rocco testified that it was chaotic with so many people in the store. However, the BNI agent repeatedly asked both Mr. and Mrs. Rocco where all of the Schedule II controlled substances were located. The BNI agent testified that in conducting the count, she used a pill counter, but since that is not very reliable, she verified the count by hand. Mrs. Rocco stated that she did not see the agent doing a hand count. However, as noted above, it was very crowded and chaotic in the store.

During questioning at the hearing regarding her notes of the pill count, the BNI agent stated that she would not know which specific types of generic equivalents of Percocet she counted since she listed everything under Percocet, specifying each bottle by the manufacturer, not the name of the substance, However, the BNI agent testified that she counted all of the Percocet and generic equivalents shown to her by the Roccos. The BNI agent concluded that Respondent had 2,657 dosage units of Percocet and its generic equivalents on hand on July 23, 1990.

Respondent argues that the closing inventory is inaccurate since the BNI agent's notes do not reflect the generic manufacturers for oxycet and roxicet and therefore those substances were not counted. Both Mr. and Mrs. Rocco testified that they believed that throughout 1990, Respondent always maintained some oxycet and roxicet. Order forms introduced into evidence by Respondent indicate that both oxycet and roxicet were purchased during the audit period. However the Acting Deputy Administrator agrees with the Administrative Law Judge that Respondent offered no definitive evidence that oxycet and roxicet were on hand on July 23, 1990, and given Respondent's overall dispensing pattern of Percocet it would not be unreasonable to find that there might not have been any on hand on that date.

In its Supplemental Exceptions, Respondent also argues that the closing inventory figure in the computation chart is inaccurate due to a mathematical error. Respondent contends that the BNI agent's notes indicate that the closing figure should have been 4,248 dosage units rather than 2,657, since the BNI agent failed to add in 1,591 which was noted as ''Perc Gen'' in her notes. The Acting Deputy Administrator finds that this argument is without merit. As the Government asserts, ''Perc Gen'' is most likely referring to Percodan, not Percocet. This assertion is supported by the BNI agent's working papers which were put into evidence by Respondent where a listing of the controlled substances counted indicates 1,591 next to ''Percodan''. Therefore, the Acting Deputy Administrator finds that the closing inventory figure used by the DEA investigator in conducting the audit of Percocet and its generic equivalents was correct.

To determine how much Percocet and its generic equivalent were sold by Respondent during the audit period, the DEA investigator looked at both Respondent's prescription records, as well as reports required to be filed with the BNI regarding all Schedule II prescriptions dispensed. In reviewing the records, it was revealed that during the audit period, 21 prescriptions found at Respondent pharmacy were not listed in the BNI reports, and 21 different prescriptions listed in the reports were not found in Respondent's records. In arriving at the sales figure for the audit, the DEA investigator included all of these prescriptions in the total amount dispensed. In its Motion to Reopen the Record, Respondent argued that the sales figure was inaccurate since the DEA investigator did not look at Respondent's Schedule III–V prescription files to see if any prescriptions for Percocet or its generic equivalent were misfiled. The Acting Deputy Administrator finds this argument to be without merit since the DEA investigator testified at both the criminal trial and the hearing before Judge Bittner that she reviewed all of the prescription files, including Schedules III–V, to look for prescriptions for Percocet or its generic equivalent.

The audit revealed that Respondent could not account for 2,167 dosage units of Percocet and its generic equivalent.

The DEA investigator testified that during the course of her review of the records seized during execution of the search warrant, she found only one prescription for Ozzie Willis. It was dated May 24, 1990 for Placidyl and indicated that it had been called in by Dr. N. As noted above, Dr. N previously testified that he did not authorize this prescription. In addition, the investigator's review of the BNI reports filed by Respondent did not reveal any prescriptions listed for Ozzie Willis.

As a result of the investigation, criminal charges were brought against Mr. Rocco. Neither party submitted direct evidence regarding these charges and/or their disposition. However, it appears based upon Respondent's assertions in its post-hearing filing and statements made by the DEA investigator that testified in these proceedings, that Mr. Rocco was charged with seven counts of dispensing controlled substances without a prescription; that the jury was hung on six of those counts and found Mr. Rocco not guilty of the seventh; that rather than retry Mr. Rocco, he was accepted into an Accelerated Rehabilitation Disposition program in March 1992; and pursuant to that program, all charges against Mr. Rocco were dropped in March 1994.

Respondent introduced into evidence a number of character references from various members of his community, all stating that they had known Mr. Rocco for many years and attesting to his personal and professional integrity, his professional expertise and his concern for his customers.

On April 10, 1996, after the hearing was concluded but prior to the filing of post-hearing briefs, Respondent submitted its Motion to Reopen the Record, Motion for Oral Argument, and Motion to Admit Character Reference Testimony into the Record. The Government did not oppose Respondent's Motion regarding character reference testimony, and on May 10, 1995, Judge Bittner granted this motion and received Respondent's character reference letters into evidence.

In its Motion to Reopen the Record, Respondent argues that it was prejudiced by the Government's failure to comply with the Prehearing Ruling issued by the Administrative Law Judge. Respondent argues that the Prehearing Ruling ordered the Government to advise Respondent in writing of the documents that were used as the basis for the pill count and the preparation of the computation chart, and that Respondent did not receive a copy of the BNI agent's notes regarding her pill count taken during the execution of the search warrant on July 23, 1990, until the hearing in this matter. In support of its Motion, Respondent also argues that the BNI agent was uncertain about generic equivalents of Percocet; that the DEA investigator's starting inventory of 1,708 dosage units of Percocet was incorrect because it failed to account for a shipment Respondent received on May 25, 1989; that the sales figure on the computation chart was incorrect because it failed to take into account six misfiled prescriptions; that the closing inventory must have been inaccurate because Respondent dispensed more generic oxycodone with APAP between the date of the closing inventory and its next shipment than it would have had

on hand according to the inventory; that the circumstances in which the closing inventory was taken were unfair to Respondent; that its May 1991 inventory showed a surplus; and that reopening the record to permit Respondent to adduce new evidence is required in the interests of justice and would not unduly burden the Government or waste judicial resources.

In denying Respondent's motion, Judge Bittner found that ''[t]here is no indication that [the DEA investigator] relied on any documents (the BNI agent) drafted in preparing the computation chart.'' Judge Bittner therefore found ''no merit to Respondent's contention that the Government failed to comply with the prehearing ruling.'' Judge Bittner also found that Respondent's argument that it dispensed more generic form of Percocet than the closing inventory plus subsequent receipts is ''untenable'' inasmuch as the BNI agent's notes are ambiguous regarding whether her figures referred to Percocet or its generic equivalents. Further, in rejecting Respondent's Motion to Reopen the Record, Judge Bittner found that there was no showing that Respondent could not have found the allegedly misfiled prescriptions earlier, and that an order form in evidence as a Respondent exhibit, correctly shows that May 28, 1989 was the date Respondent first received Percocet or its generic equivalent after May 1, 1989.

As the Government correctly asserts in its Opposition to Respondent's Motion to Reopen the Record, neither the DEA regulations nor the Administrative Procedure Act provide for the submission of additional evidence after the hearing has been concluded and the record closed. The Deputy Administrator has previously held that he has discretionary authority to request that a record be reopened to receive newly discovered evidence on the basis that a final order must be issued based upon a full and fair record. See *Robert M. Golden, M.D.,* 61 FR 24,808 (1996). In *Golden,* the Deputy Administrator concluded that, ''to prevail on such a motion, the moving party must who that the evidence sought to be introduced (1) was previously unavailable and (2) would be material and relevant to the matters in dispute.''

Respondent was on notice as of May 23, 1994, the date of the Order to Show Cause that Respondent's failure to keep complete and accurate records regarding controlled substances would be an issue in this case. By October 1994, Respondent was provided a copy of the audit computation chart. Other than the BNI agent's notes regarding the pill count, there is no evidence in Respondent's motion that other information was previously unavailable.

Regarding the closing inventory, Respondent contends that the Government did not comply with the Prehearing Ruling since it failed to turn over the BNI agent's notes regarding the pill count in advance of the hearing. Judge Bittner disagreed with this contention, seemingly confining her order to those documents relied upon by the DEA investigator in preparing the computation chart. Since the Acting Deputy Administrator was not a party to the prehearing discussions, it is difficult to know what was actually agreed to regarding the underlying documents to the computation chart. However, a plain reading of Judge Bittner's Prehearing Ruling appears to support Respondent's contention. The Prehearing Ruling orders the Government counsel to advise counsel for Respondent ''in writing what documents was used as the basis for the inventory count on July 23, 1990, and the subsequent preparation of the computation chart.'' Therefore, the Acting Deputy Administrator disagrees with the Administrative Law Judge that the Government did not violate the Prehearing Ruling.

However, the Acting Deputy Administrator does not find that the Government's failure to turn over the notes was intentional, since Government counsel asserts that she was not aware of the notes herself and apparently mistakenly thought, as did the Administrative Law Judge, that she only needed to turn over what the Government witness relied upon in preparing the computation chart. The DEA investigator testified that in obtaining the closing inventory figure she relied upon the verbal representation of the BNI agent.

Respondent argued that its failure to obtain the BNI agent's notes prior to the hearing put it at an unfair disadvantage and the record should be reopened. The Acting Deputy Administrator disagrees. First, the only aspect of the audit that the notes pertain to is the closing inventory. Therefore, the failure to turn over the notes regarding the pill count does not give rise to the entire audit being reopened. Respondent was clearly on notice regarding the other parts of the audit, and had ample opportunity to prepare for the hearing. Second, Respondent argues that the notes of the pill count indicate that the BNI agent did not count oxycet and roxicet and therefore the closing inventory figure is incorrect. The transcript of the hearing clearly indicates that Respondent thoroughly questioned the BNI agent as to whether she counted all of the percocet and its generic equivalents. Respondent also questioned both Mr. and Mrs. Rocco regarding its stock of the substances, and introduced into evidence copies of orders forms indicating the purchase of the substances during the audit period.

Consequently, the Acting Deputy Administrator finds that Respondent was not prejudiced by not being provided the BNI agent's notes in advance of the hearing. Therefore, while not agreeing with the Administrative Law Judge regarding whether there was a violation of the Prehearing Ruling, the Acting Deputy Administrator does agree with her denial of the motion to reopen the record. Respondent did not present any evidence that, other than the BNI agent's notes, the evidence was previously unavailable. Further, Respondent was not prejudiced by not receiving the notes earlier since it had the opportunity to not only question the BNI agent about the pill count, but also introduced other evidence in the record regarding oxycet and roxicet.

In its Motion for Oral Argument, Respondent argued that oral argument after filing of the briefs would effectively summarize testimony from the criminal proceeding which is in evidence in this proceeding; that it would facilitate the Administrative Law Judge's understanding of the parties' positions; and that it would not substantially prejudice the Government. In denying Respondent's Motion, Judge Bittner stated that she was ''not persuaded * * * that oral argument would significantly assist [her] in preparing a decision in this proceeding * * *.'' She further stated that her denial of the motion is ''without prejudice to Respondent's right to raise in its posthearing brief the issues it intended to argue orally.''

As the Government correctly notes, there is nothing in the regulations governing these proceedings that provides for oral argument following the filing of briefs. Consequently, the Acting Deputy Administrator finds that it is in the Administrative Law Judge's discretion whether or not to permit oral argument.

On June 20, 1995, Respondent filed a Motion for Disqualification of the Chief Administrative Law Judge. Respondent contends that the ''Judge in this case has exhibited open and obvious favoritism to the Government which not only shatters the appearance of impartiality, but in fact demonstrates actual pro-Government bias * * *.'' Respondent argues that the Administrative Law Judge's admonishment of Respondent's counsel for failing to request a subpoena more in advance of the proceeding is

evidence of their bias. The Acting Deputy Administrator concludes that any statement made regarding the timing of the subpoena of the BNI agent is irrelevant to his decision in this matter. The BNI agent ultimately appeared and testified at the hearing, and this final order is based upon the testimony and documentary evidence introduced at the hearing.

Respondent argues that the Administrative Law Judge's bias is exhibited by her mischaracterization of her own Prehearing Ruling by finding that the Government did not violate the Ruling by failing to turn over the BNI agent's notes regarding the pill count to Respondent's counsel. While, the Acting Deputy Administrator has already found that it appears that the Administrative Law Judge did mischaracterize her Prehearing Ruling, such a mischaracterization in no way warrants disqualification. The regulations governing these proceedings provide for the filing of exceptions when a party disagrees with a finding, conclusion and/or ruling of the Administrative Law Judge. Respondent availed himself of this opportunity, and the Acting Deputy Administrator concurs with Respondent's contention that the Prehearing Ruling was mischaracterized. However, as previously discussed, the discovery of the BNI agent's notes was not significant enough to reopen the record since the notes only affected the closing inventory, and Respondent questioned the BNI agent about the closing inventory at the hearing.

Respondent further argues that the Administrative Law Judge was biased in her ruling denying Respondent's Motion to Reopen the Record, as evidenced by her acceptance of the DEA investigator's interpretation of when controlled substances were first received by Respondent after May 1, 1989, without allowing Respondent an opportunity to introduce evidence to rebut the interpretation. The Acting Deputy Administrator finds no evidence of bias in this ruling since he concurs with Judge Bittner's conclusion. First, since Respondent was on notice of the computation chart well in advance of the hearing, it had more than ample opportunity to prepare for this aspect of the audit. Respondent's lack of preparation does not warrant reopening the record. Second, even if Respondent had been allowed to present evidence regarding the initial inventory after the record had been closed, the Acting Deputy Administrator's conclusion would not change. Respondent's own order form signed by Mr. Rocco demonstrates that Respondent received the controlled substances in question on May 28, 1989.

Respondent also argues that the Administrative Law Judge's denial of Respondent's Motion for Oral Argument evidences Judge Bittner's bias in that ''the Government enjoyed an effective veto power.'' Respondent contends that Judge Bittner's denial of this motion is ''difficult to rationalize on any basis other than the fact that the Government opposed it.'' As stated previously, the regulations do not provide for oral argument following submission of the briefs, therefore, to grant such a request would be extraordinary. Consequently, the Acting Deputy Administrator does not find Judge Bittner's denial of Respondent's motion unreasonable since as she stated, she was ''not persuaded at this time that oral argument would significantly assist [her] in preparing a decision in this proceeding * * *.''

Finally, Respondent argues that ''the very structure of Administrative Law Judges inherently raises suspicions about their capacity for judicial independence.'' As Judge Bittner noted in her opinion, ''the Supreme Court of the United States and various United States Courts of Appeals have found that the Administrative Procedure Act 5 U.S.C. 551 et. seq., safeguards the procedural and substantive due process rights of parties to administrative proceedings and the independence of the Administrative Law Judges who hear them.'' See, e.g., *Butz* v. *Economou*, 438 U.S. 478, 513–15 (1978); *Nash* v. *Califano*, 613 F.2d 10, 14–16 (2d Cir. 1980).

The Acting Deputy Administrator concludes that other than her mischaracterization of the Prehearing Ruling, Judge Bittner's rulings in this matter have been correct based upon a careful consideration of the evidence and the laws and regulations governing these proceedings. The Acting Deputy Administrator is not persuaded by Respondent's arguments that the Administrative Law Judge has exhibited pro-Government bias in this matter. Accordingly, Respondent's Motion for Disqualification was properly denied.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwartz, Jr., M.D., Docket No. 88–42, 54 FR 16.422 (1989).

Regarding factor one, there is no evidence in the record that any action has been taken by any state agency against either Respondent pharmacy or Mr. Rocco, therefore, this factor is not relevant in determining the public interest in this case. Respondent argues in his exceptions that the Administrative Law Judge should have considered this lack of state action in Respondent's favor in rendering her recommendation. The Acting Deputy Administrator concludes that this factor should be given no weight since there is no evidence in the record that a hearing was conducted by a state agency and no action was taken or that the state agency formally reviewed the evidence and declined to take action.

Regarding factor two, Respondent's experience in dispensing controlled substances, Mr. Rocco has been a practicing pharmacist for over 30 years. It has introduced letters into evidence form various members of the community attesting to Mr. Rocco's professionalism and value to the community. While the other evidence in the record regarding this factor covers a relatively small portion of Mr. Rocco's 30 years as a pharmacist, his dispensing to Ozzie Willis and the results of the audit covering an approximately 14 month period of time raise serious concerns regarding Respondent's continued registration.

Respondent contends that Mr. Rocco only dispensed controlled substances to Ozzie Willis pursuant to what he believed to be valid prescriptions. Respondent argues that either Dr. N authorized the prescription or Mr. Willis called the prescriptions into the pharmacy since he knew Dr. N's DEA registration number. However, the Acting Deputy Administrator, like Judge Bittner, does not credit this explanation

for the drugs provided on April 30, May 16, May 24, and June 7, 1990. Dr. N testified in Mr. Rocco's criminal proceeding that he did not authorize any of these prescriptions, and other than the May 24th prescription for Placidyl, none of these prescriptions were found in Respondent's records seized during execution of the search warrant.

On the other occasions, May 4, May 7, and June 29, 1990, when Ozzie Willis came out of Respondent pharmacy with controlled substances, Respondent argues that Mr. Willis had had an opportunity to plant the drugs. While Respondent argues in its exceptions that Mr. Willis might have had a motive to plant incriminating evidence on Respondent's premises, the Acting Deputy Administrator finds that this argument is speculative. The transcripts of Mr. Willis' visits, as well as the fact that no evidence was presented that anyone saw Ozzie Willis planting and/or retrieving the drugs belie such a theory. As Judge Bittner noted in her opinion, ''on May 3 Mr. Rocco told Mr. Willis that he would obtain a prescription that night; on subsequent visits Mr. Rocco repeatedly said he would see a doctor and/or obtain a prescription, on June 13 Mr. Rocco said that the doctor in question was hospitalized until June 25, and on June 28 Mr. Rocco told Mr. Willis to come back the next day.'' Therefore, the Acting Deputy Administrator agrees with Judge Bittner that ''it is reasonable to infer * * * that on May 4 and June 29 Mr. Rocco carried out his previously stated intention to provide Percocet to Mr. Willis'' rather than that the drugs were planted.

Respondent argues that the fact that no Percocet prescriptions for Ozzie Willis were found at Respondent pharmacy supports the theory that Mr. Rocco was only talking about obtaining a prescription from a doctor to get Ozzie Willis out of the pharmacy. However, the Acting Deputy Administrator finds that nothing in the transcript of Mr. Willis' visits indicates that a prescription would be written in Ozzie Willis' name, but just that Mr. Rocco needed to obtain a prescription from a doctor before he could give Mr. Willis any Percocet.

Regarding the May 7th visit, Respondent argues that Ozzie Willis had an opportunity to plant the Tylenol #4 obtained on that occasion. Again, the Acting Deputy Administrator finds this argument to be speculative. Mr Willis was not given advance notice when he would be sent into the pharmacy, and there was no evidence presented that anyone saw Mr. Willis planting and/or retrieving the drugs.

Respondent contends that he only dispensed controlled substances in properly labeled containers, but that Ozzie Willis switched the controlled substances into the other containers. The Acting Deputy Administrator finds this argument also to be speculative. Since Mr. Willis was searched and under surveillance going into the pharmacy and after coming out of the pharmacy, he would have had to switch containers in the store. Like with the theory that Mr. Willis planted drugs, there is no evidence in the record that anyone saw Ozzie Willis switching containers while in the pharmacy. In addition, on May 24, 1990, Mr. Willis emerged from Respondent with Placidyl in a properly labeled container even though the prescription was not authorized by Dr. N. If as Respondent argues, Mr. Willis was switching containers, it would follow that he would have switched the container on this occasion also.

The Acting Deputy Administrator finds the transcripts of conversations between the Roccos and Mr. Willis of considerable significance in evaluating Respondent's experience in dispensing controlled substances. On May 3, 1990, Ozzie Willis asked for Percocet, and Mr. Rocco replied, ''I'll tell you what, I'll get a script tonight from a doctor, pick it up tomorrow * * *.'' The next day, Ozzie Willis came out of Respondent pharmacy with 30 Percocet tablets in a UNI–ACE bottle.

On May 9, 1990, Ozzie Willis asked Mrs. Rocco to ''ask Rocco if I can, can get some *more* Percs one day next week, either that or either Placidyls.'' (emphasis added). The Acting Deputy Administrator finds it noteworthy that since no Percocet prescriptions for Ozzie Willis were found at Respondent pharmacy, why would Mr. Willis ask for ''more Percs'', unless he had been dispensed the Percocets without a valid prescription.

Ozzie Willis told Mr. Rocco on May 16, 1990, ''* * * I really need them Percs * * * I done got part of the guy's money.'' Mr. Rocco replied, ''* * * I just got a script from that doctor, thought I'd get you 30 and that would be it. Thirty I got.'' Mr. Rocco told Mr. Willis to come back in two weeks. The Acting Deputy Administrator finds significant that two weeks before this visit, on May 4th, Ozzie Willis came out of Respondent's pharmacy with 30 Percocet after being told the day before that Mr. Rocco would get a prescription from a doctor.

On May 18, 1990, Ozzie Willis asked Mr. Rocco, ''* * * you get the script from that other doctor?'' Mr. Rocco replied, ''No, not til the end of the month.'' On May 30, 1990, Mr. Rocco stated, ''I'll let you know when I get that.'' Then on June 4, 1990, Mr. Willis asked Mr. Rocco, ''did you see that doctor?'' Mr. Rocco replied, ''no, not yet * * *. Thursday morning, come in and see me then.'' During a telephone conversation on June 13, 1990, Mr. Willis asked about ''the Percocets I was supposed to get the first of the month.'' Mr. Rocco replied, ''Yeah, not this month though.'' Mr. Willis then stated, ''last month you told me, the first of June,'' to which Mr. Rocco answered, ''* * * if I can get the script * * * but I haven't got the script.'' Mr. Rocco went on to explain that the doctor went into the hospital. Mr. Willis asked, ''You got any idea when, cause I got people, got three guys waiting for them.'' Mr. Willis replied, ''* * * it probably won't be till the end of the month he's supposed to be back the 25th, to work.''

Then on June 28, 1990, Mr. Willis asked about the doctor and Mr. Rocco stated, ''Yea, tomorrow morning come back.'' On June 29th Ozzie Willis came out of Respondent pharmacy with 30 Percocet in a small unlabeled box in a brown bag.

The Acting Deputy Administrator concludes that these transcripts show that Ozzie Willis and Mr. Rocco were discussing the dispensing of Percocet to Mr. Willis without a valid prescription.

Respondent contends that Ozzie Willis was unreliable and dishonest; that he wrongly stated that Respondent was his source of controlled substances; and that the entire investigation was tainted because Ozzie Willis violated his agreement with the Bristol P.D. by going to Respondent when he was not under surveillance and by continuing to obtain controlled substances from other sources during the investigation. The Acting Deputy Administrator finds that given the criminal trial testimony and printouts from various pharmacies admitted into evidence in this proceeding, as well as the contents of Ozzie Willis' car at the time of his arrest on April 30, 1990, it is clear that Mr. Willis was obtaining controlled substances from places other than Respondent pharmacy. The Acting Deputy Administrator also finds that Ozzie Willis clearly violated his cooperation agreement with the Bristol P.D. and was convicted two times previously of offenses relating to drugs. However, the Acting Deputy Administrator concludes that regardless of these facts, the evidence is clear that Ozzie Willis obtained controlled substances from Respondent without a valid prescription.

Respondent's inability to account for over 2,000 dosage units of Percocet and its generic equivalents over an approximately 14 month period of time is of serious concern to the Acting Deputy Administrator in evaluating Respondent's experience in dispensing controlled substances.

Regarding factor three, other than Respondent's assertions in its post-hearing filing, there is virtually no evidence in the record regarding this factor, However, it appears that criminal charges against Mr. Rocco were ultimately dismissed after his successful participation in an Accelerated Rehabilitation Disposition program. Therefore, since there is no evidence of a conviction regarding controlled substances, the Acting Deputy Administrator concurs with Judge Bittner's finding that this factor does not weigh against Respondent's continued registration.

As to factor four, the Acting Deputy Administrator concurs with Judge Bittner's conclusion that ''Respondent's failure to comply with state law and the Controlled Substances Act and its implementing regulations weigh in favor of a finding that its continued registration would not be in the public interest.'' Respondent's dispensing of controlled substances without a valid prescription to Ozzie Willis was in violation of 21 U.S.C. 829 and 21 CFR 1306.11 and 1306.21 Further, his dispensing of some of these substances in improperly labeled containers violated 21 CFR 1306.14 and 1306.24.

In addition, the review of Respondent's records seized during the execution of the search warrant on July 23, 1990 revealed recordkeeping violations, First, Respondent failed to comply with state law as evidenced by the reports it filed with BNI regarding its dispensing which did not indicate 21 prescriptions which were found in Respondent's files. Second, Respondent violates 21 U.S.C. 827 and 21 CFR 1304.04 as evidenced by the 21 prescriptions noted on the BNI reports that were not found in Respondent's records seized from the pharmacy. Respondent also violated 21 CFR 1304.13, by failing to maintain a biennial inventory. Finally, Respondent violated 21 U.S.C. 827 and 21 CFR 1304.21, by failing to maintain complete and accurate records of controlled substances as evidenced by the shortage of Percocet revealed by the DEA accountability audit.

Respondent argued in its exceptions that in assessing Respondent's compliance with applicable state and Federal laws and regulations, the Administrative Law Judge's decision ''was heavily dependent on her interpretation of the meaning of audiotaped conversations,'' and that ''she relied entirely on typed transcripts'' rather than listening to the tapes themselves. The transcripts of the conversations are all that are in evidence in this proceeding, and there is no indication in the transcript of the hearing in this matter that Respondent objected to their admission into evidence. Therefore, the Acting Deputy Administrator finds that the Administrative Law Judge did not err in relying on these transcripts in rendering her recommended decision.

Respondent also argues that the Administrative Law Judge improperly relied upon hearsay testimony of Dr. N that he did not authorize the call-in prescriptions in question in this proceeding and that Judge Bittner erred in finding that Dr.N had no motivation to lie, and in ignoring the possibility that Ozzie Willis, knowing Dr. N's DEA number could have called the prescriptions in to Respondent's pharmacy. The Acting Deputy Administrator has considered these arguments and is not persuaded by them, particularly since only one of these prescriptions was found in Respondent's records seized during execution of the search warrant.

The Acting Deputy Administrator does however concur with Respondent's exception regarding the Administrative Law Judge's reliance as evidence of unlawful dispensing on the discovery of a prescription profile in Ozzie Willis' name spelled backwards. There is no evidence in the record regarding this profile other than the fact that it was discovered and therefore the Acting Deputy Administrator does not rely upon it as evidence of unlawful dispensing of controlled substances and Respondent pharmacy.

Respondent also argues that the Administrative Law Judge ignored the prescription for J.C. for Percocet dated May 2, 1990 which was picked up by Ozzie Willis on May 4th. However, the Acting Deputy Administrator notes that on May 3, 1990, Mr. Rocco told Ozzie Willis that he'd get a prescription from a doctor that night and for Mr. Willis to pick up the Percocet the next day. Therefore, the Acting Deputy Administrator concurs with the Administrative Law Judge's finding that Respondent dispensed Percocet on May 4, 1990 without a valid prescription.

Respondent also argues that the audit was improperly based on hearsay statements from an employee of Respondent's wholesaler. First, the Acting Deputy Administrator finds that hearsay is clearly admissible in administrative proceedings. See *Klinestiver* v. *Drug Enforcement Administration,* 606 F.2d 1128 (D.C. Cir. 1979). Second, in conducting the audit, the DEA investigator sought information from the wholesaler to verify Respondent's own records which it is required to maintain pursuant to the Controlled Substances Act.

The Acting Deputy Administrator finds the Respondent clearly violated both state and Federal laws and regulations relating to controlled substances and therefore factor four is highly relevant in determining whether Respondent's continued registration is in the public interest.

Regarding factor five, the Acting Deputy Administrator concurs with the Administrative Law Judge's finding that ''Mr. Rocco's apparent dishonesty and refusal to accept responsibility for his misconduct does not augur well for his future responsibility if permitted to retain his DEA registration.'' In a previous case, the Administrator found that a pharmacist's ''refusal to acknowledge the impropriety of his dispensing practices * * * give[s] rise to the inference that [he] is not likely to act more responsibly in the future.'' Medic-Aid Pharmacy, 55, FR 30,043 (1990). Like Judge Bittner, the Acting Deputy Administrator has considered Respondent's character references, however they do not outweigh the evidence of Respondent's improper dispensing and recordkeeping. Consequently, this factor weighs against Respondent's continued registration.

The Acting Deputy Administrator agrees with Judge Bittner, that based upon a careful consideration of the factors enumerated in 21 U.S.C. 823(f), the record as a whole establishes that Respondent's continued registration would be inconsistent with the public interest. Respondent pharmacy's dispensing of controlled substances without a valid prescription, the shortage of Percocet and its generic equivalents revealed by the accountability audit, its violations of applicable laws and regulations, and Mr. Rocco's continued denials of any wrongdoing whatsoever support such a conclusion. Therefore, the Acting Deputy Administrator concludes that revocation of Respondent's DEA Certificate of Registration is an appropriate remedy.

Respondent asserts in its exceptions that the Administrative Law Judge improperly focused on the same misconduct in her analysis of three of the five factors. The Acting Deputy Administrator concludes that there is no merit to this argument, finding that there is nothing in the statute that

precludes the same behavior from being considered under multiple factors. DEA has consistently considered the same conduct under more than one factor. See Robert M. Golden, M.D., 61 FR 24,808 (1996); Herman E. Walker, Jr., M.D., 60 FR 52,705 (1995).

Respondent, in its post-hearing filings further argues that DEA's failure to initiate administrative proceedings against Respondent's DEA Certificate of Registration sooner or to immediately suspend Respondent's registration pursuant to 21 U.S.C. 824(d), ''is inconsistent with a contention that continued registration would violate the public interest.'' The Acting Deputy Administrator finds no merit to this argument. First, an immediate suspension of a registration pursuant to 21 U.S.C. 824(d) can only be utilized by DEA when a finding has been made ''that there is an imminent danger to the public health or safety.'' Since a registration is immediately suspended without first providing an opportunity for a hearing, clearly Congress did not intend this tool to be used in every instance where DEA alleges that continued registration would be inconsistent with the public interest. Therefore, the Acting Deputy Administrator rejects Respondent's contention that, ''* * * rather than put this case on the fast track, the DEA put it on a slow track which belies any contention about threats to the public interest.''

Second, as to DEA's failure to initiate proceedings sooner, the Acting Deputy Administrator finds that while passage of time, alone is not dispositive, it is a consideration in assessing whether Respondent's continued registration is inconsistent with the public interest. See Norman Alpert, M.D., 58 FR 67,420 (1993). However, in Alpert, the then-Acting Administrator found significant, ''Respondent's recognition of the serious abuse of his privileges as a DEA registrant, and his sincere regret for his actions.'' In this case, Mr. Rocco continues to deny that the pharmacy has misused its DEA registration. Therefore, the Acting Deputy Administrator concludes that the fact that DEA did not initiate proceedings sooner is outweighed by Respondent's continued denial of wrongdoing.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104 hereby orders that DEA Certificate of Registration AR8587125, issued to Rocco's Pharmacy, be, and it hereby is, revoked and any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective February 20, 1997.

Dated: January 14, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–1385 Filed 1–17–97; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–005]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

DATES: February 6, 1997, 9:00 a.m. to 3:00 p.m.; and February 7, 1997, 1:00 p.m. to 3:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 9H40, 300 E Street, SW, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Anne L. Accola, Code Z, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–0682.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Update on Activities at NASA
—Top Technology Developments
—National Space Biomedical Research Institute
—Cross-enterprise Coordination of Exobiology
—Launch Vehicle Policy
—NASA Relationship with ASEB
—Technology and Commercialization Advisory Committee Restructuring
—Committee Reports
—Discussion of Findings and Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 13, 1997.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 97–1282 Filed 1–17–97; 8:45 am]

BILLING CODE 7510–02–M

[Notice 97–004]

NASA Advisory Council, Earth Systems Science and Applications Advisory Committee (ESSAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Earth Systems Science and Applications Advisory Committee.

DATES: January 29–30, 1997, 8:30 a.m. to 5:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Conference Room 7H46, 300 E Street, S.W., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Robert A. Schiffer, Code YS, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–1876.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The provisional agenda for the meeting is as follows:

—Update of Mission to Planet Earth
—Biennial Review—Role for ESSAAC
—General Discussion
—Progress Towards and EOSDIS Federation
—EOSDIS Cost Analysis
—Summary and General Discussion

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 13, 1997.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 97–1281 Filed 1–17–97; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication; Effectiveness of Ultrasonic Testing Systems in Inservice Inspection Programs

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of public comment period.

SUMMARY: On December 31, 1996, (61 FR 69120) the NRC published for public comment a proposed generic letter concerning the effectiveness of ultrasonic testing systems in inservice inspection programs. The generic letter will enable the NRC to determine if addressees are taking appropriate action to qualify future ultrasonic testing (UT) examinations. The comment period for this proposed generic letter was originally scheduled to expire on January 30, 1997. In a letter dated January 6, 1997, the Nuclear Energy Institute requested a 29-day extension of the comment period to permit sufficient time to solicit input from its members, assemble an integrated set of industry comments, and submit a consolidated comment package to the NRC for review. In response to this request, the NRC has decided to extend the comment period.

DATES: The comment period has been extended 29 days and will now expire on February 28, 1997. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Mail Stop T–6D–69, Washington, DC 20555–0001. Written comments may also be delivered to 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, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donald G. Naujock (301) 415–2767.

Dated at Rockville, Maryland, this 14th day of January, 1997.

For the Nuclear Regulatory Commission.

Thomas T. Martin,

Director, Division of Reactor Program Management Office of Nuclear Reactor Regulation.

[FR Doc. 97–1365 Filed 1–17–97; 8:45 am]

BILLING CODE 7590–01–P

Regulatory Information Conference

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The objectives of the conference are to give the licensees and the public insights into our approach to safety regulations and to provide a forum for feedback from those in attendance on their concerns about our overall approach, as will as feedback on differences that may exist on technical issues. NRC staff will provide information regarding on-going programs and potential new initiatives as a basis for discussion.

Discussions will proceed from general (i.e., the plenary sessions) to specific issues (i.e., the breakout sessions), with emphasis on plant operations and the NRC view of these operations based on experience in carrying out its regulatory mission. Three plenary sessions are planned, two of which will be followed by breakout sessions that will include presentations by the NRC staff and industry representatives.

DATES: Conference will be held April 1–2, 1997.

ADDRESSES: The conference will be held at the Capital Hilton Hotel, 16th and K Streets, N.W., Washington, DC 20036, Telephone: (202) 393–1000, FAX: (202) 639–5742 (Refer to NRC Meeting for special conference rate).

FOR REGISTRATION INFORMATION CONTACT: ES Inc., by facsimile on (202) 835–0118 or by phone on (202) 835–1585, after January 20, 1997.

PARTICIPATION: This conference is open to the general public; however, advance registration is required by March 10, 1997. The following is the preliminary program for the conference:

Tuesday, April 1, 1997—(8:30 a.m.–5:15 p.m.)

1. Welcome and Introductory Remarks—Samuel J. Collins, Director, Office of Nuclear Reactor Regulation
2. Morning Speaker: NRC Chairman Shirley A. Jackson
3. Morning Plenary Session: Regulatory Trends
4. Breakout Sessions:
   1. Electric Power Industry Restructuring and Deregulation
   2. Design Basis FSAR and Vertical Slice Architect/Engineer Inspections
   3. Spent Fuel Storage Issues
   4. PRA Implementation, Plant Risk Monitoring
5. Post-Luncheon Speaker: Commissioner Kenneth C. Rogers
6. Afternoon Plenary Session: Regional Administrators' Panel: Each Regional Administrator will make presentations on topics of current interest
7. Breakout Sessions:
   1. Enforcement Issues
   2. Steam Generator Issues
   3. License Renewal
   4. Core Performance/Fuel Issues

Wednesday, April 2, 1997—(8:30 a.m.–4:45 p.m.)

1. Breakout Sessions:
   1. NRC/Licensee Interface and Communications, REGION I
   2. NRC/Licensee Interface and Communications, REGION II
   3. NRC/Licensee Interface and Communications, REGION III
   4. NRC/Licensee Interface and Communications, REGION IV
2. Breakout Sessions:
   1. Organizational Changes and Strategic Planning
   2. Maintenance Rule Experience
   3. Decommissioning
   4. Allegation/Employee Concerns
3. Post-Luncheon Speaker: Commissioner Nils J. Diaz
4. Breakout Sessions:
   1. 10 CFR 50.59
   2. Reactor Licensing Priorities and Process Improvements
   3. Reactor Pressure Vessel and Internals
   4. Fire Protection Issues
5. Closing Plenary Session: Samuel J. Collins, Director, NRR/NRC

Note: There will be a question and answer period after each session each day.

Next year's conference is scheduled for April 14–15, 1998, at the Capital Hilton Hotel, Washington, DC.

Dated in Rockville, Maryland, this 10th day of January 1997.

For the Nuclear Regulatory Commission.

Kathryn O. Greene,

Chief, Administration Branch, Division of Inspection and Support Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 97–1363 Filed 1–17–97; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–206, 50–361 and 50–362]

Southern California Edison Company and San Diego Gas and Electric Company, San Onofre Nuclear Station; Notice of Reopening of Local Public Document Room

Notice is hereby given that the Main Library, University of California, Irvine, California, which serves as the Nuclear Regulatory Commission (NRC) local public document room (LPDR) for Southern California Edison Company's and San Diego Gas and Electric Company's San Onofre Nuclear Station, has reopened to the public after being temporarily closed in order to make seismic upgrades to the library building. Notice of the temporary closing of the LPDR was published in the Federal Register on May 23, 1996 (61 FR 25923). The telephone number for library staff at the LPDR is (714) 824–7234.

Questions concerning the NRC's LPDR program or the availability of agency documents at LPDRs should be addressed to Ms. Jona L. Souder, LPDR Program Manager, Freedom of Information/Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone number (800) 638–8081.

Dated at Rockville, Maryland, this 14th day of January, 1997.

For the Nuclear Regulatory Commission.

Russell A. Powell,

Chief, Freedom of Information/Local Public Document Room Branch, Office of Information Resources Management.

[FR Doc. 97–1364 Filed 1–17–97; 8:45 am]

BILLING CODE 7590–01–P

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 24b–1
SEC File No. 270–205
OMB Control No. 3235–0194

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 rule:

Rule 24b–1 (17 CFR 240.24b–1) requires a national securities exchange to keep and make available for public inspection a copy of its registration statement and exhibits filed with the Commission, along with any amendments thereto.

There are eight national securities exchanges that spend approximately one half hour each complying with this rule, for an aggregate total compliance burden of four hours per year. The staff estimates that the average cost per respondent is $63 per year, calculated as one half hour of clerical time ($7) plus copying ($12) plus storage ($44), resulting in a total cost of compliance for the respondents of $504.

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, N.W., Washington, D.C. 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, D.C. 20503.

Dated: January 13, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1302 Filed 1–17–97; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22465; 812–10404]

Liberty Term Trust, Inc.—1999; Notice of Application

January 14, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Liberty Term Trust, Inc.—1999 (the ''Trust'').

RELEVANT ACT SECTIONS: Order requested under section 12(d)(1)(J) of the Act for an exemption from section 12(d)(1)(F)(ii) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order that would exempt the Trust, a closed-end management investment company, from the 1.5% sales load limitation of section 12(d)(1)(F)(ii).

FILING DATE: The application was filed on October 17, 1996 and amended on November 21, 1996. Applicant has agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 10, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant: S. Elliott Cohan, Esq., Federated Investors Tower, Pittsburgh, PA 15222–3779.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, at (202) 942–0571, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Trust is registered under the Act as a diversified, closed-end management investment company. Federated Advisers (the ''Adviser''), a wholly-owned subsidiary of Federated Investors (''Federated''), serves as investment adviser to the Trust.

2. The investment objective of the Trust is to return (*i.e.,* provide a liquidating value equal to) at least $10 per share (the initial public offering price per share) to investors on or shortly before December 31, 1999, while providing high monthly income. The Trust seeks to return at least $10 per Share to investors on or shortly before December 31, 1999, by preserving capital through active management of its portfolio of high quality debt securities and through its investments in municipal securities, including municipal zero coupon securities. The Trust seeks to achieve high monthly income by investing in high quality debt securities—primarily mortgage-backed securities issued or guaranteed by the United States Government, its agencies, or instrumentalities—and by actively managing the Trust's assets in relation to market conditions, interest rate changes, and the remaining terms of the Trust.

3. The Trust conducted its initial public offering in April 1992, pursuant to which the price of its shares (''Shares'') included underwriting discounts and commissions of 5.0%. The Trust's shares are traded on the New York Stock Exchange under the symbol ''LTT.'' As of November 8, 1996, the Trust had a net asset value per Share of $8.57 and a per share closing price of $7⅞, reflecting a discount to net asset value of 8.1%. A combination of mortgage prepayments in 1993 and a bear market in fixed income securities in 1994 caused the Trust and other limited-life close-end investment

companies (''Term Trusts'') investing in mortgage-backed and other fixed incomes securities to realize significant losses. Although the Trust realized portfolio gains from the strong performance of the bond market during the second half of 1995, the Trust and the Adviser anticipate that the Trust may not fully recover previously realized losses. Accordingly, without some modifications to the Trust's current investment strategy, applicants believe that it will be difficult to provide a liquidating value of at least $10 per share to investors by December 1999. The Trust has taken a number of steps to improve the likelihood that it will be able to satisfy this portion of its investment objective, including open market repurchases of its shares, as permitted by section 23 of the Act. To argument these measures, the Trust wishes to have additional flexibility to invest a greater portion of its assets in securities issued by other closed-end management investment companies that (i) are trading at a discount to net asset value (''NAV''); (ii) are Term Trusts with similar investment objectives; and (iii) have undertaken to liquidate on or before December 31, 2002. In accordance with the Trust's investment restrictions and policies as set forth in its registration statement, the Trust proposes to allocate its assets among one or more such closed-end investment companies (each an ''Underlying Fund'' and collectively the ''Underlying Funds'') according to the following defined limits: (i) limit investment in the securities of any one Underlying Fund to not more than 3% of the total outstanding voting stock of such Underlying Fund; (ii) limit investment in the securities of any one Underlying Fund to not more than 25% of the value of the total assets of the Trust; and (iii) limit investment in the securities of all Underlying Funds to not more than 65% of the value of the total assets of the Trust.

4. Because the Trust is obligated to liquidate and distribute cash to its shareholders in December 1999, the Adviser, as matter of prudent portfolio management, generally will invest Trust assets in securities with maturities consistent with the 1999 termination date. Accordingly, as the average maturity of the Trust's portfolio shortens, the opportunity to realize capital appreciation from fluctuations in the value of portfolio securities diminishes. Moreover, while a portion of the Trust's assets have been invested in zero coupon municipal securities which, over time, should increase in value through accretion, it is not expected that the Trust will experience a significant increase in NAV from these portfolio investments to offset previously realized portfolio losses. In order to bring the Trust's NAV per share closer to $10 over time, the Trust would like to invest a substantial portion of its assets in securities issued by other Term Trusts. Since the Trust will only be buying securities of closed-end investment companies that are trading at a discount from NAV, the Trust will realize a profit if and when the discount decreases or disappears. Furthermore, the Trust will only invest in securities issued by Term Trusts that have terms expiring on or before December 31, 2002, since the Adviser expects each Underlying Fund's discount to decrease due to market factors and/or as such fund's term nears its end. If the discount decreases for any of the Underlying Funds, the Trust will realize portfolio gains, thus resulting in an increase in its NAV.

Applicant's Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities issued by another investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the value of the total assets of the acquiring company, or if securities issued by the acquired company and all other investment companies have an aggregate value in excess of 10% of the value of the total assets of the acquiring company.

2. Section 12(d)(1)(F) provides that section 12(d)(1) shall not apply to securities purchased or otherwise acquired by a registered investment company if immediately after the purchase or acquisition not more than 3% of the total outstanding stock of the acquired company is owned by the acquiring company and the acquiring company does not impose a sales load of more than 1.5% on its shares after January 1, 1971. In addition, no acquired company is obligated to honor any acquiring company redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company. Because the Trust incurred underwriting discounts and commissions in excess of 1.5% during its initial public offering, applicant seeks relief from the 1.5 during its initial public offering, applicant seeks relief from the 1.5% sales load limitation of section 12(d)(1)(F)(ii).

3. Applicant states that section 12(d) of the Act is intended to prevent the unregulated pyramiding of investment companies and the negative effects which are perceived to arise from such pyramiding. Applicant submits that these abuses include (a) undue influence by a fund holding company over its underlying funds; (b) the threat of large scale redemptions of the securities of the underlying investment companies; (c) unnecessary duplication of costs (such as sales charges, advisory fees, and administrative costs); and (d) unnecessary complexity. Applicant asserts that the proposed arrangement will not give rise to these dangers.

4. Applicant submits that the potential problems of pyramiding of voting control will be eliminated because, as a condition to the granting of the order, the Trust will comply with the requirements of section 12(d)(1)(F) (other than the sales load limitation therein), which requires the Trust to exercise voting rights with respect to any securities acquired in the manner prescribed by subsection (E) of section 12(d)(1). Subsection (E) requires that a fund holding company exercise voting rights in the portfolio securities only by passing them through to its security holders or voting such units in the same proportion as the vote of all other holders of the securities. Applicants believe that, under these conditions, orderly management of the Underlying Funds will not be threatened or disrupted.

5. Applicant argues that the concern of large-scale redemptions is not present under the proposed arrangement for several reasons. First, applicant notes that the Trust will invest only in closed-end companies, which do not stand ready to redeem their units at net asset value as do open-end investment companies and are not required to have cash on hand to cover redemptions by unitholders. Therefore, applicant believes that there is no danger of large-scale redemptions and a resulting liquidity crisis with respect to closed-end investment companies. Moreover, applicant states that the Trust itself is a closed-end fund, so its liquidity needs will be minimal.

6. With regard to layering of fees and expenses, applicant states that the Trust is an already existing closed-end fund, and therefore the concern of an excessive sales load is not present. Applicant submits that the Trust is seeking relief from the 1.5% sales load limitation of section 12(d)(1)(F) since the initial public offering of the Trust's shares, completed in April 1992,

included underwriting discounts and commissions of 5.0%. Applicant states that the initial public offering of the Shares was conducted in compliance with all applicable rules of the National Association of Securities Dealers, Inc. (''NASD''). Applicant note that, in particular, the underwriting terms and arrangements were reviewed and approved by the NASD pursuant to section 44 of Article III of the NASD's Rules of Fair Practice (recodified as rule 2740 of the Conduct Rules) governing corporate financing.

7. Furthermore, applicant states that the Trust will only invest in securities issued by closed-end investment companies that are traded on the open market. Applicant states that therefore, no front-end sales loads, contingent deferred sales charges, 12b–1 fees, or other distribution fees or redemption fees will be charged in connection with the purchase or sale of any of the Underlying Funds by the Trust. Applicant states that, although the Trust will likely incur brokerage commissions in connection with its open market purchases of securities of closed-end investment companies, these commissions will not differ from commissions otherwise incurred in connection with the purchase or sale of comparable portfolio securities. In addition, applicant states that, by purchasing the securities of closed-end investment companies in the secondary market, the Trust avoids the payment of any underwriting spreads common during the initial offering of such shares.

8. Applicant states that the Adviser would continue to charge the Trust an annual investment advisory fee in an amount equal to 0.45% of the average weekly net asset value of the Trust. Applicant states that such fee would be for services that are in addition to and not duplicative of the investment advisory services that are being furnished to the Underlying Funds. Applicant states that, the Adviser anticipates that it will devote significant resources to evaluating and monitoring individual portfolio securities, as well as the overall portfolio structure, of Term Trusts in which it invests or considers for investment, to ensure the appropriateness of such investments and their consistency with the Trust's investment objective. Thus, while shareholders of the Trust would indirectly bear their proportional share of the advisory fees and administrative expenses charged to the Underlying Funds, applicant does not believe that there would be the duplication of fees.

9. Applicant believes that the concern about undue complexity is not present under the proposed arrangement because the Trust agrees, as a condition to relief, that it will not knowingly invest in any Underlying Fund that, at the time of acquisition, acquires securities of any other investment company in excess of the limits contained in section 12(d)(1)(A). Under this condition, applicant represents that it will determine whether a prospective Underlying Fund is a ''fund of funds'' at the time of acquisition. However, applicant states that, if an Underlying Fund subsequently acquires securities of other investment companies in excess of the limits of section 12(d)(1), the Trust will not be required to divest itself of its holdings. Applicant argues that because the Underlying Funds are unaffiliated with the Trust, the Trust cannot bind or control the Underlying Funds.

10. Section 12(d)(1)(J) provides that the SEC may exempt any person or transaction from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors. Applicant submits that, under the circumstances and conditions of the application, the requested exemption is in the public interest and consistent with the protection of investors.

Applicant's Conditions

Applicant agrees that the order granting the requested relief shall be subject to the following conditions:

1. The Trust will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. The Trust will not knowingly acquire securities of an Underlying Fund which, at the time of acquisition, owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1360 Filed 1–17–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38151; File No. SR–DCC–96–15]

Self-Regulatory Organizations; Delta Clearing Corp.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Amendment of Fees Charged for Options

January 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 11, 1996, Delta Clearing Corp. (''DCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DCC. 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 purpose of the proposed rule change is to amend DCC's fee schedule for the clearance of options on U.S. Government Securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DCC included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DCC 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 amend DCC's fee schedule for the clearance of options on U.S. Treasury Securities as follows:

Options maturity	Fee
Overnight up to 14 days.	$5 per option contract per participant.
15 days up to 90 days.	$10 per option contract per participant.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

Options maturity	Fee
91 days up to 2 years	$15 per option contract per participant.

The proposed rule change complies with Section 17A(b)(3)(D) of the Act[3], which requires that the rules of a registered clearing agency provide for equitable allocation of reasonable dues, fees, and other charges for services which it provides to its participants. DCC believes the proposed rule change will result in increased utilization of its clearing services thereby resulting in more securities transactions being cleared and settled through a registered clearing agency environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

DCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Comments were neither solicited nor received.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by DCC, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(e)(2) thereunder.[5] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at DCC. All submissions should refer to the File No. SR–DCC–96–15 and should be submitted by February 11, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1362 Filed 1–17–97; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78q–1(b)(3)(D).

[4] 15 U.S.C. 78q–1(b)(3)(A).

[5] 17 CFR 240.19b–4(e)(2).

[6] 17 CFR 200.30–3(a)(12).

[Release No. 34–38162; File No. SR–MSRB–96–13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G–12(h) on Close-Outs

January 13, 1997.

On December 23, 1996, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–96–13), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. 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 Board is filing an interpretive notice concerning rule G–12(h) on Close-Outs (hereinafter referred to as ''the proposed rule change''). The rule currently requires that a dealer taking action in a close-out must provide telephonic notice to the appropriate party, followed no later than the next business day with a written notice.[2] The rule further requires that written notices be sent ''return receipt requested.'' The Board previously has interpreted this provision to allow the use of certified mail, registered mail, messenger services, and Depository Trust Company's Participant Exchange Service (''PEX'') system. Use of these procedures allows the sender to obtain acknowledgement of delivery of the notice from the recipient.

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 Board 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 Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Dealers have asked whether the use of a facsimile transmission would satisfy the requirement in the rule that written notices be sent ''return receipt requested.'' The Board has determined that the requirements of the rule would be satisfied by the facsimile transmission of written notices as long as the facsimile transmission provides the sender with an acknowledgment of successful delivery of the notice. The Board emphasizes that, prior to the sending of written notices, dealers are required to notify the appropriate parties by telephone of their intention to take action under Board rule G–12(h) on close-outs.

(2) Statutory Basis

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[3] which provides that the Board's rules shall:

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open

[1] 15 U.S.C. 78s(b)(1).

[2] Telephonic and written notices are required when dealers (i) originate a close-out; (ii) retransmit a close-out; (iii) extend delivery dates; and (iv) execute a close-out. The Board's Manual on Close-Out Procedures contains a detailed explanation of the procedures required by rule G–12(h).

[3] 15 U.S.C. 78o–4(b)(2)(C).

market in municipal securities, and, in general, to protect investors and the public interest * * *.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all brokers, dealers, and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board has not solicited or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of the Board's existing rule G–12(h), and therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[4] and subparagraph (e) of Rule 19b–4[5] thereunder. At any time within 60 days of filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested people are invited to submit written data, views, and arguments concerning the foregoing. People 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. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–96–13 and should be submitted by February 11, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1303 Filed 1–17–97; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4.

[6] 17 CFR 200–30–3(a)(12).

[Release No. 34–38165; File No. SR–OCC–96–19]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Expiration Time and Assignment Processing Procedures for Certain Flexibly Structured Foreign Currency Options

January 14, 1997.

On December 17, 1996, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–OCC–96–19) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') to modify the expiration time and assignment processing procedures for certain flexibly structured foreign currency options.[1] Notice of the proposal was published in the Federal Register on December 23, 1996.[2] No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Description

The rule change modifies the expiration time and assignment processing procedures for certain flexibly structured foreign currency options, including certain flexibly structured cross-rate foreign currency options. Under the rule, all flexibly structured foreign currency options and flexibly structured cross-rate foreign currency options (collectively referred to as ''flexibly structured FCOs'') listed for trading after January 14, 1997, and expiring on or after April 1, 1997, will expire at 10:15 a.m. Eastern Time (''ET'') instead of 11:59 p.m. ET. Furthermore, all flexibly structured FCOs will be subject to pro rata assignment instead of random assignment.

The Philadelphia Stock Exchange (''PHLX'') presently trades two types of flexibly structured FCO contracts. They are (1) flexibly structured FCOs for which market participants do not specify an expiration date (''standard flex FCOs'') which expire on standard mid-month and end-of-month expiration dates at 11:59 p.m. ET (this expiration time is consistent with standard foreign currency options); and (2) custom dated flexibly structured FCOs (''custom dated flex FCOs'') for which market participants specify the expiration date and which expire at 10:15 a.m. ET on such expiration date. Exercise notices regarding standard flex FCOs are subject to random assignment processing. Exercise notices regarding custom dated flex FCOs are subject to pro rata assignment processing.

PHLX requested that OCC modify its rules to provide that the expiration time for both types of flexibly structured FCOs be 10:15 a.m. ET on their expiration date, and that exercises involving such flexibly structured FCOs be assigned pursuant to OCC's pro rata procedures.[3] PHLX also requested that this change be effective for any standard flex FCOs listed for trading after January 14, 1997, with an expiration on or after April 1, 1997. Accordingly, any standard flex FCO contract established on or before January 14, 1997, will expire at 11:59 p.m. ET and be subject to a random assignment process. Currently, there is open interest in standard flex FCOs expiring mid-month and end-of-month for the months of March, April, July, September, and October 1997.[4] Because the existing standard flex FCOs will be exempt from the new procedures, OCC will be required to execute two separate processing cycles, one in the morning and one in the evening. OCC has represented to the Commission that the execution of two separate processing cycles will not adversely affect OCC or its participants.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38070 (December 20, 1996), 61 FR 68807.

[3] The Commission has approved a proposed rule change by PHLX regarding the trading hours, expiration times, assignment procedures and other operational procedures for flexibly structured FCOs. Securities Exchange Act Release No. 37718 (September 24, 1996), 61 FR 51479 [File No. SR–PHLX–96–13] (order approving proposed rule change).

[4] Notwithstanding the above, PHLX has indicated that it may ask holders of existing series to direct OCC to adjust the expiration time so that such contracts will expire at 10:15 a.m. ET with pro rata assignment. If the holders and the writers direct OCC to make these adjustments, OCC will act accordingly provided that OCC receives the proper authorizations from all parties involved.

[5] Additionally, OCC believes that the change in assignment processing is merely a change in OCC's procedures and does not affect the methodologies of either the random or pro rata assignment process.

Certain definitions in OCC's by-laws have been amended to be consistent with the previously approved PHLX rules.[6] Articles I, XV, and XX of OCC's by-laws regarding expirations dates and times for standard option contracts, foreign currency options, and cross-rate foreign currency options, respectively, have been amended to better define the distinction between standard foreign currency options and flexibly structured FCOs and will clarify that, but for standard flex FCOs established on or before January 14, 1997, all flexibly structured FCOs, whether standard flex FCOs or custom dated flex FCOs, will expire at 10:15 a.m. on the expiration date and be subject to a pro rata assignment process. In addition, Section 1.E(4)(iii) of Articles XV and XX of OCC's by-laws will serve as a transitional rule to govern the expiration time and assignment processing to be used for existing standard flex FCO contracts (*i.e.*, standard flex FCO contracts established on or before January 14, 1997) and to exempt such standard flex FCO contracts from the rule change.

II. Discussion

Section 17A(b)(3)(F) of the Act[7] provides that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with OCC's obligation under the Act because it will increase uniformity in the expiration time and assignment processing procedures for all flexibly structured FCOs. Because OCC has modified its by-laws to create uniform expiration times for all flexibly structured FCO contracts listed for trading after January 14, 1997 with an expiration on or after April 1, 1997 to 10:15 a.m. ET, any investor confusion resulting from the disparate expiration times for standard flex FCOs and custom flex FCOs should be reduced which should promote the prompt and accurate clearance and settlement of securities transactions.

Furthermore, OCC's by-laws also have been modified to require that exercise notices regarding both custom flex and standard flex FCOs be assigned pursuant to OCC's pro rata procedures as opposed to random assignment procedures. Under random assignment procedures, option writers are randomly assigned and exercised against.[8] Under pro rata assignment, the number of contracts assigned to a particular option writer is directly proportional to the total number of option contracts assigned to all option writers.[9] Pro rata assignment should allow member participants to ascertain their exercise exposures more quickly than with random assignment processing. Accordingly, because standard flex FCO writers will be able to ascertain their exposures, the rule change should increase liquidity thereby enhancing the prompt and accurate clearance and settlement of securities transactions.

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 prior to the thirtieth day after the date of publication of notice of filing so that the proposal can be implemented by January 14, 1997 in conjunction with the end of a foreign currency options expiration cycle.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–96–19) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1361 Filed 1–17–97; 8:45 am]

BILLING CODE 8010–01–M

[6] The specific changes to OCC's by-laws are set forth in OCC's proposed rule change, which is available for review through OCC and the Commission's Public Reference Room.

[7] 15 U.S.C. 78q-1(b)(3)(F).

[8] For example, option writers could have none, some, or all of their positions in a particular series of contracts assigned.

[9] For example, under pro rata processing if 25% of all outstanding contracts in a particular series are exercised, an individual writer will know that only 25% of its short position in such contracts will be assigned.

[10] 17 CFR 200.30–3 (a) (12).

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Central District of California dated July 22, 1996, the United States Small Business Administration hereby revokes the license of Builders Capital Corporation, a California corporation, to function as a small business investment company under Small Business Investment Company License No. 09/09–0209 issued to Builders Capital Corporation on November 10, 1977 and said license is hereby declared null and void as of September 18, 1996.

Dated: January 14, 1997.

United States Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–1286 Filed 1–17–97; 8:45 am]

BILLING CODE 8025–01–P

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Southern District of Florida dated October 29, 1996, the United States Small Business Administration hereby revokes the license of Cubico Ltd., Inc., a Florida corporation, to function as a small business investment company under Small Business Investment Company License No. 04/04–5154 issued to Cubico Ltd., Inc. on August 9, 1979 and said license is hereby declared null and void as of December 18, 1996.

Dated: January 14, 1997.

United States Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–1289 Filed 1–17–97; 8:45 am]

BILLING CODE 8025–01–P

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the District of Idaho, dated June 27, 1996, the United States Small Business Administration hereby revokes the license of First Idaho Venture Capital Corporation, an Idaho corporation, to function as a small business investment company under the Small Business Investment Company License No. 10/10–0161 issued to First Idaho Venture Capital Corporation on March 19, 1974 and said license is hereby declared null and void as of September 30, 1996.

Dated: January 17, 1997.

United States Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–1288 Filed 1–17–97; 8:45 am]

BILLING CODE 8025–01–P

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Eastern District of Michigan dated August 23, 1996, the United States Small Business Administration hereby revokes the license of Inner-City Capital Access Center, Inc., a Michigan corporation, to function as a small business investment company under Small Business Investment Company License No. 05/05–5141 issued to Inner-City Capital Access Center, Inc. on September 25, 1979 and said license is hereby declared null and void as of September 18, 1996.

Dated: January 14, 1997.

United States Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–1290 Filed 1–17–97; 8:45 am]

BILLING CODE 8025–01–P

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Order of the United States District Court for the Eastern District of Texas, dated October 5, 1995, the United States Small Business Administration hereby revokes the license of Red River Ventures, Inc., a Texas corporation, to function as a small business investment company under the Small Business Investment Company License No. 06/06–0170 issued to Red River Ventures, Inc. on February 21, 1974 and said license is hereby declared null and void as of December 14, 1995.

Dated: January 14, 1997.

United States Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–1287 Filed 1–17–97; 8:45 am]

BILLING CODE 8025–01–P

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the District of Minnesota, dated July 15, 1996, the United States Small Business Administration hereby revokes the license of Retailers Growth Fund, Inc., a Minnesota corporation, to function as a small business investment company under the Small Business Investment Company License No. 05/08–0015 issued to Retailers Growth Fund, Inc. on October 4, 1962 and said license is hereby declared null and void as of September 25, 1996.

Dated: January 14, 1997.

United States Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–1284 Filed 1–17–97; 8:45 am]

BILLING CODE 8025–01–P

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Southern District of Florida, dated March 7, 1996, the United States Small Business Administration hereby revokes the license of Safeco Capital, Inc., a Florida corporation, to function as a small business investment company under the Small Business Investment Company License No. 04/04–5158 issued to Safeco Capital, Inc. on August 30, 1979 and said license is hereby declared null and void as of June 5, 1996.

Dated: January 14, 1997.

United States Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–1285 Filed 1–17–97; 8:45 am]

BILLING CODE 8025–01–P

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Order of the United States District Court for the Southern District of Florida, dated October 18, 1995, the United States Small Business Administration hereby revokes the license of Universal Financial Services, Inc., a Florida corporation, to function as a small business investment company under the Small Business Investment Company License No. 04/04–5153 issued to Universal Financial Services, Inc. on September 15, 1978 and said license is hereby declared null and void as of February 21, 1996.

United States Small Business Administration.

Dated: January 14, 1997.

Don A. Christensen,

Associate Administrator for Investment.

[97–1283 Filed 1–17–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Renewal of the Overseas Schools Advisory Council

The Department of State is renewing the Overseas Schools Advisory Council to provide a formal channel for regular consultation and advice from U.S. corporations and foundations regarding American-sponsored overseas schools. The Under Secretary for Management has determined that the Committee is necessary and in the public interest.

Members of the Committee will be appointed by the Assistant Secretary for Administration. The Committee will follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will be open to the public unless a determination is made in accordance with the FACA Section 10(d) and 5 U.S.C. 552b(c) (1) and (4) that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provided in the Federal Register at least 15 days prior to the meeting date.

For further information, contact Dr. Ernest N. Mannino, Executive Secretary of the Committee at 703–875–7800.

Dated: January 15, 1997.

Ernest N. Mannino,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 97–1381 Filed 1–17–97; 8:45 am]

BILLING CODE 4710–24–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences; Intellectual Property Rights; Request for Public Comment on Products Affected by Partial Withdrawal of Argentina's Benefits

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for public comment.

SUMMARY: This notice informs the public that in light of his determination that Argentina fails to provide adequate and effective means under its laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, the President has indicated his intention to withdraw partially duty-free treatment accorded Argentina under the Generalized System of Preferences (GSP) program. Specifically, the President has indicated his intention to withdraw fifty percent of Argentina's benefits under the GSP program. This notice invites public comments on which products will be affected.

DATES: Comments are due by 5 p.m. on Wednesday, February 19, 1997.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative (USTR), 600 17th Street, N.W., Room 518, Washington, D.C. 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION:

I. The GSP Program

The GSP program grants duty-free treatment to designated eligible articles that are imported from designated beneficiary developing countries. The program is authorized by Title V of the Trade Act of 1974, as amended (''Trade Act'') (19 U.S.C. 2461 *et seq.*). Once granted, GSP benefits may be withdrawn, suspended or limited by the President with respect to any article or with respect to any country. In making this determination, the President must consider several factors, one of which is the extent to which a beneficiary country is providing adequate and effective means under its laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patents, trademarks and copyrights. 19 U.S.C. 2462(c)(5).

II. IPR Protection in Argentina

On April 30, 1996, the USTR announced that Argentina was being moved from the Watch List to the Priority Watch List under the ''Special 301'' provisions of the Trade Act, given that Argentina's newly enacted patent legislation and an implementing decree fell fall short of adequate and effective protection, and failed to achieve earlier Argentine assurances. The USTR also announced that she would continue to seek improvements, monitor the situation and review Argentina's status through an out-of-cycle review in December 1996.

Despite sustained efforts by the Menem Administration, there have been inadequate improvements in Argentina's patent regime since April 1996, and Argentina's recently enacted legislation on the protection of test data submitted for marketing approval of pharmaceutical products falls well short of international standards. As a result, the President has determined that Argentina fails to provide adequate and effective means under its laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property. He has therefore indicated his intention to withdraw benefits for fifty percent of Argentina's exports under the GSP program. The public is invited to comment on which of the products of Argentina currently enjoying GSP benefits should be subject to the withdrawal.

The Presidential Proclamation partially withdrawing GSP benefits will be issued and published in the Federal Register after all comments are received and reviewed. In order to give U.S. importers sufficient time to adjust, the partial withdrawal of GSP benefits for the products of Argentina will be effective 30 days after the publication of the Proclamation in the Federal Register.

III. Public Comment: Requirements for Submissions

Interestedd persons are invited to submit written comments concerning which products of Argentina should or should not be subject to the withdrawal of GSP benefits. Comments must be filed in accordance with the requirements set forth in 15 CFR 2007, including the information required by 15 CFR 2007.1, and must be filed on or before 5 p.m. on Wednesday, February 19, 1997. Comments must be in English and provided with the original plus fourteen copies to: GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, N.W., Room 518, Washington, D.C. 20508. Comments received after the deadline will not be accepted.

Pursuant to the requirements of 15 CFR 2007.7, information submitted in confidence will be exempt from public inspection if it is determined that the disclosure of such information is not required by law. A party requesting an exemption from public inspection for information submitted must clearly mark each page ''Submitted in Confidence'' at the top, and must submit the original plus fourteen copies of non-confidential version of the submission containing a non-confidential summary of the confidential information. That party must also provide a written explanation of why the material should be so protected. The version that does not contain confidential information. That party must also provide a written explanation of why the material should be so protected. The version that does not contain confidential information must be clearly marked with ''public version'' on the top of each page.

Written comments submitted in connection with these decisions, except for information granted ''business confidential'' status pursuant to 15 CFR 2007.7, will be available for public inspection shortly after the filing deadline by appointment only with the staff of the USTR Public Reading Room. An appointment to review the comments may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 10:00 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101. Other requests and questions should be directed to the GSP Information Center at USTR by calling (202) 395–6971.

Federick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 97–1524 Filed 1–17–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

FAA Approval of Noise Compatibility Program and Determination on Revised Noise Exposure Maps James M. Cox-Dayton International Airport Dayton, Ohio

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the city of Dayton, Ohio, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On June 6, 1994, the FAA determined that the noise exposure maps submitted by the city of Dayton, Ohio, under Part 150 were in compliance with applicable requirements. On October 30, 1996, the Associate Administrator for Airports approved the James M. Cox-Dayton International Airport noise compatibility program. All of the recommendations of the program were approved.

The city of Dayton, Ohio, has also requested under FAR Part 150, section 150.35(f), that FAA determine that the revised noise exposure map submitted with the noise compatibility program and showing noise contours as a result of the implementation of the noise compatibility program is in compliance with applicable requirements of FAR Part 150. The FAA announces its determination that the revised noise exposure map for James M. Cox-Dayton International Airport for the year 1998 submitted with the noise compatibility program, is in compliance with applicable requirements of FAR Part 150 effective December 16, 1996.

EFFECTIVE DATE: The effective date of the FAA's approval of the James M. Cox-Dayton International Airport noise compatibility program is October 30, 1996. The effective date of the FAA's determination on the revised noise exposure map is December 16, 1996.

FOR FURTHER INFORMATION CONTACT: Lawrence C. King, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, 313–487–7293. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for James M. Cox-Dayton International Airport, effective October 30, 1996, and that revised noise exposure map for 1998 for this same airport is determined to be in compliance with applicable requirements of FAR Part 150.

A. Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

1. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

2. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

3. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

4. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to the FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Detroit Airports District Office in Belleville, Michigan.

The city of Dayton, Ohio, submitted to the FAA on January 28, 1993, noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from September 1991, through December 1992. The James M. Cox-Dayton International Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on June 6, 1994. Notice of this determination was published in the Federal Register on June 30, 1994. The five year forecast map was subsequently revised and FAA's determination on this map follows in Paragraph B under the heading Supplemental Information.

The James M. Cox-Dayton International Airport study contains a proposed noise compatibility program comprised on actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2012. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on May 3, 1996, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The submitted program contained twenty four proposed actions for noise mitigation on and/or off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program therefore, was approved by the Associate Administrator for Airports effective October 30, 1996.

Outrights approval was granted for all of the specific program elements. These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator for Airports on October 30, 1996.

B. The FAA has also completed its review of the revised noise exposure map and related descriptions submitted by the city of Dayton, Ohio. The specific map under consideration is Exhibit D1—''1998 Noise Exposure Map,'' submitted as part of the NCP. The sponsor's September 19, 1996, letter formally requested FAA to make a determination on the revised map's acceptability. The FAA has determined that the map for James M. Cox-Dayton International Airport is in compliance with applicable requirements. This determination is effective on December 16, 1996. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information, or plans.

If questions arise concerning the precise relationship of specific

properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of FAA's evaluation of the maps, and copies of the record of approval and other evaluation materials and documents which comprised the submittal to the FAA are available for examination at the following locations:

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111

Mr. Roy Williams, Director of Aviation, James M. Cox-Dayton International Airport, Terminal Building, Vandalia, OH 45377.

Questions on either of these FAA determinations may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, December 16, 1996.

Robert H. Allen,

Assistant Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 97–1327 Filed 1–17–97; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–97–3]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 20, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Angela Anderson, (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on January 15, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 137CE
Petitioner: Air Tractor, Inc.
Sections of the FAR Affected: 14 CFR 23.3
Description of Relief Sought: To permit the AT–10, a freight carrying aircraft, to exceed the 12,500 pound limitation for a normal category aircraft.

Docket No.: 28750
Petitioner: Continental Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.585(b)(1)
Description of Relief Sought: To permit Philip Cline to occupy an exit row seat without meeting the requirements specified.

[FR Doc. 97–1401 Filed 1–17–97; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–97–4]

Petitions for Exemption; Summary of petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 20, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Petition Docket No. 28479, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation

Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on January 15, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28479
Petitioner: Strong Enterprises
Sections of the FAR Affected: 14 CFR 105.43(a)
Description of Relief Sought: To amend Exemption No. 6474, which allows employees, representatives, and other volunteer experimental parachute test jumpers under the petitioner's control to make tandem parachute jumps while wearing a dual-harness, dual parachute pack having at least one main parachute and one approved auxiliary parachute. This amendment would include the use of a dual harness, dual parachute pack by tandem instructors who are certified by the petitioner but are not under the direct supervision of the petitioner.

[FR Doc. 97–1402 Filed 1–17–97; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Capital Airport, Springfield, Illinois

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Capital Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before February 20, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 E Devon Avenue, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Robert O'Brien Jr., Director of Aviation of the Springfield Airport Authority at the following address: Springfield Airport Authority, Capital Airport, Springfield, IL 62707.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Springfield Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Philip M. Smithmeyer, P.E., Assistant Manager, Chicago Airports District Office, 2300 E. Devon Ave., Room 260, Des Plaines, IL 60018, (847) 294–7435. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue a PFC at Capital Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On December 18, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Springfield Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 21, 1997.

The following is a brief overview of the application.

PFC Application Number: 97–07–C–00–SPI.

Level of the PFC: $3.00.

Charge effective date: February 1, 1994.

Revised charge expiration date: February 1, 2010.

Total estimated PFC revenue: $4,156,493.00.

Brief description of proposed project(s):

Use Only Projects

Local Share Fee Parcel Nos. 9–4–EE, 9–4–FF, 9–4–HH, 9–4–II, 9–4–JJ; Acq Fee Parcel Nos. 9–4–J, 9–4–PP, 9–4–P & 17–3–A; Local Share Fee Parcel Nos. 16–4–A, 16–4–B1, 16–4–B2, & 16–4–C; Local Share Easement Parcel Nos. 16–2–B & 16–4–E; Local Share for Rehab Runway 4/22 & 18/36; Local Share for Rehab Runway 13; Local Share for Widen Taxiway A; Local Share Update Exhibit A; Local Share for Update Master Plan; Acq Snow Removal Equipment (Blower & Plow); Terminal Building Expansion; Acq Disabled Passenger Lift.

Impose and Use Project

Snow removal equipment (sweeper).

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 Air Taxi Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Springfield Airport Authority.

Issued in Des Plaines, Illinois on January 6, 1997.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 97–1325 Filed 1–17–97; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application to: Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Columbus Metropolitan Airport, Columbus, Georgia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Columbus Metropolitan Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before February 20, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Campus Building, 1701 Colombia Avenue, Suite 2–260, College Park, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Mark Oropeza, Airport Director of the Columbus Metropolitan Airport at the following address: Mr. Mark Oropeza, Airport Director, 3250 West Britt David Road, Columbus, GA 31909.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Columbus Airport Commission under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Southern Region, Atlanta Airports District Office, Mr. Daniel Gaetan, Program Manager, 1701 Columbia Avenue, Suite 2–260, College Park, GA 30337–2747, (404) 305–7146.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Columbus Metropolitan Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On December 20, 1996 the FAA determined that the application to impose and use the revenue from a PFC submitted by Columbus Airport Commission was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 2, 1997.

This application is for authority to use excess PFC revenues collected under previous collection authority. The following is a brief overview of the application:

Total estimated excess PFC revenue: $199,000.

Total amount of use approval requested in this application: $199,000.

Application number: 96–02–C–00–CSG.

Brief description of proposed impose and use projects: 107 Security Access Control System, remove and replace carpet with ceramic tiles in public use areas of the terminal building, and remove and replace carpeting in public holdrooms of the terminal building.

Class or classes of air carriers which the public agency has requested to be required to collect PFCs: Three.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Columbus Metropolitan Airport.

Issued in College Park, Georgia on December 20, 1996.

Dell Jernigan,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 97–1326 Filed 1–17–97; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Tampa International Airport, Tampa, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue form a PFC at Tampa International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before February 20, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822–5024.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Louis E. Miller, Executive Director of the Hillsborough County Aviation Authority at the following address: Hillsborough County Aviation Authority, Terminal Building, 3rd level, Blue Side, Tampa International Airport, Tampa, Florida 33622–2287.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Hillsborough County Aviation Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. C. Ed Howard, Plans and Program Manager, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822–5024, (407) 812–6331. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue form a PFC at Tampa International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 10, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by Hillsborough County Aviation Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 15, 1997

The following is a brief overview of PFC Application No. 97–03–C–00–TPA.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 1999.

Proposed charge expiration date: September 1, 2000.

Total estimated PFC revenue: $25,540,952.

Brief description of proposed project(s):

Project 1.1: Acquire land for runway approach and transition zone for Runway 27.

Project 1.2: Expand and improve Federal Inspection Facilities.

Project 1.3: Landside terminal building fire protection system.

Project 1.4: Reconstruct existing Runway 18R/36L.

Project 1.5: Master Plan and Part 150 noise study update.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On-demand air taxi/commercial operators that (1) do not enplane or deplane passengers at the Authority's main passenger terminal buildings, or (2) enplane less than 500 passengers per year at Tampa International Airport.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Hillsborough County Aviation Authority.

Issued in Orlando, Florida on January 10, 1997.

Charles E. Blair,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 97–1328 Filed 1–17–97; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration (NHTSA)

Denial of Petition for a Defect Investigation

This notice sets forth the reason for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162 requesting that the agency commence a

proceeding to determine the existence of a defect related to motor vehicle safety.

By letter dated August 20, 1996, Adrienne Mitchem, Legislative Counsel, Washington Office, and Donald L. Mays, Director of Testing, Recreation and Home Improvement Department, Consumers Union (CU), petitioned the Administrator of NHTSA to investigate the Evenflo Travel Tandem child safety seat. Their petition is based on testing conducted before August 1996 for CU by an independent testing facility that utilized the 20-pound test dummy included in the test procedure for Federal Motor Vehicle Safety Standard (FMVSS) No. 213, ''Child Restraint Systems,'' that took effect on September 1, 1996.

The Evenflo infant/child restraint snaps into a base that can be left in the car. The seat base is secured to the vehicle seat with the vehicle seat belt and does not need to be unstrapped each time the child seat is removed from the vehicle. The Evenflo Travel Tandem is designed to be used only in a rearward facing position by children less than 20 pounds in weight.

The Travel Tandem seat shell fractured around the buckle assembly and the buckle released in two of the three CU tests when used in the rearward facing position with the seat snapped into the base, where it is held by two spring-loaded latching pawls. This method of using the seat is preferred by many parents, as it is a much faster and more convenient method of placing the child seat into the vehicle compared to fastening and unfastening the vehicle seat belt. The seat can also be used without the provided base, by securing it directly to the vehicle with the seat belts. When secured in this manner, the seat successfully completed all the crash tests conducted for CU. The seat portion is equipped with a handle, so that the infant can be carried in the seat to and from the vehicle.

The Travel Tandem seats tested by CU were manufactured in December 1995 and January 1996. In the version of FMVSS No. 213 in effect at that time, Section S7.1 requires that a seat that is recommended by its manufacturer for use by children up to 20 pounds be tested in the rearward facing position in a 30 mph dynamic test using a ''6-month-old'' dummy that weighs 17 pounds. Among many performance requirements, S5.1.1(a) provides that the seat must ''[e]xhibit no complete separation of any load bearing structural element * * *.'' In addition, pursuant to S5.1.4, '' * * * the angle between the system's back support surface for the child and the vertical shall not exceed 70 degrees.''

During an FMVSS No. 213 test, the child restraint is secured with a conventional seat belt to a standard specified passenger seat, which is mounted on a dynamic test sled. The sled is subjected to an acceleration intended to simulate that experienced in a typical 30 mph frontal vehicle crash. This acceleration is commonly measured in units of g, each of which is equal to 32.174 feet per second squared (i.e., the acceleration of gravity). The shape of the curve depicting the g's over time during a dynamic test is referred to as the acceleration ''pulse'' of the sled.

Section 6 of FMVSS No. 213 specifies the velocity change and acceleration conditions for dynamic tests of child restraints. The velocity change shall be 30 mph with the acceleration pulse of the test sled entirely within the curve shown in figure 2 of FMVSS No. 213.

Depending on the type of sled and how the sled is calibrated, the magnitude of the peak acceleration and the duration of time the seat is subjected to the acceleration can vary. If a particular sled subjects the seat to higher peak g's or if the duration of time that g's are sustained is longer than that specified in FMVSS No. 213, then the sled test is considered to be a more ''severe'' test than that specified in FMVSS No. 213. This appears to be the case with the CU Travel Tandem test and may have affected the outcome.

Revised requirements of FMVSS No. 213 took effect on September 1, 1996. Under the revised version of S7.1, a seat that is recommended by its manufacturer for use by children in a range up to 10 kg (22 pounds) is tested with a ''newborn'' test dummy (7.5 pounds) and a 9-month-old test dummy (20 pounds).

These test conditions, however, were not required for the seats tested by CU in order to be certified by Evenflo as complying with the standard because the seats were manufactured prior to September 1, 1996.

The petitioners reported that when CU tested Travel Tandem seats in the rearward-facing position with a 20-pound dummy at a speed of slightly over 30 mph, with the seat mounted on the seat base, two of the three seats tested exhibited fractures. In the two cases, the shell of the seat body fractured around the buckle assembly and the buckle released. This could create a serious problem, because in an actual collision the child can be ejected from the vehicle. In fact, in one of the three tests the child dummy was sent hurtling through the air when the buckle was released during the testing.

In NHTSA's ongoing compliance testing program, four Evenflo Travel Tandem seats, one in each fiscal year from 1993 through 1996, were tested by the Calspan SRL Corporation, Buffalo, New York, using a 17-pound test dummy. All seats passed the requirements of FMVSS No. 213.

NHTSA has reviewed all reported cases of the safety seat body/frame cracking and inadvertent buckle release, and found no such cases involving the Evenflo Travel Tandem child seat.

In its petition, CU provided the agency with data indicating that the Evenflo Travel Tandem seat may fracture around the buckle assembly when the acceleration or dummy weight exceeds the specifications of FMVSS No. 213. However, the seat successfully passed the tests that were conducted in strict conformance with the test procedures of FMVSS No. 213 applicable to the seats tested by CU.

When a safety standard establishes minimum performance requirements for motor vehicles or items of motor vehicle equipment through the use of specific values for particular parameters, as is the case here, NHTSA does not consider performance failures at higher levels to, in themselves, demonstrate that a safety-related defect exists. Moreover, NHTSA has consistently taken the position that the fact that a vehicle or item of motor vehicle equipment would not comply with a newly-issued, more stringent safety standard, which was not in effect on the date the vehicle or equipment was manufactured, does not constitute evidence that the vehicle or its equipment is defective. Thus, given the fact that the the Evenflo Travel Tandem seat appears to satisfy the performance requirements of FMVSS No. 213 when tested with a 17-pound test dummy utilizing a conforming acceleration pulse, its performance with heavier dummies or at higher test speeds and accelerations does not indicate the existence of a safety defect.

On September 11, 1996, Evenflo Company, Inc. issued a press release stating that Evenflo products are designed and tested to meet or exceed FMVSS No. 213. Nevertheless, Evenflo will be offering a reinforcing plate to any consumers who are concerned about the performance of their seats based on the CU report.

In consideration of the available information, there is no reasonable possibility that an order concerning the notification and remedy of a safety-related defect based on the petitioner's allegations would be issued at the

conclusion of an investigation. Therefore, the petition has been denied.

Authority: 49 U.S.C. 30162(a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 7, 1997.

Michael B. Brownlee,

Associate Administrator for Safety Assurance.

[FR Doc. 97–706 Filed 1–17–97; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board

[STB Docket No. AB–474X]

Old Augusta Railroad Company—Whole-Line Abandonment Exemption—in Perry County, MS

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts from the requirements of 49 U.S.C. 10903–04, the abandonment by Old Augusta Railroad Company of its entire 2.5-mile rail line located between milepost 0.0 at Augusta and milepost 2.5 at New Augusta, in Perry County, MS, subject to labor protective conditions.

DATES: This exemption will be effective on February 20, 1997. Petitions to stay must be filed by February 5, 1997 and petitions to reopen must be filed by February 17, 1997.

ADDRESSES: Send pleadings referring to STB Docket No. AB–474X to: (1) Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423, and (2) Eugenia Langan, Shea & Gardner, 1800 Massachusetts Avenue, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: January 6, 1997.

By the Board, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons. Commissioner Simmons did not participate.

Vernon A. Williams,

Secretary,

[FR Doc. 97–1383 Filed 1–17–97; 8:45 am]

BILLING CODE 4915–00–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''The Victorians: British Painting in the Reign of Queen Victoria, 1837–1901'' (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, DC from on or about February 16, 1997 to May 11, 1997, is in the national interest. Public Notice of this determination is ordered to be published in the Federal Register.

Dated: January 15, 1997.

Wally Stuart,

Acting General Counsel.

[FR Doc. 97–1436 Filed 1–17–97; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Jacqueline H. Caldwell, Esq., Assistant General Counsel, at 202–619–6982, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001.

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on January 22 in Room 600, 301 4th Street, S.W., Washington D.C. from 11:00 a.m. to 12:00 noon.

The Commission will participate in a discussion with members of the Public Diplomacy Foundation to discuss the Foundation's role and information age foreign policy. Representing the Foundation will be its President Barry Zorthian, Leonard Baldyga, and Jack Harrod.

FOR FURTHER INFORMATION CONTACT: Please call Betty Hayes, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: January 14, 1997.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 97–1386 Filed 1–17–97; 8:45 am]

BILLING CODE 8230–01–M

federal register

Tuesday
January 21, 1997

Part II

Department of the Treasury

Customs Service

19 CFR Parts 7, 10, et al.
Drawback; Proposed Rule

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 7, 10, 145, 173, 174, 181, 191

RIN 1515–AB95

Drawback

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to revise the Customs Regulations regarding drawback. The document proposes to revise the regulations to implement the extensive and significant changes to the drawback law contained in the Customs modernization portion of the North American Free Trade Agreement Implementation Act; to change some administrative procedures involving manufacturing and unused merchandise drawback, for the purpose of expediting the filing and processing of drawback claims thereunder, while maintaining effective Customs enforcement and control over the drawback program; and to generally simplify and improve the editorial clarity of the regulations.

DATE: Comments must be received on or before March 24, 1997.

ADDRESS: Comments (preferably in triplicate) must be submitted to U.S. Customs Service, ATTN: Regulations Branch, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229, and may be inspected at the Regulations Branch, 1099 14th Street, NW., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Operational aspects: Maryanne Carney, Chief, Drawback and Records Branch, New York, (212–466–4575)

Legal aspects: Paul Hegland, Office of Regulations and Rulings, (202–482–7040)

SUPPLEMENTARY INFORMATION:

Background

Drawback is a refund or remission, in whole or in part, of a Customs duty, internal revenue tax, or fee. There are a number of different kinds of drawback authorized under law, including manufacturing and unused merchandise drawback. The statute providing for specific types of drawback is 19 U.S.C. 1313, the implementing regulations for which are contained in part 191, Customs Regulations (19 CFR part 191).

The North American Free Trade Agreement Implementation Act, Pub. L. 103–182 (December 8, 1993), specifically Title VI thereof, popularly known as the Customs Modernization Act, significantly amended certain Customs laws. In particular, section 632 of Title VI effected extensive and major amendments to the drawback law, 19 U.S.C. 1313. Also, section 622 of Title VI authorized the establishment of a ''Drawback Compliance Program'' as well as specific civil monetary penalties for false drawback claims.

Public Law 103–182 also approved and implemented the North American Free Trade Agreement (NAFTA). Section 203 of the Public Law provides special drawback provisions for exports to NAFTA countries. NAFTA drawback is separately provided for in part 181 of the Customs Regulations (19 CFR part 181). Drawback and other duty-deferral programs are addressed in subpart E of part 181. General drawback provisions under part 191 and the NAFTA drawback regulations in part 181 contain substantial differences (e.g., the ''lesser of'' calculation versus full drawback, same condition versus unused merchandise drawback, etc.) Separate claims are required for drawback claims governed by NAFTA (see 19 CFR 181.46 and 191.0a).

Accordingly, this document proposes regulatory revisions principally to part 191 in implementation of the statutory changes. In addition, this document proposes to generally rearrange and revise part 191 largely in an effort to further simplify and improve the editorial clarity of those regulatory procedures primarily dealing with the manufacturing and unused merchandise provisions, these being the most commonly used types of drawback. Several administrative changes are being proposed as well with respect to the regulatory procedures governing these provisions, for the purpose of expediting the filing and processing of drawback claims thereunder, while ensuring that Customs has the necessary enforcement information to maintain effective administrative oversight over the drawback program. Also, minor conforming changes occasioned by the general reorganization of part 191 are made with respect to other parts of the Customs Regulations (19 CFR parts 7, 10, 145, 173, 174 and 181).

Specifically, with regard to part 173, a minor change is proposed whereby a party requesting the reliquidation of a consumption entry pursuant to 19 U.S.C. 1520(c)(1) would be required to state whether to the best of such party's knowledge, the entry is the subject of a drawback claim, or whether such entry was referenced on a certificate of delivery or a certificate of manufacture and delivery and thus could be made the subject of drawback. Likewise, a change is proposed to part 174 whereby a party filing a protest must state whether, to the best of such party's knowledge, the consumption entry whose liquidation is protested is the subject of a drawback claim, or whether it was referenced on a certificate of delivery or a certificate of manufacture and delivery and thus could be the subject of a drawback claim. A corresponding change is also proposed in part 191, whereby a drawback claimant would be required to state whether, to the best of such claimant's knowledge, any consumption entry identified or designated as a basis for drawback is either under protest or the subject of a request for reliquidation (19 U.S.C. 1520(c)(1)). In this regard, when accelerated payment of drawback has been paid to a claimant on the basis of an entry of imported merchandise which has not been finally liquidated, and the duties on the import entry are increased or decreased in such final liquidation, drawback must be increased or reduced accordingly on liquidation of the drawback entry.

Proposed changes to part 191 other than the major changes described below include the addition of new definitions for purposes of part 191 in the section listing such definitions. New definitions for the following terms are set forth in the proposed regulations: Certificate of delivery; Certificate of manufacture and delivery; Act; Commercially interchangeable merchandise; Designated merchandise; Destruction; Exported article; Exportation; General manufacturing drawback ruling; Manufacture or production; Possession; Relative value; Specific manufacturing drawback ruling; and Substituted merchandise. Most of these definitions incorporate into the regulations terms which are used for drawback. The definition of commercially interchangeable merchandise is necessary because of the change (described elsewhere in this background) from fungibility as the standard for substitution to commercial interchangeability in the former same condition substitution drawback law (now unused substitution drawback law, in 19 U.S.C. 1313(j)(2)). Similarly, the definition of possession is added because possession of the exported merchandise is a requirement for drawback under section 1313(j)(2) and because the statute includes defining language. The definition of exportation is based on the definition of that term currently in 19 CFR 101.1(k), but notice is also given that an exportation may be deemed to have occurred: (1) Under the

Foreign Trade Zones Act (see 19 U.S.C. 81c(a)) when zone-restricted status is taken; (2) or under 19 U.S.C. 1309, if goods subject to drawback are used for certain aircraft or vessel supplies. The definition of manufacture or production is based on court cases and administrative rulings interpreting that phrase (see *Anheuser-Busch Brewing Association* v. *The United States,* 207 U.S. 556 (1908); *United States* v. *International Paint Co., Inc.,* 35 CCPA 87 (1948); *et al.*). In regard to the latter case, it is noted that a manufacture or production, for drawback purposes, occurs even if the processing operation does not change the general use for which the merchandise may be used (*e.g.,* as paint) but does change the particular use for which the merchandise may be used (*e.g.,* as anti-fouling paint designed for preventing marine growth on the bottom of ships).

In addition, two current definitions, those of fungible merchandise and substitution drawback, are modified. In the case of the former, the modification makes it clear that the definition applies to both merchandise and articles, but does not change the definition of fungibility. In the case of the latter, instead of defining substitution drawback (referring only to substitution manufacturing drawback), as is currently true, the definition defines substituted merchandise, and does so for purposes of each of the subsections of 19 U.S.C. 1313 authorizing such substitution.

In regard to the definition of fungibility, for drawback purposes ''merchandise'' is that which is imported, or substituted when substitution is permitted, and an ''article'' is that which is manufactured or produced, as provided for in the drawback law, from merchandise. Also in regard to the definition of fungibility, although the standard for substitution under unused (formerly same condition) drawback (19 U.S.C. 1313(j)(2)) is no longer fungibility (it is now commercial interchangeability, as discussed below), the definition of fungibility is retained in the proposed regulations because fungibility continues to be a significant concept in the proposed regulations (*i.e.,* when merchandise or articles are identified by accounting method; see proposed § 191.14). The definition of fungibility was first added to the Customs drawback regulations for this purpose and before enactment of the substitution provision for 19 U.S.C. 1313(j)(2) (see T.D. 83–212, 19 CFR 191.2(l)).

Also related to definitions for drawback purposes, the current regulations (§ 191.3) provide that duties subject to drawback include all ordinary Customs duties and marking duties assessed under 19 U.S.C. 1304(c). It is proposed to define ''ordinary Customs duties'', as used in this provision, to include finally liquidated duties paid on an entry, or withdrawal from warehouse, for consumption and estimated duties paid on such an entry or warehouse, provided that the application and waiver currently provided for in § 191.71 are filed. Also defined as such ''ordinary Customs duties'' would be voluntary tenders of the unpaid amount of lawful ordinary Customs duties and any other payment of duties related to an entry, or withdrawal from warehouse, for consumption, such as payment of a demand for duties under 19 U.S.C. 1592(d), under certain enumerated conditions. This latter proposed addition to the definition of ''ordinary Customs duties'' is consistent with Customs current administrative practice (see Customs Service Decision 85–50 (1985)). The enumerated conditions referred to are that liquidation of the import entry or withdrawal must have become final prior to the payment to Customs, that the payment must be specifically identified as being of duties for a specific entry or withdrawal, and that the drawback entry in which the import entry or withdrawal is designated may not itself have been finally liquidated. In the case of voluntary tenders and other payments of duty, procedures are proposed for a written request and waiver by the drawback claimant and any other party responsible for the other payments of duties similar to the current procedures for the payment of drawback on estimated duties.

Other minor proposed changes are that a named officer or any other individual legally authorized to bind a corporation may sign drawback documents, instead of only those named officers. This is consistent with current regulations regarding Customs business (see 19 CFR 111.3; see also 19 U.S.C. 1641(b)(1)). Correspondingly, the regulations on so-called (in the current regulations) general or specific ''contracts'' are proposed to be changed so that only the names of the persons who are authorized by regulation to sign drawback documents and who will sign such documents are listed.

(In regard to the above-referenced general or specific drawback ''contracts'', as discussed in detail below, it is proposed to change the terminology for these procedures, from ''specific drawback contracts'' to ''specific manufacturing drawback rulings'' and from ''general drawback contracts'' to ''general manufacturing drawback rulings'' and to set out the formats for applying for the specific manufacturing drawback rulings, and the general manufacturing drawback rulings, in Appendices to part 191 of the Customs Regulations. The remainder of the background to this document uses the proposed new terms (*i.e.,* ''specific manufacturing drawback ruling'' is used instead of ''specific drawback contract'' and ''general manufacturing drawback ruling'' is used instead of ''general drawback contract'').)

Also in regard to general manufacturing drawback rulings, it is proposed to require that a description of the merchandise and articles covered by the ruling be submitted with the information required for letters of notification of intent to operate under a general ruling, unless such information is specifically provided in the particular general manufacturing drawback ruling. It is proposed to modify the regulations for both general and specific rulings for manufacturing drawback so that, consistent with Customs treatment of corporations for drawback purposes (see *Moberly* v. *United States,* 4 Cust. Ct. 91, C.D. 294 (1940), and C.S.D. 89–12 (1989)), when a separately-incorporated subsidiary of a parent corporation is engaged in manufacture or production for drawback, the subsidiary is the proper party to give notice of its intent to operate under, or apply for, the general or specific ruling and cannot operate under any ruling issued in favor of the parent corporation. Finally, in regard to general and specific rulings for manufacturing drawback, it is proposed to provide that they will remain in effect indefinitely, unless no drawback claim or certificate of manufacture and delivery is filed under the ruling for a period of 5 years. If no such drawback claim or certificate is filed for 5 years, the ruling would automatically terminate following the publication of a notice to that effect in the Customs Bulletin. Currently, a drawback ''contract'' may remain in effect for 15 years unless a written request is filed to renew the ''contract''. This change would reduce unnecessary paperwork for drawback claimants and Customs.

Also among changes to part 191 not listed below are proposed modifications to the subpart of part 191 regarding drawback on supplies for certain vessels and aircraft (current subpart I; proposed subpart K). It is proposed to add to the regulation regarding a composite (monthly) notice of lading of fuel laden on vessels or aircraft as supplies that the fuel included in such a notice includes fuel laden for flights or voyages between the contiguous U.S. and Hawaii, Alaska,

or any U.S. possessions, consistent with the applicability of the underlying statute (19 U.S.C. 1309). Also, consistent with the changes to the Exporter's Summary Procedure (ESP) (*i.e.*, to make that procedure an alternative, instead of a privilege; see below) and an April 17, 1978, administrative ruling, it is proposed to modify these regulations to make it clear that the ESP may be used for drawback under this subpart and that if the ESP is used, the applicable requirements must be complied with.

The major changes to part 191 necessitated by statute are addressed below, following which the major administrative changes made to part 191 are outlined.

Manufacturing Drawback

Under the direct identification manufacturing drawback law, 19 U.S.C. 1313(a), upon the exportation of articles manufactured or produced with the use of imported, duty-paid merchandise, 99% of the duty so paid may be refunded as drawback. Under substitution manufacturing drawback, 19 U.S.C. 1313(b), if imported, duty-paid merchandise and any other merchandise (whether imported or domestic) of the same kind and quality are used in the manufacture or production of articles, then upon the exportation of such articles, 99% of the duty so paid on the imported merchandise may be refunded as drawback, notwithstanding that none of the exported articles was manufactured with the imported merchandise.

Section 632 of the Customs Modernization Act (hereinafter section 632) amended section 1313 (a) and (b) to permit drawback on articles destroyed under Customs supervision, in lieu of being exported. In addition, it is made clear that for drawback to accrue, the articles manufactured or produced cannot be used in the United States prior to their exportation or destruction.

The proposed regulations provide for a contract between the principal and agent when such a relationship is claimed to exist for purposes of substitution manufacturing drawback. The person who asserts that it is the manufacturer or producer by virtue of a principal-agency agreement under this section must establish that there was a contract between the principal and agent specifying the items in § 191.9(c)(1) (i) through (vi). The person asserting this relationship has the burden of providing satisfactory evidence to establish the above. The question of the existence of such a contract is an evidentiary question. Of course, the terms of a written contract are always easier to establish than those of an oral contract.

Principal-agency principles, in the drawback context, are used for drawback purposes to meet the ''one manufacturer'' requirement in 19 U.S.C. 1313(b) (*i.e.*, the requirement that the imported merchandise and the substituted merchandise must be used in a manufacture or production by the same person). With the use of principal-agency principles for drawback, the principal in such a relationship is treated as the manufacturer or producer when the agent performs that function as agent of the principal. The principal does not complete a certificate of delivery for merchandise transferred to the agent (because the principal, in effect, would be treated as transferring the merchandise to itself). The agent would be required to furnish a certificate of manufacture and delivery for the manufactured articles, relating to the designated or substituted merchandise and identifying the owner for whom the processing was conducted (*i.e.*, to document the manufacturing or processing operation). However, such a certificate of manufacture and delivery would not assign the potential drawback rights to the principal (because, by virtue of the relationship, the agent would not have those rights to transfer; the rights would have remained in the principal).

Rejected Merchandise Drawback

Section 632 also amended the rejected merchandise drawback law, 19 U.S.C. 1313(c). Under section 1313(c), drawback is allowable upon the exportation of merchandise which is found not to conform to sample or specifications, or which is shipped without the consent of the consignee. Such merchandise previously had to be returned to Customs custody prior to exportation, generally within 90 days after its release from Government custody unless Customs extended this period.

As amended by section 632, section 1313(c) extends the period for the return of merchandise to Customs custody to 3 years, permits destruction of the merchandise under Customs supervision in lieu of exportation, and allows drawback if the merchandise is determined to have been defective at the time of its importation without reference to purchase specifications or samples.

Unused Merchandise Drawback

Formerly, under 19 U.S.C. 1313(j)(1), drawback was allowable on the exportation, or destruction under Customs supervision, of imported merchandise which was not used in the United States before exportation or destruction, and which was in the same condition at the time of exportation or destruction as it was when imported. Under the substitution provision, 19 U.S.C. 1313(j)(2), a similar drawback was allowable if other (fungible) merchandise was instead exported, or destroyed under Customs supervision, provided that before exportation or destruction, the fungible merchandise was not used in the United States, was in the possession of the party claiming drawback, and was in the same condition at the time of exportation or destruction as was the imported merchandise when imported.

Section 632 liberalized these provisions in a number of ways. First, the requirement has been eliminated that the exported or destroyed merchandise be in the same condition as the imported merchandise when imported. Now it only must have been unused. For example, chemicals which deteriorated after importation are not in the same condition as the imported merchandise when imported and were not eligible for ''same condition'' drawback. Now such goods would be eligible for drawback under section 1313(j) as ''unused''. Second, the provision interpreting the restriction on ''use'' has been changed. Formerly, this provision provided that the performing of certain incidental operations on imported or substituted merchandise which did not amount to a manufacture or production for drawback purposes was not a ''use''. The new provision provides that the performing of *any* operations or combination of operations not amounting to a manufacture or production for drawback purposes on the imported or substituted merchandise is not a ''use''. The list of examples of the operations involved was expanded to include, but is not limited to: testing, cleaning, repacking, inspecting, sorting, refurbishing, freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing components, relabeling, disassembling, and unpacking, provided that they do not amount to manufacture or production for drawback purposes.

In addition to the foregoing, a number of additional statutory changes were made by section 632 with respect to the substitution provision, 19 U.S.C. 1313(j)(2). The substituted merchandise exported or destroyed for drawback need no longer be fungible (commercially identical) with the imported merchandise. Instead the imported and substituted merchandise must be commercially interchangeable. The legislative history of section 632

states that in determining whether merchandise is ''commercially interchangeable'', Customs should consider, but not be limited to, such factors as Governmental and recognized industrial standards, part numbers, tariff classification and values. Such merchandise, to be commercially interchangeable, need not be interchangeable in all situations.

The proposed regulations would require a determination of ''commercial interchangeability'' for all claims filed under 19 U.S.C. 1313(j)(2). This determination can be obtained in one of three ways: (1) A formal binding ruling from the Entry and Carrier Rulings Branch, Office of Regulations and Rulings, (2) a nonbinding predetermination request sent directly to the appropriate drawback office, or (3) submission of all the required documentation necessary to make a commercial interchangeability determination with each individual drawback claim filed. The details for the documentation needed are outlined in the regulations. In the interest of administrative efficiency and because commercial interchangeability is no more restrictive than fungibility, all prior unrevoked rulings finding merchandise to be fungible may continue to be relied upon to establish commercial interchangeability and reapplication is unnecessary for the same merchandise.

Moreover, the party entitled to claim drawback under section 1313(j)(2), as amended by section 632, has now been more precisely defined. Such party must either be the importer of the imported merchandise, or must have received, directly or indirectly, from the importer the imported merchandise, commercially interchangeable merchandise, or any combination thereof. Thus, the proposed regulations allow for multiple transfers of imported or substituted merchandise, but do not permit multiple substitutions (see 19 U.S.C. 1313(j)(2)(C)(ii)). Such transfers must be documented by a certificate of delivery. For example, it would be permissible for party A to import merchandise, transfer to party B commercially interchangeable merchandise documented by a Certificate of Delivery, and for party B to transfer the commercially interchangeable merchandise to party C documented by a Certificate of Delivery. If party C exports the merchandise, then party C is entitled to claim drawback, or to assign the right to claim drawback back through the chain of possession. To be entitled to claim drawback, the claimant must have been in possession of the specific substituted merchandise which is exported or destroyed with drawback. In this latter respect, the concept of possession under section 1313(j)(2), as amended by section 632, is further elucidated, to expressly include ownership while in bailment, in leased facilities, in transit to, or in any manner under the operational control of, the party claiming drawback.

Substitution of Finished Petroleum Derivatives

As amended by section 632, drawback is payable under section 1313(p) (19 U.S.C. 1313(p)), upon the timely exportation of an article which is of the same kind and quality as a qualified article. A qualified article is essentially either an imported, duty-paid article, or a manufactured article that would be eligible for drawback under 19 U.S.C. 1313 (a) or (b), should such qualified article itself be exported; furthermore, the qualified article, to be such, must be described in headings 2707, 2708, 2710–2715, 2901, and 2902, or in headings 3901–3914 (to the extent that these latter headings apply to liquids, pastes, powders, granules and flakes), of the Harmonized Tariff Schedule of the United States (HTSUS).

Also, for drawback to accrue under section 1313(p), the exporter of the exported article must have imported the qualified article or have manufactured it under section 1313 (a) or (b); or have purchased or exchanged, directly or indirectly, the qualified article from an importer, or from a refinery or facility which produced the article under section 1313 (a) or (b). In any event, the qualified article must have been manufactured, imported, or acquired by the exporter in the aforementioned manner, in a quantity at least as great as the quantity of the exported article. In addition, the exported article must be exported during the period in which the qualified article is manufactured or produced under section 1313 (a) or (b), or within 180 days after the close of such period; or within 180 days after the date of entry of a qualified imported article.

To be of the same kind and quality as the qualified article (solely for the purpose of section 1313(p)), the exported article must fall within the same 8-digit HTSUS tariff classification as, or be commercially interchangeable with, the qualified article. The drawback payable pursuant to section 1313(p) is 99% of the duty attributable to the qualified article when the qualified article is a manufactured article that would be eligible for drawback under 19 U.S.C. 1313 (a) or (b) and 100% of the duty attributable to the qualified article when the qualified article is an imported, duty-paid article and no such manufacture or production under section 1313 (a) or (b) is involved (19 U.S.C. 1313(p)(4)).

Packaging Material

Section 632 also amended 19 U.S.C. 1313(j)(4), recodifying this provision as 19 U.S.C. 1313(q), to allow drawback on imported material used to package or repackage goods that are exported or destroyed under Customs supervision and are eligible for drawback under the manufacturing, rejected or unused merchandise drawback provisions (19 U.S.C. 1313 (a), (b), (c), or (j)). Drawback is payable under the particular provision to which the packaged goods themselves are subject. The duty refund on the packaging material is, of course, based on the particular tariff provision under which the packaging material itself was entered.

Filing Under Wrong Subsection

Section 632 also amended the drawback law to provide that if a claimant files for drawback under one provision of section 1313, and Customs believes that drawback is more properly allowable under another provision thereof, the claim may simply be deemed filed under such other provision and processed with drawback accordingly.

The legislative history to this provision makes it clear that this provision is not intended to require Customs to investigate all alternatives in addition to the claimed basis before liquidating a drawback claim as presented. That is, the burden of bringing to Customs attention the possible applicability of the alternative subsection is on the claimant, not Customs. Claimants who are denied drawback under the provision claimed may raise alternative claims under another provision by protest under section 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514) (see 19 CFR part 174).

Since section 1313(r)(2) specifically requires that the claim be allowable under such other subsection (*i.e.*, not the subsection under which the claim was originally filed), the requirements in the law for drawback under the other subsection must be met. For example, if the original claim is under subsection (a) or (b) and the other provision is subsection (j), exportation or destruction would have to be within 3 years of importation, not 5 years; if the original claim was under subsection (j) and the other provision was subsection (c), the merchandise would have to be timely returned to Customs custody for exportation or destruction. These are

statutory requirements, and cannot be waived.

Successorship Under 19 U.S.C. 1313 (b) and (j)(2)

Under substitution manufacturing drawback, 19 U.S.C. 1313(b), the party manufacturing the articles on which drawback is claimed also must have used in manufacture the imported, duty-paid merchandise which forms the basis for the claim. Similarly, under the substitution unused merchandise provision, 19 U.S.C. 1313(j)(2), in pertinent part, the drawback claimant must have either imported the duty-paid merchandise, or received from the importer the imported merchandise, commercially interchangeable merchandise, or any combination thereof (in addition to possessing the exported or destroyed merchandise on which drawback is claimed).

Section 632 adds a new provision, codified as 19 U.S.C. 1313(s), which, under certain conditions, authorizes a business entity (the successor) to obtain the pre-existing drawback rights, whether vested or contingent, of another party (the predecessor) in the course of either acquiring all or substantially all of the rights and liabilities of such party, or acquiring the assets and business interests of a single plant, division or other business unit of such party, provided, in the case of the latter, that the value of the transferred property (real and personal) as well as intangibles, exceeds the value of the drawback rights.

As a result, in manufacturing drawback, section 1313(b), this enables a company to satisfy the ''one manufacturer'' requirement. Duty-paid merchandise used in manufacture by the predecessor before the date of acquisition (the succession) may thus form a basis for drawback on articles manufactured by the successor after the date of succession. The use of the duty-paid merchandise by the predecessor is imputed to the successor.

Likewise, in substitution unused merchandise drawback, section 1313(j)(2), under the general circumstances outlined above, duty-paid merchandise imported by the predecessor before the date of succession may form a basis for drawback on exported or destroyed merchandise possessed by the successor after the date of succession. The importation of the duty-paid merchandise is implicitly ascribed to the successor.

Similarly, commercially interchangeable merchandise received by a predecessor before the date of succession (19 U.S.C. 1313(s)(2)(B)) could become the basis for drawback on substituted merchandise received by the successor after the date of succession.

Agricultural Products Subject to Drawback

Section 404(e)(5) of the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465), codified as 19 U.S.C. 1313(w)(1), states that no drawback shall be available with respect to an agricultural product subject to an over-quota rate of duty established under a tariff-rate quota, except pursuant to 19 U.S.C. 1313(j)(1) (direct identification unused merchandise drawback). In addition, section 422(d) of the URAA, codified as 19 U.S.C. 1313(w)(2), provides that drawback shall be available under 19 U.S.C. 1313(a) (direct identification manufacturing) on any tobacco recognized as an agricultural product that is subject to an over-quota rate of duty established under a tariff-rate quota.

Because this statute precludes the availability of drawback ''with respect'' to a described agricultural product, the proposed regulations provide that no drawback will be available when either the designated imported merchandise or the substituted merchandise, if substitution drawback is claimed, is such an agricultural product. Additionally, based on the legislative history to this provision of the URAA, which makes it clear that the limitation on drawback applies only to merchandise for which the over-quota tariff must be paid (*i.e.*, only that exceeding the quantity provided for in the tariff rate quota), the proposed regulations make clear that the restriction applies to merchandise or articles to which the over-quota tariff rate is applicable.

Major Administrative Changes

The proposed revision of part 191 also presents several administrative changes and additions to the regulatory procedures principally governing the manufacturing and unused merchandise provisions (19 U.S.C. 1313 (a), (b), and (j)).

Manufacturing Drawback ''Contracts''

Under the current regulations, Customs requires manufacturers or producers of articles intended for exportation with drawback to apply for a so-called ''specific drawback contract'' (see subpart B of part 191) or a so-called ''general drawback contract'' (see subpart D of part 191).

In the case of the former, manufacturers or producers are currently required to file with the appropriate Customs office a proposal describing the manufacturing operation fully and the method of compliance with all requirements of the drawback law and regulations, to make a statement as to the records which will be maintained, and to agree to follow the methods and keep records concerning drawback procedures. Currently, Customs makes available sample proposals to prospective drawback applicants who request them. Customs reviews proposals submitted by manufacturers or producers and, if the proposals comply with the law and regulations, approves the proposals by means of a letter of approval to the applicant and publication in the Customs Bulletin of a synopsis of the approved proposal.

In the case of the latter, Customs currently publishes in the Customs Bulletin an offer for a ''general drawback contract'' in situations where numerous manufacturers or producers have similar operations and wish to claim drawback. Any manufacturer or producer who can comply with the terms and conditions of the published offer may adhere to it by simply notifying a drawback office in writing of its acceptance and providing certain identifying information, after which the appropriate drawback office acknowledges, in writing, the letter of adherence.

After thorough review and consideration of these procedures, changes to the current terminology for these procedures are proposed. In the case of ''specific drawback contracts'', what actually is involved is the request, by a prospective drawback claimant, for a ruling, in a special format described by Customs in the ''sample proposals'' referred to in the current regulations. Customs reviews the request and, if it complies with the law and regulations (*e.g.*, if the specifications proposed for same-kind-and-quality substitution under 19 U.S.C. 1313(b) meet the requirements for such substitution), Customs grants approval of the proposal. This is basically the procedure under which administrative rulings are obtained under part 177 of the Customs Regulations, with the addition for drawback of the special format described in the ''sample proposals''. Accordingly, it is proposed to substitute for the ''specific drawback contracts'' provided for in the current regulations the term ''specific manufacturing drawback rulings''.

As is true in the current regulations, it is proposed that unless operating under a general manufacturing drawback ruling (currently, a ''general drawback contract''; see discussion below), each manufacturer or producer

of articles intended to be claimed for drawback will be required to apply for a specific manufacturing drawback ruling. Sample formats for applications (combined application under 19 U.S.C. 1313(a) and (b); application under 19 U.S.C. 1313(b); application under 19 U.S.C. 1313(b) for petroleum drawback (T.D. 84–49); application under 19 U.S.C. 1313(d); and application under 19 U.S.C. 1313(g)) are contained in Appendix B of proposed part 191. Except for the described changes to the terminology and conforming changes necessitated by the proposed changes to the regulations, as described in this document, the sample formats for applications for specific manufacturing drawback rulings contained in appendix B are the same as the corresponding sample ''specific drawback contracts'' currently made available by Customs to persons requesting them.

Also as is currently true in regard to ''specific drawback contracts'', it is proposed that an application for a specific manufacturing drawback ruling be submitted to Customs Headquarters which will review it for consistency with the law and regulations and, based upon such review, approve or disapprove the application. If approved, a letter of approval will be issued to the applicant and a synopsis of the ruling will be published in the Customs Bulletin. If disapproved, the applicant will be promptly notified, with notification of the specific reason(s) for disapproval. A disapproved application may be resubmitted with modifications and/or explanations addressing the reasons given for disapproval, or the disapproval may be appealed to another office in Customs Headquarters.

In the case of ''general drawback contracts'', what actually is involved is the publication by Customs, as a Treasury Decision, of the requirements and specific interpretations for a particular kind of operation (for example, certain manufactures involving orange juice (T.D. 85–110) or steel (T.D. 81–74)). The operation is one used by numerous manufacturers or producers. A manufacturer or producer using one of these operations may, basically merely by giving Customs notice, claim drawback using the procedures in a ''general drawback contract''. Thus, these procedures are basically a publication of a general ruling. It is proposed to substitute for the ''general drawback contracts'' provided for in the current regulations the term ''general manufacturing drawback rulings''.

As is true in the current regulations, it is proposed that a manufacturer or producer engaged in an operation that falls within a published general manufacturing drawback ruling may submit a letter of notification to give Customs notice of the manufacturer's or producer's intent to operate under the general ruling. The current general rulings (for manufacturing under 19 U.S.C. 1313(a) (T.D.s 81–234 and 83–123); manufacturing under 19 U.S.C. 1313(b) for agents (T.D. 81–181); manufacturing under 19 U.S.C. 1313(b) for orange juice (T.D. 85–110); manufacturing under 19 U.S.C. 1313(b) for steel (T.D. 81–74); manufacturing under 19 U.S.C. 1313(b) for refined sugar (T.D. 81–92); and manufacturing under 19 U.S.C. 1313(b) for raw sugar (T.D. 83–59)) are contained in Appendix A of proposed part 191. Customs proposes to update this Appendix whenever new general manufacturing drawback rulings are issued or any such existing T.D.s are revised. Except for the described changes to the terminology and conforming changes necessitated by the proposed changes to the regulations, as described in this document, the general manufacturing drawback rulings contained in Appendix A are the same as the corresponding ''general drawback contracts'' published in the existing referenced Treasury Decisions.

Also as is currently true in regard to ''general drawback contracts'', the letter of notification of intent to operate under a general ruling will be submitted to the drawback office where drawback claims are intended to be filed, and will contain certain identifying information. The drawback office is required to acknowledge, in writing, this letter of notification, after which no further action is required before drawback claims may be filed on the basis of the general manufacturing drawback ruling.

These required procedures (*i.e.*, notification and acknowledgement) are intended to facilitate Customs administrative processing of manufacturing drawback claims to be filed.

Completion of Drawback Claims

In order to better ensure consistency and uniformity of practice, the section of the regulations dealing with the completion of drawback claims has been rewritten to clarify what documents constitute a complete drawback claim. The claim will be considered to be complete if all the required documentation is present with all the basic information provided.

In regard to certificates of manufacture and delivery, which are a required part of a complete claim when the claim is based on such a certificate, it is recognized that a certificate of manufacture and delivery may relate to articles which are the subject of more than one drawback claim. In such an instance, only one certificate of manufacture and delivery is required and the proposed regulations specifically provide that certificates of manufacture and delivery applicable to a claim must be filed with the claim, unless previously filed with Customs (if previously filed, the certificates must be referenced in the claim).

In cases in which there is some minor change or addition needed, such as a missing signature, numbers added incorrectly, information placed in the wrong part of the form, etc., the claim will be accepted and the 3-year time period to file a complete drawback claim after the date of exportation will be met although the claim must be corrected. However, if documentation is missing or the claim contains major inaccuracies and inconsistencies, the claim will be rejected and returned to the claimant for correction. The claim will not be considered to have been accepted by Customs and the 3-year time period will not be consid-ered to have been met by the filing of such an incomplete claim. Proposed rules have also been included to allow Customs to require claimants to restructure drawback claims in order to improve administrative efficiency, as long as the restructuring is not shown to be impossible or impractical for the claimant.

The regulations also differentiate between ''perfecting'' and ''amending'' a claim which has been accepted. The claim is ''perfected'' when the claimant, in response to a request from Customs, makes minor changes to the claim or provides documentation in support of the claim. The claim is ''amended'' when a major change must be made to the claim such as the designation of a different import entry or the claiming of a different export.

Privileges

The proposed regulation establishes Waiver of Prior Notice to Export or Destroy Unused Merchandise (WPN) (§191.91) and Accelerated Payment (AP) (§191.92) as special privileges that may be requested by formal application. The Exporters' Summary Procedure (ESP) is no longer a special privilege because of the changes in the filing requirements. ESP is now available to all claimants as an option for establishing exportation. The application requirements for privileges are designed to address key internal controls identified by the Treasury Inspector General by providing Customs: (1) Reasonable assurance of the accuracy of drawback claims; and (2) a sufficient basis to appropriately

verify the validity of drawback claims. These key internal controls are applicable when the issue is whether to grant a privilege. Claim sufficiency would be determined on an assessment of past facts.

Customs will allow claimants or exporters who hold existing privileges to continue utilizing these privileges for a period of one year after the effective date of the new drawback regulations. Those who want to continue these privileges must reapply prior to the conclusion of the one-year period under the requirements of the new regulations. Privileges will be revoked unless the claimant reapplies. This revocation would apply to all exportations subsequent to the revocation.

Claimants may continue with their privileges once the new application has been submitted and received by Customs, unless Customs denies the new application. The one-year period provides a reasonable opportunity for applicants to assemble and submit the required material.

Customs will act on the application within 90 days of submission or notify the applicant in writing regarding the reasons for requiring a longer time for acting on the application. Customs objective is to use the application process as an opportunity to promote informed compliance in the drawback process.

If applications for privileges are received by Customs prior to the date of publication (not effective date) of the final rule in the Federal Register, Customs will process these applications based on the current drawback procedures and regulations in place. Claimants must understand that even though the applications will be processed under the drawback regulations and procedures in place at the time of receipt of the applications, they will still be required to reapply for these privileges within one year from the effective date of the new drawback regulations. Therefore, Customs would encourage new applicants to prepare their applications under the guidelines of the new regulations.

Notice of Intent to Export or Destroy

Claimants filing a claim under 19 U.S.C. 1313 (j) or (c) must notify Customs prior to exportation or destruction (notice of destruction procedures also are applicable to drawback under 19 U.S.C. 1313 (a) and (b)). This notice should be filed at the port of intended examination or destruction. It must provide the information needed by Customs to determine if the merchandise should be examined. Under section 1313(c), the merchandise must always be returned to Customs custody. Customs intends to make this determination in an expedited manner and it will notify the party designated on the Notice of Intent to Export or Destroy of its decision. It is the responsibility of the filer to deliver the goods in a prompt manner once the filer receives notice of Customs decision to examine the merchandise. Customs will work with the claimant if a problem arises on how promptly the merchandise should be presented to Customs, but it should be done as promptly as is reasonably possible.

The terms ''present'', ''presented'', and ''presentation'', as used in proposed § 191.35 (c) and (d) and in proposed § 191.91(c)(1)(iv), mean the actual transporting of the merchandise to a location where Customs can examine it. Such transporting of the merchandise, however, is to take place only after Customs has notified the exporter or claimant of Customs decision to examine the merchandise.

There are two different situations which are envisioned here. The first is a situation in which examination takes place at the premises of the claimant or exporter. The second is a situation in which the exporter or claimant transports the merchandise to a Customs designated location. In either of these situations, arrangements must be made mutually between Customs and the exporter or claimant.

For exports that occur on or after the effective date of the regulations, a Notice of Intent to Export or Destroy must be filed with Customs, unless the exportation is covered by an existing waiver of prior notice. For destructions, a Notice of Intent to Export or Destroy must continue to be filed with Customs in all cases.

In addition, the notice of exportation form (Customs Form 7511) would be eliminated, and the drawback entry forms would be consolidated into one form (Customs Form 331). Furthermore, a new form would be devised on which a party would give advance notice of intent to export or destroy merchandise or articles for drawback purposes.

In recognition of the realities of the marketplace, it is further proposed to reduce the time frame from the current period of 5 working days to 2 working days from the date of intended exportation, within which prior notice of intent to export, unless waived, must be given to Customs for unused merchandise drawback, 19 U.S.C. 1313(j). A new Customs form (not a drawback entry form) will be devised on which prior notice would be given. Unless the claimant should be advised by Customs to the contrary during this 2-day period, the subject merchandise could thereafter be exported without delay. A drawback entry would later be filed with Customs.

The proposed regulations allow a drawback claim to be filed for qualifying merchandise which has been destroyed under Customs supervision. However, if a drawback claimant has not filed the Notice of Intent to Export/Destroy at least 7 working days prior to the intended destruction of the merchandise, the Customs Service must reject the drawback claim.

Once the Notice of Intent to Export or Destroy has been filed, the Customs Service has four working days to advise the party filing the notice as to whether Customs will witness the destruction. If the party is not so notified within four working days, the merchandise may be destroyed without delay and the destruction will be deemed to have occurred under Customs supervision.

Evidence of destruction must be included with the drawback claim.

For multiple or continuous drawback destructions other prearranged procedures may be developed with the applicable drawback office to foster administrative efficiency.

Retroactive Waiver of Notice of Intent to Export

The proposed regulations eliminate the retroactive waiver practice which was reported as a significant internal control weakness by the Treasury Inspector General. However, the proposed regulations allow a *one-time* opportunity for drawback claims under 19 U.S.C. 1313(j) on merchandise which a party exported or destroyed without having provided Customs with prior notice. This was included to: (1) Provide a reasonable method for first time claimants or exporters who were not aware of the requirement for prior notice of intent to export to obtain such drawback; and (2) make potential claimants aware of the waiver privilege and how to apply for it.

More than one claim may be included in this *one-time* opportunity, subject to the time requirements for filing complete claims (three years from the date of export). This would enable claimants to file for unused merchandise drawback on exportations which occur before the claimant may have known of the requirement for prior notice of intent to export.

Waiver of Notice of Intent to Export

Claimants and exporters may apply for a waiver of the requirement (under proposed § 191.35) to notify Customs of intent to export unused merchandise. The proposed regulations require that

applications include sufficient information about merchandise, export activities and recordkeeping to provide Customs reasonable assurance that merchandise subject to drawback claims will be unused and exported. The information will also give Customs a sufficient basis for verifying unused merchandise drawback claims.

When applying for the waiver or the one-time application to file drawback claims on past exports, as provided for in proposed § 191.36 of the regulations, a certification by the claimant is required. The claimant must certify the ability to support with business, laboratory or inventory records (prepared in the ordinary course of business) that the imported and exported or substituted merchandise (as applicable) was not used in the United States and, if substituted, was commercially interchangeable with the imported merchandise. The certification must also state that documentary evidence establishing compliance with all other applicable drawback requirements is likewise available. What is generally referred to is evidence (when applicable):

1. Of possession of the substituted merchandise within statutory time periods.
2. That the export and import transactions upon which the claim is based are within statutory time periods.
3. That the exportation is bonafide.
4. That Certificates of Delivery, when necessary, are in the possession of the claimant.
5. That any waivers or assignments from one party to another, when necessary, are in the possession of the claimant.
6. That any facts or conditions to complete the claim can be supported, such as those for successorship.

It is proposed that Customs approval of an application for the waiver of prior notice privilege would be conditioned from the outset on the agency's right to immediately stay the privilege holder's operation under the privilege, for a specified reasonable period, should the agency desire for any reason to examine the merchandise being exported with drawback for purposes of verification. This key proposed limitation on the grant of approval of the privilege would not be an adverse action, suspension, or other form of sanction against the privilege or privilege holder. Rather, it is a proposed restriction on the grant of the privilege itself. *See, e.g., Atlantic Richfield Co.* v. *United States,* 774 F.2d 1193, 1201 (D.C. Cir. 1985). The Customs Service believes this limited privilege structure would best protect the revenue and the public interest in sound administration of the drawback program. Accordingly, the agency proposes to provide the privilege holder a letter notifying it of any stay, specifying the reason(s) therefor, and the period in which the stay will remain in effect. The stay would expire at the end of the period specified in the agency's letter, or such earlier date as the agency notifies the privilege holder in writing that the reason for the stay has been satisfied. After the stay is lifted, operation under the privilege could resume. The mere lifting of a stay is not tantamount to a certification of compliance; it simply reactivates the agency's predictive judgment in granting the privilege in the first place.

Accelerated Payment of Drawback

As is true under the current regulations, accelerated (*i.e.,* before liquidation) payment of drawback claims is available for drawback claims under the manufacturing, rejected, or unused merchandise law, as well as claims under the law for substitution of finished petroleum derivatives. The proposed regulations require that applications for this privilege include sufficient information about the applicant and its drawback program, including specific information about the bond coverage that the applicant intends to use to cover accelerated payment of drawback, to provide Customs reasonable assurance against losses to the revenue when accelerated payments of drawback are made. The proposed regulations also require a certification by the applicant that all applicable statutory and regulatory requirements for drawback will be met and a description (with sample documents) of how the applicant will ensure compliance with these requirements. The detail required in this description will vary, depending on the size and complexity of the applicant's accelerated drawback program. To assist applicants, Customs will make available a sample format for requests for accelerated payment of drawback.

It is proposed that Customs would review and verify the information submitted in and with the application and, based on that information (and any additional information relating to the application requested by Customs), and the applicant's record of transactions with Customs, Customs would approve or deny the application. Criteria for Customs action, including the presence or absence of unresolved Customs charges, the accuracy of the claimant's past claims, and whether any previously approved drawback privilege was revoked or suspended, are specifically set forth in the proposed regulation.

If an applicant is approved for accelerated payment of drawback, the applicant would be required to furnish a properly executed bond in an amount sufficient to cover the estimated amount of drawback to be claimed during the term of the bond, subject to increase if the amount of the bond is exceeded. Drawback claims for which accelerated payment of drawback was requested and approved would be certified for payment within 3 weeks after filing, if a component for electronic filing of drawback claims, records, or entries which has been implemented under the National Customs Automation Program (NCAP) (19 U.S.C. 1411–1414) is used, and within 3 months after filing otherwise. In regard to electronic filing of drawback claims, currently procedures exist for electronic filing of certain ''coding sheet'' data as a part of drawback claims. The agency is working on the development of the drawback components under NCAP, in accordance with its responsibilities under the cited statutory provisions. It is anticipated that by the effective date of a Final Rule, a component for electronic filing under NCAP will have been properly implemented so that participants will be able to take advantage of the 3-week time period in the proposed regulations.

As is true of waiver of prior notice (see above), approval of the accelerated payment drawback privilege would be conditioned from the outset on the agency's right to immediately stay operation of that privilege, for a specified reasonable period, should the agency desire for any reason to examine compliance with the drawback law and regulations for purposes of verification. Claims filed in the absence of a privilege, or during the effect of a stay, would be paid in the normal manner—upon liquidation of the associated drawback entry(ies). However, if an accelerated payment privilege is granted, or reactivated after a stay, payment could proceed according to such privilege notwithstanding that the claim was filed in absence of such privilege or during a stay.

Harmonized Tariff Schedule or Schedule B Numbers

A fundamental requirement for drawback is that there be a duty-paid importation and an exportation and that the claimant have evidence to prove each. Under the laws and regulations governing dutiable entries for consumption (see 19 U.S.C. 1484, 1498 and 19 CFR parts 141, 142, and 143), the tariff classification is required from the importer of record of the merchandise. Such tariff classification is required to be shown on the entry summary and

other documentation, including the invoice for the merchandise (19 CFR 141.61(e), 19 CFR 141.90(b)). Under 19 CFR 141.61(e), the statistical reporting number required by the General Statistical Notes (GSN's) of the Harmonized Tariff Schedule of the United States (HTSUS) (10-digit number, see GSN 3), is required to be shown on the entry summary and other entry documentation. These documents (*i.e.,* entry summaries and other entry documentation, such as invoices) comprise evidence which is used to establish duty-paid importation of imported merchandise for drawback purposes.

The correct commodity number from Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States, is required by the Census Bureau to be provided for exported merchandise. This Schedule B commodity number is required to be entered in the space provided on the Shipper's Export Declaration (SED) form (15 CFR 30.7(l)) (for most exports to Canada, no SED is required (see 15 CFR 30.58; see also Department of Commerce Final Rule published in the Federal Rgister on November 30, 1990 (55 FR 49613))). Under GSN 5 of the HTSUS, as well as in the ''Notice to Exporters'' following GSN 5 of the HTSUS, the HTSUS statistical reporting numbers referred to in the preceding paragraph may, with certain exceptions, be substituted on the SED in place of comparable Schedule B numbers. The SED, with other documentation, comprises evidence which is used to establish exportation for drawback purposes.

In regard to imports, the proposed regulations would require claimants to provide on all drawback claims they submit the HTSUS number, to the six-digit level, for the designated imported merchandise. When such claimants are importers of record, the HTSUS number would be provided from the entry summary(s) and other entry documentation under which the merchandise originally entered the country. When such claimants are not importers of record (and thus would have received a Certificate of Delivery or a Certificate of Manufacture and Delivery for the imported merchandise (or substituted merchandise in certain cases; see below)), the HTSUS number would be provided from such Certificate (see below).

Also in regard to imports, the proposed regulations would require importers of record and any other party(ies) preparing Certificates of Delivery and Certificates of Manufacture and Delivery to provide the HTSUS number for the imported merchandise, to the six-digit level, on such Certificates. Any intermediate party(ies) receiving merchandise on a Certificate of Delivery would be required to transfer it to another party using such a Certificate. If the party preparing the Certificates is the importer of record, the HTSUS number would be from the entry summary(s) and other entry documentation under which the merchandise originally entered the country. If the party preparing the Certificates is another party (*e.g.,* an intermediate party), the HTSUS number would be from the Certificate on which that party received the merchandise, and thus ultimately be derived from the entry summary(s) and other entry documentation.

The requirement for the HTSUS number on the Certificates of Delivery and Certificates of Manufacture and Delivery is necessary because, under the proposed regulations, these Certificates would no longer be part of the drawback entry form, as is currently true. In the case of Certificates of Delivery, those Certificates will not be filed with a claim; they will be required to be in the possession of the claimant at the time that a claim is filed. Therefore, for Certificates of Delivery, the HTSUS number must be on both the Certificates and the claim (so that the claim preparer can derive the HTSUS number, ultimately, from the entry summary(s) and other entry documentation and so that that HTSUS number is on the drawback claim filed with Customs). In the case of Certificates of Manufacture and Delivery, such Certificates are required to be filed with a claim or to have been previously filed with Customs and are necessary parts of a complete claim. Therefore, providing the HTSUS number on the Certificates, if a claim is based on such certificates, satisfies the requirement for providing the HTSUS number on the claim (*i.e.,* if a claim is based on Certificate(s) of Manufacture and Delivery filed with the claim or previously filed with Customs, the HTSUS number need only be on the Certificate(s) and not the drawback entry form).

In addition, in the case of the transfer of merchandise substituted for the imported merchandise under 19 U.S.C. 1313(j)(2) or 19 U.S.C. 1313(p), the proposed regulations would require the claim and any Certificate of Delivery or Certificate of Manufacture and Delivery (see above) to bear the tariff numbers, to the six-digit level, for the substituted merchandise. This additional information proposed to be required for substituted merchandise is necessary to establish compliance with the drawback statute (*i.e.,* either as one of the criteria to establish commercial interchangeability for purposes of section 1313(j)(2), see House Report No. 103–361, *supra,* page 131, and Senate Report No. 103–189, *supra,* page 83, or to establish same kind and quality for purposes of section 1313(p), per the explicit language in that subsection itself).

In regard to exports, the proposed regulations would require all drawback claimants to provide on all drawback claims they submit the Schedule B numbers, or HTSUS numbers substituted therefor, for the exported merchandise or articles upon which the claims are based. These numbers would be provided from the SED(s) for such exported merchandise or articles, when an SED is required. If no SED is required (*e.g.,* for certain exports to Canada (15 CFR 30.58)), the claimant is required to provide the Schedule B commodity number(s) or HTSUS number(s), to the 6-digit level, that the exporter would have set forth on the SED, but for the exemption from the requirement for an SED.

Consistent with the stated intent of both the House Committee on Ways and Means and the Senate Committee on Finance, although the amended drawback law will allow claimants to make greater use of drawback, Customs will be able to ensure greater compliance through the use of enhanced penalty and automated drawback selectively programs authorized elsewhere in the NAFTA Implementation Act (see 19 U.S.C. 1593a, and its legislative history in House Report No. 103–361, *supra,* page 130, and Senate Report No. 103–189, *supra,* page 81). Customs intends the above-described proposed requirements, incorporating already required HTSUS and Schedule B commodity numbers into the drawback claim itself, to directly serve those specified means for achieving greater compliance. More generally, the above-described proposed requirements also serve the basic automation goals behind Title VI (Customs Modernization) of the NAFTA Implementation Act. These proposed requirements will result in numerical descriptions of merchandise or articles instead of narrative descriptions, which are far more amenable to electronic processing and automation. That is, since HTSUS and commodity numbers are the basic terms of reference for imports and exports of merchandise, inclusion of this information in drawback claims is necessary for Customs to be able to offer the enhanced electronic processing, uniformity, and automation Congress intended (see,

House Report No. 103–361, *supra,* pages 106–107; Senate Report No. 103–189, *supra,* pages 63–64).

For imports, the proposed requirement will go into effect for merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the regulations. For exports, the proposed requirement will go into effect for exported merchandise or articles exported one year after the effective date of the regulations.

Procedures to Evidence Exportation

It is the obligation of the claimant to have adequate evidence of export to support his drawback claim. There may be cases where the consignee shown on the bill of lading is not the ultimate consignee, or where, to retain commercial confidentiality, the identity of the ultimate consignee is not known to the claimant. The current practice in such a situation is for the exporter to either cut out or blank out the name of the ultimate consignee from the proof of export submitted to the claimant.

As noted above in this background, under ''Privileges'', the Exporter's Summary Procedure (ESP) would no longer be a special privilege, but would be available to all claimants as an option for establishing exportation. It is proposed to revise the current subpart regarding evidence of exportation (subpart E) accordingly. That is, the proposed regulations would list the alternative procedures for establishing exportation (actual evidence of exportation, export summary, certified export invoice for mail shipments, notice of lading for supplies for certain vessels or aircraft, and notice of transfer for articles manufactured or produced in the United States which are transferred to a foreign trade zone). The actual evidence of exportation alternative is modified to make it clear that the documentary evidence listed therein consists of *originals* of the listed documents, or certified copies thereof (the current regulations omit the word ''original''). In addition, the ''Chronological Summary of Exports'', provided for in the ESP regulations, is proposed to be simplified to list only necessary information (date of export, unique export identifier (explained in a footnote) description, net quantity, Schedule B number or HTSUS number (see discussion of Harmonized Tariff Schedule or Schedule B Numbers in this background), and destination).

Selectivity

The U.S. Customs Service has had an electronic selectivity program in operation for its National Drawback Program since 1994. The present system is a random statistical sampling whose methodology is based on the drawback claimant's overall history with Customs. This selectivity system will be further expanded in late 1996 to become a two-tier system whereby rules and criteria elements such as tariff classification numbers of the subject merchandise and articles, import and export locations, etc., would be used to evaluate risk and designate the level of Customs review of the claim. After this initial review, a random statistical targeting based on the claimant and the claimant's overall history with Customs would also be run (see Item 4 under discussion of liquidation, below).

Drawback Compliance Program

The drawback compliance program is designed to allow Customs to review claims in a post audit mode on an account basis rather than transaction by transaction. Any person, corporation or business may be certified as a participant in the drawback compliance program. Under 19 U.S.C. 1593a(e), claimants and other parties in interest may participate. A ''party'' is considered to include any person or company who is involved in providing data on which a drawback claim may be based or who is the drawback claimant. This would include importers, intermediary parties and drawback claimants. Therefore, any party that provides information or documentation to one who intends to file a drawback claim is encouraged to participate in the drawback compliance program.

Customs will be publishing another regulatory package in the Federal Register concerning penalties. That package, which will be subject to public comment, will set forth mitigation guidelines.

In evaluating a drawback compliance application package, Customs will consider the following factors:

—Size of the company;

—Nature of the business;

—Type of drawback claims being filed;

—Number of claims being filed.

In addition, depending on the complexity of the applicant's actual drawback program, Customs may request additional information or details before making its decision.

It is anticipated that the initial number of requests will make it difficult to approve applicants within a specified time period.

For corporations that have various business units and divisions, are decentralized or use several brokers to administer all or part of their drawback program, each entity may apply separately for the drawback compliance program.

Identification By Accounting Methods

For those situations in which the statute does not allow substitution of merchandise or articles (see above), and in which a company is not able to specifically identify merchandise or articles (*e.g.,* by serial number), accounting methods may be used to determine the identity thereof. Such identification may be made on the basis of a company's records, rather than on the basis of the actual physical movement of the inventory. Previous regulations and rulings required that merchandise or articles be commingled in the same inventory location in order for a company to use an accounting method to identify the merchandise or articles. The proposed regulations clarify that such commingling is allowed, but not mandated, and that a company's records will be the determining factor in the employment of an accounting method.

Four accounting methods are approved for use in the proposed revision of part 191: first-in, first-out (FIFO), last-in, first-out (LIFO), low-to-high, and weighted average. Provision is also made for Customs to approve either a modification of one of these methods, or a different method. These proposed regulations reflect Customs position that a properly established turn-over period may be used to establish timely use in manufacture or production of the imported designated and other (substituted) merchandise under 19 U.S.C. 1313(b), and the manufacture or production of the finished articles under 19 U.S.C. 1313 (a) and (b). These proposed regulations also incorporate the criteria set forth in T.D. 95–61, 60 FR 40995 (August 11, 1995), and are designed to provide a greater degree of predictability in the accounting methods that may be approved for drawback purposes.

Recordkeeping

Records are required to be kept to establish compliance with the requirements in the drawback law and the regulations issued under that law. Individual records are identified and described in the proposed revision of part 191 at the point where the requirements underlying those records are found.

Records supporting the information contained in any document required for filing a drawback claim would have to be maintained by the claimant or by the responsible party (*e.g.,* importer, exporter, possessor). If deficiencies are revealed in the underlying records on

which a drawback claim is based, the payment of the claim would, of course, to this extent be adversely affected, notwithstanding that such records were generated and maintained by persons other than the claimant. Regarding the retention period for records kept by parties other than the claimant, it is the responsibility of such parties to communicate with the claimant to determine when a related claim for drawback has been filed and paid by Customs. The retention period for certificates of delivery begins upon their issuance (19 U.S.C. 1313(t)). In addition, the retention period for records generally, including that for certificates of delivery, ends 3 years after the date of payment of the related claim. Notwithstanding the recordkeeping retention requirements, claimants are urged to maintain records that support the claim until the liquidation of the drawback entry becomes final. Moreover, records not specifically subject to recordkeeping retention which are maintained by a claimant, and support a claim, ought to be maintained until the liquidation of the drawback entry becomes final.

Redistribution of Drawback Workload

Customs may transfer drawback claims to a location other than where they were originally filed to ensure the timely and efficient processing of the claims. This would occur primarily to evenly distribute the drawback claims or because an office has a particular expertise with a specific account or product. Customs believes that this is an internal Customs work management issue which does not require regulatory action. Therefore, the proposed regulations do not address this issue. However, Customs recognizes the public's concerns over the possibility of lost documentation or delays in processing. Customs will develop procedures to safeguard documents that are mailed and to monitor the time to process them. Customs believes that, until a fully-developed selectivity system and compliance program are operating, quicker, more efficient and more accurate processing of drawback claims will be the result of transferring claims among offices. If a claim is transferred for processing, the notice of liquidation of the associated drawback entry will remain the bulletin notice of liquidation posted at the port where the drawback claim was originally filed.

Liquidation of Drawback Entries

The committee reports of both the Senate and House commented on their expectation that Customs drawback regulations will take into account the various time frames for recordkeeping, filing claims, amendments, and clarifications, and for auditing and liquidating drawback entries. Customs believes that these proposed regulations have addressed many of the Committees' concerns, specifically in proposed §§ 191.25, 191.26, 191.37, 191.51, 191.52, 191.53, 191.61, and 191.62. These proposed regulations do not, however, specify a time frame for liquidating drawback entries. This is because Customs believes that, absent statutory language such as the ''deemed liquidated'' language of 19 U.S.C. 1504, it lacks the authority to specify a deadline after which the drawback entry is ''deemed liquidated'' as entered.

Customs is aware of the Congressional and trade interest in shortening the time between the filing of a drawback entry and the liquidation of that entry. Customs is pursuing the following actions in order to reduce the time in which to liquidate drawback entries:

1. Customs has established 11 new positions and filled vacancies in all 8 drawback offices in order to bring them up to their designated staffing levels;

2. Customs has developed and delivered standardized, national training to all drawback specialists (not just the new specialists) in FYs '95 and '96;

3. Customs has developed automated tools (initially, diskette filings and ABI transmission of drawback claims) to more quickly identify, reject and return to filers claims that do not meet minimum filing standards.

4. Customs has developed and is improving a selectivity system in ACS which already has reduced the number of designated import entries that must be physically retrieved by the drawback office, prior to liquidation of related drawback entries. Enhancements to this system will eventually lead to virtual ''instant liquidation'' of those drawback entries not selected by the system for pre-liquidation scrutiny by the drawback specialists.

5. Through the Drawback Compliance Program, and increased use of claimant interviews and visits for claimants not in the Drawback Compliance Program, Customs expects to inform drawback claimants of their responsibilities with respect to filing and supporting their claims as well as to learn about claimants' drawback programs, recordkeeping, and internal controls. In the past, when drawback specialists questioned the claims, or sought evidence to support the claim, they often relied upon Regulatory Audit. With better staffing and training, as well as use of interviews with claimants, Customs expects that the number of referrals to Regulatory Audit will significantly decrease.

6. In partnership with trade groups, Customs plans to use meetings, conferences, publications, satellite meetings and other forums, to educate and to learn from claimants.

7. The largest single reason for the delays in liquidating drawback entries is that the designated import entry has not been liquidated. Approximately 75% of entries withheld from liquidation are because of suspensions under the antidumping or countervailing duty laws; however, antidumping and countervailing duties are not subject to drawback. In recognition of this, Customs announced in the Federal Register on May 17, 1996, a pilot of the reconciliation process provided for in 19 U.S.C. 1484(b) (as amended by section section 637 of the NAFTA Implementation Act) for entry summaries suspended under the antidumping or countervailing duty laws. The use of the reconciliation entry process will allow for the liquidation of the ordinary duty on these entry summaries, thereby expediting the liquidation of the drawback entries referencing those import entries.

Customs believes that these actions, taken together, will bring about faster liquidation of drawback entries, thereby addressing the Congress's concerns.

Comments

Customs has consulted extensively with the drawback community/trade in formulating these proposed regulations. Three drafts of the proposed regulations were made available to the public through Customs Automated Broker Interface (ABI) and the Customs Electronic Bulletin Board. Copies were also sent out to interested persons upon request. Additionally, since January 1992, Customs met 42 times with various groups representing drawback claimants, exporters, brokers, attorneys, and consultants to explain and discuss its proposals. In the summer of 1995, the trade expressed its continuing dissatisfaction with the modifications Customs had made based upon comments to those earlier drafts.

At the request of the American Association of Exporters and Importers, Customs agreed to continue these informal rulemaking consultations with trade groups in a series of meetings. These meetings were a continuation of the previous informal consultations with the trade. They were not a negotiation, mediation or a formal rulemaking procedure as provided for in the Negotiated Rulemaking Act of 1990 (Pub. L. 101–648, codified at 5 U.S.C. 561 *et seq.*). Other groups that

participated in these meetings were the National Council on International Trade Development, the National Customs Brokers and Forwarders Association of America, and the American Petroleum Institute. The Customs participants represented the Trade Compliance program managers at Headquarters, the Office of Regulations and Rulings, field drawback offices, and Regulatory Audit. In view of concerns regarding Customs obligations under the Chief Financial Officer Act of 1990 (Pub. L. 101–576), representatives of the Treasury Inspector General and the Customs Office of Financial Management also participated. In addition, comments and recommendations from the public, the trade and Customs drawback offices were considered in this process.

These proposed regulations are subject to the requirements of the Administrative Procedures Act (5 U.S.C. 553), which requires Customs to give notice and afford interested persons the opportunity to comment on the proposed rules. Therefore, before adopting this proposal, full consideration will be given to any written comments (preferably in triplicate) that are timely submitted to Customs. The comments submitted will receive full consideration and only Customs staff will prepare the analysis of the comments submitted in response to this notice of proposed rulemaking.

In view of Customs extensive consultation with groups of interested persons, Customs believes that a 60-day comment period is adequate for review and comment by all interested parties. Interested persons are encouraged to file their comments within the 60-day period.

All such comments received from the public pursuant to this notice of proposed rulemaking will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, 1099 14th Street, NW., Suite 4000, Washington, DC.

Regulatory Flexibility Act and Executive Order 12866

The proposed rule would amend the Customs drawback regulations principally to reflect changes to the law occasioned by the Customs modernization portion of the NAFTA Implementation Act. The proposed rule also makes certain administrative changes to the existing regulations which are essentially intended to simplify and expedite the filing and processing of claims for the payment of drawback, and it generally revises and rearranges these regulations to improve their editorial clarity. As such, under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed rule would not have a significant economic impact on a substantial number of small entities. Thus, it is not subject to the requirements of 5 U.S.C. 603 or 604, nor would it result in a ''significant regulatory action'' under E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

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

The collection of information in this document is in §§ 191.0–191.195. This information is necessary and will be used to enforce the requirements of the drawback law and protect the revenue. The likely respondents and/or recordkeepers are business and other for-profit institutions.

Estimated annual reporting and/or recordkeeping burden: 216,650 hours.

Estimated average annual burden per respondent/recordkeeper: one hour for providing Harmonized Tariff System numbers; 60 hours for drawback compliance program participation.

Estimated number of respondents and/or recordkeepers: 7000.

Estimated annual frequency of responses: on occasion.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the 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.

Parallel Reference Table

[This table shows the relation of sections in the proposed revision of part 191 to existing part 191.]

Revised section	Old section
191.0	191.0.
191.0a	New.
191.1	191.1.
191.2(a)	191.2(p).
191.2(b)	New.
191.2(c)	New.
191.2(d)	New.
191.2(e)	New.
191.2(f)	191.2(b).
191.2(g)	New.
191.2(h)	191.2(j).
191.2(i)	191.2(a).
191.2(j)	191.2(i).
191.2(k)	191.2(h).
191.2(l)	191.2(g).
191.2(m)	New.
191.2(n)	191.2(l).
191.2(o)	191.2(f).
191.2(p)	New.
191.2(q)	New.
191.2(r)	New.
191.2(s)	191.2(m).
191.2(t)	191.2(n).
191.2(u)	191.2(e).
191.2(v)	191.2(o).
191.3	191.3.
191.4	191.11.
191.5	191.13.
191.6	191.6.
191.7(a)	191.41.
191.7(b)(1)	191.42(a).
191.7(b)(2)	191.42(b).
191.7(c)	191.43.
191.7(d)	191.44
191.8(a)	191.21(a).
191.8(b)	191.21(c).
191.8(c)	191.21(b).
191.8(d)	191.21(d); 191.23(a).
191.8(e)	191.23(b).
191.8(f)	191.24.
191.8(g)(1)	191.25 (a)&(b)(1).
191.8(g)(2)	191.25(b)(2).
191.8(g)(3)	191.25(c).
191.8(h)	191.26.
191.9	191.21(a)(2); 191.34; 191.66 (b), (f).
191.9(a), first sentence.	New.
191.10(a)	191.65(a).
191.10(b)	191.22(e).
191.10(c)(1)	191.65(b).
191.10(c)(2)	191.66(d).
191.10(d)	191.5; 191.22(e).
191.10(e)	New.
191.10(f)	191.65(d).
191.11	191.27.
191.12	New.
191.13	191.4(a)(11).
191.14	191.22(c).
191.21	191.4(a)(1).

Revised section	Old section
191.22(a)	191.4(a)(2).
191.22(b)	191.32(c).
191.22(c)	191.32(d).
191.22(d)	New.
191.22(e)	191.22(a)(5) & 191.33.
191.23(a)-(c)	New.
191.23(d)(1)	191.22(a)(2) & 191.32(b).
191.23(d)(2)	191.22(a)(1)(iv).
191.24(a)	191.66(a).
191.24(b)	New.
191.24(c)	191.22(a)(4); 191.62(a)(2)(i).
191.24(d)	New.
191.25(a)(1)	191.22(a)(1).
191.25(a)(1)(iii)	191.22(a)(3).
191.25(a)(2)	191.22(b).
191.25(a)(3)	191.22(c).
191.25(b)	191.32(a).
191.25(c)	191.22(a)(2) & 191.32(b).
191.25(d)	191.62(a)(2)(ii).
191.25(e)	191.65(a)&(b).
191.25(f)	191.62(c).
191.25(g)	191.5.
191.26(a)	191.8(a); 191.22(a)(1)(v).
191.26(b)	191.32(a).
191.26(c)	191.23(c).
191.27	New.
191.31(a)	191.4(a)(9); 191.141(a)(1).
191.31(b)	191.8(b); 191.141(a)(2).
191.31(c)	191.141(a)(3).
191.32(a)	191.141(a)(10).
191.32(b)	191.141(h).
191.32(c)	New.
191.32(d)	191.141(h).
191.32(e)&(f)	New.
191.33	New.
191.34(a)	191.65(a); 191.141 (b) & (e).
191.34(b)	New.
191.34(c)	191.65(d).
191.35	191.141(b).
191.36	New.
191.37(a)	191.5
191.37(b)	191.22(b).
191.41	191.142(a)(1).
191.42	191.142(b).
191.43	191.142(a)(2).
191.44	New.
191.51(a)	191.62 (a)&(b).
191.51(b), (c) & (d)	New.
191.52(a)	191.61.
191.52(b) & (c)	191.64.
191.61	191.10.
191.62(a)	191.9.
191.62(b)	New.
191.71	191.141(f).
191.72	191.51.
191.73	191.53.
191.74	191.54.
191.75	191.55.
191.76	191.67.
191.81	191.71.
191.82	191.73(a).
191.83	191.73(b).
191.84	191.7.
191.91	191.141(b)(2)(ii).
191.92	191.72.
191.93	New.

Revised section	Old section
191.101	191.81.
191.102	191.82.
191.103	191.83.
191.104	191.84.
191.105	191.85.
191.106	191.86.
191.111	191.91.
191.112	191.92; 191.93.
191.121	191.101.
191.122	191.102.
191.123	191.103.
191.131	191.111.
191.132	191.112.
191.133	191.113.
191.141	191.121.
191.142	191.122.
191.143	191.123.
191.144	191.124.
191.151	191.131.
191.151(a)(1)	191.8(c).
191.152	191.132.
191.153	191.133.
191.154	191.134.
191.155	191.135.
191.156	191.136.
191.157	191.137.
191.158	191.138.
191.159	191.139.
191.161	191.151.
191.162	191.152.
191.163	191.153.
191.164	191.154.
191.165	191.155.
191.166	191.156.
191.167	191.157.
191.168	191.158.
191.171	New.
191.172	New.
191.173	New.
191.174	New.
191.175	New.
191.176	New.
191.181	191.161.
191.182	191.162.
191.183	191.163.
191.184	191.164.
191.185	191.165.
191.186	191.166.
191.191	New.
191.192	New.
191.193	New.
191.194	New.
191.195	New.

Parallel Reference Table

[This table shows the relation between the sections in existing part 191 to those in the proposed revision of part 191.]

Old section	Revised section
191.0	191.0.
191.1	191.1.
191.2(a)	191.2(i).
191.2(b)	191.2(f).
191.2(c)	Deleted.
191.2(d)	Deleted.
191.2(e)	191.2(u).
191.2(f)	191.2(o).
191.2(g)	191.2(l).
191.2(h)	191.2(k).
191.2(i)	191.2(j).

Old section	Revised section
191.2(j)	191.2(h).
191.2(k)	Deleted.
191.2(l)	191.2(n).
191.2(m)	191.2(s).
191.2(n)	191.2(t).
191.2(o)	191.2(v).
191.2(p)	191.2(a).
191.3	191.3
191.4(a)(1)	191.21.
191.4(a)(2)	191.22(a).
191.4(a) (3)–(8)	Deleted.
191.4(a)(9)	191.31(a).
191.4(a)(10)	191.32(a).
191.4(a)(11)	191.13.
191.4(a) (12)–(14)	Deleted.
191.4(b)	Deleted.
191.5	191.10(d); 191.25(g); 191.37(a).
191.6	191.6.
191.7	191.84.
191.8(a)	191.26(a).
191.8(b)	191.31(b).
191.8(c)	191.151(a)(1).
191.9	191.62(a).
191.10	191.61.
191.11	191.4.
191.12	Deleted.
191.13	191.5.
191.21(a)	191.8(a).
191.21(a)(1)	Deleted.
191.21(a)(2)	191.9.
191.21(b)	191.8(c).
191.21(c)	191.8(b).
191.21(d)	191.8(d).
191.21(e)	Deleted.
191.22(a)(1)	191.25(a)(1).
191.22(a)(1)(iv)	191.23(d)(2).
191.22(a)(1)(v)	191.26(a).
191.22(a)(2)	191.23(d)(1); 191.25(c).
191.22(a)(3)	191.25(a)(1)(iii).
191.22(a)(4)	191.24(c).
191.22(a)(5)	191.22(e).
191.22(b)	191.25(a)(2).
191.22(c)	191.14.
191.22(d)	Deleted.
191.22(e)	191.10 (b) & (d).
191.23(a)	191.8(d).
191.23(b)	191.8(e).
191.23(c)	191.26(c).
191.23(d)	Deleted.
191.24	191.8(f).
191.25(a)	191.8(g)(1).
191.25(b)(1)	191.8(g)(1).
191.25(b)(2)	191.8(g)(2).
191.25(c)	191.8(g)(3).
191.26	191.8(h).
191.27	191.11.
191.31	Deleted.
191.32(a)	191.25(b).
191.32(b)	191.25(c).
191.32(c)	191.22(b).
191.32(d)	191.22(c).
191.33	191.22(e).
191.34	191.9.
191.41	191.7(a).
191.42(a)	191.7(b)(1).
191.42(b)	191.7(b)(2).
191.43	191.7(c).

Old section	Revised section
191.44	191.7(d).
191.45	Deleted.
191.51	191.72.
191.52	Deleted.
191.53	191.73.
191.54	191.74.
191.55	191.75.
191.56	Deleted.
191.57	Deleted.
191.61	191.52(a).
191.62(a)	191.51(a).
191.62(a)(2)(ii)	191.25(d).
191.62(b)	191.51(a).
191.62(c)	191.25(f).
191.62(d)	Deleted.
191.63	Deleted.
191.64	191.52 (b) & (c).
191.65(a)	191.10(a); 191.25(e).
191.65(b)	191.10(c)(1); 191.25(e).
191.65(c)	Deleted.
191.65(d)	191.10(f); 191.34(c).
191.66(a)	191.24(a).
191.66(b)	191.9.
191.66(c)	Deleted.
191.66(d)	191.10(c)(2).
191.66(e)	Deleted.
191.66(f)	191.9.
191.67	191.76.
191.71	191.81.
191.72	191.92.
191.73(a)	191.82.
191.73(b)	191.83.
191.81	191.101.
191.82	191.102.
191.83	191.103.
191.84	191.104.
191.85	191.105.
191.86	191.106.
191.91	191.111.
191.92, 191.93	191.112.
191.101	191.121.
191.102	191.122.
191.103	191.123.
191.111	191.131.
191.112	191.132.
191.113	191.133.
191.121	191.141.
191.122	191.142.
191.123	191.143.
191.124	191.144.
191.131	191.151.
191.132	191.152.
191.133	191.153.
191.134	191.154.
191.135	191.155.
191.136	191.156.
191.137	191.157.
191.138	191.158.
191.139	191.159.
191.141(a)(1)	191.31(a).
191.141(a)(2)	191.31(b).
191.141(a)(3)	191.31(c).
191.141(b)	191.34(a); 191.35.
191.141(b)(2)(ii)	191.91.
191.141(c)	191.51.
191.141(d)	191.73.
191.141(e)	Deleted.
191.141(f)	191.71.
191.141(g)	191.51; 191.52.
191.141(h)	191.32 (b) & (d).
191.142(a)(1)	191.41.
191.142(a)(2)	191.43.
191.142(b)	191.42.
191.151	191.161.
191.152	191.162.
191.153	191.163.
191.154	191.164.
191.155	191.165.
191.156	191.166.
191.157	191.167.
191.158	191.168.
191.161	191.181.
191.162	191.182.
191.163	191.183.
191.164	191.184.
191.165	191.185.
191.166	191.186.

List of Subjects

19 CFR Part 7

Customs duties and inspection, Exports, Imports.

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 145

Customs duties and inspection, Imports, Postal Service.

19 CFR Part 173

Administrative practice and procedure, Customs duties and inspection.

19 CFR Part 174

Administrative practice and procedure, Customs duties and inspection, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 181

Administrative practice and procedure, Canada, Customs duties and inspection, Exports, Imports, Mexico, Reporting and recordkeeping requirements, Trade agreements (North American Free Trade Agreement).

19 CFR Part 191

Canada, Commerce, Customs duties and inspection, Drawback, Mexico, Reporting and recordkeeping requirements, Trade agreements.

Proposed Amendments

It is proposed to amend chapter I of title 19, Code of Federal Regulations (19 CFR chapter I), by amending parts 7, 10, 145, 173, 174, 181 and 191 as set forth below.

PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

1. The general authority for part 7 would be revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624; 48 U.S.C. 1406i.

§ 7.1 [Amended]

2. It is proposed to amend § 7.1(a) by removing the reference to ''§§ 191.85 and 191.86'' where appearing therein, and by adding in place thereof, ''§§ 191.105 and 191.106''.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 would continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

§ 10.38 [Amended]

2. It is proposed to amend § 10.38(f) by removing the reference to ''§ 191.10'' where appearing therein, and by adding in place thereof, ''§ 191.61''.

PART 145—MAIL IMPORTATIONS

1. The general authority citation for part 145 would be revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624;

* * * * *

§ 145.72 [Amended]

2. It is proposed to amend § 145.72(e) by removing the reference to ''§ 191.142'' where appearing therein, and by adding in place thereof, ''§ 191.42''.

PART 173—ADMINISTRATIVE REVIEW IN GENERAL

1. The general authority citation for part 173 would continue to read as follows:

Authority: 19 U.S.C. 66, 1501, 1520, 1624.

2. It is proposed to amend §173.4 by adding a sentence at the end of paragraph (c) to read as follows:

§ 173.4 Correction of clerical error, mistake of fact, or inadvertence.

* * * * *

(c) * * * The party requesting reliquidation under section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)) shall state, to the best of his knowledge, whether the entry for which correction is requested is the subject of a drawback claim, or whether the entry has been referenced on a certificate of delivery or certificate of manufacture and delivery so as to enable a party to make such entry the subject of drawback (see §§181.50(b) and 191.81(b) of this chapter).

* * * * *

PART 174—PROTESTS

1. The general authority citation for part 174 would continue to read as follows:

Authority: 19 U.S.C. 66, 1514, 1515, 1624.

2. It is proposed to amend § 174.13 by adding a new paragraph (a)(9) to read as follows:

§ 174.13 Contents of protest.

(a) *Contents, in general.* * * *

(9) A declaration, to the best of the protestant's knowledge, as to whether the entry is the subject of drawback, or whether the entry has been referenced on a certificate of delivery or certificate of manufacture and delivery so as to enable a party to make such entry the subject of drawback (see §§ 181.50(b) and § 191.81(b) of this chapter).

* * * * *

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

1. The general authority citation for part 181 would continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 3314.

§ 181.44 [Amended]

2. It is proposed to amend § 181.44(d) by removing the reference to ''§ 191.2(m)'' where appearing therein, and by adding in place thereof, ''§ 191.2(s)''.

3. It is proposed to amend the ''Example'' in § 181.44(f) by removing the reference to ''Customs Form 7575–A'' where appearing therein, and by adding in its place, ''Customs Form 331''.

§ 181.45 [Amended]

4. It is proposed to amend § 181.45(b)(2)(i) by removing the reference to ''§ 191.141(e)'' where appearing therein, and by adding in place thereof, ''§ 191.14''.

§ 181.46 [Amended]

5. It is proposed to amend § 181.46(b) by removing the term ''port(s)'' and where appearing in the first sentence, and adding in place thereof, ''drawback office(s)''.

§ 181.47 [Amended]

6. It is proposed to amend § 181.47(b)(2)(i)(C) by removing the words ''Exporter's'' and ''exporter's'' where appearing therein, and by adding in place thereof, ''Export'' and ''export'', respectively.

7. It is proposed to amend § 181.47(b)(2)(ii)(A) by removing ''Customs Form 7539J'', and adding in place thereof, ''Customs Form 331''.

8. It is proposed to amend § 181.47(b)(2)(ii)(D) by removing the phrase ''The certificate of delivery portion of Customs Form 331'' where appearing therein, and adding in place thereof, ''A certificate of delivery''.

9. It is proposed to amend § 181.47(b)(2)(ii)(G) by revising the first two sentences to read:

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(G) Evidence of exportation. Acceptable documentary evidence of exportation to Canada or Mexico shall include a bill of lading, air waybill, freight waybill, export ocean bill of lading, Canadian customs manifest, cargo manifest, or certified copies thereof, issued by the exporting carrier''. * * *

10. It is proposed to amend § 181.47(b)(2)(iii)(A) by removing ''Customs Form 7539C'' where appearing therein, and by adding in place thereof, ''Customs Form 331''.

§ 181.48 [Amended]

11. It is proposed to amend § 181.47(b)(2)(v) by removing the reference to ''subpart L'' where appearing therein, and by adding in place thereof, ''subpart N''.

§ 181.49 [Amended]

12. It is proposed to amend § 181.49 by removing the reference to ''§ 191.5'' where appearing therein, and by adding in place thereof, ''§ 191.25(d)''.

§ 181.50 [Amended]

13. It is proposed to amend § 181.50(c) by removing the reference to ''§ 191.72'' where appearing therein, and by adding in place thereof, ''191.92''.

PART 191—DRAWBACK

1. It is proposed to revise part 191 to read as follows:

Sec.
191.0 Scope.
191.0a Claims filed under NAFTA.

Subpart A—General Provisions

191.1 Authority of the Commissioner of Customs.
191.2 Definitions.
191.3 Duties and fees subject or not subject to drawback.
191.4 Merchandise in which a U.S. Government interest exists.
191.5 Guantanamo Bay, insular possessions, trust territories.
191.6 Authority to sign drawback documents.
191.7 General manufacturing drawback ruling.
191.8 Specific manufacturing drawback ruling.
191.9 Agency.
191.10 Certificate of delivery.
191.11 Tradeoff.
191.12 Claim filed under incorrect provision.
191.13 Packaging materials.
191.14 Identification of merchandise or articles by accounting.

Subpart B—Manufacturing drawback

191.21 Direct identification drawback.
191.22 Substitution drawback.
191.23 Methods of claiming drawback.
191.24 Certificate of manufacture and delivery.
191.25 Recordkeeping for manufacturing drawback.
191.26 Time limitations.
191.27 Person entitled to claim drawback.

Subpart C—Unused Merchandise Drawback

191.31 Direct identification.
191.32 Substitution drawback.
191.33 Person entitled to drawback.
191.34 Certificate of delivery required.
191.35 Notice of intent to export; examination of merchandise.
191.36 Failure to file notice of intent to export or destroy merchandise.
191.37 Records.

Subpart D—Rejected Merchandise

191.41 Rejected merchandise drawback.
191.42 Procedure.
191.43 Unused merchandise claim.
191.44 Destruction under Customs supervision.

Subpart E—Completion of Drawback Claims

191.51 Completion of drawback claims.
191.52 Completing, perfecting or amending claims.
191.53 Restructuring of claims.

Subpart F—Verification of Claims

191.61 Verification of drawback claims.
191.62 Falsification of drawback claims.

Subpart G—Evidence of Exportation and Destruction

191.71 Drawback on articles destroyed under Customs supervision.
191.72 Alternative procedures for establishing exportation.
191.73 Export summary procedure.
191.74 Certification of exportation by mail.
191.75 Exportation by the Government.
191.76 Landing certificate.

Subpart H—Liquidation and Protest of Drawback Entries

191.81 Liquidation.
191.82 Person entitled to claim drawback.
191.83 Person entitled to receive payment.
191.84 Protests.

Subpart I—Privileges

191.91 Waiver of notice of intent to export.
191.92 Accelerated payment.
191.93 Combined applications.

Subpart J—Internal Revenue Tax on Flavoring Extracts and Medicinal or Toilet Preparations (Including Perfumery) Manufactured from Domestic Tax-Paid Alcohol

191.101 Drawback allowance.
191.102 Procedure.
191.103 Additional requirements.
191.104 Alcohol, Tobacco and Firearms certificates.
191.105 Liquidation.
191.106 Amount of drawback.

Subpart K—Supplies for Certain Vessels and Aircraft

191.111 Drawback allowance.
191.112 Procedure.

Subpart L—Meats Cured with Imported Salt

191.121 Drawback allowance.
191.122 Procedure.
191.123 Refund of duties.

Subpart M—Materials for Construction and Equipment of Vessels and Aircraft Built for Foreign Ownership and Account

191.131 Drawback allowance.
191.132 Procedure.
191.133 Explanation of terms.

Subpart N—Foreign-Built Jet Aircraft Engines Processed in the United States

191.141 Drawback allowance.
191.142 Procedure.
191.143 Drawback entry.
191.144 Refund of duties.

Subpart O—Merchandise Exported from Continuous Customs Custody

191.151 Drawback allowance.
191.152 Merchandise released from Customs custody.
191.153 Continuous Customs custody.
191.154 Filing the entry.
191.155 Merchandise withdrawn from warehouse for exportation.
191.156 Bill of lading.
191.157 Landing certificates.
191.158 Procedures.
191.159 Amount of drawback.

Subpart P—Distilled Spirits, Wines, or Beer Which Are Unmerchantable or Do Not Conform to Sample or Specifications

191.161 Refund of taxes.
191.162 Procedure.
191.163 Documentation.
191.164 Return to Customs custody.
191.165 No exportation by mail.
191.166 Destruction of merchandise.
191.167 Liquidation.
191.168 Time limit for exportation or destruction.

Subpart Q—Substitution of Finished Petroleum Derivatives

191.171 General; Drawback allowance.
191.172 Definitions.
191.173 Imported duty-paid derivatives (no manufacture).
191.174 Derivatives manufactured under 19 U.S.C. 1313 (a) or (b).
191.175 Drawback claimant; maintenance of records.
191.176 Procedures for claims filed under 19 U.S.C. 1313(p).

Subpart R—Merchandise Transferred to a Foreign Trade Zone from Customs Custody

191.181 Drawback allowance.
191.182 Zone-restricted merchandise.
191.183 Articles manufactured or produced in the United States.
191.184 Merchandise transferred from continuous Customs custody.
191.185 Unused merchandise drawback and merchandise not conforming to sample or specification, shipped without consent of the consignee, or found to be defective as of the time of importation.
191.186 Person entitled to claim drawback.

Subpart S—Drawback Compliance Program

191.191 Purpose.
191.192 Certification for compliance program.
191.193 Application procedure for compliance program.
191.194 Action on application to participate in compliance program.
191.195 Combined application for Certification in Drawback Compliance Program and Drawback Privileges.

Appendix A to Part 191—General Manufacturing Drawback Rulings

Appendix B to Part 191—Sample Formats for Applications for Specific Manufacturing Drawback Ruling Applications

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1313, 1624.

§ 191.62 also issued under 18 U.S.C. 550, 19 U.S.C. 1593a;

§ 191.84 also issued under 19 U.S.C. 1514;

§§ 191.111, 191.112 also issued under 19 U.S.C. 1309;

§§ 191.151(a)(1), 191.153, 191.157, 191.159 also issued under 19 U.S.C. 1557;

§ 191.182–191.186 also issued under 19 U.S.C. 81c;

§§ 191.191–191.195 also issued under 19 U.S.C. 1593a.

§ 191.0 Scope.

This part sets forth general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims. Additional drawback provisions relating to the North American Free Trade Agreement (NAFTA) are contained in subpart E of part 181 of this chapter.

§191.0a Claims filed under NAFTA.

Claims for drawback filed under the provisions of part 181 of this chapter shall be filed separately from claims filed under the provisions of this part.

Subpart A—General Provisions

§191.1 Authority of the Commissioner of Customs.

Pursuant to Treasury Department Order No. 165, Revised (T.D. 53654, 19 FR 7241), as amended, the Commissioner of Customs, with the approval of the Secretary of the Treasury, shall prescribe rules and regulations regarding drawback.

§191.2 Definitions.

For the purposes of this part:

(a) *Abstract.* ''Abstract'' means the summary of the actual production records of the manufacturer.

(b) *Certificate of delivery.* ''Certificate of delivery'' means Customs Form xxx summarizing information contained in original documents, establishing:

(1) The delivery of imported merchandise, substituted merchandise under 19 U.S.C. 1313(j)(2), or drawback product, from one party (transferor) to another (transferee); and

(2) The assignment of drawback rights for the merchandise transferred from the transferor to the transferee.

(c) *Certificate of manufacture and delivery.* ''Certificate of manufacture and delivery'' means Customs Form xxx summarizing information contained in original documents, establishing the manufacture or production of articles under 19 U.S.C. 1313 (a) or (b). A certificate of manufacture and delivery must contain the information, and has the effect, set forth in §191.24 of this part.

(d) *Act.* ''Act'', unless indicated otherwise, means the Tariff Act of 1930, as amended.

(e) *Commercially interchangeable merchandise.* ''Commercially interchangeable merchandise'' means merchandise which may be substituted under the substitution unused merchandise drawback law, section 313(j)(2) of the Act, as amended (19 U.S.C. 1313(j)(2)) (see §191.32(b)(2) of this part), or under the provision for the substitution of finished petroleum derivatives, section 313(p), as amended (19 U.S.C. 1313(p)).

(f) *Designated merchandise.* ''Designated merchandise'' means either

eligible imported duty-paid merchandise or drawback products selected by the drawback claimant as the basis for a drawback claim under 19 U.S.C. 1313 (b) or (j)(2), as applicable, or qualified articles selected by the claimant as the basis for drawback under 19 U.S.C. 1313(p).

(g) *Destruction*. ''Destruction'' means the complete destruction of articles or merchandise to the extent that they have no commercial value.

(h) *Direct identification drawback*. ''Direct identification drawback'' means drawback authorized either under section 313(a) of the Act, as amended (19 U.S.C. 1313(a)), on imported merchandise used to manufacture or produce an article which is either exported or destroyed, or under section 313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)), on imported merchandise exported, or destroyed under Customs supervision, without having been used in the United States (see also sections 313 (c), (e), (f), (g), (h), and (q)).

(i) *Drawback*. ''Drawback'' means the refund or remission, in whole or in part, of a customs duty, fee or internal revenue tax which was imposed on imported merchandise under Federal law because of its importation, and the refund of internal revenue taxes paid on domestic alcohol as prescribed in 19 U.S.C. 1313(d).

(j) *Drawback claim*. ''Drawback claim'' means the drawback entry and related documents required by regulation which together constitute the request for drawback payment.

(k) *Drawback entry*. ''Drawback entry'' means the document containing a description of, and other required information concerning, the exported or destroyed article on which drawback is claimed. Drawback entries are filed on Customs Form 331.

(l) *Drawback product*. A ''drawback product'' means a product which is finished, partially finished or wholly manufactured in the United States under the procedures in this part for manufacturing drawback. A drawback product may be exported, or destroyed under Customs supervision with a claim for drawback, or it may be used in the further manufacture of other drawback products by manufacturers or producers operating under the procedures in this part for manufacturing drawback, in which case drawback would be claimed upon exportation or destruction of the ultimate product. Products manufactured or produced from substituted merchandise (imported or domestic) also become ''drawback products'' when applicable substitution provisions of the Act are met. For purposes of section 313(b) of the Act, as amended (19 U.S.C. 1313(b)), drawback products may be designated as the basis for drawback or deemed to be substituted merchandise (see section 1313(b)). For a drawback product to be designated as the basis for drawback, the product must be associated with a certificate of manufacture and delivery (see section 191.24 of this part).

(m) *Exportation*. ''Exportation'' means the severance of goods from the mass of goods belonging to this country, with the intention of uniting them with the mass of goods belonging to some foreign country. An exportation may be deemed to have occurred when goods subject to drawback are admitted into a foreign trade zone in zone-restricted status, or are used as aircraft or vessel supplies in accordance with section 309(b) of the Act, as amended (19 U.S.C. 1309(b)).

(n) *Fungible merchandise or articles*. ''Fungible merchandise or articles'' means merchandise or articles which for commercial purposes are identical and interchangeable in all situations.

(o) *General manufacturing drawback ruling*. A ''general manufacturing drawback ruling'' means a description of a manufacturing or production operation for drawback and the regulatory requirements and interpretations applicable to that operation which is published in appendix A of this part. A manufacturer or producer whose operation is within this description may operate under a particular ''general manufacturing drawback ruling'' by submitting to the appropriate drawback office a letter of notification of intent to operate under the general ruling, in accordance with § 191.7, after which Customs issues a letter of acknowledgment.

(p) *Manufacture or production*. ''Manufacture or production'' means:

(1) A process, including, but not limited to, an assembly, by which merchandise is made into a new and different article having a distinctive ''name, character or use''; or

(2) A process, including, but not limited to, an assembly, by which merchandise is made fit for a particular use even though it does not meet the requirements of paragraph (p)(1) of this section.

(q) *Possession*. ''Possession'', for purposes of substitution unused merchandise drawback (19 U.S.C. 1313(j)(2)), means physical or operational control of the merchandise, including ownership while in bailment, in leased facilities, in transit to, or in any other manner under the operational control of, the party claiming drawback.

(r) *Relative value*. ''Relative value'' means the value of a product divided by the total value of all products which are necessarily manufactured or produced concurrently in the same operation. Relative value is based on the market value, or other value approved by Customs, of each such product or by-product determined as of the time it is first separated in the manufacturing or production process. Market value is generally measured by the selling price, not including any packaging, transportation, or other identifiable costs, which accrue after the product itself is processed. Drawback law requires the apportionment of drawback to each such product or by-product based on its relative value at the time of separation.

(s) *Substituted merchandise*. ''Substituted merchandise'' means same kind and quality merchandise that may be substituted under the substitution drawback provisions, either section 313(b) or 313(p) of the Act, as amended (19 U.S.C. 1313 (b) or (p)). Under section 313(b), substituted merchandise is of the same kind and quality if it is capable of being used interchangeably in manufacture or production of exported or destroyed articles with no substantial change in the manufacturing or production process. Under section 313(p), as amended, an exported article and a qualified article are of the same kind and quality if they fall under the same 8-digit Harmonized Tariff Schedule of the United States (HTSUS) tariff classification as enumerated in section 313(p)(3)(A)(i) (I) or (II), as amended, or are commercially interchangeable (see § 191.2(e)). Under section 313(j)(2), substituted merchandise means merchandise which is commercially interchangeable with the imported designated merchandise.

(t) *Schedule*. A ''schedule'' means a document filed by a drawback claimant, under section 313 (a) or (b), as amended (19 U.S.C. 1313 (a) or (b)), showing the quantity of imported or substituted merchandise used in or appearing in each article exported or destroyed for drawback.

(u) *Specific manufacturing drawback ruling*. A ''specific manufacturing drawback ruling'' means an application, in one of the formats published in appendix B of this part, by a manufacturer or producer for a ruling on a specific manufacturing or production operation for drawback, as described in the format used, together with a letter of approval issued by Customs Headquarters to the applicant in response to the application in accordance with §191.8. Synopses of approved specific manufacturing drawback rulings are published in the Customs Bulletin with each synopsis

being published under an identifying Treasury Decision. Specific manufacturing drawback rulings are subject to the provisions in part 177 of this chapter.

(v) *Verification*. ''Verification'' means the examination of any and all records, maintained by the claimant, or any party involved in the drawback process, which are required by the appropriate Customs officer to render a meaningful recommendation concerning the drawback claimant's conformity to the law and regulations and the determination of supportability, correctness, and validity of the specific claim or groups of claims being verified.

§ 191.3 Duties and fees subject or not subject to drawback.

(a) Duties subject to drawback include:

(1) All ordinary Customs duties, including:

(i) Duties paid on an entry, or withdrawal from warehouse, for consumption for which liquidation has become final;

(ii) Estimated duties paid on an entry, or withdrawal from warehouse, for consumption, for which liquidation has not become final and for which the drawback claimant and any other party responsible for the payment of liquidated import duties have filed a written request and waiver under §191.82(b) of this part;

(iii) Voluntary tenders of the unpaid amount of lawful duties on an entry, or withdrawal from warehouse, for consumption, provided that the import entry, or withdrawal from warehouse, for consumption for which the voluntary tender was made is specifically identified in the voluntary tender and provided that liquidation of the drawback entry in which that specifically identified import entry, or withdrawal from warehouse, for consumption is designated has not become final and that the drawback claimant and any other party responsible for the payment of the voluntary tender have filed a written request and waiver under § 191.82(c) of this part; or

(iv) Any payment of duty for an import entry, or withdrawal from warehouse, for consumption, such as payment of a demand for duties under 19 U.S.C. 1592(d), provided that the payment is specifically identified as duty on a specifically identified import entry, or withdrawal from warehouse, for consumption the liquidation of which became final prior to such payment, and provided that liquidation of the drawback entry in which that specifically identified entry, or withdrawal from warehouse, for consumption is designated has not become final and that the drawback claimant and any other party responsible for the other payments of duties have filed a written request and waiver under § 191.82(c) of this part;

(2) Marking duties assessed under section 304(c), Tariff Act of 1930, as amended (19 U.S.C. 1304(c)); and,

(3) Internal revenue taxes which attach upon importation (see § 101.1(i) of this chapter).

(b) Duties and fees not subject to drawback include:

(1) Harbor maintenance fee (see § 24.24 of this chapter);

(2) Merchandise processing fee (see § 24.23 of this chapter); and

(3) Antidumping and countervailing duties on merchandise entered, or withdrawn from warehouse, for consumption on or after August 23, 1988.

(c) No drawback shall be allowed when the designated imported merchandise, or the substituted other merchandise (when applicable), consists of an agricultural product to which an over-quota rate of duty established under a tariff-rate quota is applicable, except that:

(1) Agricultural products as described in paragraph (c) of this section may be eligible for drawback under section 313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)); and

(2) Tobacco otherwise meeting the description of agricultural products in paragraph (c) of this section may also be eligible for drawback under section 313(a) of the Act, as amended (19 U.S.C. 1313(a)).

§ 191.4 Merchandise in which a U.S. Government interest exists.

(a) *Restricted meaning of Government*. A U.S. Government instrumentality operating with nonappropriated funds is considered a Government entity within the meaning of this section. Surety on any drawback bond undertaken by these instrumentalities will not be required.

(b) *Allowance of drawback*. If the merchandise was sold to the U.S. Government, drawback shall be available only to the:

(1) Department, branch, agency, or instrumentality of the U.S. Government which purchased it; or

(2) Supplier, or any of the parties specified in § 191.82 of this part, provided the claim is supported by documentation signed by a proper officer of the department, branch, agency, or instrumentality concerned certifying that the right to drawback was reserved by the supplier or other parties with the knowledge and consent of the department, branch, agency, or instrumentality.

§ 191.5 Guantanamo Bay, insular possessions, trust territories.

Guantanamo Bay Naval Station shall be considered foreign territory for drawback purposes and, accordingly, drawback may be permitted on articles shipped there. Under 19 U.S.C. 1313, drawback of Customs duty is not allowed on articles shipped to Puerto Rico, the U.S. Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

§ 191.6 Authority to sign drawback documents.

(a) Documents listed in paragraph (b) of this section shall be signed only by one of the following:

(1) The president, a vice-president, secretary, treasurer, or any other individual legally authorized to bind the corporation;

(2) A full partner of a partnership;

(3) The owner of a sole proprietorship;

(4) Any employee of a business entity with a power of attorney;

(5) An individual acting on his or her own behalf; or

(6) A licensed Customs broker with a power of attorney.

(b) The following documents require execution in accordance with paragraph (a) of this section:

(1) Drawback entries;

(2) Certificates of delivery;

(3) Certificates of manufacture and delivery;

(4) Applications of manufacturers or producers for approval of specific manufacturing drawback rulings, schedules, and supplemental schedules;

(5) Letters of notification for general manufacturing drawback rulings;

(6) Endorsements of exporters on bills of lading or evidence of exportation; and

(7) Abstracts, schedules and extracts from monthly abstracts if not included as part of a drawback claim.

§ 191.7 General manufacturing drawback ruling.

(a) *Purpose; eligibility*. General manufacturing drawback rulings are designed to simplify drawback for certain common manufacturing operations but do not preclude or limit the use of applications for specific manufacturing drawback rulings (see § 191.8). A manufacturer or producer engaged in an operation that falls within a published general manufacturing drawback ruling may submit a letter of notification of intent to operate under that general ruling. Where a separately-

incorporated subsidiary of a parent corporation is engaged in manufacture or production for drawback, the subsidiary is the proper party to submit the letter of notification, and cannot operate under a letter of notification submitted by the parent corporation.

(b) *Procedures*—(1) *Publication.* General manufacturing drawback rulings are contained in Appendix A to this part. The Appendix will be updated when new general drawback rulings are issued (as Treasury Decisions) or existing general drawback rulings are revised.

(2) *Submission.* Letters of notification of intent to operate under a general manufacturing drawback ruling shall be submitted in duplicate to any drawback office where drawback entries will be filed and liquidated. If claims are to be filed at more than one drawback office, two additional copies of the letter of notification shall be filed for each additional office and the drawback office with which the letter of notification is submitted shall forward the additional copies to such additional office(s).

(3) *Information required.* Each manufacturer or producer submitting a letter of notification of intent to operate under a general manufacturing drawback ruling under this section must provide the following specific detailed information:

(i) Name and address of producer or manufacturer (if the manufacturer or producer is a separately-incorporated subsidiary of a corporation, the subsidiary corporation must submit a letter of notification in its own name);

(ii) In the case of a business entity, the names of the persons listed in § 191.6(a)(1) through (5) who will sign drawback documents;

(iii) Locations of the factories which will operate under the letter of notification;

(iv) Description of the merchandise and articles, unless specifically described in the letter of notification;

(v) Basis of claim used for calculating drawback; and

(vi) IRS (Internal Revenue Service) number of the manufacturer or producer.

(c) *Acknowledgment.* The appropriate drawback office shall acknowledge in writing the receipt of the letter of notification of intent to operate under the general manufacturing drawback ruling.

(d) *Duration.* Acknowledged letters of notification under this section shall remain in effect under the same terms as provided for in § 191.8(h) for specific manufacturing drawback rulings.

§ 191.8 Specific manufacturing drawback ruling.

(a) *Proper applicant.* Unless operating under a general manufacturing drawback ruling (see § 191.7), each manufacturer or producer of articles intended to be claimed for drawback shall apply for a specific manufacturing drawback ruling. Where a separately-incorporated subsidiary of a parent corporation is engaged in manufacture or production for drawback, the subsidiary is the proper party to apply for a specific manufacturing drawback ruling, and cannot operate under any specific manufacturing drawback ruling approved in favor of the parent corporation.

(b) *Sample application.* Sample formats for applications for specific manufacturing drawback rulings are contained in Appendix B to this part.

(c) *Content of application.* The application of each manufacturer or producer shall include the following information as applicable:

(1) Name and address of the applicant;

(2) Internal Revenue Service (IRS) number of the applicant;

(3) Description of the type of business in which engaged;

(4) Description of the manufacturing or production process, which shows how the designated and substituted merchandise are used to make the article that is to be exported or destroyed;

(5) In the case of a business entity, the names of persons listed in § 191.6(a)(1) through (5) who will sign drawback documents;

(6) Description of the imported merchandise including specifications;

(7) Description of the exported article;

(8) Basis of claim for calculating manufacturing drawback;

(9) Summary of the records kept to support claims for drawback; and

(10) Identity and address of the recordkeeper if other than the claimant.

(d) *Submission.* An application for a specific manufacturing drawback ruling shall be submitted, in triplicate, to Customs Headquarters (Attention: Entry and Carrier Rulings Branch, Office of Regulations and Rulings). If drawback claims are to be filed under the ruling at more than one drawback office, two additional copies of the application shall be filed for each additional office.

(e) *Review and action by Customs.* Customs Headquarters shall review the application for a specific manufacturing drawback ruling.

(1) *Approval.* If consistent with the drawback law and regulations, Customs Headquarters shall issue a letter of approval to the applicant and shall forward 2 copies of the application for the specific manufacturing drawback ruling to the appropriate drawback office(s) with a copy of the letter of approval. Synopses of approved specific manufacturing drawback rulings shall be published in the weekly Customs Bulletin with each synopsis being published under an identifying Treasury Decision (T.D.). Each approved specific manufacturing drawback ruling shall be assigned a unique computer-generated manufacturing contract number which appears in the published synopsis and must be used when filing manufacturing drawback claims with Customs.

(2) *Disapproval.* If not consistent with the drawback law and regulations, Customs Headquarters shall promptly inform the applicant that the application cannot be approved and shall specifically advise the applicant why this is so. A disapproved application may be resubmitted with modifications and/or explanations addressing the reasons given for disapproval, or the disapproval may be appealed to Customs Headquarters (Attention: Director, International Trade Compliance Division).

(f) *Schedules and supplemental schedules.* When an application for a specific manufacturing drawback ruling states that drawback is to be based upon a schedule filed by the manufacturer or producer, the schedule will be reviewed by Customs Headquarters. The application may include a request for authorization for the filing of supplemental schedules with the drawback office where claims are filed.

(g) *Procedure to modify a specific manufacturing drawback ruling.*—(1) *Supplemental application.* Except as provided for limited modifications in paragraph (g)(2) of this section, a manufacturer or producer desiring to modify an existing specific manufacturing drawback ruling shall submit a supplemental application for such a ruling in the form of the original application to Customs Headquarters (Attention: Entry and Carrier Rulings Branch, Office of Regulations and Rulings). Except as specifically provided in this section, such modifications (not including those provided for in paragraph (g)(2) of this section) shall be subject to the procedures provided for in part 177 of this chapter.

(2) *Limited modifications.* (i) A supplemental application for a specific manufacturing drawback ruling shall be submitted to the drawback office(s) where claims are filed if the modifications are limited to:

(A) The location of a factory, or the addition of one or more factories where

the methods followed and records maintained are the same as those at another factory operating under the existing specific manufacturing drawback ruling of the manufacturer or producer;

(B) The succession of a sole proprietorship, partnership or corporation to the operations of a manufacturer or producer;

(C) A change in name of the manufacturer or producer;

(D) A change in the persons who will sign drawback documents in the case of a business entity; or

(E) Any combination of the foregoing changes.

(ii) A limited modification, as provided for in this paragraph, shall contain only the modifications to be made, in addition to identifying the specific manufacturing drawback ruling and being signed by an authorized person (that is, such a modification need not be in the form of an original application, as under paragraph (g)(1) of this section).

(h) *Duration.* Subject to part 177 of this chapter, an approval of a specific manufacturing drawback ruling under this section shall remain in effect indefinitely unless:

(1) No drawback claim or certificate of manufacture and delivery is filed under the ruling for a period of 5 years and notice of termination is published in the Customs Bulletin; or

(2) The manufacturer or producer to whom approval of the ruling was issued files a request to terminate the ruling, in writing, with Customs Headquarters.

§ 191.9 Agency.

(a) *Applicability.* The principal-agent procedures described in paragraphs (b) through (e) of this section are applicable only in substitution manufacturing drawback under 19 U.S.C. 1313(b).

(b) *General.* An owner of the designated and substituted merchandise that is used to produce the exported articles may employ another person to do part, or all, of the work that transforms either the designated or substituted merchandise into articles for the purpose of 19 U.S.C. 1313(b), or which accomplishes any of the other manufacture or production processes stated in § 191.2(p). The person who asserts that it is the manufacturer or producer under 19 U.S.C. 1313(b) must establish by its manufacturing records, the manufacturing records of its agent, or the manufacturing records of both parties, that the designated and substituted merchandise were used in the manufacture or production of articles.

(c) *Requirements.*—(1) *Contract.* The manufacturer must establish that it is the principal in a contract between it and its agent who actually does the work on either the designated or substituted merchandise for the principal. The contract must specify:

(i) Terms of compensation to show that the relationship is an agency rather than a sale;

(ii) How transfers of merchandise and articles will be recorded by the principal and its agent;

(iii) The work to be performed on the merchandise by the agent for the principal;

(iv) The degree of control that is to be exercised by the principal over the agent's performance of work;

(v) The party who is to bear the risk of loss on the merchandise while it is in the agent's custody; and

(vi) The period that the contract is in effect.

(2) *Ownership of the merchandise by the principal.* The records of the principal and/or the agent must establish that the principal had legal and equitable title to the merchandise before receipt by the agent. The right of the agent to assert a lien on the merchandise for work performed does not derogate the principal's ownership interest for the purpose of 19 U.S.C. 1313(b).

(3) *Sales prohibited.* The relationship between the principal and agent must not be that of a seller and buyer. If the parties' records show that, with respect to the merchandise that is the subject of the principal-agent contract, the merchandise is sold to the agent by the principal, or the articles manufactured by the agent are sold to the principal by the agent, those records are inadequate to show compliance with the requirement in 19 U.S.C. 1313(b) that the principal was the manufacturer or producer of the articles.

(d) *Specific manufacturing drawback rulings; general manufacturing drawback rulings.*—(1) *Owner.* An owner who intends to show that it is the manufacturer or producer of articles under 19 U.S.C. 1313(b) through the work of an agent must state that intent in any application for a specific manufacturing drawback ruling filed under § 191.8.

(2) *Agent.* Each agent operating under this section must have filed a letter of notification for the general manufacturing drawback ruling (see § 191.7), for an agent, covering the articles manufactured or produced, or have obtained a specific manufacturing drawback ruling (see § 191.8), as appropriate.

(e) *Certificate of manufacture and delivery; drawback entry.*—(1) *Agent.* Each agent manufacturer conducting operations under this section shall furnish the principal for whom such agent processed merchandise a certificate of manufacture and delivery applicable to the operation so conducted, relating to the substituted or designated merchandise, and identifying the owner of the articles for whom processing was conducted. Certificates of Manufacture and Delivery issued to document the transfer of articles under this section do not assign the potential right to drawback to the person to whom such certificates are issued.

(2) *Principal.* The principal for whom processing was conducted under this section shall complete and file a drawback entry on Customs Form 331 and attach to it the forms from its agents or agent, if necessary (see §§ 191.10(e) and 191.24(c) of this part). The principal shall not complete a certificate of delivery for merchandise which it transfers to its agent(s) under the procedures in this section.

§ 191.10 Certificate of delivery.

(a) *Purpose; when required.* A party who: imports and pays duty on imported merchandise; receives imported merchandise; in the case of 19 U.S.C. 1313(j)(2), receives imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise; or receives an article manufactured or produced under 19 U.S.C. 1313 (a) and/or (b): May transfer such merchandise or manufactured article to another party. The party shall record this transfer by preparing and issuing in favor of such other party a certificate of delivery, certified by the importer or other party through whose possession the merchandise or manufactured article passed (see paragraph (c) of this section). A certificate of delivery issued with respect to the delivered merchandise or article:

(1) Documents the transfer of that merchandise or article;

(2) Identifies such merchandise or article as being that to which a potential right to drawback has attached; and

(3) Assigns such right to the transferee (see § 191.82 of this part).

(b) *Required information.* The certificate of delivery must include the following information:

(1) The party to whom the merchandise or articles are delivered;

(2) Date of delivery;

(3) Import entry number;

(4) Quantity delivered;

(5) Total duty paid on, or attributable to, the delivered merchandise;

(6) Date certificate was issued;

(7) Date of importation;

(8) Port where import entry filed;

(9) Person from whom received; and

(10) Description of the merchandise delivered, and if such merchandise is the designated imported merchandise or merchandise substituted therefor under 19 U.S.C. 1313(j)(2) or 1313(p), the HTSUS number with a minimum of 6 digits. (For designated imported merchandise, such HTSUS number shall be from the entry summary and other entry documentation for the merchandise unless the issuer of the certificate of delivery received the merchandise under another certificate of delivery, in which case such HTSUS number shall be from the other certificate of delivery.)

(c) *Intermediate transfer.*—(1) *Imported merchandise.* If the imported merchandise was not delivered directly from the importer to the manufacturer, or from the importer to the exporter (or destroyer), each intermediate transfer of the imported merchandise shall be documented by means of a certificate of delivery issued in favor of the receiving party, and certified by the person through whose possession the merchandise passed.

(2) *Manufactured article.* If the article manufactured or produced under 19 U.S.C. 1313 (a) or (b) is not delivered directly from the manufacturer to the exporter (or destroyer), each intermediate transfer of the article shall be documented by means of a certificate of delivery, issued in favor of the receiving party, and certified by the person through whose possession the article passed.

(d) *Retention period; supporting records.* Records supporting the information required on the certificate(s) of delivery, as listed in paragraph (b) of this section, must be retained by the issuing party for 3 years from the date of payment of the related claim.

(e) *Submission to Customs; certification.* The certificate of delivery shall be retained by the drawback claimant and, if requested, submitted to Customs as part of the claim. If the certificate is requested by Customs, but is not submitted as part of the claim, the drawback claim dependent on that certificate will be rejected (see § 191.52 of this part).

(f) *Warehouse transfer and withdrawals.* The person in whose name merchandise is withdrawn from a bonded warehouse shall be considered the importer for drawback purposes. No certificate of delivery is required covering prior transfers of merchandise while in a bonded warehouse.

§ 191.11 Tradeoff.

(a) *Exchanged merchandise.* To comply with §§191.21 and 191.22 of this part, the use of domestic merchandise taken in exchange for imported merchandise of the same kind and quality (as defined in §191.2(s) of this part for purposes of 19 U.S.C. 1313(b)) shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the transfer of the imported merchandise. This provision shall be known as tradeoff and is authorized by section 313(k) of the Act, as amended (19 U.S.C. 1313(k)).

(b) *Requirements.* Tradeoff must occur between two separate legal entities but it is not necessary that the entity exchanging the imported merchandise be the importer thereof. In addition, tradeoff must consist of a straight tradeoff of same kind and quality merchandise, with no additional payments of any type, including additional payment in kind.

(c) *Application.* Each would-be user of tradeoff, except those operating under an approved specific manufacturing drawback ruling covering substitution, must apply to the Entry and Carrier Rulings Branch, Office of Regulations and Rulings, Customs Headquarters, for a determination of whether the imported and domestic merchandise are of the same kind and quality. For those users manufacturing under substitution drawback, this request should be contained in the drawback application. For those users manufacturing under direct identification drawback, the request should be made by a separate letter.

§ 191.12 Claim filed under incorrect provision.

A drawback claim filed pursuant to any provision of section 313 of the Act, as amended (19 U.S.C. 1313) may be deemed filed pursuant to any other provision thereof should the drawback office determine that drawback is not allowable under the provision as originally filed, but that it is allowable under such other provision. To be allowable under such other provision, the claim must meet each of the requirements of such other provision.

§ 191.13 Packaging materials.

Drawback of duties is provided for in section 313(q) of the Act, as amended (19 U.S.C. 1313(q)), on imported packaging material when used to package or repackage merchandise or articles exported or destroyed pursuant to section 313 (a), (b), (c), or (j) of the Act, as amended (19 U.S.C. 1313 (a), (b), (c), or (j)). Drawback is payable on the packaging material pursuant to the particular drawback provision to which the packaged goods themselves are subject. The drawback will be based on the duty, tax or fee paid on the importation of the packaging material. The packaging material must be separately identified on the claim.

§ 191.14 Identification of merchandise or articles by accounting method.

(a) *General.* This section provides for the identification of merchandise or articles for drawback purposes by the use of accounting methods. This section applies to identification of merchandise or articles in inventory or storage, as well as identification of merchandise used in manufacture. This section is not applicable to situations in which the drawback law authorizes substitution (see 19 U.S.C. 1313(b), 1313(j)(2), 1313(k), and 1313(p)). When substitution is authorized, merchandise or articles may be substituted without reference to this section, under the criteria and conditions specifically authorized in the statutory and regulatory provisions providing for the substitution. This section is not applicable to the identification of merchandise by accounting procedures for drawback under 19 U.S.C. 1313(j)(1) for exportations to Canada or Mexico under the NAFTA (see §181.45(b)(2)).

(b) *Conditions and criteria for identification by accounting method.* Manufacturers, producers, claimants, or other appropriate persons may identify for drawback purposes lots of merchandise or articles under this section, subject to each of the following conditions and criteria:

(1) The lots of merchandise or articles to be so identified must be fungible (see §191.2(n) of this part);

(2) The person using the identification method must establish that inventory records (for example, material control records), prepared and used in the ordinary course of business, account for the lots of merchandise or articles to be identified as being received into and withdrawn from the same inventory. Even if merchandise or articles are received or withdrawn at different geographical locations, if such inventory records treat receipts or withdrawals as being from the same inventory, those inventory records may be used to identify the merchandise or articles under this section, subject to the conditions of this section. If any such inventory records (that is, inventory records prepared and used in the

ordinary course of business) treat receipts and withdrawals as being from different inventories, those inventory records must be used and receipts into or withdrawals from the different inventories may not be accounted for together. If units of merchandise or articles can be specifically identified (for example, by serial number), the merchandise or articles must be specifically identified and may not be identified by accounting method, unless it is established that inventory records, prepared and used in the ordinary course of business, treat the merchandise or articles to be identified as being received into and withdrawn from the same inventory (subject to the above conditions);

(3) Unless otherwise provided in this section (see, for example, paragraph (c)(5) of this section) or specifically approved by Customs (by a binding ruling under part 177 of this chapter), all receipts (or inputs) into and all withdrawals from the inventory must be recorded in the accounting record;

(4) The records which support any identification method under this section are subject to verification by Customs (see §191.61 of this part). If Customs requests such verification, the person using the identification method must be able to demonstrate how, under generally accepted accounting procedures, the records which support the identification method used account for all merchandise or articles in, and all receipts into and withdrawals from, the inventory, and the drawback per unit for each receipt and withdrawal; and

(5) Any accounting method which is used by a person for drawback purposes under this section must be used without variation with other methods for a period of at least one year, unless approval is given by Customs for a shorter period.

(c) *Approved accounting methods.* The following accounting methods are approved for use in the identification of merchandise or articles for drawback purposes under this section.

(1) *First-in, first-out (FIFO).* The FIFO method is the method by which fungible merchandise or articles are identified on the basis of the first merchandise or articles received into the inventory. Under this method, withdrawals are from the oldest (first-in) merchandise or articles in the inventory at the time of withdrawal.

(2) *Last-in, first out (LIFO).* The LIFO method is the method by which fungible merchandise or articles are identified on the basis of the last merchandise or articles received into the inventory. Under this method, withdrawals are from the newest (last-in) merchandise or articles in the inventory at the time of withdrawal.

(3) *Low-to-high.*—(i) *General.* The low-to-high method is the method by which fungible merchandise or articles are identified on the basis of the lowest drawback amount per unit of the merchandise or articles received into the inventory. Merchandise or articles with no drawback attributable to them (for example, domestic merchandise or duty-free merchandise) must be accounted for and are treated as having the lowest drawback attributable to them. Under this method, withdrawals are from the merchandise or articles with the least amount of drawback attributable to them, then that with the next higher amount, and so forth. If the same amount of drawback is attributable to more than one lot of merchandise or articles, withdrawals are from the oldest (first-in) merchandise or articles among those lots with the same amount of drawback attributable. This method may be used without accounting for domestic withdrawals. Drawback requirements are applicable to withdrawn merchandise or articles as identified (for example, if the merchandise or articles identified were attributable to an import more than 5 years (more than 3 years for unused merchandise drawback) before the claimed export, no drawback could be granted).

(ii) *Use with inventory turn-over period.* The low-to-high method may be used with an established inventory turn-over period, provided that:

(A) Merchandise or articles identified for drawback purposes under this method are the merchandise or articles with the least amount of drawback attributable to them among the lots of merchandise or articles received into the inventory during the inventory turn-over period preceding the month in which the merchandise or articles identified were withdrawn; and

(B) The person establishes the average turnover period, as described in this paragraph. For purposes of this section, average inventory turn-over period is based on the rate of withdrawal from inventory and represents the time in which all of the merchandise or articles in the inventory at a given time must have been withdrawn. To establish an average of this time, at least 1 year, or three (3) turn-over periods (if inventory turns over less than 3 times per year), must be averaged. The inventory turn-over period must be that for the merchandise or articles to be identified, except that if the person using the method has more than one kind of merchandise or articles with different inventory turn-over periods, the longest average turn-over period established under this section may be used. This method may be used without accounting for domestic withdrawals.

(iii) *Examples.* (A) If the inventory contained 100 units with no drawback attributable to them, 100 units with $1 drawback attributable per unit, 100 units with $2 drawback attributable per unit, and the inventory turn-over method is not to be used, withdrawals would be identified as follows: The first 100 units withdrawn would have no drawback attributable to them, the next 100 units withdrawn would have a drawback attribution of $1 per unit, and the third 100 units withdrawn would have a drawback attribution of $2 per unit. If 50 units were first withdrawn for non-drawback purposes and the next 250 units were withdrawn for drawback purposes, the 250-unit withdrawal would consist of 100 units with no drawback attributable, 100 units with $1 drawback attributable per unit, and 50 units with $2 drawback attributable per unit.

(B) If the average turn-over period for the merchandise or articles identified is 3 months, the inventory turn-over method is used, and the withdrawal is any date in September, the merchandise or articles with the lowest drawback attribution received into inventory in June, July, and August would be that identified.

(C) If the average turn-over period for the merchandise or articles identified is 3 months, the inventory turn-over method is used, the person using the identification method has more than one kind of merchandise or articles with different inventory turn-over periods the longest of which is 6 months, and the withdrawal is any date in September, the merchandise or articles with the lowest drawback attribution received into inventory in March, April, May, June, July, and August would be that identified.

(4) *Average.* The average method is the method by which fungible merchandise or articles are identified on the basis of the calculation (by weighted averaging) of the amount of drawback that may be attributed to each unit of merchandise or articles in the inventory. A person proposing to use this method should obtain a ruling from Customs (see 19 CFR part 177).

(5) *Inventory turn-over for limited purposes.* A properly established average inventory turn-over period, as provided for in paragraph (c)(3)(ii)(B) of this section, may be used to determine:

(i) The fact and date(s) of use in manufacture or production of the imported designated merchandise and

other (substituted) merchandise (see 19 U.S.C. 1313(b)); or

(ii) The fact and date(s) of manufacture or production of the finished articles (see 19 U.S.C. 1313(a) and (b)).

(d) *Approval of other accounting methods.* (1) Persons proposing to use an accounting method for identification of merchandise or articles for drawback purposes which has not been previously approved for such use (see paragraph (c) of this section), or which includes modifications from the methods listed in paragraph (c) of this section, may seek approval by Customs of the proposed accounting method under the provisions for obtaining an administrative ruling (see part 177 of this chapter). The conditions applied and the criteria used by Customs in approving such an alternative accounting method, or a modification of one of the approved accounting methods, will be the criteria in paragraph (b) of this section, as well as those in paragraph (d)(2) of this section.

(2) In order for a proposed accounting method to be approved by Customs for purposes of this section, it shall meet the following criteria:

(i) For purposes of calculations of drawback, the proposed accounting method must be either revenue neutral or favorable to the Government; and

(ii) The proposed accounting method should be:

(A) Generally consistent with commercial accounting procedures, as applicable for purposes of drawback;

(B) Consistent with inventory or material control records used in the ordinary course of business by the person proposing the method; and

(C) Easily administered by both Customs and the person proposing the method.

Subpart B—Manufacturing Drawback

§ 191.21 Direct identification drawback.

Section 313(a) of the Act, as amended (19 U.S.C. 1313(a)), provides for drawback upon the exportation, or destruction under Customs supervision, of articles which are not used in the United States prior to their exportation or destruction, and which are manufactured or produced in the United States wholly or in part with the use of particular imported, duty-paid merchandise. Where two or more products result, drawback shall be distributed among the products in accordance with their relative value (see § 191.2(r)) at the time of separation. Merchandise may be identified for drawback purposes under 19 U.S.C. 1313(a) in the manner provided for and prescribed in § 191.14 of this part.

§ 191.22 Substitution drawback.

(a) *General.* If imported, duty-paid, merchandise and any other merchandise (whether imported or domestic) of the same kind and quality are used in the manufacture or production of articles within a period not to exceed 3 years from the receipt of the imported merchandise by the manufacturer or producer of the articles, then upon the exportation, or destruction under Customs supervision, of any such articles, without their having been used in the United States prior to such exportation or destruction, drawback is provided for in section 313(b) of the Act, as amended (19 U.S.C. 1313(b)), even though none of the imported, duty-paid merchandise may have been used in the manufacture or production of the exported or destroyed articles. The amount of drawback allowable cannot exceed that which would have been allowable had the merchandise used therein been the imported, duty-paid merchandise.

(b) *Use by same manufacturer or producer at different factory.* Duty-paid merchandise or drawback products used at one factory of a manufacturer or producer within 3 years after the date on which the material was received by the manufacturer or producer may be designated as the basis for drawback on articles manufactured or produced in accordance with these regulations at other factories of the same manufacturer or producer.

(c) *Designation.* A manufacturer or producer may designate any eligible imported merchandise or drawback product which it has used in manufacture or production.

(d) *Designation by successor.*—(1) *General rule.* Upon compliance with the requirements in this section, a drawback successor as defined in paragraph (d)(2) of this section may designate merchandise or drawback product used by a predecessor before the date of succession as the basis for drawback on articles manufactured or produced by the successor after the date of succession.

(2) *Drawback successor.* A ''drawback successor'' is a manufacturer or producer to whom another entity (predecessor) has transferred, by written agreement, merger, or corporate resolution:

(i) All or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(ii) The assets and other business interests of a division, plant, or other business unit of such predecessor, provided that the value of the transferred assets and interests (realty, personality, and intangibles, exclusive of the drawback rights) exceeds the value of such drawback rights, whether vested or contingent.

(3) *Certifications and required evidence*—(i) *Records of predecessor.* The predecessor or successor must certify that the successor is in possession of the predecessor's records which are necessary to establish the right to drawback under the law and regulations with respect to the merchandise or drawback product.

(ii) *Merchandise not otherwise designated.* The predecessor or successor must certify in an attachment to the claim, that the predecessor has not designated and will not designate, nor enable any other person to designate, such merchandise or product as the basis for drawback.

(iii) *Value of transferred property.* In instances in which assets and other business interests of a division, plant, or other business unit of a predecessor are transferred, the predecessor or successor must specify, and maintain supporting records to establish, the value of the drawback rights and the value of all other transferred property.

(iv) *Review by Customs.* The written agreement, merger, or corporate resolution, provided for in paragraph (d)(2) of this section, and the records and evidence provided for in paragraph (d)(3) (i) through (iii) of this section, must be retained by the appropriate party(s) for 3 years from the date of payment of the related claim and are subject to review by Customs upon request.

(e) *By-products*—(1) *General.* Where two or more products are produced concurrently in a substitution manufacturing operation, drawback shall be distributed to each product in accordance with its relative value (see §191.2(r)) at the time of separation.

(2) *Claims covering a manufacturing period.* Where the claim covers a manufacturing period rather than a manufacturing lot, the entire period covered by the claim is the time of separation of the products and the value per unit of product is the market value for the period (see §191.2(r) of this part). Manufacturing periods in excess of one month may not be used without specific approval of Customs.

(3) *Recordkeeping.* Records shall be maintained showing the relative value of each product at the time of separation.

§ 191.23 Methods of claiming drawback.

(a) *Used in.* Drawback may be paid based on the amount of the imported or

substituted merchandise used in the manufacture of the exported article, where there is no waste or the waste is valueless or unrecoverable. This method must be used when byproducts also necessarily and concurrently result from the manufacturing process, and there is no valuable waste (see paragraph (c) of this section).

(b) *Appearing in.* Drawback is allowable under this method based only on the amount of imported or substituted merchandise that appears in (is contained in) the exported articles. This method may not be used if there are byproducts also necessarily and concurrently resulting from the manufacturing process.

(c) *Used in less valuable waste.* Drawback is allowable under this method based on the quantity of merchandise or drawback products used to manufacture the exported or destroyed article, reduced by an amount equal to the quantity of this merchandise that the value of the waste would replace. This method must be used when byproducts also necessarily and concurrently result from the manufacturing process, and there is valuable waste.

(d) *Recordkeeping.*—(1) *Valuable waste.* When the waste has a value and the drawback claim is not limited to the quantity of imported or substituted merchandise or drawback products appearing in the exported or destroyed articles claimed for drawback, the manufacturer or producer shall keep records to show the market value of the merchandise or drawback products used in manufacture or production, as well as the market value of the resulting waste (see § 191.2(r) of this part).

(2) *If claim for waste is waived.* If claim for waste is waived, only the ''appearing in'' basis may be used (see paragraph (b) of this section). Waste records need not be kept unless required to establish the quantity of imported duty-paid merchandise or drawback products appearing in the exported or destroyed articles claimed for drawback.

§ 191.24 Certificate of manufacture and delivery.

(a) *When required.* When the imported merchandise or drawback product undergoes some process of manufacture under a general manufacturing drawback ruling or a specific manufacturing drawback ruling, a certificate of manufacture and delivery shall be prepared and certified by the manufacturer. To assign drawback rights, see §191.82 of this part.

(b) *Information required on certificate.* The following information shall be required on the certificate of manufacture and delivery executed by the manufacturer or producer:

(1) The quantity, kind and quality of imported, duty-paid merchandise or drawback product designated;

(2) Import entry numbers, HTSUS number to at least the 6th digit (such HTSUS number shall be from the entry summary and other entry documentation for the imported, duty-paid merchandise unless the issuer of the certificate of manufacture and delivery received the merchandise under another certificate (either of delivery or of manufacture and delivery), in which case such HTSUS number shall be from the other certificate), and applicable duty amounts, if applicable;

(3) Date received at factory, if applicable;

(4) Date used in manufacture, if applicable;

(5) Value at factory, if applicable;

(6) Quantity of waste, if any, if applicable;

(7) Market value of any waste, if applicable;

(8) Total quantity and description of merchandise appearing in or used;

(9) Total quantity and description of articles produced;

(10) Date of manufacture or production of the articles; and

(11) The quantity of articles transferred.

(c) *Filing of certificate.* The certificate of manufacture and delivery shall be filed with the drawback claim it supports (unless previously filed) (see §191.51 of this part).

(d) *Effect of certificate.* A certificate of manufacture and delivery is used to document the physical delivery of articles from the manufacturer or producer to another party. A certificate of manufacture and delivery issued with respect to articles identifies such articles as being those to which a potential right to drawback has attached. Unless it is explicitly provided on the certificate of manufacture and delivery that potential drawback rights are not transferred by such certificate (for example, in the case of a principal-agency relationship under this part (see §191.9)), a certificate of manufacture and delivery assigns such potential rights to the transferee (see §191.82 of this part).

§ 191.25 Recordkeeping for manufacturing drawback.

(a) *Direct identification manufacturing.*—(1) *Records required.* Each manufacturer or producer under 19 U.S.C. 1313(a) shall keep records to allow the verifying Customs official to trace all articles manufactured or produced for exportation or destruction with drawback, from importation, through production, to exportation or destruction. To this end, these records shall specifically establish:

(i) The date or inclusive dates of manufacture or production;

(ii) The quantity and identity of the imported duty-paid merchandise or drawback products used in or appearing in (see §191.23) the articles manufactured or produced;

(iii) The quantity, if any, of the nondrawback merchandise used, when these records are necessary to determine the quantity of imported duty-paid merchandise or drawback product used in the manufacture or production of the exported or destroyed articles or appearing in them;

(iv) The quantity and description of the articles manufactured or produced;

(v) The quantity of waste incurred, if applicable; and

(vi) That the finished articles on which drawback is claimed were exported or destroyed within 5 years after the importation of the duty-paid merchandise, without having been used in the United States prior to such exportation or destruction. (If the completed articles were commingled after manufacture, their identity may be maintained in the manner prescribed in § 191.14 of this part.)

(2) *Accounting.* The merchandise and articles to be exported or destroyed shall be accounted for in a manner which will enable the manufacturer, producer, or claimant:

(i) To determine, and the Customs official to verify, the applicable import entry, certificate of delivery, and/or certificate of manufacture and delivery associated with the claim; and

(ii) To identify with respect to that import entry, certificate of delivery, or certificate of manufacture and delivery, the imported duty-paid merchandise or drawback products used in manufacture or production.

(b) *Substitution manufacturing.* The records of the manufacturer or producer of articles manufactured or produced in accordance with 19 U.S.C. 1313(b) shall establish the facts in paragraph (a)(1)(i)–(vi) of this section, and:

(1) The quantity, identity, and specifications of the merchandise designated (imported duty-paid, or drawback product);

(2) The quantity, identity, and specifications of merchandise of the same kind and quality as the designated merchandise before its use to manufacture or produce (or appearance in) the exported articles; and

(3) That, within 3 years after receiving the designated merchandise at its plant,

the manufacturer or producer used it in manufacturing or production and that during the same 3-year period it manufactured or produced the exported or destroyed articles.

(c) *Valuable waste records.* When waste has a value and the manufacturer, producer, or claimant, has not limited the claims based on the quantity of imported or substituted merchandise appearing in the articles exported or destroyed, the manufacturer or producer shall keep records to show the market value of the merchandise used, as well as the quantity and market value of the waste incurred (see § 191.2(r) of this part). In such records, the quantity of merchandise identified or designated for drawback, under 19 U.S.C. 1313(a) or 1313(b), respectively, shall be based on the quantity of merchandise actually used to manufacture or produce the exported or destroyed articles, reduced by the amount of merchandise which the value of the waste would replace.

(d) *Purchase of manufactured articles for exportation.* Where the claimant purchases articles from the manufacturer and exports them, the claimant shall file the related certificate of manufacture and delivery as part of the claim (see § 191.51(a)(1) of this part).

(e) *Delivery of imported merchandise to manufacturer.* The claimant shall retain the certificate of delivery for any identified or designated import entry covering merchandise that was not imported by the manufacturer.

(f) *Multiple claimants.*—(1) *General.* Multiple claimants may file for drawback with respect to the same export (for example, a chemical is exported in a container, where the chemical and the container have been produced by different manufacturers under drawback conditions).

(2) *Procedures.*—(i) *Submission of letter.* Each drawback claimant shall file a separate letter, as part of the claim, describing the component article on the export bill of lading to which each claim will relate. Each letter shall show the name of the claimant and bear a statement that the claim shall be limited to its respective component article. The exporter shall endorse the letters, as required, to show the respective interests of the claimants.

(ii) *Blanket waivers and assignments of drawback rights.* Exporters may waive and assign their drawback rights for all, or any portion, of their exportations with respect to a particular commodity for a given period to a drawback claimant.

(iii) *Use of export summary procedure.* If the parties elect to use the export summary procedure, each drawback claimant shall complete a chronological summary of exports for the respective component product to which each claim will relate. Each claimant shall identify in the chronological summary the name of the other claimant(s) and the component product for which each will independently claim drawback. The exporter shall endorse the summaries, as required, to show the respective interests of the claimants. The claimant shall have on file and make available to Customs upon request, the endorsement from the exporter assigning the right to claim drawback.

(g) *Retention of records.* All records required to be kept by the manufacturer, producer, or claimant with respect to drawback claims, and records kept by others to complement the records of the manufacturer, producer, or claimant shall be retained for 3 years after the date of payment of the related claims.

§ 191.26 Time limitations.

(a) *Direct identification manufacturing.* Drawback shall be allowed on imported merchandise used to manufacture or produce articles that are exported or destroyed under Customs supervision within 5 years after importation of the merchandise identified to support the claim.

(b) *Substitution manufacturing.* Drawback shall be allowed on the imported merchandise if the following conditions are met:

(1) The designated merchandise is used in manufacture or production within 3 years after receipt by the manufacturer or producer at its factory;

(2) Within the 3-year period described in paragraph (b)(1) of this section, the exported or destroyed articles, or drawback products, were manufactured or produced; and

(3) The completed articles must be exported or destroyed under Customs supervision within 5 years of the date of importation of the designated merchandise.

(c) *Drawback claims filed before specific or general manufacturing drawback ruling approved or acknowledged.* Drawback claims may be filed before the letter of notification of intent to operate under a general manufacturing drawback ruling covering the claims is acknowledged (§ 191.7), or before the specific manufacturing drawback ruling covering the claims is approved (§ 191.8), but no drawback shall be paid until such acknowledgment or approval, as appropriate.

§ 191.27 Person entitled to claim drawback.

The exporter (or destroyer) shall be entitled to claim drawback, unless the exporter (or destroyer), by means of a certification, assigns the right to claim drawback to the manufacturer, producer, importer, or intermediate party. Such certification shall also affirm that the exporter (or destroyer) has not and will not itself claim drawback or assign the right to claim drawback on the particular exportation or destruction to any other party. Drawback is paid to the claimant, who may be the manufacturer, producer, intermediate party, importer, or exporter (destroyer).

Subpart C—Unused Merchandise Drawback

§ 191.31 Direct identification.

(a) *General.* Section 1313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)), provides for drawback upon the exportation or destruction under Customs supervision of imported merchandise upon which was paid any duty, tax, or fee imposed under Federal law because of its importation, if the merchandise has not been used within the United States before such exportation or destruction.

(b) *Time of exportation or destruction.* Drawback shall be allowed on imported merchandise if, before the close of the 3-year period beginning on the date of importation, the merchandise is exported from the United States or destroyed under Customs supervision.

(c) *Use.* In general, for purposes of this section, merchandise is ''used'' when it is employed to perform the function for which it was intended (for example, shoes worn as footwear have been ''used''). The performing of any operation or combination of operations, not amounting to manufacture or production under the provisions of the manufacturing drawback law, on the imported merchandise is not a use of that merchandise for purposes of this section.

§ 191.32 Substitution drawback.

(a) *General.* Section 313(j)(2) of the Act, as amended (19 U.S.C. 1313(j)(2)), provides for drawback on merchandise which is commercially interchangeable with imported merchandise if the commercially interchangeable merchandise is exported, or destroyed under Customs supervision, within 3 years after the importation of the imported merchandise, and before such exportation or destruction, the commercially interchangeable merchandise is not used in the United

States (see paragraph (e) of this section) and is in the possession of the party claiming drawback.

(b) *Requirements.* (1) The claimant must have possessed the substituted merchandise that was exported or destroyed, as provided in paragraph (d)(1) of this section;

(2) The substituted merchandise must be commercially interchangeable with the imported merchandise that is designated for drawback; and

(3) The substituted merchandise exported or destroyed must not have been used in the United States before its exportation or destruction (see paragraph (e) of this section).

(c) *Determination of commercial interchangeability.* In determining commercial interchangeability, factors to be considered include, but are not limited to, Governmental and recognized industrial standards, part numbers, tariff classification and value. This determination can be obtained in one of three ways:

(1) A formal ruling from the Entry and Carrier Rulings Branch, Office of Regulations and Rulings;

(2) A nonbinding predetermination request sent directly to the appropriate drawback office; or

(3) A submission of all the required documentation necessary to make a commercial interchangeability determination with each individual drawback claim filed.

(d) *Time limitations.* For substitution unused merchandise drawback:

(1) The claimant must have had possession of the exported or destroyed merchandise at some time during the 3-year period following the date of importation of the imported designated merchandise; and

(2) The merchandise to be exported or destroyed to qualify for drawback must be exported, or destroyed under Customs supervision, before the close of the 3-year period beginning on the date of importation of the imported designated merchandise.

(e) *Use.* In general, for purposes of this section, merchandise is ''used'' when it is employed to perform the function for which it was intended (for example, shoes worn as footwear have been ''used''). The performing of any operation or combination of operations, not amounting to manufacture or production under the provisions of the manufacturing drawback law, on the commercially interchangeable substituted merchandise is not a use of that merchandise for purposes of this section.

(f) *Designation by successor*—(1) *General rule.* Upon compliance with the requirements of this section, a drawback successor as defined in paragraph (f)(2) of this section may designate either of the following as the basis for drawback on merchandise possessed by the successor after the date of succession:

(i) Imported merchandise which the predecessor, before the date of succession, imported; or

(ii) Imported and/or commercially interchangeable merchandise which was transferred to the predecessor and for which the predecessor received, before the date of succession, a certificate of delivery from the person who imported and paid duty on the imported merchandise.

(2) *Drawback successor.* A ''drawback successor'' is an entity to which another entity (predecessor) has transferred, by written agreement, merger, or corporate resolution:

(i) All or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(ii) The assets and other business interests of a division, plant, or other business unit of such predecessor, provided that the value of the transferred assets and interests (realty, personalty, and intangibles, exclusive of the drawback rights) exceeds the value of such drawback rights, whether vested or contingent.

(3) *Certifications and required evidence.*-(i) *Records of predecessor.* The predecessor or successor must certify in an attachment to the drawback claim that the successor is in possession of the predecessor's records which are necessary to establish the right to drawback under the law and regulations with respect to the imported and/or commercially interchangeable merchandise.

(ii) *Merchandise not otherwise designated.* The predecessor or successor must certify in an attachment to the drawback claim, that the predecessor has not and will not designate, nor enable any other person to designate, the imported and/or commercially interchangeable merchandise as the basis for drawback.

(iii) *Value of transferred property.* In instances in which assets and other business interests of a division, plant, or other business unit of a predecessor are transferred, the predecessor or successor must specify, and maintain supporting records to establish, the value of the drawback rights and the value of all other transferred property.

(iv) *Review by Customs.* The written agreement, merger, or corporate resolution, provided for in paragraph (f)(2) of this section, and the records and evidence provided for in paragraph (f)(3) (i) through (iii) of this section, must be retained by the appropriate party(ies) for 3 years from the date of payment of the related claim and are subject to review by Customs upon request.

§ 191.33 Person entitled to claim drawback.

(a) *Direct identification.* (1) Under 19 U.S.C. 1313(j)(1), the exporter (or destroyer) shall be entitled to claim drawback.

(2) The exporter or destroyer may waive the right to claim drawback and assign such right to the importer or any intermediate party. A drawback claimant under 19 U.S.C. 1313(j)(1) other than the exporter or destroyer shall secure and retain a certification signed by the exporter or destroyer that such party waived the right to claim drawback, and did not and will not authorize any other party to claim the exportation or destruction for drawback (see § 191.82 of this part). The claimant shall file such certification as part of the drawback claim.

(b) *Substitution.* (1) Under 19 U.S.C. 1313(j)(2), the following parties may claim drawback:

(i) In situations where the exporter or destroyer of the substituted merchandise is also the importer of the imported merchandise, that party shall be entitled to claim drawback.

(ii) In situations where the exporter or destroyer receives from the person who imported and paid the duty on the imported merchandise a certificate of delivery documenting the transfer of imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise, and exports such transferred merchandise, that exporter shall be entitled to claim drawback. (Any such transferred merchandise, regardless of its origin, will be treated as imported merchandise for purposes of drawback under § 1313(j)(2), and any retained merchandise will be treated as domestic merchandise.)

(iii) In situations where the transferred merchandise described in paragraph (b)(1)(ii) of this section is the subject of further transfer(s), such transfer(s) shall be documented by certificate(s) of delivery, and the exporter or destroyer shall be entitled to claim drawback.

(2) The exporter or destroyer may waive the right to claim drawback and assign such right to the importer or to any intermediate party, provided that the claimant had possession of the substituted merchandise prior to its exportation or destruction. A drawback claimant under 19 U.S.C. 1313(j)(2) other than the exporter or destroyer

shall secure and retain a certification signed by the exporter or destroyer that such party waived the right to claim drawback, and did not and will not authorize any other party to claim the exportation or destruction for drawback (see § 191.82 of this part). The claimant shall file such certification as part of the drawback claim.

§ 191.34 Certificate of delivery required.

(a) *Direct identification; purpose; when required.* If the exported or destroyed merchandise claimed for drawback under 19 U.S.C. 1313(j)(1) was not imported by the exporter or destroyer, the drawback claimant must have a properly executed certificate of delivery prepared by the importer and each intermediate party. Each such transfer of the merchandise must be documented by its own certificate of delivery.

(1) *Completion.* The certificate of delivery shall be completed as provided in § 191.10 of this part. Each party must also certify on the certificate of delivery that the party did not use the exported or destroyed merchandise (see § 191.31(c) of this part).

(2) *Retention.* The drawback claimant shall retain the certificate for submission to Customs as part of the claim, if requested (see § 191.51(a)(2) of this part).

(b) *Substitution.* For purposes of substitution unused merchandise drawback, 19 U.S.C. 1313(j)(2), if the importer transfers to another party imported, duty-paid merchandise, commercially interchangeable merchandise, or any combination thereof, the importer shall prepare and issue in favor of such party a certificate of delivery covering the transferred merchandise. The certificate of delivery must expressly state that it is prepared pursuant to 19 U.S.C. 1313(j)(2). Merchandise so transferred for which drawback is allowed under 19 U.S.C. 1313(j)(2) may not be designated as imported merchandise for the purpose of manufacturing drawback. Certificates of delivery under this paragraph are subject to the provisions for completion and retention of certificates of delivery in paragraphs (a)(1) and (a)(2) of this section.

(c) *Warehouse transfer and withdrawals.* The person in whose name merchandise is withdrawn from a bonded warehouse shall be considered the importer for drawback purposes. No certificate of delivery need be prepared covering prior transfers of merchandise while in a bonded warehouse, because such transfers will be recorded in the warehouse entry (see § 144.22 of this chapter).

§ 191.35 Notice of intent to export; examination of merchandise.

(a) *Notice.* A notice of intent to export merchandise which may be the subject of an unused merchandise drawback claim (19 U.S.C. 1313(j)) must be provided to the Customs Service to give Customs the opportunity to examine the merchandise. The claimant, or the exporter, must file at the port of intended examination a Notice of Intent to Export/Destroy on Customs Form xxx at least 2 working days prior to the date of intended exportation unless Customs approves another filing period or the claimant has been granted a waiver of prior notice (see § 191.91 of this part).

(b) *Required information.* The notice shall certify that the merchandise has not been used in the United States before exportation. In addition, the notice shall provide the bill of lading number, if known, the name and telephone number of a contact person, and the location of the merchandise should Customs decide to examine the merchandise.

(c) *Decision to examine or to waive examination.* Within two (2) working days after receipt of the Notice of Intent to Export/Destroy (see paragraph (a) of this section), Customs will notify the party designated on the Notice of Customs decision to either examine the merchandise to be exported, or to waive examination. If Customs timely notifies the designated party, in writing, of its decision to examine the merchandise (see paragraph (d) of this section), but the merchandise is exported without having been presented to Customs for examination, any drawback claim, or part thereof, based on the Notice of Intent to Export/Destroy, shall be denied. If Customs notifies the designated party, in writing, of its decision to waive examination of the merchandise, or, if timely notification of a decision by Customs to examine or to waive examination is absent, the merchandise may be exported without delay.

(d) *Time and place of examination.* If Customs gives timely notice of its decision to examine the export merchandise, the merchandise to be examined shall be promptly presented to Customs. Customs shall examine the merchandise within five (5) working days after presentation of the merchandise. The merchandise may be exported without examination if Customs fails to timely examine the merchandise after presentation to Customs. If the examination is completed at a port other than the port of actual exportation, the merchandise shall be transported in-bond to the port of exportation.

(e) *Extent of examination.* The appropriate Customs office may permit release of merchandise without examination, or may examine routinely (to the extent determined to be necessary) the items exported.

§ 191.36 Failure to file Notice of Intent to Export or Destroy merchandise.

(a) *General; application.* Merchandise which has been exported without complying with the requirements of § 191.35(a) or § 191.91 of this part may be eligible for unused merchandise drawback under 19 U.S.C. 1313(j) subject to the following conditions:

(1) *Application.* The claimant must file a written application with the drawback office where the drawback claims will be filed. Such application shall include the following:

(i) Required information.

(A) Name, address, and identification number of applicant;

(B) Name, address, and identification number of exporter(s), if applicant is not the exporter;

(C) Export period covered by this application;

(D) Commodity/product lines of imported and exported merchandise covered in this application;

(E) The origin of the above merchandise;

(F) Estimated number of export transactions covered in this application;

(G) The port(s) of exportation;

(H) Estimated dollar value of potential drawback to be covered in this application; and

(I) The relationship between the parties involved in the import and export transactions;

(ii) Written declarations regarding:

(A) The reason(s) that Customs was not notified of the intent to export; and

(B) Whether the applicant, to the best of its knowledge, will have future exportations on which unused merchandise drawback might be claimed; and

(iii) A certification that the following documentary evidence will be made available for Customs review upon request:

(A) For the purpose of establishing that the imported merchandise was not used in the United States (for purposes of drawback under 19 U.S.C. 1313(j)(1)) or that the exported merchandise was not used in the United States and was commercially interchangeable with the imported merchandise (for purposes of drawback under 19 U.S.C. 1313(j)(2)):

(*1*) Business records prepared in the ordinary course of business;

(*2*) Laboratory records prepared in the ordinary course of business; and

(*3*) Inventory records prepared in the ordinary course of business tracing all

relevant movements and storage of the imported merchandise, substituted merchandise, and/or exported merchandise; and

(B) Evidence establishing compliance with all other applicable drawback requirements.

(2) *One-time use.* The procedure provided for in this section may be used by a claimant only once, unless good cause is shown (for example, successorship).

(3) *Claims filed pending disposition of application.* Drawback claims may be filed under this section pending disposition of the application. However, those drawback claims will not be processed or paid until the application is approved by Customs.

(b) *Customs action.* In order for Customs to evaluate the application under this section, Customs may request, and the applicant shall provide, any of the information listed in paragraph (a)(1)(iii)(A) (*1*) through (*3*) of this section. In making its decision to approve or deny the application under this section, Customs will consider factors such as, but not limited to, the following:

(1) Information provided by the claimant in the written application;

(2) Any of the information listed in paragraph (a)(1)(iii)(A) (*1*) through (*3*) of this section and requested by Customs under this paragraph; and

(3) The applicant's prior record with Customs.

(c) *Time for Customs action.* Customs will notify the applicant in writing within 90 days of its decision to approve or deny the application, or of Customs inability to approve, deny or act on the application.

(d) *Appeal of denial of application.* If Customs denies the application, the applicant may file a written appeal with the drawback office which issued the denial, provided that the applicant files this appeal within 30 days of the denial date of the application. If Customs denies this initial appeal, the applicant may file a further written appeal with Customs Headquarters, provided that the applicant files this further appeal within 30 days of the denial date of the initial appeal. Customs may extend the 30 day period for appeal to the drawback office or to Customs Headquarters, for good cause, if the applicant applies in writing for such extension within the appropriate 30 day period above.

(e) *Future intent to export unused merchandise.* If an applicant states it will have future exportations on which unused merchandise drawback may be claimed (see paragraph (a)(1)(ii)(B) of this section), the applicant will be informed of the procedures for waiver of prior notice (see §191.91 of this part). If the applicant seeks waiver of prior notice under §191.91, any documentation submitted to Customs to comply with this section will be included in the request under §191.91. An applicant which states that it will have future exportations on which unused merchandise drawback may be claimed (see paragraph (a)(1)(ii)(B) of this section) and which does not obtain waiver of prior notice shall notify Customs of its intent to export prior to each such exportation, in accordance with §191.35.

§191.37 Records.

(a) *Maintained by claimant; by others.* All records which are necessary to be maintained by the claimant under this part with respect to drawback claims, and records kept by others to complement the records of the claimant, which are essential to establish compliance with the legal requirements of 19 U.S.C. 1313 (j)(1) or (j)(2), as applicable, and this part, shall be retained for 3 years after payment of such claims.

(b) *Accounting for the merchandise.* Merchandise subject to drawback under 19 U.S.C. 1313 (j)(1) and (j)(2) shall be accounted for in a manner which will enable the claimant:

(1) To determine, and Customs to verify, the applicable import entry or certificate of delivery;

(2) To determine, and Customs to verify, the applicable exportation; and

(3) To identify with respect to the import entry or certificate of delivery, the imported duty-paid merchandise.

Subpart D—Rejected Merchandise

§191.41 Rejected merchandise drawback.

Section 313(c) of the Act, as amended (19 U.S.C. 1313(c)), provides for drawback upon the exportation or destruction under Customs supervision of imported merchandise which has been entered, or withdrawn from warehouse, for consumption, duty-paid; and which does not conform to sample or specifications; has been shipped without the consent of the consignee; or has been determined to be defective as of the time of importation. The claimant must show by evidence satisfactory to Customs that the exported or destroyed merchandise was defective at the time of importation, or was not in accordance with sample or specifications, or was shipped without the consent of the consignee.

§191.42 Procedure.

(a) *Return to Customs custody.* The claimant must return the merchandise to Customs custody within 3 years after the date the merchandise was originally released from Customs custody. Drawback will be denied on merchandise returned to Customs custody after the statutory 3-year time period or exported without return to Customs custody.

(b) *Required documentation.* The claimant shall submit documentation to the drawback office as part of the drawback claim to establish that the merchandise did not conform to sample or specification, was shipped without the consent of the consignee, or was defective as of the time of importation. If the claimant was not the importer, the claimant must:

(1) Submit a statement signed by the importer and every other person, other than the ultimate purchaser, that owned the goods that no other claim for drawback was made on the goods by any other person; and

(2) Certify that records are available to support the statement required in paragraph (b)(1) of this section.

(c) *Notice.* A notice of intent to export or destroy merchandise which may be the subject of a rejected merchandise drawback claim (19 U.S.C. 1313(c)) must be provided to the Customs Service to give Customs the opportunity to examine the merchandise. The claimant, or the exporter, must file at the port of intended redelivery to Customs custody a Notice of Intent to Export/Destroy on Customs Form xxx at least 5 working days prior to the date of intended return to Customs custody. Waiver of prior notice for exportations under 19 U.S.C. 1313(j) (see §191.91 of this part) is inapplicable to exportations under 19 U.S.C. 1313(c).

(d) *Required information.* The notice shall provide the bill of lading number, if known, the name and telephone number of a contact person, and the location of the merchandise.

(e) *Decision to waive examination.* Within two (2) working days after receipt of the Notice of Intent to Export/Destroy (see paragraph (c) of this section), Customs will notify the party designated on the Notice of Customs decision to either examine the merchandise to be exported, or to waive examination. If Customs timely notifies the designated party, in writing, of its decision to examine the merchandise (see paragraph (f) of this section), but the merchandise is exported without having been presented to Customs for such examination, any drawback claim, or part thereof, based on the Notice of Intent to Export/Destroy, shall be denied. If Customs notifies the designated party, in writing, of its decision to waive examination of the

merchandise, or, if timely notification of a decision by Customs to examine or to waive examination is absent, the merchandise may be exported without delay and shall be deemed to have been returned to Customs custody.

(f) *Time and place of examination.* If Customs gives timely notice of its decision to examine the export merchandise, the merchandise to be examined shall be promptly presented to Customs. Customs shall examine the merchandise within five (5) working days after presentation of the merchandise. The merchandise may be exported without examination if Customs fails to timely examine the merchandise after presentation to Customs, and in such case the merchandise shall be deemed to have been returned to Customs custody. If the examination is completed at a port other than the port of actual exportation, the merchandise shall be transported in-bond to the port of exportation.

(g) *Extent of examination.* The appropriate Customs office may permit release of merchandise without examination, or may examine, to the extent determined to be necessary, the items exported.

(h) *Drawback claim.* When filing the drawback claim, the drawback claimant must correctly calculate the amount of drawback due (see §191.51(b) of this part). The procedures for restructuring a claim (see §191.53 of this part) shall apply to rejected merchandise drawback if the claimant has an ongoing export program which qualifies for this type of drawback.

(i) *Exportation.* The claimant shall export the merchandise under Customs supervision and shall provide documentary evidence of exportation. The claimant may establish exportation by mail as set out in §191.74 of this part.

§191.43 Unused merchandise claim.

Rejected merchandise may be the subject of an unused merchandise drawback claim under 19 U.S.C. 1313(j)(1), in accordance with subpart C of this part, to the extent that the merchandise qualifies therefor.

§191.44 Destruction under Customs supervision.

A claimant may destroy merchandise and obtain rejected merchandise drawback by complying with the procedures set forth in §191.71(a) of this part relating to destruction.

Subpart E—Completion of Drawback Claims

§191.51 Completion of drawback claims.

(a) *General.*—(1) *Complete claim.* Unless otherwise specified, a complete drawback claim under this part shall consist of the drawback entry on Customs Form 331, applicable certificate(s) of manufacture and delivery, applicable Notice(s) of Intent to Export or Destroy, applicable import entry number(s), coding sheet unless the data is filed electronically, and evidence of exportation or destruction under subpart G of this part.

(2) *Certificates.* Additionally, the associated certificate(s) of delivery must be in the possession of the claimant at the time of the filing of the claim. Any required certificate(s) of manufacture and delivery, if not previously filed with Customs, must be filed with the claim. Previously filed certificates of manufacture and delivery, if required, shall be referenced in the claim.

(b) *Drawback due.* Drawback claimants are required to correctly calculate the amount of drawback due. The amount of drawback requested on the drawback entry is generally to be 99 percent of the import duties eligible for drawback. (For example, if $1,000 in import duties are eligible for drawback less 1 percent ($10), the amount claimed on the drawback entry should be for $990. Claims exceeding 99 percent will not be paid until the calculations have been corrected by the claimant.) Claims for less than 99 percent will be paid as filed, unless the claimant amends the claim in accordance with §191.52(c).

(c) *HTSUS number(s) or Schedule B commodity number(s) of imports and exports.* Drawback claimants are required to provide, on all drawback claims they submit, the Harmonized Tariff Schedule of the United States (HTSUS) number(s) for the designated imported merchandise and the HTSUS number(s) or the Schedule B commodity number(s) for the exported article or articles. For imports, HTSUS numbers shall be provided from the entry summary(s) and other entry documentation, when the claimant is the importer of record, or from the certificate of delivery and/or the certificate of manufacture and delivery, otherwise. For exports, the HTSUS number(s) or Schedule B commodity number(s) shall be from the Shipper's Export Declaration(s) (SEDs), when required. If no SED is required (see, *e.g.*, 15 CFR 30.58), the claimant shall provide the Schedule B commodity number(s) or HTSUS number(s) that the exporter would have set forth on the SED, but for the exemption from the requirement for an SED. Manufacturing drawback claimants filing drawback claims based on certificate(s) of manufacture and delivery filed with the claims or previously filed with Customs (see paragraph (a) of this section), may meet this requirement with the HTSUS number(s) on such certificate(s). The HTSUS number will be stated to at least 6 digits.

(d) *Place of filing.* For manufacturing drawback, the claimant shall file the drawback claim with the drawback office listed, as appropriate, in the general manufacturing drawback ruling or the specific manufacturing drawback ruling (see §§191.7 and 191.8 of this part). For other kinds of drawback, the claimant shall file the claim with any drawback office.

§191.52 Completing, perfecting or amending claims.

(a) *Completing the claim.* (1) Upon review of a drawback claim, if the claim is determined to be incomplete (see §191.51(a)(1)), the claim will be rejected and Customs will notify the filer. The filer shall then have the opportunity to complete the claim subject to the requirement for filing a complete claim within 3 years (see paragraph (a)(2) of this section).

(2) A completed drawback claim, with all required documents, shall be filed within 3 years after the date of exportation or destruction of the articles which are the subject of the claim. No extension will be granted unless the claimant establishes that the Customs Service was responsible for the untimely filing (see 19 U.S.C. 1313(r)(1)). The only exception is for landing certificates under §191.76 of this part.

(b) *Perfecting the claim; additional evidence required.* If Customs determines that the claim is complete according to the requirements of §191.51(a)(1), but that additional evidence or information is required, Customs will notify the filer. The claimant shall furnish, or have the appropriate party furnish, the evidence or information requested within 30 days of the date of notification by Customs. Customs may extend this 30 day period for good cause if the claimant files a written request for such extension within the 30 day period. The evidence or information required under this paragraph may be filed more than 3 years after the date of exportation or destruction of the articles which are the subject of the claim. Such additional evidence or information may include, but is not limited to:

(1) A copy of the export bill of lading which shall show that the articles were shipped by the person filing the drawback entry, or a letter of endorsement from the party in whose name the articles were shipped which shall be attached to such bill of lading, showing that the party filing the entry

is authorized to claim drawback and receive payment (the claimant shall have on file and make available to Customs upon request, the endorsement from the exporter assigning the right to claim drawback);

(2) A copy of the import entry and invoice annotated for the merchandise identified or designated; and

(3) A copy of the export invoice annotated to indicate the items on which drawback is being claimed.

(c) *Amending the claim; supplemental filing.* Amendments to claims for which the drawback entries have not been liquidated must be made within three (3) years after the date of exportation or destruction of the articles which are the subject of the drawback claim. Liquidated drawback entries may not be amended; however, they may be protested as provided for in §191.84 of this part and part 174 of this chapter.

§191.53 Restructuring of claims.

(a) *General.* Customs may require claimants to restructure their drawback claims in such a manner as to foster Customs administrative efficiency. In making this determination, Customs will consider the following factors:

(1) The number of transactions of the claimant (imports and exports);

(2) The value of the claims;

(3) The frequency of claims;

(4) The product or products being claimed; and

(5) For 19 U.S.C. 1313(a) and 1313(b) claims, the provisions, as applicable, of the general manufacturing drawback ruling or the specific manufacturing drawback ruling.

(b) *Exemption from restructuring; criteria.* In order to be exempt from a restructuring, a claimant must demonstrate an inability or impracticability in restructuring its claims as required by Customs and must provide a mutually acceptable alternative. Criteria used in such determination will include a demonstration by the claimant of one or more of the following:

(1) Complexities caused by multiple commodities or the applicable general manufacturing drawback ruling or the specific manufacturing drawback ruling;

(2) Variable and conflicting manufacturing and inventory periods (for example, financial, accounting and manufacturing records maintained are significantly different);

(3) Complexities caused by multiple manufacturing locations;

(4) Complexities caused by difficulty in adjusting accounting and inventory records (for example, records maintained—financial or accounting—are significantly different); and/or

(5) Complexities caused by significantly different methods of operation.

Subpart F—Verification of Claims

§191.61 Verification of drawback claims.

(a) *Authority*—(1) *Drawback office.* All claims shall be subject to verification by the port director where the claim is filed.

(2) *Two or more locations.* The port director selecting the claim for verification may forward copies of the claim and, as applicable, letters of notification and acknowledgement for the general manufacturing drawback ruling or application for, and letter of approval of, a specific manufacturing drawback ruling, and request for verification, to other drawback offices when deemed necessary.

(b) *Method.* The verifying office shall verify the accuracy of the related general manufacturing drawback ruling or specific manufacturing drawback ruling and the selected drawback claims. Verification may include an examination of all records relating to the transaction(s).

(c) *Liquidation.* When a claim has been selected for verification, liquidation will be postponed only on the drawback entries for those claims selected for verification. Postponement will continue in effect until the verification has been completed and the appropriate port director issues a report. In the event that a substantial error is revealed during the verification, Customs may postpone liquidation of all related product line claims, or, in Customs discretion, all claims for that claimant.

§191.62 Falsification of drawback claims.

(a) *Criminal penalty.* Any person who knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback upon the exportation of merchandise or knowingly or willfully makes or files any false document for the purpose of securing the payment to himself or others of any drawback on the exportation of merchandise greater than that legally due, shall be subject to the criminal provisions of 18 U.S.C. 550, 1001 or any other appropriate criminal sanctions.

(b) *Civil penalty.* Any person who seeks, induces or affects the payment of drawback, by fraud or negligence, or attempts to do so, is subject to civil penalties, as provided under 19 U.S.C. 1593a. A fraudulent violation is subject to a maximum administrative penalty of 3 times the total actual or potential loss of revenue. Repetitive negligent violations are subject to a maximum penalty equal to the actual or potential loss of revenue.

Subpart G—Evidence of Exportation and Destruction

§191.71 Drawback on articles destroyed under Customs supervision.

(a) *Procedure.* At least 7 working days before the intended date of destruction of merchandise or articles upon which drawback is intended to be claimed, a Notice of Intent to Export/Destroy on Customs Form xxx shall be filed by the claimant with the Customs port where the destruction is to take place, giving notification of the date and specific location where the destruction is to occur. Within 4 working days, Customs shall advise the filer of its determination to witness or not to witness the destruction. If the filer of the notice is not so notified within 4 working days, the merchandise may be destroyed without delay and will be deemed to have been destroyed under Customs supervision. Unless Customs determines to witness the destruction, the destruction of the articles following timely notification on Customs Form xxx shall be deemed to have occurred under Customs supervision. If Customs attends the destruction, it must certify the Notice of Intent to Export/Destroy.

(b) *Evidence of destruction.* When Customs declines the opportunity to attend the destruction, the claimant must submit evidence that destruction took place in accordance with the approved Notice of Intent to Export/Destroy. The evidence must be issued by a disinterested third party (for example, a landfill operator). The type of evidence depends on the method and place of destruction, but must establish that the merchandise was, in fact, destroyed within the meaning of ''destruction'' in § 191.2(g) (*i.e.*, that no articles of commercial value remained after destruction).

(c) *Completion of drawback entry.* After destruction, the claimant and, if applicable, the Customs official witnessing the destruction shall certify on an attachment to Customs Form 331 the time and place of destruction.

§191.72 Alternative procedures for establishing exportation.

Exportation of articles for drawback purposes shall be established by complying with one of the procedures provided for in this section (in addition to providing prior notice of intent to export (see §§ 191.35, 191.36, 191.42, and 191.91 of this part)). Supporting documentary evidence shall establish fully the time and fact of exportation

and the identity of the exporter. The alternative procedures for establishing exportation outlined by this section are:

(a) Actual evidence of exportation consisting of documentary evidence, such as the original bill of lading, air waybill, freight waybill, Canadian Customs manifest, and/or cargo manifest, or certified copies thereof, issued by the exporting carrier;

(b) Export summary (§ 191.73);

(c) Certified export invoice for mail shipments (§ 191.74);

(d) Notice of lading for supplies on certain vessels or aircraft (§ 191.112); or

(e) Notice of transfer for articles manufactured or produced in the U.S. which are transferred to a foreign trade zone (§ 191.183).

§ 191.73 Export summary procedure.

(a) *General.* The export summary procedure consists of a chronological summary of exports used to support a drawback claim. It may be submitted as part of the claim in lieu of actual documentary evidence of exportation. It may be used by any claimant for manufacturing drawback, and for unused or rejected merchandise drawback, as well as for drawback involving the substitution of finished petroleum derivatives (19 U.S.C. 1313 (a), (b), (c), (j), or (p)). It is intended to improve administrative efficiency.

(b) *Format of chronological export summary.* The chronological summary of the exports shall contain the data provided for in the following sample:

CHRONOLOGICAL SUMMARY OF EXPORTS

Drawback entry No. _____. _____
Claimant _____; Exporter _____ (if different from claimant)
Period from _____ to _____.

Date of export	Unique export identifier [1]	Description	Net quantity	Sched. B com. # or HTSUS #	Destination #
(1)	(2)	(3)	(4)	(5)	(6)

[1] This number is to be used to associate the export transaction presented on the Chronological Export Summary to the appropriate documentary evidence of exportation (for example, Bill of Lading, Manifest no., invoice, etc.).

(c) *Documentary evidence*—(1) *Records.* The claimant, whether or not the exporter, shall maintain the chronological summary of the exports and such additional evidence of exportation required by Customs to establish fully the identity of the exported articles and the fact of exportation. The bill of lading issued by the exporting carrier is the primary proof of export for drawback purposes.

(2) *Maintenance of records.* The claimant shall submit as part of the claim the chronological export summary (see § 191.51). The claimant shall retain records supporting the Chronological Export Summary for 3 years after payment of the related claim. Customs may at any time request to review the underlying documentation supporting the Chronological Export Summary.

§ 191.74 Certification of exportation by mail.

If the merchandise on which drawback is to be claimed is exported by mail or parcel post, the official postal records which describe the mail shipment shall be sufficient to prove exportation. The postal record shall be identified on the drawback entry, and shall be retained by the claimant and submitted as part of the drawback claim (see § 191.10(e) of this part).

§ 191.75 Exportation by the Government.

(a) *Claim by U.S. Government.* When a department, branch, agency, or instrumentality of the United States Government exports products with the intention of claiming drawback, it may establish the exportation in the manner provided in § 191.73. No bond shall be required when the United States Government claims drawback.

(b) *Claim by supplier.* When a supplier of merchandise to the Government or any of the parties specified in § 191.82 of this part claims drawback, exportation shall be established under § 191.73.

§ 191.76 Landing certificate.

(a) *Requirement.* Prior to the liquidation of the drawback entry, Customs may require a landing certificate for every aircraft departing from the United States under its own power if drawback is claimed on the aircraft or a part thereof, except for the exportation of supplies under section 309 of the Act, as amended (19 U.S.C. 1309). The certificate shall show the exact time of landing in the foreign destination and describe the aircraft or parts subject to drawback in sufficient detail to enable Customs officers to identify them with the documentation of exportation.

(b) *Written notice of requirement and time for filing.* A landing certificate shall be filed within one year from the written Customs request, unless Customs Headquarters grants an extension.

(c) *Signature.* A landing certificate shall be signed by a revenue officer of the foreign country of the export's destination, unless the embassy of that country certifies in writing that there is no Customs administration in that country, in which case the landing certificate may be signed by the consignee or the carrier's agent at the place of unlading.

(d) *Inability to produce landing certificates.* A landing certificate shall be waived by the requiring Customs authority if the claimant demonstrates inability to obtain a certificate and offers other satisfactory evidence of export.

Subpart H—Liquidation and Protest of Drawback Entries

§ 191.81 Liquidation.

(a) *Time of liquidation.* Drawback entries may be liquidated after:

(1) Liquidation of the import entry becomes final; or

(2) Deposit of estimated duties on the imported merchandise and before liquidation of the import entry.

(b) *Claims based on estimated duties.* (1) Drawback may be paid on estimated duties if the import entry has not been liquidated, or the liquidation has not become final (because of a protest being filed) (see also § 173.4(c) of this chapter), and the drawback claimant and any other party responsible for the payment of liquidated import duties each file a written request for payment of each drawback claim, waiving any right to payment or refund under other provisions of law. The drawback claimant shall, to the best of its knowledge, identify each import entry that has been protested or that is the subject of a request for reliquidation (19 U.S.C. 1520(c)(1)) and that is included in the drawback claim. A drawback entry, once finally liquidated on the basis of estimated duties, shall not be adjusted by reason of a subsequent final liquidation of the import entry.

(2) However, if final liquidation of the import entry discloses that the total amount of import duty is different from the total estimated duties deposited, the party responsible for the payment of liquidated duties, as applicable, shall:

(i) Be liable for 1 percent of all increased duties found to be due on that

portion of merchandise recorded on the drawback entry; or

(ii) Be entitled to a refund of 1 percent of all excess duties found to be paid on that portion of the merchandise recorded on the drawback entry.

(c) *Claims based on voluntary tenders or other payments of duties*—(1) *Voluntary tenders.* Drawback may be paid on voluntary tenders of the unpaid amount of lawful ordinary Customs duties on an entry, or withdrawal from warehouse, for consumption provided that:

(i) The entry, or withdrawal from warehouse, for consumption for which the voluntary tender was made is specifically identified in the voluntary tender; and

(ii) Liquidation of the drawback entry in which that specifically identified import entry, or withdrawal from warehouse, for consumption is designated has not become final.

(2) *Other payments of duty.* Drawback may be paid on any other payment of lawful ordinary Customs duties for an entry, or withdrawal from warehouse, for consumption, such as payment of a demand for duties under 19 U.S.C. 1592(d), provided that:

(i) The payment is specifically identified as duty on a specifically identified entry, or withdrawal from warehouse, for consumption;

(ii) Liquidation of the specifically identified entry, or withdrawal from warehouse, for consumption became final prior to such payment; and

(iii) Liquidation of the drawback entry in which that specifically identified import entry, or withdrawal from warehouse, for consumption is designated has not become final.

(3) *Written request and waiver.* Drawback may be paid on claims based on voluntary tenders or other payments of duties under this subsection only if the drawback claimant and any other party responsible for the payment of the voluntary tenders or other payments of duties each file a written request for payment of each drawback claim based on such voluntary tenders or other payments of duties, waiving any right to payment or refund under other provisions of law.

(d) *Claims based on liquidated duties.* Drawback shall be based on the final liquidated duties paid that have been made final by operation of law (except in the case of the written request for payment of drawback on the basis of estimated duties, voluntary tender of duties, and other payments of duty, and waiver, provided for in paragraphs (b) and (c) of this section).

(e) *Liquidation procedure.* When the drawback claim has been completed by the filing of the entry and other required documents, and exportation (or destruction) of the articles has been established, the drawback office shall determine drawback due on the basis of the complete drawback claim, the applicable general manufacturing drawback ruling or specific manufacturing drawback ruling, and any other relevant evidence or information.

(f) *Distribution and value of multiple products*—(1) *Distribution.* Where two or more products result from the manufacture or production of merchandise, drawback shall be distributed to the several products in accordance with their relative value at the time of separation.

(2) *Value.* The value to be used in computing the distribution of drawback where two or more products result from the manufacture or production of merchandise under drawback conditions shall be the market value (see § 191.2(r) of this part), unless another value is approved by Customs.

(g) *Payment.* The drawback office shall authorize the amount of the refund due as drawback to the claimant.

§ 191.82 Person entitled to claim drawback.

Unless otherwise provided in this part (see §§ 191.42(b), 191.162, 191.175(a), 191.186), the exporter (or destroyer) shall be entitled to claim drawback, unless the exporter (or destroyer), by means of a certification, waives the right to claim drawback and assigns such right to the manufacturer, producer, importer, or intermediate party (in the case of drawback under 19 U.S.C. 1313(j)(1), see § 191.33(a)). Such certification shall also affirm that the exporter (or destroyer) has not and will not assign the right to claim drawback on the particular exportation or destruction to any other party.

§ 191.83 Person entitled to receive payment.

Drawback is paid to the claimant (see § 191.82).

§ 191.84 Protests.

Procedures to protest the denial, in whole or in part, of a drawback entry shall be in accordance with part 174 of this chapter (19 CFR part 174).

Subpart I—Privileges

§ 191.91 Waiver of prior notice of intent to export.

(a) *General.* The requirement in § 191.35 of this part for prior notice of intent to export merchandise which may be the subject of an unused merchandise drawback claim under section 313(j) of the Act, as amended (19 U.S.C. 1313(j)), may be waived under the provisions of this section.

(b) *Application*—(1) *Who may apply.* A claimant for unused merchandise drawback under 19 U.S.C. 1313(j) may apply for a waiver of prior notice of intent to export merchandise under this section.

(2) *Contents of application.* An applicant for a waiver of prior notice under this section must file a written application with the drawback office where the claims will be filed. Such application shall include the following:

(i) Required information:

(A) Name, address, and identification number of applicant;

(B) Name, address, and identification number of current exporter(s), if applicant is not the exporter;

(C) Export period covered by this application;

(D) Commodity/product lines of imported and exported merchandise covered by this application;

(E) Origin of merchandise covered by this application;

(F) Estimated number of export transactions during the next 12-month period covered by this application;

(G) Port(s) of exportation to be used during the next 12-month period covered by this application;

(H) Estimated dollar value of potential drawback during the next 12-month period covered by this application; and

(I) The relationship between the parties involved in the import and export transactions;

(ii) A written declaration whether or not the applicant has previously been denied a waiver request, or had an approval of a waiver revoked, by any other drawback office; and

(iii) A certification that the following documentary evidence will be made available for Customs review upon request:

(A) For the purpose of establishing that the imported merchandise was not used in the United States (for purposes of drawback under 19 U.S.C. 1313(j)(1)) or that the exported merchandise was not used in the United States and was commercially interchangeable with the imported merchandise (for purposes of drawback under 19 U.S.C. 1313(j)(2)):

(*1*) Business records prepared in the ordinary course of business;

(*2*) Laboratory records prepared in the ordinary course of business; and

(*3*) Inventory records prepared in the ordinary course of business tracing all relevant movements and storage of the imported merchandise, substituted merchandise, and/or exported merchandise; and

(B) Evidence establishing compliance with other applicable drawback

requirements, upon Customs request under paragraph (b)(2)(iii) of this section.

(3) *Samples of records to accompany application.* To expedite the processing of applications under this section, the application should contain at least one sample of each of the records to be used to establish compliance with the applicable requirements (that is, sample of import document (for example, Customs Form 7501), sample of export document (for example, bill of lading), and samples of business, laboratory, and inventory records certified, under paragraph (b)(2)(iii)(A) (*1*) through (*3*) of this section, to be available to Customs upon request).

(c) *Action on application*—(1) *Customs review.* The drawback office shall review and verify the information submitted on and with the application. Customs will notify the applicant in writing within 90 days of receipt of the application of its decision to approve or deny the application, or of Customs inability to approve, deny, or act on the application. In order for Customs to evaluate the application, Customs may request any of the information listed in paragraph (b)(2)(iii)(A)(*1*) through (*3*) of this section. Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with Customs, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with Customs include (as applicable):

(i) The presence or absence of unresolved Customs charges (duties, taxes, or other debts owed Customs);

(ii) The accuracy of the claimant's past drawback claims;

(iii) Whether waiver of prior notice was previously revoked or suspended; and

(iv) The presence or absence of any failure to present merchandise to Customs for examination after Customs had timely notified the party filing a Notice of Intent to Export/Destroy of Customs intent to examine the merchandise (see §191.35 of this part).

(2) *Approval.* The approval of an application for waiver of prior notice of intent to export, under this section, shall operate prospectively, applying only to those export shipments occurring after the date of the waiver. It shall be subject to a stay, as provided in paragraph (d) of this section.

(3) *Denial.* If an application for waiver of prior notice of intent to export, under this section, is denied, the applicant shall be given written notice, specifying the grounds therefor, together with what corrective action may be taken, and informing the applicant that the denial may be appealed in the manner prescribed in paragraph (g) of this section. The applicant may not reapply for a waiver until the reason for the denial is resolved.

(d) *Stay.* A privilege holder's privilege may be stayed, for a specified reasonable period, should the agency desire for any reason to examine the merchandise being exported with drawback prior to its exportation for purposes of verification. A stay of this privilege shall take effect on the date of the agency's letter notifying the privilege holder of the stay and shall remain in effect for the period specified in that letter, or such earlier date as the agency notifies the privilege holder in writing that the reason for the stay has been satisfied. After the stay is lifted, operation under the privilege may resume.

(e) *Proposed revocation.* Customs may propose to revoke the approval of an application for waiver of prior notice of intent to export, under this section, for good cause (that is, noncompliance with the drawback law and/or regulations). Customs shall give written notice of the proposed revocation of a waiver of prior notice of intent to export. The notice shall specify the reasons for Customs proposed action and provide information regarding the procedures for challenging Customs proposed revocation action as prescribed in paragraph (g) of this section.

(f) *Action by drawback office controlling.* Action by the appropriate drawback office to approve, deny, stay, or revoke waiver of prior notice of intent to export, unless reversed by Customs Headquarters, will govern the applicant's eligibility for this procedure in all Customs drawback offices. If the application for waiver of prior notice of intent to export is approved, the claimant shall submit a copy of the approval letter with the first drawback claim filed in any drawback office other than the approving office, when the export upon which the claim is based was without prior notice, under this section.

(g) *Appeal of denial or challenge to proposed revocation.* An appeal of a denial of an application under this section, or challenge to the proposed revocation of an approved application under this section, may be made by letter to the drawback office issuing the denial or proposed revocation and must be filed within 30 days of the date of denial or proposed revocation. A denial of an appeal or challenge made to the drawback office may itself be appealed to Customs Headquarters and must be filed within 30 days of the denial date of the initial appeal or challenge. The 30-day period for appeal or challenge to the drawback office or to Customs Headquarters may be extended for good cause, upon written request by the applicant or privilege holder for such extension filed with the appropriate office within the 30-day period.

§191.92 Accelerated payment.

(a) *Scope.* Accelerated payment of drawback is available on claims covering exportations (or destructions, if applicable) under the manufacturing, rejected or unused merchandise drawback provisions, as well as claims for the substitution of finished petroleum derivatives (19 U.S.C. 1313 (a), (b), (c), (j), or (p)). Accelerated payment of a drawback claim does not constitute liquidation of the drawback entry.

(b) *Application for approval; contents.* A person who wishes to apply for accelerated payment of drawback must file a written application with the drawback office where claims will be filed.

(1) *Required information.* The application must contain:

(i) Company name and address;

(ii) Identification number (including suffixes);

(iii) Identity (by name and title) of the person in claimant's organization who will be responsible for the drawback program;

(iv) Description of the bond coverage the applicant intends to use to cover accelerated payments of drawback (see paragraph (d) of this section), including:

(A) Identity of the surety to be used;

(B) Dollar amount of bond coverage for the first year under the accelerated payment procedure; and

(C) Procedures to ensure that bond coverage remains adequate (that is, procedures to alert the applicant when and if its accelerated payment potential liability exceeds its bond coverage);

(v) Description of merchandise and/or articles covered by the application;

(vi) Type(s) of drawback covered by the application; and

(vii) Estimated dollar value of potential drawback during the next 12-month period covered by the application.

(2) *Previous applications.* In the application, the applicant must state whether or not the applicant has previously been denied an application for accelerated payment of drawback, or had an approval of such an application revoked by any drawback office.

(3) *Certification of compliance.* In or with the application, the applicant must also submit a certification, signed by the

applicant, that all applicable statutory and regulatory requirements for drawback will be met.

(4) *Description of claimant's drawback program.* With the application, the applicant must submit a description (with sample documents) of how the applicant will ensure compliance with its certification that the statutory and regulatory drawback requirements will be met. This description may be in the form of a booklet. The detail contained in this description should vary depending on the size and complexity of the applicant's accelerated drawback program (for example, if the dollar amount is great and there are several kinds of drawback involved, with differing inventory, manufacturing, and shipping methods, greater detail in the description will be required). The description must include at least:

(i) The name of the official in the claimant's organization who is responsible for oversight of the claimant's drawback program;

(ii) The procedures and controls demonstrating compliance with the statutory and regulatory drawback requirements;

(iii) The parameters of claimant's drawback record-keeping program, including the retention period and method (for example, paper, electronic, etc.);

(iv) A list of the records that will be maintained, including at least sample import documents, sample export documents, sample inventory and transportation documents (if applicable), sample laboratory or other documents establishing the qualification of merchandise or articles for substitution under the drawback law (if applicable), and sample manufacturing documents (if applicable);

(v) The procedures that will be used to notify Customs of changes to the claimant's drawback program, variances from the procedures described in this application, and violations of the statutory and regulatory drawback requirements; and

(vi) The procedures for an annual review by the claimant to ensure that its drawback program complies with the statutory and regulatory drawback requirements and that Customs is notified of any modifications from the procedures described in this application.

(c) *Sample application.* The drawback office, upon request, shall provide applicants for accelerated payment with a sample letter format to assist them in preparing their submissions.

(d) *Bond required.* If approved for accelerated payment, the claimant must furnish a properly executed bond in an amount sufficient to cover the estimated amount of drawback to be claimed during the term of the bond. If outstanding accelerated drawback claims exceed the amount of the bond, the drawback office will require additional bond coverage as necessary before additional accelerated payments are made.

(e) *Action on application.* (1) *Customs review.* The drawback office shall review and verify the information submitted in and with the application. In order for Customs to evaluate the application, Customs may request additional information (including additional sample documents) and/or explanations of any of the information provided for in paragraph (b)(4) of this section. Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with Customs, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with Customs include (as applicable):

(i) The presence or absence of unresolved Customs charges (duties, taxes, or other debts owed Customs);

(ii) The accuracy of the claimant's past drawback claims; and

(iii) Whether accelerated payment of drawback or any other drawback privilege was previously revoked or suspended.

(2) *Notification to applicant.* Customs will notify the applicant in writing within 90 days of receipt of the application of its decision to approve or deny the application, or of Customs inability to approve, deny, or act on the application.

(3) *Approval.* The approval of an application for accelerated payment, under this section, shall operate prospectively, applying to those claims filed after the date of approval. It shall be subject to a stay, as provided in paragraph (f) of this section.

(4) *Denial.* If an application for accelerated payment of drawback under this section is denied, the applicant shall be given written notice, specifying the grounds therefor, together with what corrective action may be taken, and informing the applicant that the denial may be appealed in the manner prescribed in paragraph (i) of this section. The applicant may not reapply for accelerated payment of drawback until the reason for the denial is resolved.

(f) *Stay.* A privilege holder's privilege may be stayed, for a specified reasonable period, should the agency desire for any reason to examine compliance with the drawback law and regulations for purposes of verification. A stay of this privilege shall take effect on the date of the agency's letter notifying the privilege holder of the stay and shall remain in effect for the period specified in the agency's letter, or such earlier date as the agency notifies the privilege holder in writing that the reason for the stay has been satisfied. After the stay is lifted, operation under the privilege may resume.

(g) *Proposed revocation.* Customs may propose to revoke the approval of an application for accelerated payment of drawback under this section, for good cause (that is, noncompliance with the drawback law and/or regulations). In case of such proposed revocation, Customs shall give written notice of the proposed revocation of the accelerated payment privilege. The notice shall specify the reasons for Customs proposed action and the procedures for challenging Customs proposed revocation action as prescribed in paragraph (i) of this section.

(h) *Action by drawback office controlling.* Action by the appropriate drawback office to approve, deny, stay, or revoke the privilege of accelerated payment of drawback will govern the applicant's eligibility for this procedure in all Customs drawback offices. If the application for accelerated payment of drawback is approved and the claimant desires accelerated payment of drawback in a drawback claim filed in a drawback office other than the approving drawback office, the claimant shall submit a copy of the approval letter with the first drawback claim filed in the drawback office other than the approving office.

(i) *Appeal of denial or challenge to proposed revocation.* An appeal of a denial of an application under this section, or challenge to the proposed revocation of an approved application under this section, may be made in writing to the drawback office issuing the denial or proposed revocation and must be filed within 30 days of the date of denial or proposed revocation. A denial of an appeal or challenge made to the drawback office may itself be appealed to Customs Headquarters and must be filed within 30 days. The 30-day period for appeal or challenge to the drawback office or to Customs Headquarters may be extended for good cause, upon written request by the applicant or privilege holder for such extension filed with the appropriate office within the 30-day period.

(j) *Payment.* The drawback office approving a drawback claim in which accelerated payment of drawback was

requested (and in which the claimant has been approved for accelerated payment of drawback under this section) shall certify the drawback claim for payment within 3 weeks after filing, if a component for electronic filing of drawback claims, records, or entries which has been implemented under the National Customs Automation Program (NCAP) (19 U.S.C. 1411–1414) is used, and within 3 months after filing, if the claim is filed manually. After liquidation, the drawback office shall certify payment of any amount due or demand a refund of any excess amount paid. Any excess amount of duty the subject of accelerated payment that is not refunded within 30 days after the date of liquidation of the related drawback entry shall be considered delinquent (see §§ 24.3a and 113.65(b) of this chapter.)

§ 191.93 Combined applications.

An applicant for the privileges provided for in §§191.91 and 191.92 of this subpart may apply for only one privilege, both privileges separately, or both privileges in one application package. In the latter instance, the intent to apply for both privileges must be clearly stated. In all instances, all of the requirements for the privilege(s) applied for must be met (for example, in a combined application for both privileges, all of the information required for each privilege, all required sample documents for each privilege, and all required certifications must be included in and with the application).

Subpart J—Internal Revenue Tax on Flavoring Extracts and Medicinal or Toilet Preparations (Including Perfumery) Manufactured from Domestic Tax-Paid Alcohol

§ 191.101 Drawback allowance.

(a) *Drawback.* Section 313(d) of the Act, as amended (19 U.S.C. 1313(d)), provides for drawback of internal revenue tax upon the exportation of flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from the domestic tax-paid alcohol.

(b) *Shipment to Puerto Rico, the Virgin Islands, Guam, and American Samoa.* Drawback of internal revenue tax on articles manufactured or produced under this subpart and shipped to Puerto Rico, the Virgin Islands, Guam, or American Samoa shall be allowed in accordance with section 7653(c) of the Internal Revenue Code (26 U.S.C. 7653(c)). However, there is no authority of law for the allowance of drawback of internal-revenue tax on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced in the United States and shipped to Wake Island, Midway Islands, Kingman Reef, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

§ 191.102 Procedure.

(a) *General.* Other provisions of this part relating to direct identification drawback (see subpart B of this part) shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

(b) *Manufacturing record.* The manufacturer of flavoring extracts or medicinal or toilet preparations on which drawback is claimed shall record the products manufactured, the quantity of waste, if any, and a full description of the alcohol. These records shall be available at all times for inspection by Customs officers.

(c) *Additional information required on the manufacturer's application for a specific manufacturing drawback ruling.* The manufacturer's application for a specific manufacturing drawback ruling, under §191.8 of this part, shall state the quantity of domestic tax-paid alcohol contained in each product on which drawback is claimed.

(d) *Variance in alcohol content*—(1) *Variance of more than 5 percent.* If the percentage of alcohol contained in a medicinal preparation, flavoring extract or toilet preparation varies by more than 5 percent from the percentage of alcohol in the total volume of the exported product as stated in a previously approved application for a specific manufacturing drawback ruling, the manufacturer shall apply for a new specific manufacturing drawback ruling pursuant to § 191.8 of this part. If the variation differs from a previously filed schedule, the manufacturer shall file a new schedule incorporating the change.

(2) *Variance of 5 percent or less.* Variances of 5 percent or less of the volume of the product shall be reported to the appropriate drawback office where the drawback entries are liquidated. In such cases, the drawback office may allow drawback without specific authorization from Customs Headquarters.

(e) *Time period for completing claims.* The 3-year period for the completion of drawback claims prescribed in 19 U.S.C. 1313(r)(1) shall be applicable to claims for drawback under this subpart.

(f) *Filing of drawback entries on duty-paid imported merchandise and tax-paid alcohol.* When the drawback claim covers duty-paid imported merchandise in addition to tax-paid alcohol, the claimant shall file one set of entries for drawback of Customs duty and another set for drawback of internal revenue tax.

(g) *Description of the alcohol.* The description of the alcohol stated in the drawback entry may be obtained from the description on the package containing the tax-paid alcohol.

§ 191.103 Additional requirements.

(a) *Manufacturer claims domestic drawback.* In the case of medicinal preparations and flavoring extracts, the claimant shall file with the drawback entry, a declaration of the manufacturer showing whether a claim has been or will be filed by the manufacturer with the regional regulatory administrator of the Bureau of Alcohol, Tobacco and Firearms for domestic drawback on alcohol under section 5131, 5132, 5133 and 5134, Internal Revenue Code, as amended (26 U.S.C. 5131, 5132, 5133 and 5134).

(b) *Manufacturer does not claim domestic drawback*—(1) *Submission of statement.* If no claim has been or will be filed with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback on medicinal preparations or flavoring extracts, the manufacturer shall submit a statement, in duplicate, setting forth that fact to the appropriate regional regulatory administrator of the Bureau of Alcohol, Tobacco and Firearms for the region in which the manufacturer's factory is located.

(2) *Contents of the statement.* The statement shall show the:

(i) Quantity and description of the exported products;

(ii) Identity of the alcohol used by serial number of package or tank car;

(iii) Name and registry number of the warehouse from which the alcohol was withdrawn;

(iv) Date of withdrawal;

(v) Serial number of the tax-paid stamp or certificate, if any; and

(vi) Drawback office where the claim will be filed.

(3) *Verification of the statement.* The regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms, shall verify receipt of this statement, forward the original of the document to the drawback office designated, and retain the copy.

§ 191.104 Alcohol, Tobacco and Firearms certificates.

(a) *Request.* The drawback claimant or manufacturer shall file a written request with the regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms, in whose region the alcohol used in the manufacture was withdrawn requesting him to provide the Customs drawback office where the

drawback claim will be processed, a tax-paid certificate on Alcohol, Tobacco and Firearms Form 5100.4 (Certificate of Tax-Paid Alcohol).

(b) *Contents.* The request shall state the:

(1) Quantity of alcohol in taxable gallons;

(2) Serial number of each package;

(3) Serial number of the stamp, if any;

(4) Amount of tax paid on the alcohol;

(5) Name, registry number, and location of the warehouse;

(6) Date of withdrawal;

(7) Name of the manufacturer using the alcohol in producing the exported articles;

(8) Address of the manufacturer and his manufacturing plant; and

(9) Customs drawback office where the drawback claim will be processed.

(c) *Extracts of Alcohol, Tobacco and Firearms certificates.* If a certification of any portion of the alcohol described in the Bureau of Alcohol, Tobacco and Firearms Form 5100.4 is required for liquidation of drawback entries processed in another drawback office, the drawback office, on written application of the person who requested its issuance, shall transmit a copy of the extract from the certificate for use at that drawback office. The drawback office shall note that the copy of the extract was prepared and transmitted.

§ 191.105 Liquidation.

The drawback office shall ascertain the final amount of drawback due by reference to the certificate of manufacture and delivery and the specific manufacturing drawback ruling under which the drawback claimed is allowable.

§ 191.106 Amount of drawback.

(a) *Claim filed with Bureau of Alcohol, Tobacco and Firearms.* If the declaration required by § 191.103 of this subpart shows that a claim has been or will be filed with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback, drawback under section 313(d) of the Act, as amended (19 U.S.C. 1313(d)), shall be limited to the difference between the amount of tax paid and the amount of domestic drawback claimed.

(b) *Claim not filed with Bureau of Alcohol, Tobacco and Firearms.* If the declaration and verified statement required by § 191.103 show that no claim has been or will be filed by the manufacturer with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback, the drawback shall be the full amount of the tax on the alcohol used.

(c) *No deduction of 1 percent.* No deduction of 1 percent shall be made in drawback claims under section 313(d) of the Act, as amended (19 U.S.C. 1313(d)).

(d) *Payment.* The drawback due shall be paid in accordance with § 191.81(f) of this part.

Subpart K—Supplies for Certain Vessels and Aircraft

§ 191.111 Drawback allowance.

Section 309 of the Act, as amended (19 U.S.C. 1309), provides for drawback on articles laden as supplies on certain vessels or aircraft of the United States or as supplies including equipment upon, or used in the maintenance or repair of, certain foreign vessels or aircraft.

§ 191.112 Procedure.

(a) *General.* The provisions of this subpart shall override other conflicting provisions of this part.

(b) *Customs forms.* The drawback claimant shall file with the drawback office the drawback entry on Customs Form 331 annotated for 19 U.S.C. 1309, and attach thereto a notice of lading on Customs Form 7514, in quadruplicate, unless the export summary procedure, provided for in § 191.73, is used. If the export summary procedure is used, the requirements in § 191.73 shall be complied with, as applicable.

(c) *Time of filing notice of lading.* In the case of drawback in connection with 19 U.S.C. 1309(b), the drawback notice of lading on Customs Form 7514 may be filed either before or after the lading of the articles. If filed after lading, the notice shall be filed within 3 years after exportation of the articles.

(d) *Contents of notice.* The notice of lading shall show:

(1) The name of the vessel or identity of the aircraft on which articles were or are to be laden;

(2) The number and kind of packages and their marks and numbers;

(3) A description of the articles and their weight (net), gauge, measure, or number; and

(4) The name of the exporter.

(e) *Assignment of numbers and return of one copy.* The drawback office shall assign a number to each notice of lading and return one copy to the exporter for delivery to the master or authorized officer of the vessel or aircraft.

(f) *Declaration*—(1) *Requirement.* The master or an authorized representative of the vessel or aircraft having knowledge of the facts shall complete the section of the notice entitled ''Declaration of Master or Other Officer''.

(2) *Procedure if notice filed before lading.* If the notice is filed before lading of the articles, the declaration must be completed on the copy of the numbered drawback notice that was filed with the drawback office and returned to the exporter for this purpose.

(3) *Procedure if notice filed after lading.* If the drawback notice is filed after lading of the articles, the drawback claimant may file a separate document containing the declaration required on the Drawback Notice, Customs Form 7514.

(4) *Filing.* The drawback claimant shall file with the drawback office both the drawback entry and the drawback notice or separate document containing the declaration of the master or other officer or representative.

(g) *Information concerning class or trade.* Information about the class of business or trade of a vessel or aircraft is required to be furnished in support of the drawback entry if the vessel or aircraft is American.

(h) *Vessel or aircraft required to clear or obtain a permit to proceed.* After the vessel or aircraft has cleared or obtained a permit to proceed, the drawback office shall complete the section entitled ''Customs Certification'' on one of the copies of the notice of lading. The drawback office shall return the completed copy and one other copy to the exporter or the person designated by the exporter for subsequent filing with the drawback claim.

(i) *Vessel or aircraft not required to clear or obtain a permit to proceed.* If the vessel or aircraft is not required to clear or obtain a permit to proceed to another port, the drawback office shall return to the exporter or the person designated by the exporter two copies of the notice, noting the absence of a requirement for clearance or permit to proceed, for subsequent filing with the drawback claim. The claimant shall file with the claim an itinerary of the vessel or aircraft for the immediate voyage or flight showing that the vessel or aircraft is engaged in a class of business or trade which makes it eligible for drawback.

(j) *Articles laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft.* The drawback office where the drawback claim is filed shall require a declaration or other evidence showing to its satisfaction that articles have been laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft.

(k) *Fuel laden on vessels or aircraft as supplies.*—(1) *Composite notice of lading.* In the case of fuel laden on vessels or aircraft as supplies, the drawback claimant may file with the drawback office a composite notice of lading on the reverse side of Customs Form 7514, for each calendar month. The composite notice of lading shall

describe all of the drawback claimant's deliveries of fuel supplies during the one calendar month at a single port or airport to all vessels or airplanes of one vessel owner or operator or airline. This includes fuel laden for flights or voyages between the contiguous U.S. and Hawaii, Alaska, or any U.S. possessions (see § 10.59 of this chapter).

(2) *Contents of composite notice.* The composite notice shall show for each voyage or flight, either on the reverse side of Customs Form 7514 or on a continuation sheet:

(i) The identity of the vessel or aircraft;

(ii) A description of the fuel supplies laden;

(iii) The quantity laden; and

(iv) The date of lading.

(3) *Declaration of owner or operator.* An authorized vessel or airline representative having knowledge of the facts shall complete the section ''Declaration of Master or Other Officer'' on Customs Form 7514.

(l) *Desire to land articles covered by notice of lading.* The master of the vessel or commander of the aircraft desiring to land in the United States articles covered by a notice of lading shall apply for a permit to land those articles under Customs supervision. All articles landed, except those transferred under the original notice of lading to another vessel or aircraft entitled to drawback, shall be considered imported merchandise for the purpose of section 309(c) of the Act, as amended (19 U.S.C. 1309(c)).

Subpart L—Meats Cured with Imported Salt

§ 191.121 Drawback allowance.

Section 313(f) of the Act, as amended (19 U.S.C. 1313(f)), provides for the allowance of drawback upon the exportation of meats cured with imported salt.

§ 191.122 Procedure.

(a) *General.* Other provisions of this part relating to direct identification manufacturing drawback shall apply to claims for drawback under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

(b) *Customs form.* The forms used for other drawback claims shall be used and modified to show that the claim is being made for refund of duties paid on salt used in curing meats.

§ 191.123 Refund of duties.

Drawback shall be refunded in aggregate amounts of not less than $100 and shall not be subject to the retention of 1 percent of duties paid.

Subpart M—Materials for Construction and Equipment of Vessels and Aircraft Built for Foreign Ownership and Account

§ 191.131 Drawback allowance.

Section 313(g) of the Act, as amended (19 U.S.C. 1313(g)), provides for drawback on imported materials used in the construction and equipment of vessels and aircraft built for foreign account and ownership, or for the government of any foreign country, notwithstanding that these vessels or aircraft may not be exported within the strict meaning of the term.

§ 191.132 Procedure.

Other provisions of this part relating to direct identification manufacturing drawback shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 191.133 Explanation of terms.

(a) *Materials.* Section 313(g) of the Act, as amended (19 U.S.C. 1313(g)), applies only to materials used in the original construction and equipment of vessels and aircraft and not to materials used for alteration or repair, or to materials not required for safe operation of the vessel or aircraft.

(b) Foreign account and ownership. Foreign account and ownership, as used in section 313(g) of the Act, as amended (19 U.S.C. 1313(g)), means only vessels or aircraft built or equipped for the account of an owner or owners residing in a foreign country and having a bona fide intention that the vessel or aircraft, when completed, shall be owned and operated under the flag of a foreign country.

Subpart N—Foreign-Built Jet Aircraft Engines Processed in the United States

§ 191.141 Drawback allowance.

Section 313(h) of the Act, as amended (19 U.S.C. 1313(h)), provides for drawback on the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts.

§ 191.142 Procedure.

Other provisions of this part shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 191.143 Drawback entry.

(a) *Filing of entry.* Drawback entries covering these foreign-built jet aircraft engines shall be filed on Customs Form 331, modified to show that the entry covers jet aircraft engines processed under section 313(h) of the Act, as amended (19 U.S.C. 1313(h)).

(b) *Contents of entry.* The entry shall show the country in which each engine was manufactured and describe the processing performed thereon in the United States.

§ 191.144 Refund of duties.

Drawback shall be refunded in aggregate amounts of not less than $100, and shall not be subject to the deduction of 1 percent of duties paid.

Subpart O—Merchandise Exported from Continuous Customs Custody

§ 191.151 Drawback allowance.

(a) *Eligibility of entered or withdrawn merchandise.*—(1) Under 19 U.S.C. 1557(a). Section 557(a) of the Act, as amended (19 U.S.C. 1557(a)), provides for drawback on the exportation to a foreign country, or the shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, of merchandise upon which duties have been paid which has remained continuously in bonded warehouse or otherwise in Customs custody for a period not to exceed 5 years from the date of importation.

(2) *Under 19 U.S.C. 1313.* Imported merchandise that has not been regularly entered or withdrawn for consumption, shall not satisfy any requirement for use, importation, exportation or destruction, and shall not be available for drawback, under section 313 of the Act, as amended (19 U.S.C. 1313) (see 19 U.S.C. 1313(u)).

(b) *Guantanamo Bay.* Guantanamo Bay Naval Station shall be considered foreign territory for drawback purposes under this subpart and merchandise shipped there is eligible for drawback. Imported merchandise which has remained continuously in bonded warehouse or otherwise in Customs custody since importation is not entitled to drawback of duty when shipped to Puerto Rico, Canton Island, Enderbury Island, or Palmyra Island.

§ 191.152 Merchandise released from Customs custody.

No remission, refund, abatement, or drawback of duty shall be allowed under this subpart because of the exportation or destruction of any merchandise after its release from Government custody, except in the following cases:

(a) When articles are exported or destroyed on which drawback is expressly provided for by law;

(b) When prohibited articles have been regularly entered in good faith and are subsequently exported or destroyed pursuant to statute and regulations prescribed by the Secretary of the Treasury; or

(c) When articles entered under bond are destroyed within the bonded period, as provided in section 557(c) of the Act, as amended (19 U.S.C. 1557(c)), or destroyed within the bonded period by death, accidental fire, or other casualty, and proof of destruction is furnished to the satisfaction of the Secretary of the Treasury, in which case any accrued duties shall be remitted or refunded and any condition in the bond that the articles shall be exported shall be deemed to have been satisfied (see 19 U.S.C. 1558).

§ 191.153 Continuous Customs custody.

(a) *Merchandise released under an importer's bond and returned.* Merchandise released to an importer under a bond prescribed by § 142.4 of this chapter and later returned to the public stores upon requisition of the appropriate Customs office shall not be deemed to be in the continuous custody of Customs officers.

(b) *Merchandise released under Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States (HTSUS).* Merchandise released as provided for in Chapter 98, Subchapter XIII, HTSUS (19 U.S.C. 1202), shall not be deemed to be in the continuous custody of Customs officers.

(c) *Merchandise released from warehouse.* For the purpose of this subpart, in the case of merchandise entered for warehouse, Customs custody shall be deemed to cease when estimated duty has been deposited and the appropriate Customs office has authorized the withdrawal of the merchandise.

(d) *Merchandise not warehoused, examined elsewhere than in public stores.*—(1) *General rule.* Except as stated in paragraph (d)(2) of this section, merchandise examined elsewhere than at the public stores, in accordance with the provisions of § 151.7 of this chapter, shall be considered released from Customs custody upon completion of final examination for appraisement.

(2) *Merchandise upon the wharf.* Merchandise which remains on the wharf by permission of the appropriate Customs office shall be considered to be in Customs custody, but this custody shall be deemed to cease when the Customs officer in charge accepts the permit and has no other duties to perform relating to the merchandise, such as measuring, weighing, or gauging.

§ 191.154 Filing the entry.

(a) *Direct export.* At least 6 working hours before lading the merchandise on which drawback is claimed under this subpart, the importer or the agent designated by him in writing shall file with the drawback office a direct export drawback entry on Customs Form 331 in duplicate.

(b) *Merchandise transported to another port for exportation.* The importer of merchandise to be transported to another port for exportation shall file in triplicate with the drawback office an entry naming the transporting conveyance, route, and port of exit. The drawback office shall certify one copy and forward it to the Customs office at the port of exit. A bonded carrier shall transport the merchandise in accordance with the applicable regulations. Manifests shall be prepared and filed in the manner prescribed in § 144.37 of this chapter.

§ 191.155 Merchandise withdrawn from warehouse for exportation.

The regulations in part 18 of this chapter concerning the supervision of lading and certification of exportation of merchandise withdrawn from warehouse for exportation without payment of duty shall be followed to the extent applicable.

§ 191.156 Bill of lading.

(a) *Filing.* In order to complete the claim for drawback under this subpart, a bill of lading covering the merchandise described in the drawback entry (Customs Form 331) shall be filed within 2 years after the merchandise is exported.

(b) *Contents.* The bill of lading shall either show that the merchandise was shipped by the person making the claim or bear an endorsement of the person in whose name the merchandise was shipped showing that the person making the claim is authorized to do so.

(c) *Limitation of the bill of lading.* The terms of the bill of lading may limit and define its use by stating that it is for Customs purposes only and not negotiable.

(d) *Inability to produce bill of lading.* When a required bill of lading cannot be produced, the person making the drawback entry may request the drawback office, within the time required for the filing of the bill of lading, to accept a statement setting forth the cause of failure to produce the bill of lading and such evidence of exportation and of his right to make the drawback entry as may be available. The request shall be granted if the drawback office is satisfied by the evidence submitted that the failure to produce the bill of lading is justified, that the merchandise has been exported, and that the person making the drawback entry has the right to do so. If the drawback office is not so satisfied, such office shall transmit the request and its accompanying evidence to the Office of Field Operations, Customs Headquarters, for final determination.

(e) *Extracts of bills of lading.* Drawback offices may issue extracts of bills of lading filed with drawback claims.

§ 191.157 Landing certificates.

When required, a landing certificate shall be filed within the time prescribed in § 191.76 of this part.

§ 191.158 Procedures.

When the drawback claim has been completed and the bill of lading filed, together with the landing certificate, if required, the reports of inspection and lading made, and the clearance of the exporting conveyance established by the record of clearance in the case of direct exportation or by certificate in the case of transportation and exportation, the drawback office shall verify the importation by referring to the import records to ascertain the amount of duty paid on the merchandise exported. To the extent appropriate and not inconsistent with the provisions of this subpart, drawback entries shall be liquidated in accordance with the provisions of § 191.81 of this part.

§ 191.159 Amount of drawback.

Drawback due under this subpart shall not be subject to the deduction of 1 percent.

Subpart P—Distilled Spirits, Wines, or Beer Which Are Unmerchantable or Do Not Conform to Sample or Specifications

§ 191.161 Refund of taxes.

Section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)), provides for the refund, remission, abatement or credit to the importer of internal-revenue taxes paid or determined incident to importation, upon the exportation, or destruction under Customs supervision, of imported distilled spirits, wines, or beer found after entry to be unmerchantable or not to conform to sample or specifications and which are returned to Customs custody.

§ 191.162 Procedure.

The export procedure shall be the same as that provided in § 191.42 except that the claimant must be the importer and as otherwise provided in this subpart.

§ 191.163 Documentation.

(a) *Entry.* Customs Form 331 shall be used to claim drawback under this subpart.

(b) *Documentation.* The drawback entry for unmerchantable merchandise shall be accompanied by a certificate of the importer setting forth in detail the facts which cause the merchandise to be unmerchantable and any additional proof that the drawback office requires to establish that the merchandise is unmerchantable.

§ 191.164 Return to Customs custody.

There is no time limit for the return to Customs custody of distilled spirits, wine, or beer subject to refund of taxes under the provisions of this subpart.

§ 191.165 No exportation by mail.

Merchandise covered by this subpart shall not be exported by mail.

§ 191.166 Destruction of merchandise.

(a) *Action by the importer.* A drawback claimant who proposes to destroy rather than export the distilled spirits, wine, or beer shall state that fact on Customs Form 331.

(b) *Action by Customs.* Distilled spirits, wine, or beer returned to Customs custody at the place approved by the drawback office where the drawback entry was filed shall be destroyed under the supervision of the Customs officer who shall certify the destruction on Customs Form 3499.

§ 191.167 Liquidation.

No deduction of 1 percent of the internal revenue taxes paid or determined shall be made in allowing entries under Section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)).

§ 191.168 Time limit for exportation or destruction.

Merchandise not exported or destroyed within 90 days from the date of notification of acceptance of the drawback entry shall be considered unclaimed, unless upon written request by the importer, prior to the expiration of the 90-day period, the drawback office grants an extension of not more than 90 days.

Subpart Q—Substitution of Finished Petroleum Derivatives

§ 191.171 General; Drawback allowance.

(a) *General.* Section 313(p), of the Act, as amended (19 U.S.C. 1313(p)), provides for drawback on the basis of qualified articles which consist of either imported duty-paid petroleum derivatives, or petroleum derivatives manufactured or produced in the United States and qualified for drawback under the manufacturing drawback law (19 U.S.C. 1313 (a) or (b)).

(b) *Allowance of drawback.* Drawback may be granted under 19 U.S.C. 1313(p):

(1) In cases where there is no manufacture, upon exportation of the imported article, an article of the same kind and quality, or any combination thereof; or

(2) In cases where there is a manufacture or production, upon exportation of the manufactured or produced article, an article of the same kind and quality, or any combination thereof.

§ 191.172 Definitions.

The following are definitions for purposes of this subpart only:

(a) *Qualified article.* ''Qualified article'' means an article described in headings 2707, 2708, 2710 through 2715, 2901, 2902, or 3901 through 3914 of the Harmonized Tariff Schedule of the United States (HTSUS). In the case of headings 3901 through 3914, the definition is limited as those headings apply to liquids, pastes, powders, granules and flakes.

(b) *Same kind and quality article.* ''Same kind and quality article'' means an article which is commercially interchangeable with, or which is referred to under the same 8-digit classification of the HTSUS as, the article to which it is compared. (For example, unleaded gasoline and jet fuel (naphtha or kerosene-type), both falling under the same HTSUS classification (2710.00.15) would be considered same kind and quality articles because they fall under the same 8 digit HTSUS classification, even though they are not ''commercially interchangeable''.)

(c) *Exported article.* ''Exported article'' means an article which has been exported and is the qualified article, an article of the same kind and quality as the qualified article, or any combination thereof.

§ 191.173 Imported duty-paid derivatives (no manufacture).

When the basis for drawback under 19 U.S.C. 1313(p) is imported duty-paid petroleum derivatives (that is, not articles manufactured under 19 U.S.C. 1313 (a) or (b)), the requirements for drawback are as follows:

(a) *Imported duty-paid merchandise.* The imported duty-paid merchandise designated for drawback must be a ''qualified article'' as defined in § 191.172(a) of this subpart;

(b) *Exported article.* The exported article on which drawback is claimed must be an ''exported article'' as defined in § 191.172(c) of this subpart;

(c) *Exporter.* The exporter of the exported article must have either:

(1) Imported the qualified article in at least the quantity of the exported article; or

(2) Purchased or exchanged (directly or indirectly) from an importer an imported qualified article in at least the quantity of the exported article;

(d) *Time of export.* The exported article must be exported within 180 days after the date of entry of the designated imported duty-paid merchandise; and

(e) *Amount of drawback.* The amount of drawback payable may not exceed the amount of drawback which would be attributable to the imported qualified article which serves as the basis for drawback.

§ 191.174 Derivatives manufactured under 19 U.S.C. 1313 (a) or (b).

When the basis for drawback under 19 U.S.C. 1313(p) is petroleum derivatives which were manufactured or produced in the United States and qualify for drawback under the manufacturing drawback law (19 U.S.C. 1313 (a) or (b)), the requirements for drawback are as follows:

(a) *Merchandise.* The merchandise which is the basis for drawback under 19 U.S.C. 1313(p) must:

(1) Have been manufactured or produced as described in 19 U.S.C. 1313 (a) or (b) from crude petroleum or a petroleum derivative; and

(2) Be a ''qualified article'' as defined in § 191.172(a) of this subpart;

(b) *Exported article.* The exported article on which drawback is claimed must be an ''exported article'' as defined in § 191.172(c) of this subpart;

(c) *Exporter.* The exporter of the exported article must have either:

(1) Manufactured or produced the qualified article in at least the quantity of the exported article; or

(2) Purchased or exchanged (directly or indirectly) from a manufacturer or producer described in 19 U.S.C. 1313 (a) or (b) the qualified article in at least the quantity of the exported article;

(d) *Manufacture in specific facility.* The qualified article must have been manufactured or produced in a specific petroleum refinery or production facility which must be identified;

(e) *Time of export.* The exported article must be exported either:

(1) During the period provided for in the manufacturer's or producer's specific manufacturing drawback ruling (see § 191.8 of this part) in which the qualified article is manufactured or produced; or

(2) Within 180 days after the close of the period in which the qualified article is manufactured or produced; and

(f) *Amount of drawback.* The amount of drawback payable may not exceed the amount of drawback which would be attributable to the article manufactured or produced under 19 U.S.C. 1313 (a) or (b) which serves as the basis for drawback.

§ 191.175 Drawback claimant; maintenance of records.

(a) *Drawback claimant.* A drawback claimant under 19 U.S.C. 1313(p) must be the exporter of the exported article, or the refiner, producer, or importer of that article. Any of these persons may designate another person to file the drawback claim.

(b) *Certificate of manufacture and delivery or delivery.* A drawback claimant under 19 U.S.C. 1313(p) must provide a certificate of manufacture and delivery or a certificate of delivery, as applicable, establishing the drawback eligibility of the articles for which drawback is claimed.

(c) *Maintenance of records.* The manufacturer, producer, importer, exporter and drawback claimant of the qualified article and the exported article must all maintain their appropriate records required by this part.

§ 191.176 Procedures for claims filed under 19 U.S.C. 1313(p).

(a) *Applicability.* The general procedures for filing drawback claims shall be applicable to claims filed under 19 U.S.C. 1313(p) unless otherwise specifically provided for in this section.

(b) *Administrative efficiency, frequency of claims, and restructuring of claims.* The procedures regarding administrative efficiency, frequency of claims, and restructuring of claims (as applicable, see § 191.53 of this part) shall apply to claims filed under this subpart.

(c) *Imported duty-paid derivatives (no manufacture).* When the basis for drawback under 19 U.S.C. 1313(p) is imported duty-paid petroleum (not articles manufactured under 19 U.S.C. 1313 (a) or (b)), claims under this subpart may be paid and liquidated if:

(1) The claim is filed on Customs Form 331 and the letter ''P'' is marked thereon; and

(2) The claimant provides a certification stating the basis (such as company records, or customer's written certification), for the information contained therein and certifying that:

(i) The exported merchandise was exported within 180 days of entry of the designated, imported merchandise;

(ii) The qualified article and the exported article are commercially interchangeable or both articles are subject to the same 8-digit HTSUS tariff classification;

(iii) To the best of the claimant's knowledge, the designated imported merchandise, the qualified article and the exported article have not and will not serve as the basis of any other drawback claim;

(iv) Evidence in support of the certification will be retained by the person providing the certification for 3 years after payment of the claim; and

(v) Such evidence will be available for verification by Customs.

(d) *Derivatives manufactured under 19 U.S.C. 1313 (a) or (b).* When the basis for drawback under 19 U.S.C. 1313(p) is articles manufactured under 19 U.S.C. 1313 (a) or (b), claims under this section may be paid and liquidated if:

(1) The claim is filed on Customs Form 331 and the letter ''P'' is marked in block 15 thereof;

(2) All documents required to be filed with a manufacturing claim under 19 U.S.C. 1313 (a) or (b) are filed with the claim;

(3) The claim identifies the specific refinery or production facility at which the derivatives were manufactured or produced;

(4) The claim states the period of manufacture for the derivatives; and

(5) The claimant provides a certification stating the basis (such as company records or a customer's written certification), for the information contained therein and certifying that:

(i) The exported merchandise was exported during the manufacturing period for the qualified article or within 180 days after the close of that period;

(ii) The 8-digit HTSUS tariff classification of the qualified article and the exported article is the same;

(iii) To the best of the claimant's knowledge, the designated imported merchandise, the qualified article and the exported article have not and will not serve as the basis of any other drawback claim;

(iv) Evidence in support of the certification will be retained by the person providing the certification for 3 years after payment of the claim; and

(v) Such evidence will be available for verification by Customs.

Subpart R—Merchandise Transferred to a Foreign Trade Zone From Customs Territory

§ 191.181 Drawback allowance.

The fourth proviso of section 3 of the Foreign Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81c), provides for drawback on merchandise transferred to a foreign trade zone from Customs territory for the sole purpose of exportation, storage or destruction (except destruction of distilled spirits, wines, and fermented malt liquors), provided there is compliance with the regulations of this subpart.

§ 191.182 Zone-restricted merchandise.

Merchandise in a foreign trade zone for the purposes specified in § 191.181 shall be given status as zone-restricted merchandise on proper application (see § 146.44 of this chapter).

§ 191.183 Articles manufactured or produced in the United States.

(a) *Procedure for filing documents.* Except for the evidence of exportation procedure, the drawback procedures prescribed in this part shall be followed as applicable to drawback under this subpart on articles manufactured or produced in the United States with the use of imported or substituted merchandise, and on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced with the use of domestic tax-paid alcohol.

(b) *Notice of transfer*—(1) *Proof of export.* The notice of zone transfer on Customs Form 7514 shall be in place of the documents under subpart G of this part to establish the exportation.

(2) *Filing procedures.* The notice of transfer, in triplicate, shall be filed with the drawback office where the foreign trade zone is located prior to the transfer of the articles to the zone, or within 3 years after the transfer of the articles to the zone. A notice filed after the transfer shall state the foreign trade zone lot number.

(3) *Contents of notice.* Each notice of transfer shall show the:

(i) Number and location of the foreign trade zone;

(ii) Number and kind of packages and their marks and numbers;

(iii) Description of the articles, including weight (gross and net), gauge, measure, or number; and

(iv) Name of the transferor.

(c) *Action of drawback office on the notice of transfer.* The drawback office shall assign a number to each notice of transfer, return one copy to the transferor and forward another copy to the zone operator at the foreign trade zone.

(d) *Action of foreign trade zone operator.* After articles have been received in the zone, the zone operator shall certify on a copy of the notice of transfer the receipt of the articles (see § 191.184(d)(2)) and forward the notice to the transferor or the person designated by the transferor. The transferor shall verify that the notice has been certified before filing it with the drawback claim.

(e) *Drawback entries.* Drawback entries shall be filed on Customs Form 331 to indicate that the merchandise was transferred to a foreign trade zone. The ''Declaration of Exportation'' shall be modified as follows:

DECLARATION OF TRANSFER TO A FOREIGN TRADE ZONE

I, _____ (member of firm, officer representing corporation, agent, or attorney), of _____, declare that, to the best of my knowledge and belief, the particulars of transfer stated in this entry, the notices of transfer, and receipts are correct, and that the merchandise was transferred to a foreign trade zone for the sole purpose of exportation, destruction, or storage, not to be returned to the customs territory of the United States for domestic consumption.

Dated _____

_____

Transferor or agent.

§ 191.184 Merchandise transferred from continuous Customs custody.

(a) *Procedure for filing claims.* The procedure described in subpart O of this part shall be followed as applicable, for drawback on merchandise transferred to a foreign trade zone from continuous Customs custody.

(b) *Drawback entry.* Before the transfer of merchandise from continuous Customs custody to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the drawback office a direct export drawback entry on Customs Form 331 in duplicate. The drawback office shall forward one copy of Customs Form 331 to the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator shall certify on the copy of Customs Form 331 the receipt of the merchandise (see paragraph (d)(2) of this section) and forward the form to the transferor or the person designated by the transferor. After executing the certifications provided for in paragraph (d)(3) of this section, the transferor shall resubmit Customs Form 331 to the drawback office in place of the bill of lading required by § 191.156.

(d) *Modification of drawback entry*—(1) *Indication of transfer.* Customs Form 331 shall indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor shall endorse Customs Form 331 as follows, for execution by the foreign trade zone operator:

CERTIFICATION OF FOREIGN TRADE ZONE OPERATOR

The merchandise described in the entry was received from _____ on _____, 19 _____ ; in Foreign Trade Zone No. _____, (City and State) Exceptions: _____.

_____ (Name and title)

By _____ (Name of operator)

(3) *Transferor's declaration.* The transferor shall declare on Customs Form 331 as follows:

TRANSFEROR'S DECLARATION

I, _____ of the firm of _____, declare that the merchandise described in this entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No._____, located at _____, (City and State) for the sole purpose of exportation, destruction, or storage, not to be returned to the customs territory of the United States for domestic consumption. I further declare that to the best of my knowledge and belief, this merchandise is in the same quantity, quality, value, and package, unavoidable wastage and damage excepted, as it was at the time of importation; that no allowance nor reduction of duties has been made for damage or other cause except as specified in this entry; and that no part of the duties paid has been refunded by drawback or otherwise.

Dated _____

(Transferor)

§ 191.185 Unused merchandise drawback and merchandise not conforming to sample or specification, shipped without consent of the consignee, or found to be defective as of the time of importation.

(a) *Procedure for filing claims.* The procedures described in subpart C of this part relating to unused merchandise drawback, and in subpart D of this part relating to rejected merchandise, shall be followed as applicable to drawback under this subpart for unused merchandise drawback and merchandise that does not conform to sample or specification, is shipped without consent of the consignee, or is found to be defective as of the time of importation.

(b) *Drawback entry.* Before transfer of the merchandise to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the drawback office an entry on Customs Form 331 in duplicate. The drawback office shall forward one copy of Customs Form 331 to the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator at the zone shall certify on the copy of Customs Form 331 the receipt of the merchandise and forward the form to the transferor or the person designated by the transferor. After executing the declarations provided for in paragraph (d)(3) of this section, the transferor shall resubmit Customs Form 331 to the drawback office in place of the bill of lading required by §191.156.

(d) *Modification of drawback entry.*—(1) *Indication of transfer.* Customs Form 331 shall indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor shall endorse Customs Form 331 as follows, for execution by the foreign trade zone operator:

CERTIFICATION OF FOREIGN TRADE ZONE OPERATOR

The merchandise described in this entry was received from _____ on _____, 19 _____, in Foreign Trade Zone No. _____, _____ (City and State). Exceptions: _____.

_____ (Name of operator)

By _____ (Name and title)

(3) *Transferor's declaration.* The transferor shall declare on Customs Form 331 as follows:

TRANSFEROR'S DECLARATION

I, _____, of the firm of _____, declare that the merchandise described in the within entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No. _____, located at _____, _____ (City and State) for the sole purpose of exportation, destruction, or storage, not to be returned to the customs territory of the United States for domestic consumption. I further declare that to the best of my knowledge and belief, said merchandise is the same in quantity, quality, value, and package as specified in this entry; that no allowance nor reduction in duties has been made; and that no part of the duties paid has been refunded by drawback or otherwise.

Dated _____

Transferor

§ 191.186 Person entitled to claim drawback.

The person named in the foreign trade zone operator's certification on the notice of transfer or the drawback entry, as applicable, shall be considered to be the transferor. Drawback may be claimed by, and paid to, the transferor.

Subpart S—Drawback Compliance Program

§ 191.191 Purpose.

This subpart sets forth the requirements for the Customs drawback compliance program in which claimants and other parties in interest, including Customs brokers, may participate after being certified by Customs. Participation in the program is voluntary. Under the program, Customs is required to inform potential drawback claimants and related parties clearly about their rights and obligations under the drawback law and regulations. Reduced penalties and/or warning letters may be issued once a party has been certified for the program, and is in general compliance with the appropriate procedures and requirements thereof.

§ 191.192 Certification for compliance program.

(a) *General.* A party may be certified as a participant in the drawback compliance program after meeting the core requirements established under the program, or after negotiating an alternative drawback compliance program suited to the needs of both the party and Customs. Certification requirements shall take into account the size and nature of the party's drawback program, the type of drawback claims filed, and the volume of claims filed. Whether the party is a drawback claimant, a broker, or one that provides data and documentation on which a drawback claim is based, will also be considered.

(b) *Core requirements of program.* In order to be certified as a participant in the drawback compliance program or negotiated alternative drawback compliance program, the party must be able to demonstrate that it:

(1) Understands the legal requirements for filing claims, including the nature of the records that are required to be maintained and produced and the time periods involved;

(2) Has in place procedures that explain the Customs requirements to those employees involved in the preparation of claims, and the maintenance and production of required records;

(3) Has in place procedures regarding the preparation of claims and maintenance of required records, and the production of such records to Customs;

(4) Has designated a dependable individual or individuals who will be responsible for compliance under the program, and maintenance and production of required records;

(5) Has in place a record maintenance program approved by Customs regarding original records, or if approved by Customs, alternative records or recordkeeping formats for other than the original records; and

(6) Has procedures for notifying Customs of variances in, or violations of, the drawback compliance or other alternative negotiated drawback compliance program, and for taking corrective action when notified by Customs of violations and problems regarding such program.

(c) *Broker certification.* A Customs broker may be certified as a participant in the drawback compliance program only on behalf of a given claimant (see §191.194(b)). To do so, a Customs broker who is employed to assist a claimant in filing for drawback must be able to demonstrate, for and on behalf of such claimant, conformity with the core requirements of the drawback compliance program as set forth in paragraph (b) of this section. The broker shall ensure that the claimant has the necessary documentation and records to support the drawback compliance program established on its behalf, and that claims to be filed under the program are reviewed by the broker for accuracy and completeness.

§ 191.193 Application procedure for compliance program.

(a) *Who may apply.* Claimants and other parties in interest may apply for participation in the drawback compliance program. This includes any person, corporation or business entity that provides supporting information or documentation to one who files drawback claims, as well as Customs brokers who assist claimants in filing for drawback. Program participants may further consist of importers, manufacturers or producers, agent-manufacturers, complementary recordkeepers, subcontractors, intermediate parties, and exporters.

(b) *Place of filing.* An application in letter format containing the information as prescribed in paragraphs (c) and (d) of this section shall be submitted to any drawback office. However, in the event the applicant is a claimant for drawback, the application shall be submitted to the drawback office where the claims will be filed.

(c) *Letter of application; contents.* A party requesting certification to become a participant in the drawback compliance program shall file with the applicable drawback office a written application in letter format, signed by an individual authorized to sign drawback documents (see §191.6 of this part). The detail required in the application shall take into account the size and nature of the applicant's drawback program, the type of drawback claims filed, and the dollar value and volume of claims filed. However, the application shall contain at least the following information:

(1) Name of applicant, address, IRS identification number, and the type of business in which engaged, as well as the name(s) of the individual(s) designated by the applicant to be responsible for compliance under the program;

(2) A description of the nature of the applicant's drawback program, including the type of drawback in which involved (such as, manufacturing, or unused or rejected merchandise), and the applicant's particular role(s) in the drawback claims process (such as claimant and/or importer, manufacturer or producer, agent-manufacturer, complementary recordkeeper, subcontractor, intermediate party (possessor or purchaser), or exporter (destroyer)); and

(3) Size of applicant's drawback program. (For example, if the applicant is a claimant, the number of claims filed over the previous 12-month period should be included, along with the number estimated to be filed over the next 12-month period, and the estimated amount of drawback to be claimed annually. Other parties should describe the extent to which they are involved in drawback activity, based upon their particular role(s) in the drawback process; for example, manufacturers should explain how much manufacturing they are engaged in for drawback, such as the quantity of drawback product produced on an annual basis, as established by the certificates of manufacture and delivery they have executed.)

(d) *Application package.* Along with the letter of application as prescribed in paragraph (c) of this section, the application package must include a description of how the applicant will ensure compliance with statutory and regulatory drawback requirements. This description may be in the form of a booklet or set forth otherwise. The description must include at least the following:

(1) The name and title of the official in the claimant's organization who is responsible for oversight of the claimant's drawback program;

(2) If the applicant is a manufacturer and the drawback involved is manufacturing drawback, a copy of the letter of notification of intent to operate under a general manufacturing drawback ruling or the application for a specific manufacturing drawback ruling

(see §§191.7 and 191.8 of this part), as appropriate, if such letter of notification has not yet been acknowledged or application has not yet been approved;

(3) A description of the applicant's drawback record-keeping program, including the retention period and method (for example, paper, electronic, etc.);

(4) A list of the records that will be maintained, including at least sample import documents, sample export documents, sample inventory and transportation documents (if applicable), sample laboratory or other documents establishing the qualification of merchandise or articles for substitution under the drawback law (if applicable), and sample manufacturing documents (if applicable);

(5) A description of the applicant's specific procedures for:

(i) How drawback claims are prepared (if the applicant is a claimant); and

(ii) How the applicant will fulfill any requirements under the drawback law and regulations applicable to its role in the drawback program;

(6) A description of the applicant's procedures for notifying Customs of variances in, or violations of, its drawback compliance program or negotiated alternative drawback compliance program, and procedures for taking corrective action when notified by Customs of violations or other problems in such program; and

(7) A description of the applicant's procedures for annual review to ensure that its drawback compliance program meets the statutory and regulatory drawback requirements and that Customs is notified of any modifications from the procedures described in this application.

§ 191.194 Action on application to participate in compliance program.

(a) *Review by applicable drawback office.*—(1) *General.* It is the responsibility of the drawback office where the drawback compliance application package is filed to coordinate its decision making on the package both with Customs Headquarters and with the other field drawback offices as appropriate. Customs processing of the package will consist of the review of the information contained therein as well as any additional information requested (see paragraph (a)(2) of this section).

(2) *Criteria for Customs review.* The drawback office shall review and verify the information submitted in and with the application. In order for Customs to evaluate the application, Customs may request additional information (including additional sample documents) and/or explanations of any of the information provided for in §191.193 (c) and (d) of this subpart. Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with Customs, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with Customs shall include (as applicable):

(i) The presence or absence of unresolved Customs charges (duties, taxes, or other debts owed Customs);

(ii) The accuracy of the claimant's past drawback claims; and

(iii) Whether accelerated payment of drawback or any other drawback privilege was previously revoked or suspended.

(b) *Approval.* Certification as a participant in the drawback compliance program will be given to applicants whose applications are approved under the criteria in paragraph (a)(2) of this section. The applicable drawback office will give written notification to an applicant of its certification as a participant in the drawback compliance program. A Customs broker obtaining certification for a drawback claimant will be sent written notification on behalf of such claimant, with a copy of the notification also being sent to the claimant.

(c) *Benefits of participation in program.*—(1) *Alternative to penalties; written notice.* When a party that has been certified as a participant in the drawback compliance program and is generally in compliance with the appropriate procedures and requirements of the program commits a violation of 19 U.S.C. 1593a(a) (see §191.62(b) of this part), Customs shall, in the absence of fraud or repeated violations, and in lieu of a monetary penalty as otherwise provided under section 1593a, issue a written notice of the violation to the party. Repeated violations by a participant, including a Customs broker, may result in the issuance of penalties and the removal of certification under the program until corrective action, satisfactory to Customs, is taken.

(d) *Denial.* If certification as a participant in the drawback compliance program is denied to an applicant, the applicant shall be given written notice by the applicable drawback office, specifying the grounds for such denial, together with any action that may be taken to correct the perceived deficiencies, and informing the applicant that such denial may be appealed to the appropriate drawback office and then appealed to Customs Headquarters.

(e) *Proposed revocation.* If the participant commits repeated violations of its drawback compliance program or negotiated alternative program, the applicable drawback office, by written notice, may propose to revoke certification from the participant, until corrective action, satisfactory to Customs, is taken to prevent such violations. The written notice will describe the cause for the proposed revocation and the corrective actions required for re-certification.

(f) *Appeal of denial or challenge to proposed revocation.* A party may appeal a denial or challenge a proposed revocation of certification as a participant in the drawback compliance program by filing a written appeal, within 30 days of the date of such denial or proposed revocation, with the applicable drawback office. A denial of an appeal or challenge to a proposed revocation may itself be appealed to Customs Headquarters within 30 days of receipt of the applicable drawback office's decision. The 30-day period for appeal or challenge with the applicable drawback office and/or with Customs Headquarters may be extended for good cause, upon written request by the applicant for such extension filed with the applicable drawback office or with Customs Headquarters, as the case may be, within the 30-day period.

§ 191.195 Combined application for certification in drawback compliance program and drawback privileges.

An applicant for certification in the drawback compliance program may also, in the same application, apply for the drawback privileges provided for in subpart I of this part (waiver of prior notice of intent to export and accelerated payment of drawback). Alternatively, an applicant may separately apply for certification in the drawback compliance and one or both privilege(s). In the former instance, the intent to apply for certification and one or both privileges must be clearly stated. In all instances, all of the requirements for certification and the privilege(s) applied for must be met (for example, in a combined application for certification in the drawback compliance program and both privileges, all of the information required for certification and each privilege, all required sample documents for certification and each privilege, and all required certifications must be included in and with the application).

Appendix A to Part 191—General Manufacturing Drawback Rulings

I. General Instructions

A. There follow various general manufacturing drawback rulings which have been designed to simplify drawback procedures. Any person who can comply with the conditions of any one of these rulings may notify a Customs drawback office in writing of its intention to operate under the ruling. Such a letter of notification shall include the following information:

1. Name and address of operator;

2. Factories which will operate under the general ruling;

3. If a business entity, the names of officers or other persons legally authorized to bind the corporation who will sign drawback documents on behalf of operator;

4. Description of the merchandise and articles, unless specifically described in the general ruling;

5. For the general ruling for manufacturing drawback under section 1313(a) and the general ruling for manufacturing drawback (agents under section 1313(b)), if the drawback office has doubts as to whether the conversion of the imported merchandise into the exported articles is a manufacturing or production operation, the operator will be asked to give details of the operation.

B. These general manufacturing drawback rulings supersede general ''contracts'' previously published under the following Treasury Decisions (T.D.'s): 81–74, 81–92, 81–181, 81–234, 81–300, 83–59, 83–73, 83–123, 85–110.

Anyone currently operating under any of the above-listed Treasury Decisions will automatically be covered by the superseding general ruling, including all privileges of the previous ''contract''.

II. General Drawback Manufacturing Ruling Under 19 U.S.C. 1313(a)

A. Imported Merchandise or Drawback Products [1] Used

Imported merchandise or drawback products are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed will be manufactured in the United States using imported merchandise or drawback products.

C. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture new and different articles (see 19 CFR 191.2(p)).

D. By-Products

1. Relative values. Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. If by-products are produced records will be maintained of the market value of each product or by-product at the time it is first separated in the manufacturing process.

2. Appearing-in method. The appearing in basis may not be used if by-products are produced unless all products are valued identically.

E. Loss or Gain

Records will be maintained showing the extent of any loss or gain in net weight or measurement of the imported merchandise, caused by atmospheric conditions, chemical reactions, or other factors.

F. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that is of the same kind and quality as the imported merchandise, meeting specifications set forth in the application by the operator for a determination of same kind and quality (see §191.11(c)), shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings (see 19 CFR 191.11).

G. Stock in Process

Stock in process does not result; or if it does result, details will be given in claims as filed, and it will not be included in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.

H. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

I. Procedures and Records Maintained

Records will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise, and

2. The quantity of imported merchandise [2] used in producing the exported articles. To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise.

J. Inventory Procedures

The operator's inventory records will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 191 of the Customs Regulations will be met, as discussed under the heading ''Procedures And Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles less the amount of that merchandise which the value of the waste would replace.

L. General Requirements

The operator will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(a), part 191 of the Customs Regulations and this general ruling.

III. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Agents

Operators under this general ruling must comply with T.D.s 55027(2) and 55207(1), 19 U.S.C. 1313(b), and 19 CFR part 191 (see particularly, §191.9).

A. Name and Address of Principal

B. Imported Merchandise or Drawback Products, or Other (Substituted) Merchandise, Used in Manufacture or Production

C. Articles Manufactured or Produced From the Imported Merchandise or Drawback Products or Other (Substituted) Merchandise Used in Manufacture or Production.

D. Process of Manufacture or Production.

The imported merchandise or drawback products or other substituted merchandise will be used to manufacture new and different articles (see 19 CFR 191.2(p)).

E. Procedures and Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the merchandise received from the principal;

2. The date such merchandise was received from the principal;

3. The date the merchandise received from the principal was used in manufacture or production, and the identity and

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

[2] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

specifications of the articles produced thereby; and

4. The date the articles produced were returned to the principal.

F. General Requirements

The operator will:

1. Comply fully with the terms of this general ruling when manufacturing or producing articles for account of principal under the principal's general manufacturing drawback ruling or specific manufacturing drawback ruling, as appropriate;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates the claims any changes in the number or locations of the operator's offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this general ruling.

IV. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Component Parts

A. Same Kind and Quality (Parallel Columns)

Imported Merchandise or Drawback Products [1] to be Designated as the Basis for Drawback on the Exported Products.	Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which will be Used in the Production of the Exported Products.
Component parts identified by individual part numbers.	Component parts identified with the same individual part numbers as those in the column immediately to the left hereof.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

The designated components will have been manufactured in accordance with the same specifications and from the same materials, and identified by the same part number as the substituted components. Further, the designated and substituted components are used interchangeably in the manufacture of the exported articles upon which drawback will be claimed. Specifications or drawings will be maintained and made available for Customs officers. The imported merchandise designated on drawback claims will be so similar to the merchandise used in producing the exported articles on which drawback is claimed that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise. Fluctuations in market value resulting from factors other than quality will not affect the drawback.

B. Exported Articles on Which Drawback Will Be Claimed

The exported articles will have been manufactured in the United States using components described in the parallel columns above.

C. General Statement

The operator manufactures for its own account. The operator may produce articles for the account of another or another manufacturer may produce for the operator's account under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1).

D. Process of Manufacture or Production

The components described in the parallel columns will be used to manufacture new and different articles (see 19 CFR 191.2(p)).

E. By-Products

Not applicable.

F. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of components appearing in the exported articles, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

G. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

H. Procedures and Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise [2] used to produce the exported articles;

3. That, within 3 years after receiving the designated merchandise at its factory, the operator used the merchandise to produce articles. During the same 3-year period, the operator produced [3] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. The operator's records establishing its compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The operator's inventory records will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations will be met, as discussed under the heading ''Procedures And Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of eligible components used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible components that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible components used to produce the exported articles less the amount of those components which the value of the waste would replace.

K. General Requirements

The operator will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this general ruling.

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[3] The date of production is the date an article is completed.)

V. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Orange Juice

A. Same Kind and Quality (Parallel Columns)

Imported Merchandise or Drawback Products[1] to be Designated as the Basis for Drawback on the Exported Products.	Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which Will be Used in the Production of Exported Products.
Concentrated orange juice for manufacturing (of not less than 55° Brix) as defined in the standard of identity of the Food and Drug Administration (21 CFR 146.53) which meets the Grade A standard of the U.S. Dept. of Agriculture (7 CFR 52.1557, Table IV).	Concentrated orange juice for manufacturing as described in the left-hand parallel column.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.)

The imported merchandise designated on drawback claims will be so similar in quality to the merchandise used in producing the exported articles on which drawback is claimed that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise. Fluctuations in the market value resulting from factors other than quality will not affect the drawback.

B. Exported Articles on Which Drawback Will Be Claimed

1. Orange juice from concentrate (reconstituted juice).
2. Frozen concentrated orange juice.
3. Bulk concentrated orange juice.

C. General Statement

The operator manufactures for its own account. The operator may produce articles for the account of another or another manufacturer may produce for the operator's account under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1).

D. Process of Manufacture or Production

1. Orange juice from concentrate (reconstituted juice). Concentrated orange juice for manufacturing is reduced to a desired 11.8° Brix by a blending process to produce orange juice from concentrate. The following optional blending processes may be used:

i. The concentrate is blended with fresh orange juice (single strength juice); or

ii. The concentrate is blended with essential oils, flavoring components, and water; or

iii. The concentrate is blended with water and is heat treated to reduce the enzymatic activity and the number of viable microorganisms.

2. Frozen concentrated orange juice. Concentrated orange juice for manufacturing is reduced to a desired degree Brix of not less than 41.8° Brix by the following optional blending processes:

i. The concentrate is blended with fresh orange juice (single strength juice); or

ii. The concentrate is blended with essential oils and flavoring components and water.

3. Bulk concentrated orange juice. Concentrated orange juice for manufacturing is blended with essential oils and flavoring components which would enable another processor such as a dairy to prepare finished frozen concentrated orange juice or orange juice from concentrate by merely adding water to the (intermediate) bulk concentrated orange juice.

E. By-Products, Waste, Loss or Gain

Not applicable

F. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

G. Procedures and Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise[2] used to produce the exported articles;

3. That, within 3 years after receiving the designated merchandise at its factory, the operator used the designated merchandise to produce articles. During the same 3-year period, the operator produced[3] the exported articles.

To obtain drawback it must be established that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. No drawback is payable without proof of compliance.

H. Inventory Procedures

The operator's inventory records will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations will be met, as discussed under the heading ''Procedures And Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[3] The date of production is the date an article is completed.

I. Basis of Claim for Drawback

The basis of claim for drawback will be the quantity of concentrated orange juice for manufacturing used in the production of the exported articles. It is understood that when fresh orange juice is used as cutback, it will not be included in the pound solids when computing the drawback due.

J. General Requirements

The operator will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this general ruling.

VI. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Piece Goods

A. Same Kind and Quality (Parallel Columns)

Imported Merchandise or Drawback Products[1] to be Designated as the Basis for Drawback on the Exported Products.	Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which will be Used in the Production of the Exported Products.
Piece goods.	Piece goods.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under 19 U.S.C. 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

The piece goods used in manufacture will be the same kind and quality as the piece goods designated as the basis of claim for drawback, and are used interchangeably without change in manufacturing processes or resultant products, by-products, or wastes. Some tolerances between imported-designated piece goods and the used-exported piece goods will be permitted to accommodate variations which are normally found in piece goods. These tolerances are no greater than the tolerances generally allowed in the industry for piece goods of the same kind and quality as follows:

1. A 4% weight tolerance so that the piece goods used in manufacture will be not more

than 4% lighter or heavier than the imported piece goods which will be designated;

2. A tolerance of 4% in the aggregate thread count per square inch so that the piece goods used in manufacture will have an aggregate thread count within 4%, more or less of the aggregate thread count of the imported piece goods which will be designated. In each case, the average yarn number of the domestic piece goods will be the same or greater than the average yarn number of the imported piece goods designated, and in each case, the substitution and tolerance will be employed only within the same family of fabrics, *i.e.*, print cloth for print cloth, gingham for gingham, greige for greige, dyed for dyed, bleached for bleached, *etc.* The piece goods used in manufacture of the exported articles will be designated as containing the identical percentage of identical fibers as the piece goods designated as the basis for allowance of drawback; for example, piece goods containing 65% cotton and 35% dacron will be designated against the use of piece goods shown to contain 65% cotton and 35% dacron. The actual fiber composition may vary slightly from that described on the invoice or other acceptance of the fabric as having the composition described on documents in accordance with trade practices. The substituted piece goods used in the manufacture of articles for exportation with drawback will be so similar in quality to the imported piece goods designated for the basis of allowance of drawback, that the piece goods used, if imported, would have been subject to the same or greater amount of duty as was paid on the imported designated piece goods. Differences in value resulting from factors other than quality, as for example, price fluctuations, will not preclude an allowance of drawback.

B. Exported Articles on Which Drawback Will Be Claimed

Finished piece goods.

C. General Statement

The operator manufactures for its own account. The operator may produce articles for the account of another or another manufacturer may produce for the operator's account under contract within the principal and agency relationship outlined in T.D.s. 55027(2) and 55207(1).

D. Process of Manufacture or Production

Piece goods are subject to any one of the following finishing productions:

1. Bleaching,
2. Mercerizing,
3. Dyeing,
4. Printing,
5. A combination of the above, or
6. Any additional finishing processes.

E. By-Products

Not applicable.

F. Waste

Rag waste may be incurred. The operator's records shall show the quantity of rag waste, if any, and its value. In instances where rag waste occurs and it is impractical to account for the actual quantity of rag waste incurred, it shall be assumed in liquidation that such rag waste constituted 2% of the piece goods put into the finishing processes.

G. Shrinkage, Gain, and Spoilage

The operator's records shall show the yardage lost by shrinkage or gained by stretching during manufacture, and the quantity of remnants resulting and of spoilage incurred, if any.

H. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

I. Procedures and Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise[2] used to produce the exported articles;

3. That, within 3 years after receiving the designated merchandise at its factory, the operator used the merchandise to produce articles. During the same 3-year period, the operator produced[3] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. The operator's records establishing its compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures

The operator's inventory records will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations will be met, as discussed under the heading ''Procedures And Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of eligible piece goods used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible piece goods that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste from each lot of piece goods, drawback may be claimed on the quantity of eligible piece goods used to produce the exported articles less the amount of piece goods which the value of the waste would replace.

L. General Requirements

The operator will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this general ruling.

VII. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Steel

A. Same kind and Quality (Parallel Columns)

Imported Merchandise or Drawback Products[1] to be Designated as the Basis for Drawback on the Exported Products.	Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which will be Used in the Production of the Exported Products.
Steel of one general class, *e.g.*, an ingot, falling within one SAE, AISI, or ASTM[2] specification, and if the specification contains one or more grades falling within one grade of the specification.	Steel of the same general class, specification and grade as the steel in the column immediately to the left hereof.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

[2] Standards set by the Society of Automotive Engineers (SAE), the American Iron and Steel Institute (AISI), or the American Society for Testing and Materials (ASTM).

1. The duty-free or domestic steel used instead of the duty-paid steel will be interchangeable for manufacturing purposes with the duty-paid steel. To be

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[3] The date of production is the date an article is completed.

interchangeable a steel must be able to be used in place of the substituted steel without any additional processing step in the manufacture of the article on which drawback is to be claimed.

2. Because the duty-paid steel that is to be designated as the basis for drawback is dutiable according to its value, the amount of duty can vary with its size (gauge, width, or length) or composition (*e.g.*, chrome content). If such variances occur, designation will be by ''price extra'', and in no case will drawback be claimed in a greater amount than that which would have accrued to that steel used in manufacture of or appearing in the exported articles. Price extra is not available for coated or plated steel, covered in paragraph 5, *infra*, insofar as the coating or plating is concerned.

3. The duty-paid steel will be so similar in quality to the steel used to manufacture the articles on which drawback will be claimed that the steel so used, if imported, would be classifiable in the same tariff subheading number and at the same rate of duty as the duty-paid imported steel.

4. Any fluctuation in market value caused by a factor other than quality does not affect drawback.

5. If the steel is coated or plated with a base metal, in addition to meeting the requirements for uncoated or unplated steel set forth in the parallel columns, the base-metal coating or plating on the duty-free or domestic steel used in place of the duty-paid steel will have the same composition and thickness as the coating or plating on the duty-paid steel. If the coated or plated duty-paid steel is within a SAE, AISI, ASTM specification, any duty-free or domestic coated or plated steel covered by the same specification and grade (if two or more grades are in the specification) is considered to meet this criterion for same kind and quality.

B. Exported Articles on Which Drawback Will Be Claimed

The exported articles will have been manufactured in the United States using steels described in the parallel columns above.

C. General Statement

The operator manufactures for its own account. The operator may produce articles for the account of another or another manufacturer may produce for the operator's account under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1).

D. Process of Manufacture or Production

The steel described in the parallel columns will be used to manufacture new and different articles (see 19 CFR 191.2(p)).

E. By-Products

Not applicable.

F. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of steel appearing in the exported articles, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

G. Loss or Gain

The operator will maintain records showing the extent of any loss or gain in net weight or measurement of the steel caused by atmospheric conditions, chemical reactions, or other factors.

H. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

I. Procedures and Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise[3] used to produce the exported articles;

3. That, within 3 years after receiving the designated merchandise at its factory, the operator used the merchandise to produce articles. During the same 3-year period, the operator produced[4] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. The operator's records establishing its compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures

The operator's inventory records will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations will be met, as discussed under the heading ''Procedures And Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of steel used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible steel that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste from each lot of steel, drawback may be claimed on the quantity of eligible steel used to produce the exported articles less the amount of that steel which the value of the waste would replace.

[3] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[4] The date of production is the date an article is completed.

L. General Requirements

The operator will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this general ruling.

VIII. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Sugar

A. Same Kind and Quality (Parallel Columns)

Imported Merchandise or Drawback Products[1] to be Designated as the Basis for Drawback on the Exported Products	Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which will be Used in the Production of the Exported Products.
1. Granulated or liquid sugar for manufacturing, containing sugar solids of not less than 99.5 sugar degrees	1. Granulated or liquid sugar for manufacturing, containing sugar solids of not less than 99.5 sugar degrees.
2. Granulated or liquid sugar for manufacturing, containing sugar solids of less than 99.5 sugar degrees	2. Granulated or liquid sugar for manufacturing, containing sugar solids of less than 99.5 sugar degrees.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

The sugars listed above test within three-tenths of a degree on the polariscope. Sugars in each column are completely interchangeable with the sugars directly opposite and designation will be made on this basis only. The designated sugar on which claims for drawback will be based will be so similar in quality to the sugar used in manufacture of the products exported with drawback that the sugar used in manufacture would, if imported, be subject to the same amount of duty paid on a like quantity of designated sugar. Differences in value resulting from factors other than quality,

such as market fluctuation, will not affect the allowance of drawback.

B. Exported Articles on Which Drawback Will Be Claimed

Edible substances (including confectionery) and/or beverages and/or ingredients therefor.

C. General Statement

The operator manufactures for its own account. The operator may produce articles for the account of another or another manufacturer may produce for the operator's account under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1).

D. Process of Manufacture or Production

The sugars are subjected to one or more of the following operations to form the desired product(s):

1. Mixing with other substances,
2. Cooking with other substances,
3. Boiling with other substances,
4. Baking with other substances,
5. Additional similar processes

E. By-Products

Not applicable.

F. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of sugar appearing in the exported articles, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

G. Loss or Gain

The operator will maintain records showing the extent of any loss or gain in net weight or measurement of the sugar caused by atmospheric conditions, chemical reactions, or other factors.

H. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

I. Procedures And Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;
2. The quantity of merchandise of the same kind and quality as the designated merchandise [2] used to produce the exported articles.
3. That, within 3 years after receiving the designated merchandise at its factory, the operator used the merchandise to produce articles. During the same 3-year period, the operator produced [3] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. The operator's records establishing its compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures

The operator's inventory records will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations will be met, as discussed under the heading ''Procedures And Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of sugar used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible sugar that appears in the exported articles regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles less the amount of that sugar which the value of the waste would replace.

L. General Requirements

The operator will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this general ruling.

IX. General Drawback Ruling under 19 U.S.C. 1313(b) for Raw Sugar.

Drawback may be allowed under 19 U.S.C. 1313(b) upon the exportation of hard or soft refined sugars and sirups manufactured from raw sugar, subject to the following special requirements:

A. The drawback allowance shall not exceed 99 percent of the duty paid on a quantity of raw sugar designated by the refiner which contains a quantity of sucrose not in excess of the quantity required to manufacture the exported sugar or sirup, ascertained as provided in this general rule.

B. The refined sugars and sirups shall have been manufactured with the use of duty-paid, duty-free, or domestic sugar, or combinations thereof, within 3 years after the date on which designated sugar was received by the refiner, and shall have been exported within 5 years from the date of importation of the designated sugar.

C. All granulated sugar testing by the polariscope 99.5° and over shall be deemed hard refined sugar. All refined sugar testing by the polariscope less than 99.5° shall be deemed soft refined sugar. All ''blackstrap,'' ''unfiltered sirup,'' and ''final molasses'' shall be deemed sirup.

D. The imported duty-paid sugar selected by the refiner as the basis for the drawback claim (designated sugar) shall be of the same kind and quality as that used in the manufacture of the exported refined sugar or sirup and shall have been used within 3 years after the date on which it was received by the refiner. Duty-paid sugar which has been used at a plant of a refiner within 3 years after the date on which it was received by such refiner may be designated as the basis for the allowance of drawback on refined sugars or sirups manufactured at another plant of the same refiner.

E. For the purpose of distributing the drawback, relative values shall be established between hard refined (granulated) sugar, soft refined (various grades) sugar, and sirups at the time of separation. The entire period covered by an abstract shall be deemed the time of separation of the sugars and sirups covered by such abstract.

F. The sucrose allowance per pound on hard refined (granulated) sugar established by an abstract, as provided for in this general ruling, shall be applied to hard refined sugar commercially known as loaf, cut loaf, cube, pressed, crushed, or powdered sugar manufactured from the granulated sugar covered by such abstract.

G. The sucrose allowance per gallon on sirup established by an abstract, as provided for in this general ruling, shall be applied to sirup further advanced in value by filtration or otherwise, unless such sirup is the subject of a special manufacturing drawback ruling.

H. As to each lot of imported or domestic sugar used in the manufacture of refined sugar or sirup on which drawback is to be claimed, the raw stock records shall show the refiner's raw lot number, the number and character of the packages, the settlement weight in pounds, and the settlement polarization. Such records covering imported sugar shall show, in addition to the foregoing, the import entry number, date of importation, name of importing carrier, country of origin, the Government weight, and the Government polarization.

I. The melt records shall show the date of melting, the number of pounds of each lot of

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[3] The date of production is the date an article is completed.

raw sugar melted, and the full analysis at melting.

J. There shall be kept a daily record of final products boiled showing the date of the melt, the date of boiling, the magma filling serial number, the number of the vacuum pan or crystallizer filling, the date worked off, and the sirup filling serial number.

K. The sirup manufacture records shall show the date of boiling, the period of the melt, the sirup filling serial number, the number of barrels in the filling, the magma filling serial number, the quantity of sirup, its disposition in tanks or barrels and the refinery serial manufacture number.

L. The refined sugar stock records shall show the refinery serial manufacture number, the period of the melt, the date of manufacture, the grade of sugar produced, its polarization, the number and kind of packages, and the net weight. When soft sugars are manufactured, the commercial grade number and quantity of each shall be shown.

M. Each lot of hard or soft refined sugar and each lot of sirup manufactured, regardless of the character of the containers or vessels in which it is packed or stored, shall be marked immediately with the date of manufacture and the refinery manufacture number applied to it in the refinery records provided for and shown in the abstract, as provided for in this general ruling, from such records. If all the sugar or sirup contained in any lot manufactured is not intended for exportation, only such of the packages as are intended for exportation need be marked as prescribed above, provided there is filed with the drawback office immediately after such marking a statement showing the date of manufacture, the refinery manufacture number, the number of packages marked, and the quantity of sugar or sirup contained therein. No drawback shall be allowed in such case on any sugar or sirup in excess of the quantity shown on the statement as having been marked. If any packages of sugar or sirup so marked are repacked into other containers, the new containers shall be marked with the marks which appeared on the original containers and a revised statement covering such repacking and remarking shall be filed with the drawback office. If sirups from more than one lot are stored in the same tank, the refinery records shall show the refinery manufacture number and the quantity of sirup from each lot contained in such tank.

N. An abstract from the foregoing records covering manufacturing periods of not less than 1 month nor more than 3 months, unless a different period shall have been authorized, shall be filed when drawback is to be claimed on any part of the refined sugar or sirup manufactured during such period. Such abstract shall be filed by each refiner with the drawback office where drawback claims are filed on the basis of this general ruling. Such abstract shall be in the form described in Treasury Decision 83–59.

O. The refiner shall file with each abstract a statement, in the form described in Treasury Decision 83–59.

P. At the end of each calendar month the refiner shall furnish to the drawback office a statement showing the actual sales of sirup and the average market values of refined sugars for the calendar month.

Q. The sucrose allowance to be applied to the various products based on the abstract and statement provided for in this general ruling shall be in accordance with the example set forth in Treasury Decision 83–59.

R. Certificates of delivery under this general ruling shall be in the form described in Treasury Decision 83–59.

S. Drawback claims under this general ruling shall be in the form described in Treasury Decision 83–59.

T. General Statement. The refiner manufactures for its own account. The refiner may produce articles for the account of another or another manufacturer may produce for the refiner's account under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1).

U. Waste. No drawback is payable on any waste which results from the manufacturing operation. Unless drawback claims are based on the ''appearing in'' method, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

V. Loss or Gain. The refiner will maintain records showing the extent of any loss or gain in net weight or measurement of the sugar caused by atmospheric conditions, chemical reactions, or other factors.

W. Tradeoff. The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality requirements provided for in this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

X. Procedures And Records Maintained. Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise [2] used to produce the exported articles; and

3. That, within 3 years after receiving the designated merchandise at its factory, the refiner used the designated merchandise to produce articles. During the same 3-year period, the refiner produced [3] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. The refiner's records establishing its compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

Y. General requirements. The refiner will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this general ruling.

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[3] The date of production is the date an article is completed.

Appendix B to Part 191—Sample Formats for Applications for Specific Manufacturing Drawback Rulings

These sample formats for applications for specific manufacturing drawback rulings are not rulings until reviewed and approved by Customs Headquarters. A specific manufacturing drawback ruling consists of the application plus the letter of acceptance, as provided in 19 CFR 191.8. In these application formats, remarks in parentheses and footnotes are for explanatory purposes only and should not be copied. Other material should be quoted directly in the applications.

Format for Sample 1313 (a) and (b) Application Company Letterhead (Optional)

U.S. Customs Service, Entry and Carrier Rulings Branch, 1301 Constitution Avenue, N.W., Washington, D.C. 20229

Dear Sir: We, (Applicant's Name), a (State, *e.g.*, Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, §§ 1313 (a) and (b), and part 191 of the Customs Regulations. We request that the Customs Service authorize drawback on the basis of this application.

Name and Address and IRS Number of Applicant

(Section 191.8(a) of the Customs Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under §191.7 of the Customs Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see § 191.8(a)).)

Location of Factory

(Give the address of the factory(s) where the process of manufacture or production

will take place. If the factory is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

Corporate Officers

(List officers and other persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the Customs Regulations permits only the president, vice-president, secretary, treasurer, or any other individual legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively.)

Customs Office Where Drawback Claims Will Be Filed

(The 8 offices where drawback claims can be filed are located at: Boston, MA; New York, NY; Miami, FL; New Orleans, LA; Houston, TX; Long Beach, CA; Chicago, IL; San Francisco, CA)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, two additional copies of the application must be furnished for each additional office indicated.)

General Statement

(The following questions must be answered:

1. Who will be the importer of the designated merchandise? (If the applicant will not always be the importer of the designated merchandise, does the applicant understand its obligations to obtain the appropriate certificates of delivery (19 CFR 191.10), certificates of manufacture and delivery (19 CFR 191.24), or both?)

2. Will an agent be used to process the designated or the substituted merchandise into articles? (If an agent is to be used, the applicant must state it will comply with T.D.'s 55027(2) and 55207(1), and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (see § 191.7 and appendix A) or an application for a specific manufacturing drawback ruling (see § 191.8 and this appendix B).)

3. Will the applicant be the exporter? (If the applicant will not be the exporter in every case but will be the claimant, the manufacturer must state that it will reserve the right to claim drawback with the knowledge and written consent of the exporter (19 CFR 191.82).)) (Since the permission to grant use of the accelerated payment procedure rests with the Customs office with which claims will be filed, do not include any reference to that procedure in this application.)

Procedures Under Section 1313(b)

Parallel Columns—''Same Kind and Quality''

Imported merchandise or drawback products [2] to be designated as the basis for drawback on the exported products.	Duty-paid, duty-free or domestic merchandise of the same kind and quality as that designated which will be used in the production of the exported products.
1.	1.
2.	2.
3.	3.

[2] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.)

(Following the items listed in the parallel columns, a statement will be made, by the applicant, that affirms the ''same kind and quality'' of the merchandise. This statement should be included in the application exactly as it is stated below:)

The imported merchandise which we will designate on our claims will be so similar in quality to the merchandise used in producing the exported articles on which we claim drawback that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise.

Fluctuations in the market value resulting from factors other than quality will not affect the drawback.

(In order to successfully claim drawback it is necessary to prove that the duty-paid, duty-free or domestic merchandise which is to be substituted for the imported merchandise is the ''same kind and quality''. ''Same kind and quality'' does not necessarily mean that the merchandise is identical. It does mean that the merchandise is of the same nature or character (''same kind'') and that the merchandise to be substituted is interchangeable with the imported merchandise with little or no change in the manufacturing process to produce the same exported article (''same quality''). In order to enable Customs to rule on ''same kind and quality'', the application must include a detailed description of the designated imported merchandise and of the substituted duty-paid, duty-free or domestic merchandise to be used to produce the exported articles.)

(It is essential that all the characteristics which determine the quality of the merchandise are provided in the application in order to substantiate that the merchandise meets the ''same kind and quality'' statutory requirement. These characteristics should clearly distinguish merchandise of different qualities. For example, USDA standards; FDA standards; industry standards, *e.g.*, ASTM; concentration; specific gravity; purity; luster; melting point, boiling point; odor; color; grade; type; hardness; brittleness; *etc.* Note that these are only a few examples of characteristics and that each kind of merchandise has its own set of specifications that characterizes its quality. If specifications are given with a minimum value, be sure to include a maximum value. The converse is also true. Often characteristics are given to Customs on attached specification sheets. These specifications should not include Material Safety Data sheets or other descriptions of the merchandise that do not contribute to the ''same kind and quality'' determination. When the merchandise is a chemical, state the chemical's generic name as well as its trade name plus any generally recognized identifying number, *e.g.* CAS number; Color Index Number, *etc.*)

(In order to expedite the specific manufacturing drawback ruling process, it will be helpful if you provide copies of technical standards/specifications (particularly industry standards such as ASTM standards) referred to in your application.)

(The descriptions of the ''same kind and quality'' merchandise should be formatted in the parallel columns. The left-hand column will consist of the name and specifications of the designated imported merchandise under the heading set forth above. The right-hand column will consist of the name and specifications for the duty-paid, duty-free or domestic merchandise under the heading set forth above.)

Exported Articles on Which Drawback Will Be Claimed

(Name each article to be exported. When the identity of the product is not clearly evident by its name state what the product is, *e.g.*, a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE AND PRODUCTION section below and each article listed here.)

Process of Manufacture or Production

(Drawback under section 1313(b) is not allowable except where a manufacture or production exists. A manufacture or production exists when a ''new and different article emerges having a distinctive name, character, or use'', or when an article is made fit for a particular use (see 19 CFR 191.2(p); see also *Anheuser-Busch Brewing Assoc.* v. *United States*, 207 U.S. 556 (1907); *United States* v. *International Paint Co.*, 35 CCPA 87 (1948), *et al.*). In order to obtain drawback under section 1313(b), it is essential for the applicant to show use in manufacture or production by giving a thorough description of the manufacturing process. This description should include the name and exact condition of the merchandise listed in the Parallel Columns, a complete explanation of the processes to which it is subjected in this country, the effect of such processes, the name and exact description of the finished article, and the use for which the finished article is intended. When applicable, give equations of the chemical reactions. The attachment of a flow chart in addition to the description showing the manufacturing process is an excellent means of illustrating whether or not a ''new and different article'' has been formed. Flow charts can clearly illustrate if and at what point during the manufacturing process by-products and wastes are generated.)

(This section should contain a description of the process by which each item of

merchandise listed in the parallel columns above is used to make or produce every article that is to be exported.)

By-Products

1. Relative Values

(Some processes result in the separation of the merchandise used in the same operation into two or more products. List all of the products. State that you will record the market value of each product or by-product at the time it is first separated in the manufacturing process. If this section is not applicable to you, then state so.)

(Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. For instance, the refining of flaxseed necessarily produces linseed oil and linseed husks (animal feed), and drawback must be distributed to each product in accordance with its relative value. However, the voluntary election of a steel fabricator, for instance, to use part of a lot of imported steel to produce automobile doors and part of the lot to produce automobile fenders does not call for relative value distribution.)

(The relative value of a product is its value divided by the total value of all products, whether or not exported. For example, 100 gallons of drawback merchandise are used to produce 100 gallons of products, including 60 gallons of product A, 20 gallons of product B, and 20 gallons of product C. At the time of separation, the unit values of products A, B, and C are $5, $10, and $50 respectively. The relative value of product A is $300 divided by $1500 or 1/5. The relative value of B is 2/15 and of product C is 2/3, calculated in the same manner. This means that 1/5 of the drawback product payments will be distributed to product A, 2/15 to product B, and 2/3 to product C.)

(Drawback is allowable on exports of by-products, but is not allowable on exports of valuable waste. In making this distinction between by-product or valuable waste, the applicant should address the following significant elements: (1) The nature of the material of which the residue is composed; (2) the value of the residue as compared to the value of the principal manufactured product and the raw material; (3) the use to which it is put; (4) its status under the tariff laws, if imported; (5) whether it is a commodity recognized in commerce; (6) whether it must be subjected to some process to make it saleable.)

2. Producibility

(Some processes result in the separation of fixed proportions of each product, while other processes afford the opportunity to increase or decrease the proportion of each product. An example of the latter is petroleum refining, where the refiner has the option to increase or decrease the production of one or more products relative to the others. State under this heading whether you can or cannot vary the proportionate quantity of each product.)

(The BY-PRODUCT section consists of two sub-sections: Relative Values and Producibility. If no by-products result from your operation state ''Not Applicable'' for the entire section. If by-products do result from your operation Relative Values will always apply. However, Producibility may or may not apply. If Producibility does not apply to your by-product operation state ''Not Applicable'' for this sub-section.)

Waste

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.) (If waste occurs, state: (1) Whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what ''Basis'' you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of imported or substituted merchandise used in producing the exported articles (less valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. See ''Basis of Claim for Drawback'' section below.)

Stock in Process

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process necessarily reduces the quantity of imported material used in manufacture in a current lot or period, in that the amount manufactured in any given batch does not include the recycled merchandise going into the next batch. Therefore the amount of imported merchandise used in manufacture of exported articles is decreased.)

(If stock in process occurs, the application must include a statement that merchandise is considered to be used in manufacture at the time it was originally processed so that the stock in process will not be included twice in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.)

Tradeoff

(If an applicant proposes to use tradeoff (19 CFR 191.11), the applicant should so state and the applicant should describe the contractual arrangement between the applicant and its partner for tradeoff. The person claiming drawback under the tradeoff provision has the burden of establishing compliance with the law and regulations. In this regard, the terms of a written contract are always easier to establish than those of an oral contract.)

Loss or Gain (Separate and Distinct From WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured ''by weight'' unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

Procedures and Records Maintained

We will maintain records to establish:

1. The identity and specifications of the merchandise we designate;

2. The quantity of merchandise of the same kind and quality as the designated merchandise [3] we used to produce the exported articles.

3. That, within 3 years after receiving it at our factory, we used the designated merchandise to produce articles. During the same 3-year period, we produced [4] the exported articles.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise.

1Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

Inventory Procedures

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To insure compliance the following areas should be included in your discussion:)

RECEIPT AND STORAGE OF DESIGNATED MERCHANDISE
RECORDS OF USE OF DESIGNATED MERCHANDISE
BILLS OF MATERIALS
MANUFACTURING RECORDS
WASTE RECORDS

[3] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles we produce.'');

[4] (The date of production is the date an article is completed.)

RECORDS OF USE OF DUTY-PAID, DUTY-FREE OR DOMESTIC MERCHANDISE OF THE REQUIRED SAME KIND AND QUALITY WITHIN 3 YEARS AFTER THE RECEIPT OF THE DESIGNATED MERCHANDISE
FINISHED STOCK STORAGE RECORDS
SHIPPING RECORDS

(Proof of time frames may be specific or inclusive, e.g. within 120 days, but specific proof is preferable. Separate storage and identification of each article or lot of merchandise usually will permit specific proof of exact dates. Proof of inclusive dates of use, production or export may be acceptable, but in such cases it is well to describe very specifically the data you intend to use to establish each legal requirement, thereby avoiding misunderstandings at the time of audit.)

(If you do not describe the inventory records that you will use, a statement that the legal requirements will be met by your inventory procedures is acceptable. However, it should be noted that without a detailed description of the inventory procedures set forth in the application a judgement as to the adequacy of such a statement cannot be made until a drawback claim is verified. Approval of this application for a specific manufacturing drawback ruling merely constitutes approval of the ruling application as submitted; it does not constitute approval of the applicant's record keeping procedures if, for example, those procedures are merely described as meeting the legal requirements, without specifically stating how the requirements will be met. Failure to describe how the specific records will show receipt, use and export may be a ground to deny use of the accelerated payment procedure until completion of a satisfactory audit. Drawback is not payable without proof of compliance.)

Basis of Claim for Drawback

(There are three different bases that may be used to claim drawback: (1) Used in; (2) Appearing In; and (3) Used Less Valuable Waste.)

(The ''Used In'' basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the ''Used In'' basis. Drawback is payable in the amount of 99 percent of the duty paid on the quantity of imported material designated as the basis for the allowance of drawback on the exported articles. The designated quantity may not exceed the quantity of material actually used in the manufacture of the exported articles.)

(For example, if 100 pounds of material, valued at $1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duty paid on the 100 pounds of designated material used to produce the exported articles.)

(The ''Appearing In'' basis may be used regardless of whether there is waste. If the ''Appearing In'' basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the ''Appearing In'' basis. Drawback is payable on 99 percent of the duty paid on the quantity of material designated, which may not exceed the quantity of eligible material that appears in the exported articles. ''Appearing In'' may not be used if by-products are involved unless the applicant agrees to value all products identically.)

(Based on the previous example, drawback would be payable on the 90 pounds of merchandise which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)

(The ''Used Less Valuable Waste'' basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the ''Used Less Valuable Waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article may be based on the duty paid on the quantity of merchandise used in the manufacture, reduced by the quantity of such merchandise which the value of the waste will replace. Thus in this case, drawback is claimed on the quantity of eligible material actually used to produce the exported product, less the amount of such material which the value of the waste would replace. Note section 191.25(c) of the Customs Regulations.)

(Based on the previous examples, if the 10 pounds of waste had a value of $.50 per pound, then the 10 pounds of waste, having a total value of $5.00, would be equivalent in value to 5 pounds of the designated material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duty paid on the 95 pounds of imported material designated as the basis for the allowance of drawback on the exported article rather than on the 100 pounds ''Used In'' or the 90 pounds ''Appearing In'' as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A ''schedule'' shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production;)

(An ''abstract'' is the summary of the records (which may be set forth on Customs Form 331) which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a duration of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back on how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the ''schedule'' choice must base his claims on the ''abstract'' method. State which Basis and Method you will use. An example of Used In by Schedule follows:)

We shall claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 191.8(f) of the Customs Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Except as noted above in the explanation of the ''Appearing In'' basis, neither the ''Appearing In'' basis nor the ''schedule'' method for claiming drawback may be used where the relative value procedure is required.)

Procedures Under Section 1313(a) Imported Merchandise or Drawback Products Used Under 1313(a)

(List the imported merchandise or drawback products)

Exported Articles on Which Drawback Will be Claimed

(Name each article to be exported. When the identity of the product is not clearly evident by its name state what the product is, *e.g.*, a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE AND PRODUCTION section below and each article listed here.)

(If the merchandise used under section 1313(a) is not also used under section 1313(b), the sections entitled PROCESS OF MANUFACTURE OR PRODUCTION, BY-PRODUCTS, LOSS OR GAIN, and STOCK IN PROCESS should be included here to cover merchandise used under section 1313(a). However, if the merchandise used under section 1313(a) is also used under section 1313(b) these sections need not be repeated unless they differ in some way from the section 1313(b) descriptions.)

Procedures and Records Maintained

We will maintain records to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise, and

2. The quantity of imported merchandise [5] we used in producing the exported articles.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise.

Inventory Procedures

(This section must be completed separately from that set forth under the section 1313(b) portion of your application. The legal requirements under section 1313(a) differ from those under section 1313(b).)

(Describe your inventory procedures and state how you will identify the imported merchandise from the time it is received at your factory until it is incorporated in the articles to be exported. Also describe how you will identify the finished articles from the time of manufacture until shipment.)

Basis of Claim for Drawback

(See section with this title for procedures under section 1313(b). Either repeat the same basis of claim or use a different basis of claim, as described above, specifically for drawback claimed under section 1313(a).)

Agreements

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;
4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;
5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service all other changes affecting information contained in this application;
6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and
7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(a) & (b), part 191 of the Customs Regulations and this application and letter of approval.

Declaration of Official

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of _____ 19_____, makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By [6] _____

(Signature and Title)

_____

(Print Name)

Format for 1313(b) Application Company Letterhead (Optional)

U.S. Customs Service,
Entry and Carrier Rulings Branch, 1301 Constitution Avenue, N.W., Washington, D.C. 20229

Dear Sir: We, (Applicant's Name), a (State, *e.g.* Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(b), and part 191 of the Customs Regulations. We request that the Customs Service authorize drawback on the basis of this application.

Name and Address and IRS Number of Applicant

(Section 191.8(a) of the Customs Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under §191.7 of the Customs Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see §191.8(a)).)

Location of Factory

(Give the address of the factory(ies) where the process of manufacture or production will take place. If the factory is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

Corporate Officers

(List officers and other persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the Customs Regulations permits only the president, vice-president, secretary, treasurer, or any other individual legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively.)

Customs Office Where Drawback Claims Will be Filed

(The 8 offices where drawback claims can be filed are located at:

Boston, MA;
New York, NY;
Miami, FL;
New Orleans, LA;
Houston, TX;
Long Beach, CA;
Chicago, IL;
San Francisco, CA)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, two additional copies of the application must be furnished for each additional office indicated.)

General Statement

(The following questions must be answered:

1. Who will be the importer of the designated merchandise?

(If the applicant will not always be the importer of the designated merchandise, does the applicant understand its obligations to obtain the appropriate certificates of delivery (19 CFR 191.10), certificates of manufacture and delivery (19 CFR 191.24), or both?)

2. Will an agent be used to process the designated or the substituted merchandise into articles?

(If an agent is to be used, the applicant must state it will comply with T.D.'s 55027(2), 55207(1), and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (see § 191.7 and Appendix A), or an application for a specific manufacturing drawback ruling (see §191.8 and this appendix B).)

3. Will the applicant be the exporter?

(If the applicant will not be the exporter in every case but will be the claimant, the manufacturer must state that it will reserve the right to claim drawback with the knowledge and written consent of the exporter (19 CFR 191.82).)

(Since the permission to grant use of the accelerated payment procedure rests with the Drawback office with which claims will be filed, do not include any reference to that procedure in this application.)

(PARALLEL COLUMNS—"SAME KIND AND QUALITY")

IMPORTED MERCHANDISE OR DRAWBACK PRODUCTS [2] TO BE DESIGNATED AS THE BASIS FOR DRAWBACK ON THE EXPORTED PRODUCTS.	DUTY-PAID, DUTY-FREE OR DOMESTIC MERCHANDISE OF THE SAME KIND AND QUALITY AS THAT DESIGNATED WHICH WILL BE USED IN THE PRODUCTION OF THE EXPORTED PRODUCTS.

[5] If claims are to be made on an "Appearing In" basis, the remainder of the sentence should read "appearing in the exported articles we produce."

[6] Section 191.6(a) of the Customs Regulations requires that applications for specific manufacturing drawback rulings be signed by the owner of a sole proprietorship, a partner in a partnership, or the president, vice president, secretary, treasurer or other individual legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney filed with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port your Customs power(s) of attorney is/are filed.

(PARALLEL COLUMNS—''SAME KIND AND QUALITY'')—Continued

1.	1.
2.	2.
3.	3.

[2] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

(Following the items listed in the parallel columns, a statement will be made, by the applicant, that affirms the ''same kind and quality'' of the merchandise. This statement should be included in the application exactly as it is stated below:)

The imported merchandise which we will designate on our claims will be so similar in quality to the merchandise used in producing the exported articles on which we claim drawback that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise.

Fluctuations in the market value resulting from factors other than quality will not affect the drawback.

(In order to successfully claim drawback it is necessary to prove that the duty-paid, duty-free or domestic merchandise which is to be substituted for the imported merchandise is the ''same kind and quality''. ''Same kind and quality'' does not necessarily mean that the merchandise is identical. It does mean that the merchandise is of the same nature or character (''same kind'') and that the merchandise to be substituted is interchangeable with the imported merchandise with little or no change in the manufacturing process to produce the same exported article (''same quality''). In order to enable Customs to rule on ''same kind and quality'', the application must include a detailed description of the designated imported merchandise and of the substituted duty-paid, duty-free or domestic merchandise to be used to produce the exported articles.)

(It is essential that all the characteristics which determine the quality of the merchandise are provided in the application in order to substantiate that the merchandise meets the ''same kind and quality'' statutory requirement. These characteristics should clearly distinguish merchandise of different qualities. For example, USDA standards; FDA standards; industry standards, *e.g.*, ASTM; concentration; specific gravity; purity; luster; melting point, boiling point; odor; color; grade; type; hardness; brittleness; *etc.* Note that these are only a few examples of characteristics and that each kind of merchandise has its own set of specifications that characterizes its quality. If specifications are given with a minimum value, be sure to include a maximum value. The converse is also true. Often characteristics are given to Customs on attached specification sheets. These specifications should not include Material Safety Data sheets or other descriptions of the merchandise that do not contribute to the ''same kind and quality'' determination. When the merchandise is a chemical, state the chemical's generic name as well as its trade name plus any generally recognized identifying number, *e.g.* CAS number; Color Index Number, *etc.*)

(In order to expedite the specific manufacturing drawback ruling review process, it will be helpful if you provide copies of technical standards/specifications (particularly industry standards such as ASTM standards) referred to in your application.)

(The descriptions of the ''same kind and quality'' merchandise should be formatted in the parallel columns. The left-hand column will consist of the name and specifications of the designated imported merchandise under the heading set forth above. The right-hand column will consist of the name and specifications for the duty-paid, duty-free or domestic merchandise under the heading set forth above.)

Exported Articles on Which Drawback Will be Claimed

(Name each article to be exported. When the identity of the product is not clearly evident by its name state what the product is, *e.g.*, a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE AND PRODUCTION section below and each article listed here.)

Process of Manufacture or Production

(Drawback under section 1313(b) is not allowable except where a manufacture or production exists. A manufacture or production exists when a ''new and different article emerges having a distinctive name, character, or use'', or when an article is made fit for a particular use (see 19 CFR 191.2(p); see also *Anheuser-Busch Brewing Assoc.* v. *United States*, 207 U.S. 556 (1907); *United States* v. *International Paint Co.*, 35 CCPA 87 (1948), *et al.*). In order to obtain drawback under section 1313(b), it is essential for the applicant to show use in manufacture or production by giving a thorough description of the manufacturing process. This description should include the name and exact condition of the merchandise listed in the Parallel Columns, a complete explanation of the processes to which it is subjected in this country, the effect of such processes, the name and exact description of the finished article, and the use for which the finished article is intended. When applicable, give equations of the chemical reactions. The attachment of a flow chart in addition to the description showing the manufacturing process is an excellent means of illustrating whether or not a ''new and different article'' has been formed. Flow charts can clearly illustrate if and at what point during the manufacturing process by-products and wastes are generated.)

(This section should contain a description of the process by which each item of merchandise listed in the parallel columns above is used to make or produce every article that is to be exported.)

By-Products

1. Relative Values

(Some processes result in the separation of the merchandise used in the same operation into two or more products. List all of the products. State that you will record the market value of each product or by-product at the time it is first separated in the manufacturing process. If this section is not applicable to you, then state so.)

(Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. For instance, the refining of flaxseed necessarily produces linseed oil and linseed husks (animal feed), and drawback must be distributed to each product in accordance with its relative value. However, the voluntary election of a steel fabricator, for instance, to use part of a lot of imported steel to produce automobile doors and part of the lot to produce automobile fenders does not call for relative value distribution.)

(The relative value of a product is its value divided by the total value of all products, whether or not exported. For example, 100 gallons of drawback merchandise are used to produce 100 gallons of products, including 60 gallons of product A, 20 gallons of product B, and 20 gallons of product C. At the time of separation, the unit values of products A, B, and C are $5, $10, and $50 respectively. The relative value of product A is $300 divided by $1500 or 1/5. The relative value of B is 2/15 and of product C is 2/3, calculated in the same manner. This means that 1/5 of the drawback product payments will be distributed to product A, 2/15 to product B, and 2/3 to product C.)

(Drawback is allowable on exports of by-products, but is not allowable on exports of valuable waste. In making this distinction between by-product or valuable waste, the applicant should address the following significant elements: (1) The nature of the material of which the residue is composed; (2) the value of the residue as compared to the value of the principal manufactured product and the raw material; (3) the use to which it is put; (4) its status under the tariff laws, if imported; (5) whether it is a commodity recognized in commerce; (6) whether it must be subjected to some process to make it saleable.)

2. Producibility

(Some processes result in the separation of fixed proportions of each product, while other processes afford the opportunity to increase or decrease the proportion of each product. An example of the latter is petroleum refining, where the refiner has the option to increase or decrease the production of one or more products relative to the others. State under this heading whether you can or cannot vary the proportionate quantity of each product.)

(The BY-PRODUCT section consists of two sub-sections: Relative Values and Producibility. If no by-products result from your operation state ''Not Applicable'' for the entire section. If by-products do result from your operation Relative Values will always apply. However, Producibility may or may not apply. If Producibility does not apply to your by-product operation state ''Not Applicable'' for this sub-section.)

Waste

(Many processes result in residue materials which, for drawback purposes, are treated as

wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.)

(If waste occurs, state: (1) Whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what ''Basis'' you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of imported or substituted merchandise used in producing the exported articles less valuable waste, state that you will keep records to establish the quantity and value of the waste recovered. See ''Basis of Claim for Drawback'' section below.)

Stock in Process

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process necessarily reduces the quantity of imported material used in manufacture in a current lot or period, in that the amount manufactured in any given batch does not include the recycled merchandise going into the next batch. Therefore the amount of imported merchandise used in manufacture of exported articles is decreased.)

(If stock in process occurs, the application must include a statement that merchandise is considered to be used in manufacture at the time it was originally processed so that the stock in process will not be included twice in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.)

Tradeoff

(If an applicant proposes to use tradeoff (19 CFR 191.11), the applicant should so state and the applicant should describe the contractual arrangement between the applicant and its partner for tradeoff. The person claiming drawback under the tradeoff provisions has the burden of establishing compliance with the law and regulations. In this regard, the terms of a written contract are always easier to establish than those of an oral contract.)

Loss or Gain (Separate and Distinct From WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured ''by weight'' unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

Procedures and Records Maintained

We will maintain records to establish:

1. The identity and specifications of the merchandise we designate;

2. The quantity of merchandise of the same kind and quality as the designated merchandise[3] we used to produce the exported articles.

3. That, within 3 years after receiving it at our factory, we used the designated merchandise to produce articles. During the same 3-year period, we produced[4] the exported articles.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise.

Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

Inventory Procedures

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED.To insure compliance the following areas should be included in your discussion:)

RECEIPT AND STORAGE OF DESIGNATED MERCHANDISE
RECORDS OF USE OF DESIGNATED MERCHANDISE
BILLS OF MATERIALS
MANUFACTURING RECORDS
WASTE RECORDS
RECORDS OF USE OF DUTY-PAID, DUTY-FREE OR DOMESTIC MERCHANDISE OF THE REQUIRED SAME KIND AND QUALITY WITHIN 3 YEARS AFTER THE RECEIPT OF THE DESIGNATED MERCHANDISE
FINISHED STOCK STORAGE RECORDS
SHIPPING RECORDS

(Proof of time frames may be specific or inclusive, *e.g.*, within 120 days, but specific proof is preferable. Separate storage and identification of each article or lot of merchandise usually will permit specific proof of exact dates. Proof of inclusive dates of use, production or export may be acceptable, but in such cases it is well to describe very specifically the data you intend to use to establish each legal requirement, thereby avoiding misunderstandings at the time of audit.)

(If you do not describe the inventory records that you will use, a statement that the legal requirements will be met by your inventory procedures is acceptable. However, it should be noted that without a detailed description of the inventory procedures set forth in the application a judgement as to the adequacy of such a statement cannot be made until a drawback claim is verified. Approval of this application for a specific manufacturing drawback ruling merely constitutes approval of the ruling application as submitted; it does not constitute approval of the applicant's record keeping procedures if, for example, those procedures are merely described as meeting the legal requirements, without specifically stating how the requirements will be met. Failure to describe how the specific records will show receipt, use and export may be a ground to deny use of the accelerated payment procedure until completion of a satisfactory audit. Drawback is not payable without proof of compliance.)

Basis of Claim for Drawback

(There are three different bases that may be used to claim drawback: (1) Used in; (2) Appearing In; and (3) Used less Valuable Waste.)

(The ''Used In'' basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the ''Used In'' basis. Drawback is payable in the amount of 99 percent of the duty paid on the quantity of imported material designated as the basis for the allowance of drawback on the exported articles. The designated quantity may not exceed the quantity of material actually used in the manufacture of the exported articles.)

(For example, if 100 pounds of material, valued at $1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duty paid on the 100 pounds of designated material used to produce the exported articles.)

(The ''Appearing In'' basis may be used regardless of whether there is waste. If the ''Appearing In'' basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the ''Appearing In'' basis. Drawback is payable on 99 percent of the duty paid on the quantity of material

[3] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles we produce.''

[4] The date of production is the date an article is completed.

designated, which may not exceed the quantity of eligible material that appears in the exported articles. ''Appearing In'' may not be used if by-products are involved unless the applicant agrees to value all products identically.)

(Based on the previous example, drawback would be payable on the 90 pounds of merchandise which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)

(The ''Used Less Valuable Waste'' basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the ''Used Less Valuable Waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article may be based on the duty paid on the quantity of merchandise used in the manufacture, reduced by the quantity of such merchandise which the value of the waste will replace. Thus in this case, drawback is claimed on the quantity of eligible material actually used to produce the exported product, less the amount of such material which the value of the waste would replace. Note section 191.25(c) of the Customs Regulations.)

(Based on the previous examples, if the 10 pounds of waste had a value of $.50 per pound, then the 10 pounds of waste, having a total value of $5.00, would be equivalent in value to 5 pounds of the designated material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duty paid on the 95 pounds of imported material designated as the basis for the allowance of drawback on the exported article rather than on the 100 pounds ''Used In'' or the 90 pounds ''Appearing In'' as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A ''schedule'' shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production;)

(An ''abstract'' is the summary of the records (which may be set forth on Customs Form 331) which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a duration of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back on how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the ''schedule'' choice must base his claims on the ''abstract'' method. State which Basis and Method you will use. An example of Used In by Schedule would read:)

We shall claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 191.8(f) of the Customs Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Except as noted above in the explanation of the ''Appearing In'' basis, neither the ''Appearing In'' basis nor the ''schedule'' method for claiming drawback may be used where the relative value procedure is required.)

Agreements

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2.Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service, all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this application and letter of approval.

Declaration of Official

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of _____ 19_____, makes this application binding on

_____
(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By [5] _____
(Signature and Title)

(Print Name)

Format for 1313(b) Petroleum Drawback Application Company Letterhead (Optional)

U.S. Customs Service,
Entry and Carrier Rulings Branch, 1301 Constitution Avenue, N.W., Washington, D.C. 20229

Dear Sir: We (Applicant's Name), a (State, *e.g.* Delaware) corporation (or other described entity), submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(b), and part 191 of the Customs Regulations. We request that the Customs Service authorize drawback on the basis of this application.

Name and Address and IRS Number of Applicant

(Section 191.8(a) of the Customs Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under §191.7 of the Customs Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see §191.8(a).)

Location of Refinery

(Give the address of the refinery(s) where the process of manufacture or production will take place. If the refinery is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

Corporate Officers

(List officers and other persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the Customs Regulations permits only the president, vice-president, secretary, treasurer, or any other individual legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be

[5] Section 191.6(a) of the Customs Regulations requires that applications for specific manufacturing drawback rulings be signed by the owner of a sole proprietorship, a partner in a partnership, or the president, vice president, secretary, treasurer or other individual legally authorized to bind the corporation. In addition, any employee of a business entity with a Customs power of attorney filed with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port Customs power(s) of attorney is/are filed.

changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively.)

Customs Office Where Drawback Claims Will Be Filed

(The 8 offices where drawback claims can be filed are located at:

Boston, MA;
New York, NY;
Miami, FL;
New Orleans, LA;
Houston, TX;
Long Beach, CA;
Chicago, IL;
San Francisco, CA)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, two additional copies of the application must be furnished for each additional office indicated.)

General Statement

(The following questions must be answered:

1. Who will be the importer of the designated merchandise?

(If the applicant will not always be the importer of the designated merchandise, does the applicant understand its obligations to obtain the appropriate certificates of delivery (19 CFR 191.10), certificates of manufacture and delivery (19 CFR 191.24), or both?)

2. Will an agent be used to process the designated or the substituted merchandise into articles?

(If an agent is to be used, the applicant must state it will comply with T.D.'s 55027(2) and 55207(1), and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (see §191.7 and Appendix A), or an application for a specific manufacturing drawback ruling (see §191.8 and this appendix B).)

3. Will the applicant be the exporter?

(If the applicant will not be the exporter in every case but will be the claimant, the manufacturer must state that it will reserve the right to claim drawback with the knowledge and written consent of the exporter (19 CFR 191.82).)

(Since the permission to grant use of the accelerated payment procedure rests with the Drawback office with which claims will be filed, do not include any reference to that procedure in this application.)

(PARALLEL COLUMNS—"SAME KIND AND QUALITY")

IMPORTED MERCHANDISE OR DRAWBACK PRODUCTS [2] TO BE DESIGNATED AS THE BASIS FOR DRAWBACK ON THE EXPORTED PRODUCTS	DUTY-PAID, DUTY-FREE OR DOMESTIC MERCHANDISE OF THE SAME KIND AND QUALITY AS THAT DESIGNATED WHICH WILL BE USED IN THE PRODUCTION OF THE EXPORTED PRODUCTS.

[2] (Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.)

We will substitute crude petroleum for crude petroleum and a petroleum derivative for the same petroleum derivative on a class-for-class basis only.

Class Designations:
Class I—API Gravity 0–11.9
Class II—API Gravity 12.0–24.9
Class III—API Gravity 25.0–44.9
Class IV—API Gravity 45–up

The imported merchandise which we will designate on our claims will be so similar in quality to the merchandise used in producing the exported articles on which we claim drawback that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise.

Exported Articles Produced From Fractionation

1. Motor Gasoline
2. Aviation Gasoline
3. Special Naphthas
4. Jet Fuel
5. Kerosene & Range Oils
6. Distillate Oils
7. Residual Oils
8. Lubricating Oils
9. Paraffin Wax
10. Petroleum Coke
11. Asphalt
12. Road Oil
13. Still Gas
14. Liquified Petroleum Gas
15. Petrochemical Synthetic Rubber
16. Petrochemical Plastics & Resins
17. All Other Petrochemical Products

Exported Articles on Which Drawback Will Be Claimed

(Name each article to be exported. When the identity of the product is not clearly evident by its name, state what the product is, *e.g.*, a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE AND PRODUCTION section below and each article listed here.)

Process of Manufacture or Production

Heated crude oil is charged to an atmospheric distillation tower where it is subjected to fractionation. The charge to the distillation tower consists of a single crude oil, or of commingled crudes which are fed to the tower simultaneously or after blending in a tank. During fractionation, components of different boiling ranges are separated.

By-Products

1. Relative Values

Fractionation results in 17 products. In order to insure proper distribution of drawback to each of these products, we agree to record the relative values at the time of separation. The entire period covered by an abstract is to be treated as the time of separation. The value per unit of each product shall be the average market value for the abstract period.

2. Producibility

We can vary the proportionate quantity of each product. We understand that drawback is payable on exported products only to the extent that these products could have been produced from the designated merchandise. Our records will show that all of the products exported for which drawback will be claimed under this specific manufacturing drawback ruling could have been produced concurrently on a practical operating basis from the designated merchandise.

We agree to establish the amount to be designated by reference to the Industry Standards of Potential Production published in T.D. 66–16.[3]

There are no valuable wastes as a result of the processing. Records will be kept in accordance with T.D. 84–49, as amended by T.D. 95–61.

Loss or Gain

Because we keep records on a volume basis rather than a weight basis, it is anticipated that the material balance will show a volume gain. For the same reason, it is possible that occasionally the material balance will show a volume loss. Fluctuations in type of crude used, together with the type of finished product desired make an estimate of an average volume gain meaningless. However, records will be kept to show the amount of loss or gain with respect to the production of export products.

Tradeoff

(If an applicant proposes to use tradeoff (19 CFR 191.11), the applicant should so state and the applicant should describe the contractual arrangement between the applicant and its partner for tradeoff. The person claiming drawback under the tradeoff provision has the burden of establishing compliance with the law and regulations. In this regard, the terms of a written contract are always easier to establish than those of an oral contract.)

Procedures and Records Maintained

We will maintain records to establish:

1. The identity and specifications of the merchandise we designate;

2. The quantity of merchandise of the same kind and quality as the designated

[3] A manufacturer who proposes to use standards other than those in T.D. 66–16 must state the proposed standards and provide sufficient information to the Customs Service in order for those proposed standards to be verified in accordance with T.D. 84–49.

merchandise we used to produce the exported articles.

3. That, within 3 years after receiving it at our refinery, we used the designated merchandise to produce articles. During the same 3-year period, we produced the exported articles.

4(a). We agree to use a 28–31 day period (monthly) abstract period for each refinery covered by this application for a specific manufacturing drawback ruling.

(b). We propose to use an abstract period _____ (not to exceed 1 year) for each refinery covered by this application for a specific manufacturing drawback ruling. We certify that if we were to file abstracts covering each manufacturing period of not less than 28 days and not more than 31 days (monthly) within the longer period, in no such monthly abstract would the quantity of designated merchandise exceed, for the same class of designated merchandise, the material introduced into the manufacturing process during that monthly period. (Select (a) or (b))

5. On each abstract of production we agree to show the value per barrel to five decimal places.

6. We agree to file claims in the format set forth in exhibits A through F which are attached to this application for a specific manufacturing drawback ruling. We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

Residual Rights

It is understood that the refiner can reserve as the basis for future payment the right to drawback only on the number of barrels of raw material computed by subtracting from Line E the larger of Lines A or B, of a given Exhibit E. It is further understood that this right to future payment can be claimed only against products concurrently producible with the products listed in Column 21, in the quantities shown in Column 22 of such Exhibit E. Such residual right can be transferred to another refinery of the same refiner only when Line B of Exhibit E is larger than Line A. Unless the number of residual barrels is specifically computed and rights thereto are expressly reserved on Exhibit E, such residual rights shall be deemed waived. The procedure we shall follow in preparing drawback entries claiming this residual right is illustrated in the attached sample Exhibit E–1. It is understood that claims involving residual rights shall be filed only at the port where the Exhibit E reserving such right was filed.

Inventory Procedures

We realize that inventory control is of major importance. In accordance with our normal accounting procedures, each refinery prepares a monthly stock and yield report, which accounts for inventories, production and disposals from time of receipt to time of disposition. This provides an audit trail of all products.

The above-noted records will provide the required audit trail from the initial source documents to our drawback claims and will support adherence with the requirements discussed under the heading PROCEDURES AND RECORDS MAINTAINED.

Basis of Claim for Drawback

The amount of raw material on which drawback may be based shall be computed by multiplying the quantity of each product exported by the drawback factor for that product. The amount of any one type and class of raw material which may be designated as the basis for drawback on the exported products produced at a given refinery and covered by a drawback entry shall not exceed the quantity of such raw material used at the refinery during the abstract period or periods from which the exported products were produced. The quantity of raw material to be designated as the basis for drawback on exported products must be at least as great as the quantity of raw material of the same type and class which would be required to produce the exported products in the quantities exported.

Agreements

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its refinery and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service, all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this application and letter of approval.

Declaration of Official

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of _____ 19_____ , makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By [4] _____

(Signature and Title)

_____

(Print Name)

(Exhibits A–F of the Petroleum Drawback Proposal follow)

EXHIBIT A.—ABSTRACT OF MANUFACTURING RECORDS, ABC OIL CO., INC.—BEAUMONT, TEXAS REFINERY PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

[Material Used (in Bbls. at 60°)]

	Totals	Crudes				Derivatives	
		Class I	Class II	Class III	Class IV	Crude tops class IV	Unfinished naphtha class IV
(1) Opening Inventory	4,007,438	.....	.....	.....	.....	.....	.....
(2) Material Introduced*	7,450,732	0	619,473	6,367,991	0	101,224	362,044
(3) Closing Inventory	3,671,005	.....	.....	.....	.....	.....	.....

[4] Section 191.6(a) of the Customs Regulations requires that applications for specific manufacturing drawback rulings be signed by the owner of a sole proprietorship, a partner in a partnership, or the president, vice president, secretary, treasurer or other individual legally authorized to bind the corporation. In addition, any employee of a business entity with a Customs power of attorney filed with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port Customs power(s) of attorney is/are filed.

EXHIBIT A.—ABSTRACT OF MANUFACTURING RECORDS, ABC OIL CO., INC.—BEAUMONT, TEXAS REFINERY PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995—Continued

[Material Used (in Bbls. at 60°)]

	Totals	Crudes				Derivatives	
		Class I	Class II	Class III	Class IV	Crude tops class IV	Unfinished naphtha class IV
(4) Total Consumption	7,787,165	.....	.....	.....	.....	.....	.....

Line (1)—Stock in process at beginning of manufacturing period.

Line (2)—Raw material introduced into manufacturing process during the period. The amount, by type and class, shown hereon, shall be the maximum that may be designated under T.D. 84–49.

Line (3)—Stock in process at end of period.

Line (4)—Total Consumed, namely, line 1 plus line 2 less line 3.

* All raw materials of a type and class not to be designated may be shown as a total.

EXHIBIT B.—ABSTRACT OF PRODUCTION ABC OIL CO., INC.—BEAUMONT, TEXAS REFINERY PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

Product (5)	Quantity in bbls. (6)	Value per bbl. (7)	Value of product (8)	Drawback factor per bbl. (9)
1. Motor Gasoline	2,699,934	$ 6.14333	$16,586,586	1.06678
2. Aviation Gasoline	108,269	5.83363	631,601	1.01300
3. Special Naphthas	372,676	8.06356	3,005,095	1.40023
4. Jet Fuel	249,386	3.95698	986,815	.68712
5. Kerosene and Range Oil	321,263	4.69857	1,509,477	.81590
6. Distillate Oils	2,567,975	4.45713	11,445,798	.77398
7. Residual Oils	308,002	2.51322	774,077	.43642
8. Lubricating Oils	292,492	26.72296	7,816,252	4.64041
9. Paraffin Wax	19,063	10.49642	200,093	1.82269
10. Petroleum Coke	122,353	1.24291	152,074	.21583
11. Asphalt	75,231	3.59105	270,158	.62358
12. Road Oil	0	0	0	0
13. Still Gas	245,784	1.00530	247,087	.17457
14. Liquified Refinery Gas	524,423	2.23013	1,169,531	.38726
15. Petrochemical Synthetic Rubber	0	0	0	0
16. Petrochemical Plastics & Resins	0	0	0	0
17. All Other Petrochemical Products	7,996	6.21343	49,683	1.07895
Loss (or Gain)	(127,682)	.....	.....	.....
Total	7,787,165	.....	44,844,327	.....

Col. (6) Products are shown in the net quantities realized in the refining process and do not include non-petroleum additives.

Col. (7) Weighted average realization for the period covered.

Col. (8) Column 6 multiplied by column 7.

Col. (9) Quantity of raw materials allowable per barrel of product. (Formula for obtaining drawback factors: $44,844,327 ÷ 7,787,165 bbls. = $5.75875 divided into product values per barrel equals drawback factor.)

EXHIBIT C.—INVENTORY CONTROL SHEET ABC OIL CO., INC.—BEAUMONT, TEXAS REFINERY PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

[All quantities exclude non-petroleum additives]

	Aviation gasoline		Residual oils		Lubricating oils		Petrochemicals all other	
	Drawback factor	Bbls.	Drawback factor	Bbls.	Drawback factor	Bbls.	Drawback factor	Bbls.
(10) Opening Inventory	11,218	1.00126	21,221	.45962	9,242	4.52178	891	1.00244
(11) Production	108,269	1.01300	308,002	.43642	292,492	4.64041	7,996	1.07895
(11–A) Receipts.								
(12) Exports	11,218	1.00126	21,221	.45962	8,774	4.52178	195	1.00244
	176	1.01300	104,397	.43642				
(13) Drawback Deliveries							696	1.00244
							319	1.07895
(14) Domestic Shipments	97,863	1.01300	180,957	.43642	468	4.52178	6,867	1.07895
					278,286	4.64041		
(15) Closing Inventory	10,230	1.01300	22,648	.43642	14,206	4.64041	810	1.07895

Line (10)—Opening inventory from previous period's closing inventory.
Line (11)—From production period under consideration.
Line (11–A)—Product received from other sources.
Line (12)—From earliest on hand (inventory or production). Totals from drawback entry or entries recapitulated (see column 18).
Line (13)—Deliveries for export or for designation against further manufacture—earliest on hand after exports are deducted.
Line (14)—From earliest on hand after lines (12) and (13) are deducted.
Line (15)—Balance on hand.

EXHIBIT D.—RECAPITULATION OF DRAWBACK ENTRY ABC OIL CO., INC.—BEAUMONT, TEXAS REFINERY PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

Product (16)	Quantity in bbls. exported (17)	Quantity in bbls. in the terms of the Abstract (18)	Drawback factor per bbl. (19)	Crude allowed for drawback in bbls. (20)	Crude to be allowed for drawback deliveries in bbls. (20a)
Aviation Gasoline	11,410	11,218	1.00126	11,232	
		176	1.01300	178	
Residual Oils	125,618	21,221	.45962	9,754	
		104,397	.43642	45,561	
Lubricating Oils	8,875	8,774	4.52178	39,674	
Petrochemicals—		696	1.00244		698
Other		319	1.07895		344
	195	195	1.00244	195	
Total	146,098	146,996		106,594	1,042

Duty paid on raw material selected for designation—$.1050 per bbl. (class III crude):	
Amount of drawback claim—gross—106,594 × .1050 =	$11,192
Less 1%	−112
Amount of drawback claim—net	11,080

Col. (16) Lists only products exported.
Col. (17) Quantities in condition as shown on the notices of exportation and notices of lading.
Col. (18) Quantities in condition as shown on the abstract (i.e., less additives if any). These quantities will appear in line 12.
Col. (19) The drawback factor(s) shown on line 12.
Col. (20) Raw materials (crude or derivatives) allowable, determined by multiplying column 18 by column 19.
Col. (20a) Raw materials (crude or derivatives) allowable, for drawback deliveries determined by multiplying column 18 by column 19.

EXHIBIT E.—PRODUCIBILITY TEST FOR PRODUCTS EXPORTED (INCLUDING DRAWBACK DELIVERIES) ABC OIL CO., INC.—BEAUMONT, TEXAS REFINERY PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

[Type and Class of Raw Material Designated—Crude, Class III]

Product (21)	Quantity in barrels (22)	Industry standard (percent) (23)	Quantity of raw material of type and class designated needed to produce product (24)
Aviation Gasoline	11,394	40	28,485
Residual Oils	125,618	83	151,347
Lubricating Oils	8,774	50	17,548
Petrochemicals, other	(195)	.....	.....
Petrochemicals, other (Drawback Deliveries)	(1,015)	.....	.....
Petrochemicals—Total	1,210	29	4,172
Total	146,996	.....	.....

A—Crude allowed (column 20: 106,594 plus column 20a: 1,042; 107,636 bbls.
B—Total quantity exported (including drawback deliveries) (column 22): 146,996; 107,636 bbls.
C—Largest quantity of raw material needed to produce an individual exported product (see column 24): 151,347; 107,636 bbls.
D—The excess of raw material over the largest of lines A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within the domestic industry, the exported articles (including drawback deliveries) in the quantities exported (or delivered): None.
E—Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable): 151,347, None.
I hereby certify that all the above drawback deliveries and products exported by the Beaumont Refinery of ABC Oil Co., Inc. during the period from January 1, 1995 to January 31, 1995 could have been produced concurrently on a practical operating basis from 151,347 barrels of imported Class III crude against which drawback is claimed.

Signature

EXHIBIT E–1.—PRODUCIBILITY TEST FOR PRODUCTS ON WHICH RESIDUAL RIGHT TO DRAWBACK IS NOW CLAIMED AND PRODUCTS COVERED BY ABSTRACTS ON WHICH RAW MATERIALS COVERED WERE PREVIOUSLY DESIGNATED ABC OIL CO., INC.—TULSA, OKLAHOMA REFINERY PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

[Type and Class of Raw Material Designated—Crude, Class III]

Product	Quantity in barrels	Industry standard (percent)	Quantity of raw material of type and class designated needed to produce product		Covered by: 1. period 2. refinery	Drawback factor per barrel	Crude allowed for drawback
			Separate	Combined			
(21)	(22)	(23)	(24)			(19)	(20)
Aviation Gasoline	11,394	40	28,485	29,125		1.00126	11, 232
						1.01300	178
Residual Oils	125,618	83	151,347	151,347	1. Jan. 1995	.45962	9,754
						.43642	45,561
Lubricating Oils	8,774	50	17,548	17,932	2. Beaumont	4.52178	39,674
Petrochemicals, Other	(195)					1.00244	195
Petrochemicals, Other (Drawback Deliveries)	(1,015)						
	1,210	29	4,172	4,503			
[Residual Rights]:							
Aviation Gasoline	256	40	640	29,125		1.01265259	259
Lubricating Oils	192	50	384	17,932	1. Jan. 1995	4.59006881	881
Petrochemicals, Other	96	29	331	4,503	2. Tulsa	1.12412108	108
Distillate Oils	3807	89	4,278	4,278		.76624	2,917
Subtotal							4,165
Total	151,347						110,759

A—Crude allowed (column 20: 110,759; plus crude allowed for drawback deliveries: 1,042); 111,801 bbls.
B—Total quantity exported (including drawback deliveries) (column 22): 151,347 bbls.
C—Largest quantity of raw material needed to produce an individual exported product (see col. 24): 151,347.
D—The excess of raw material over the largest of line A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within the domestic industry, the exported articles (including drawback deliveries) in the quantities exported (or delivered): None.
E—Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable): 151,347.

Drawback Computation

4,165*bbls. @10½ = $437.33
Less 1% 4.37
Amount of Drawback Claim—Net $432.96
See subtotal, col. 20, for Residual Rights above.

Certificate

I hereby certify that all the above drawback deliveries and products exported by the Tulsa, Oklahoma refinery of ABC Oil Co., Inc., during the period from January 1, 1995 to January 31, 1995, could have been produced concurrently on a practical operating basis together with all drawback deliveries and products exported covered by Exhibit E of the abstract for the period January 1, 1995 to January 31, 1995, filed by the Beaumont, Texas refinery of the company from 151,347 barrels of imported Class III crude against which drawback is claimed.

Signature

The attached sample, EXHIBIT E (COMBINATION), illustrates the procedures to be followed when two classes or types of raw material are designated on a given abstract. For purposes of illustration it is assumed that the refiner has only 100,000 barrels of Class III crude to designate, but adequate supplies of Class II to designate.

In addition, please note that the computation of drawback on EXHIBIT D will be as follows:

Duty paid on raw material selected for designation:
$.1050 per barrel (Class III crude)
$.0525 per barrel (Class II crude)

Amount of drawback claim—gross: 81,638 × .1050=	$8,571.99
24,956 × .0525=	1,310.19
	9,882.18
(Rounded Off)	9,882
Less 1%	−99
Amount of drawback claim—net:	9,783

EXHIBIT E (COMBINATION).—PRODUCIBILITY TEST FOR PRODUCTS EXPORTED (INCLUDING DRAWBACK DELIVERIES) ABC OIL CO., INC.—BEAUMONT, TEXAS REFINERY PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

[Type and Class of Raw Material Designated—Crude, Class III]

Product	Quantity in barrels	Industry standard (percent)	Quantity of raw material of type and class designated needed to produce product	Drawback factor per barrel	Crude allowed for drawback
(21)	(22)	(23)	(24)	(19)	(20)
Aviation Gasoline	11,218	40	28,485	1.00126	11,232
	176	.....	.....	1.01300	178
Residual Oils	21,221	83	25,567	.45962	9,754
	47,214	83	56,884	.43642	20,605
Lubricating Oils	8,774	50	17,548	4.52178	39,674
Petrochemicals, Other	195	.....	.....	1.00244	195
Petrochemicals, Other	696	.....	.....	1.00244	.....
(Drawback Deliveries)	319	.....	.....	1.07895	.....
	1,210	29	4,172	.....	.....
Total	89,813	.....	.....	.....	81,638

A—Crude allowed (column 20: 81,638; plus crude allowed for drawback deliveries: 1,042): 82,680 bbls.

B—Total quantity exported (including drawback deliveries) (column 22): 89,813 bbls.

C—Largest quantity of raw material needed to produce an individual exported product (see column 24): 82,451 bbls.

D—The excess of raw material over the largest of lines A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within the domestic industry, the exported articles (including drawback deliveries) in the quantities exported (or delivered): 10,187.

E—Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable): 100,000 bbls.

I hereby certify that all the above drawback deliveries and products exported by the Beaumont refinery of ABC Oil Co., Inc. during the period from January 1, 1995 to January 31, 1995, could have been produced concurrently on a practical operating basis from 100,000 barrel of imported Class III crude against which drawback is claimed.

Signature

EXHIBIT F.—DESIGNATIONS FOR DRAWBACK CLAIM ABC OIL CO., INC.—BEAUMONT, TEXAS REFINERY PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

Certificate of delivery number	Entry No.	Date of importation	Kind of materials	Quantity of materials in barrels	Date received	Date consumed	Rate of duty
	26192	04/13/93	Class III Crude	75,125	04/13/93	May 1993	$.1050
	23990	08/04/94	Class III Crude	37,240	08/04/94	Oct. 1994	.1050
3155	22517	10/05/94	Class III Crude	38,982	10/05/94	Nov. 1994	.1050

Format for 1313(d) Application Company Letterhead (Optional)

U.S. Customs Service,
Entry and Carrier Rulings Branch, 1301 Constitution Avenue, N.W., Washington, D.C. 20229

Dear Sir: We, (Applicant's Name), a (State, *e.g.*, Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(d), and part 191 of the Customs Regulations. We request that the Customs Service authorize drawback on the basis of this application.

Name and Address and IRS Number of Applicant

(Section 191.8(a) of the Customs Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under §191.7 of the Customs Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see § 191.8(a)).)

Location of Factory

(Give the address of the factory(s) where the process of manufacture or production will take place. If the factory is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

Corporate Officers

(List officers and other persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the Customs Regulations permits only the president, vice-president, secretary, treasurer, or any other individual legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively.)

Customs Office Where Drawback Claims Will Be Filed

(The 8 offices where drawback claims can be filed are located at:

Boston, MA;
New York, NY;
Miami, FL;
New Orleans, LA;
Houston, TX;
Long Beach, CA;
Chicago, IL;
San Francisco, CA)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, two additional copies of the application must be furnished for each additional office indicated.)

General Statement

(The exact material placed under this heading in individual cases will vary, but it

should include such information as the type of business in which the manufacturer is engaged, whether the manufacturer is manufacturing for his own account or is performing the operation on a toll basis (including commission or conversion basis) for the account of others, whether the manufacturer is a direct exporter of his products or sells or delivers them to others for export, and whether drawback will be claimed by the manufacturer or by others.)

(Regarding drawback operations conducted under section 1313(d), the data may describe the flavoring extracts, medicinal, or toilet preparations (including perfumery) manufactured with the use of domestic tax-paid alcohol; and where such alcohol is obtained or purchased.)

(Since the permission to grant use of the accelerated payment procedure rests with the Drawback office with which claims will be filed, do not include any reference to that procedure in this application.)

Tax-Paid Material Used Under Section 1313(d)

(Describe or list the tax-paid material)

Exported Articles on Which Drawback Will Be Claimed

(Name each article to be exported)

Process of Manufacture or Production

(Drawback under section 1313(d) is not allowable except where a manufacture or production exists. A manufacture or production exists when a ''new and different article emerges having a distinctive name, character, or use'', or when an article is made fit for a particular use (see 19 CFR 191.2(p); see also (*Anheuser-Busch Brewing Assoc.* v. *United States,* 207 U.S. 556 (1907); *United States* v. *International Paint Co.,* 35 CCPA 87 (1948), *et al.*). In order to obtain drawback under section 1313(d), it is essential for the applicant to show use in manufacture or production by giving a thorough description of the manufacturing process. Describe how the tax-paid material is processed into the export article.)

Waste

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.)

(If waste occurs, state: (1) Whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of domestic tax-paid alcohol used in manufacturing. If the claim is based upon the quantity of domestic tax-paid alcohol appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation, does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what ''Basis'' you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of domestic tax-paid alcohol used in producing the exported articles (less valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. See ''Basis of Claim for Drawback'' section below.)

Stock in Process

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process necessarily reduces the quantity of domestic tax-paid alcohol used in manufacture in a current lot or period, in that the amount manufactured in any given batch does not include the recycled merchandise going into the next batch. Therefore, the amount of domestic tax-paid alcohol used in manufacture of exported articles is decreased.)

(If stock in process occurs, the application must include a statement that the domestic tax-paid alcohol is considered to be used in manufacture at the time it was originally processed so that the stock in process will not be included twice in the computation of the domestic tax-paid alcohol used to manufacture the finished articles on which drawback is claimed.)

Loss or Gain (Separate and Distinct From WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured ''by weight'' unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

Procedures and Records Maintained

We will maintain records to establish:

1. That the exported articles on which drawback is claimed were produced with the use of a particular lot (or lots) of domestic tax-paid alcohol, and

2. The quantity of domestic tax-paid alcohol[2] we used in producing the exported articles.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the tax has been paid on the domestic alcohol.

Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

Inventory Procedures

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(d) and part 191 of the Customs Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To insure compliance the following areas should be included in your discussion:)

RECEIPT AND RAW STOCK STORAGE RECORDS
MANUFACTURING RECORDS
FINISHED STOCK STORAGE RECORDS

Basis of Claim for Drawback

(There are three different bases that may be used to claim drawback: (1) Used in; (2) Appearing In; and (3) Used less Valuable Waste.)

(The ''Used In'' basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the ''Used In'' basis. Drawback is payable in the amount of 100% of the tax paid on the quantity of domestic alcohol used in the manufacture of flavoring extracts and medicinal or toilet preparation (including perfumery).) (For example, if 100 gallons of alcohol, valued at $1.00 per gallon, were used in manufacture resulting in 10 gallons of irrecoverable or valueless waste, the 10 gallons of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 100% of the tax paid on the 100 gallons of domestic alcohol used to produce the exported articles.)

The ''Appearing In'' basis may be used regardless of whether there is waste. If the ''Appearing In'' basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the ''Appearing In'' basis. Drawback is payable on 100% of the tax paid on the quantity of domestic alcohol which appears in the exported articles.

(Based on the previous example, drawback would be payable on the 90 gallons of domestic alcohol which actually went into the exported product (appearing in) rather than the 100 gallons used in as set forth previously.)

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles we produce.''

(The ''Used Less Valuable Waste'' basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of domestic tax-paid alcohol. The value of the waste reduces the amount of drawback when claims are based on the ''Used Less Valuable Waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the quantity of tax-paid alcohol used to manufacture the exported articles, reduced by the quantity of such alcohol which the value of the waste will replace.)

(Based on the previous examples, if the 10 gallons of waste had a value of $.50 per gallon, then the 10 gallons of waste, having a total value of $5.00, would be equivalent in value to 5 gallons of the tax-paid alcohol. Thus the value of the waste would replace 5 gallons of the alcohol used, and drawback is payable on 100% of the tax paid on 95 gallons of alcohol rather than on the 100 gallons ''Used In'' or the 90 gallons ''Appearing In'' as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A ''schedule'' shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production;)

(An ''abstract'' is the summary of the records (which may be set forth on Customs Form 331) which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a duration of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back on how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the ''schedule'' choice must base his claims on the ''abstract'' method. State which Basis and Method you will use. An example of Used In by schedule follows:)

We shall claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 191.8(f) of the Customs Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Except as noted above in the explanation of the ''Appearing In'' basis, neither the ''Appearing In'' basis nor the ''schedule'' method for claiming drawback may be used where the relative value procedure is required.)

Agreements

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;
4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;
5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service all other changes affecting information contained in this application;
6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and
7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(d), part 191 of the Customs Regulations and this application and letter of approval.

Declaration of Official

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of _____ 19_____ , makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By [3]_____ _____

(Signature and Title)

_____

(Print Name)

Format for 1313(g) Application Company Letterhead (Optional)

U.S. Customs Service,
Entry and Carrier Rulings Branch, 1301 Constitution Avenue, N.W., Washington, D.C. 20229

Dear Sir: We, (Applicant's Name), a (State, *e.g.*, Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(g), and part 191 of the Customs Regulations. We request that the Customs Service authorize drawback on the basis of this application.

Name and Address and IRS Number of Applicant

(Section 191.8(a) of the Customs Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under § 191.7 of the Customs Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see § 191.8(a)).)

Location of Factory or Shipyard

(Give the address of the factory(s) or shipyard(s) at which the construction and equipment will take place. If the factory or shipyard is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

Corporate Officers

(List officers and other persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the Customs Regulations permits only the president, vice-president, secretary, treasurer, or any other individual legally authorized to bind corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively.)

Customs Office Where Drawback Claims Will be Filed

(The 8 offices where drawback claims can be filed are located at:

Boston, MA;
New York, NY;
Miami, FL;
New Orleans, LA;
Houston, TX;
Long Beach, CA;
Chicago, IL;
San Francisco, CA)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback

[3] Section 191.6(a) of the Customs Regulations requires that applications for specific manufacturing drawback rulings be signed by the owner of a sole proprietorship, a partner in a partnership, or the president, vice president, secretary, treasurer or other individual legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney filed with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port Customs power(s) of attorney is/are filed.

office, two additional copies of the application must be furnished for each additional office indicated.)

General Statement

(The following questions must be answered:

1. Who will be the importer of the merchandise?

(If the applicant will not always be the importer, does the applicant understand its obligations to obtain the appropriate certificates of delivery (19 CFR 191.10), certificates of manufacture and delivery (19 CFR 191.24), or both?)

2. Who is the manufacturer?

(Is the applicant constructing and equipping for his own account or merely performing the operation on a toll basis for others?)

3. Will the applicant be the drawback claimant?

(State how the vessel will qualify for drawback under 19 U.S.C. 1313(g). Who is the foreign person or government for whom the vessel is being made or equipped?)

(There shall be included under this heading the following statement:

We are particularly aware of the terms of § 191.76(a)(1) of and subpart M of part 191 of the Customs Regulations, and shall comply with these sections where appropriate.)

(Since the permission to grant use of the accelerated payment procedure rests with the Drawback office with which claims will be filed, do not include any reference to that procedure in this application.)

Imported Merchandise or Drawback Products Used

(Describe the imported merchandise or drawback products)

Articles Constructed and Equipped for Export

(Name the vessel or vessels to be made with imported merchandise or drawback products)

Process of Construction and Equipment

(What is required here is a clear, concise description of the process of construction and equipment involved. The description should also trace the flow of materials through the manufacturing process for the purpose of establishing physical identification of the imported or drawback merchandise and of the articles resulting from the processing.)

Waste

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.) (If waste occurs, state: (1) Whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what ''Basis'' you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of imported or substituted merchandise used in producing the exported articles (less valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. See ''Basis of Claim for Drawback'' section below.)

Loss or Gain (Separate and Distinct From WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured ''by weight'' unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

Procedures and Records Maintained

We will maintain records to establish:

1. That an exported article on which drawback is claimed was constructed and equipped with the use of a particular lot (or lots) of imported material; and

2. The quantity of imported merchandise [2] we used in producing the exported article.

([2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles we produce.'')

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise.

Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

Inventory Procedures

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313 and part 191 of the Customs Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To insure compliance the following should be included in your discussion:)

RECEIPT AND RAW STOCK STORAGE RECORDS
CONSTRUCTION AND EQUIPMENT RECORDS
FINISHED STOCK STORAGE RECORDS
SHIPPING RECORDS

Basis of Claim for Drawback

(There are three different bases that may be used to claim drawback: (1) Used in; (2) Appearing In; and (3) Used less Valuable Waste.)

(The ''Used In'' basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the ''Used In'' basis. Drawback is payable in the amount of 99 percent of the duty paid on the quantity of imported material used to construct and equip the exported article.)

(For example, if 100 pounds of material, valued at $1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duty paid on the 100 pounds of imported material used in constructing and equipping the exported articles.)

(The ''Appearing In'' basis may be used regardless of whether there is waste. If the ''Appearing In'' basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the ''Appearing In'' basis. Drawback is payable on 99 percent of the duty paid on the quantity of imported material which appears in the exported articles. ''Appearing In'' may not be used if by-products are involved unless the applicant agrees to value all products identically.)

(Based on the previous example, drawback would be payable on the 90 pounds of imported material which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)

(The ''Used Less Valuable Waste'' basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the ''Used Less Valuable Waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article may be based on the duty paid on the quantity of imported material used to construct and equip the exported product, reduced by the quantity of such material which the value of the waste will replace. Thus in this case, drawback is claimed on the quantity of eligible material actually used to produce the exported

product, less the amount of such material which the value of the waste would replace. Note section 191.25(c) of the Customs Regulations.)

(Based on the previous examples, if the 10 pounds of waste had a value of $.50 per pound, then the 10 pounds of waste, having a total value of $5.00, would be equivalent in value to 5 pounds of the imported material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duty paid on the 95 pounds of imported material rather than on the 100 pounds ''Used In'' or the 90 pounds ''Appearing In'' as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A ''schedule'' shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production;)

(An ''abstract'' is the summary of the records (which may be set forth on Customs Form 331) which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a duration of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back on how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the ''schedule'' choice must base his claims on the ''abstract'' method. State which Basis and Method you will use. An example of Used In by Schedule would read:)

We shall claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 191.8(f) of the Customs Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Except as noted above in the explanation of the ''Appearing In'' basis, neither the ''Appearing In'' basis nor the ''schedule'' method for claiming drawback may be used where the relative value procedure is required.)

Agreements

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(g), part 191 of the Customs Regulations and this application and letter of approval.

Declaration of Official

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of _____19 _____, makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By [3] _____

(Signature and Title)

_____

(Print Name)

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: December 10, 1996.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 97–1048 Filed 1–17–97; 8:45 am]

BILLING CODE 4820–02–P

[3] Section 191.6(a) of the Customs Regulations requires that applications for specific manufacturing drawback rulings be signed by the owner of a sole proprietorship, a partner in a partnership, or the president, vice president, secretary, treasurer or other individual legally authorized to bind the corporation. In addition, any employee of a business entity with a Customs power of attorney with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port Customs power(s) of attorney is/are filed.

federal register

Tuesday
January 21, 1997

Part III

Securities and Exchange Commission

17 CFR Parts 228, 229, 230, and 239
Plain English Disclosure; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230 and 239

[Release Nos. 33–7380; 34–38164; IC–22464; File No. S7–3–97; International Series No. 1044]

RIN 3235–AG88

Plain English Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: One of the fundamental protections provided to investors by our federal securities laws is full and fair disclosure, but investors must be able to understand these disclosures to benefit from them. Prospectuses often use a complex, legalistic language that is foreign to all but financial or legal experts. To address these problems, our rule proposals would: Require companies to use plain English principles in writing the front and back cover pages, summary and risk factor sections of prospectuses; revise current requirements for highly technical information in the front of prospectuses; and revise the rule on the preparation of prospectuses to provide companies with more specific guidance on the clarity required in the entire document.

DATES: Public comments are due March 24, 1997.

ADDRESSES: Please send three copies of the comment letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–6009. Comments can be sent electronically to the following e-mail address: rule-comments@sec.gov. The comment letter should refer to File No. S7–3–97; if e-mail is used please include the file number in the subject line. Anyone can inspect and copy the comment letters in the SEC's Public Reference Room, 450 Fifth Street, N.W. Washington, D.C. 20549. We will post comment letters submitted electronically on our Internet site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Ann D. Wallace, Senior Counsel to the Director, Division of Corporation Finance, at (202) 942–2980, or Kathleen K. Clarke, Special Counsel, Division of Investment Management, at (202) 942–0724, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: To implement the first step in our plain English initiatives, we are publishing for comment amendments to Rules 421 [1] and 461 [2] of Regulation C [3] and Items 101,[4] 301,[5] 501,[6] 502,[7] 503,[8] and 508 [9] of Regulation S–K.[10] We also are proposing minor amendments to Forms S–2,[11] S–3,[12] S–4,[13] S–20,[14] F–3,[15] and Form F–4,[16] as part of this plain English initiative.

The Office of Investor Education and Assistance is issuing simultaneously a draft of the text of *A Plain English Handbook: How to Create Clear SEC Disclosure Documents.* The handbook covers proven techniques and tips on how to create plain English documents. You may request a copy of the draft handbook by calling 1–800–SEC–0330; or you may access the document on our Internet site (http://www.sec.gov).

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I. Executive Summary

Full and fair disclosure is one of the cornerstones of investor protection under the federal securities laws. Documents that communicate clearly and effectively play a crucial role in achieving the basic protections provided by disclosure. For many years, it has been recognized that the language and style of disclosure documents could be improved. Most recently, the Task Force on Disclosure Simplification [17] criticized prospectuses for their dense writing, legal boilerplate, and repetitive disclosures. These problems are magnified by the complex transactions and novel securities that dominate today's securities market.

As part of our ongoing commitment to give investors more understandable disclosure documents, we are proposing a rule for public comment that requires the use of plain English writing principles when drafting the front of prospectuses—the cover page, summary, and risk factor sections of these documents. The proposed rule would require public companies and mutual funds to write this information in everyday language that investors can understand on the first reading.

The efforts to date of the public companies participating in our plain English pilot programs support our belief that disclosure documents can be made more readable without sacrificing substantive business and financial information. Our proposed plain English rule, Rule 421(d), would specify six minimum plain English writing principles that public companies should use in drafting the front of prospectuses: Active voice, short sentences, everyday

[1] 17 CFR 230.421.
[2] 17 CFR 230.461.
[3] 17 CFR 230.400 *et seq.*
[4] 17 CFR 229.101.
[5] 17 CFR 229.301.
[6] 17 CFR 229.501.
[7] 17 CFR 229.502.
[8] 17 CFR 229.503.
[9] 17 CFR 229.508.
[10] 17 CFR 229.10 *et seq.* We are proposing similar revisions to Regulation S–B governing disclosure by small business issuers. 17 CFR 228.10 *et seq.*
[11] 17 CFR 239.12.
[12] 17 CFR 239.13.
[13] 17 CFR 239.25.
[14] 17 CFR 239.20.
[15] 17 CFR 239.33.
[16] 17 CFR 239.34.
[17] S.E.C. Report of the Task Force on Disclosure Simplification (1996), Section II, Presentation of Information. The staff task force, with Philip K. Howard providing valuable advice, recommended ways to streamline, simplify and modernize our rules and forms on capital formation without compromising investor protection.

language, tabular presentation of complex material, no legal jargon, and no multiple negatives. This proposal would not reduce or eliminate any of the substantive disclosures public companies must give investors. The prospectus would continue to contain detailed business and financial information, which would be available to investors and others in the marketplace who use this information.

Recognizing that many of our rules have contributed to the legalistic language and tone of these documents, we also are proposing to eliminate highly formatted and overly technical information required on the cover page. The proposed rules move to the body of the document technical information that may be important to the offering process, but is not critical for the cover page. In addition, we are proposing other revisions to Rule 421, the rule on the preparation of prospectuses, to give companies guidance on how to improve the readability of the rest of the prospectus.

Because our plain English proposals will change customary drafting practices, we are continuing our plain English pilot programs to help companies draft clearer disclosure documents. The documents filed by pilot participants will provide other companies with examples of plain English documents. Also, the Office of Investor Education and Assistance today is issuing a draft of the text of *A Plain English Handbook: How To Create Clear SEC Disclosure Documents* to explain the plain English principles of our proposed rule and other techniques for producing clearer documents. The staff welcomes your views on the draft handbook and how it can be improved. Once the staff receives your comments, the handbook will be finalized and available to the public at no cost.

We have used a number of the plain English writing techniques in this release. For example, we have kept sentences and paragraphs short and avoided defined terms, cross-references, and other legalistic or formal writing conventions. We also have used the personal pronoun ''we'' when referring to the SEC and ''you'' when referring to public companies and mutual funds that would need to comply with our plain English proposals.

We encourage everyone involved in the public offering process—public companies, lawyers, accountants, underwriters and investment bankers—to give us their comments on the proposed rules and other ways we can improve the language in disclosure documents. Most importantly, we would like investors, financial analysts, brokers, and other users of these disclosure documents to give us their views on our plain English proposals and ways to improve the readability of these documents.

II. Background

A. Prospectus Disclosure Problems

Giving investors full and fair disclosure is one of the cornerstones of investor protection under the federal securities laws. The legislative history of the Securities Act of 1933[18] states that the purpose of disclosure ''is to secure for potential buyers the means of understanding the intricacies of the transaction into which they are invited.'' [19] The prospectus—the traditional offering document—must describe the company's business, management, and financial condition to enable investors to make informed investment decisions.

Investors often complain that prospectuses use arcane, complex, and incomprehensible language.[20] As a result, many investors may skim, rather than read, prospectuses.[21] A recent study on the investment concerns of senior citizens concluded:

> The notion that there is ''full disclosure'' to Americans about their investments is, by and large, a myth * * * [m]ost written disclosures are too long and too complicated to be of any practical use to someone other than a securities lawyer or expert investor.[22]

The Task Force's report criticized prospectuses for their dense writing, legal boilerplate, and repetitive descriptions of the company's business. Noting that trivial points sometimes receive as much attention as material ones, the report found that dense disclosure can often bury the points that are most significant to making an informed investment decision. The report expressed concern that prospectuses are filled with legal jargon and over-inclusive disclosures.

These problems are not new. More than forty-five years ago, Professor Louis Loss identified prospectus readability as one of the basic problems with the registration process.[23] In 1969, the Wheat Report found that prospectuses included unnecessary information, and were often so long or complex that the average investor could not readily understand them.[24]

Over the years, the SEC has attempted to address these problems. The SEC's concern about prospectuses for employee benefit plans prompted a 1966 release encouraging issuers to avoid complex legal and other technical language in the plan prospectus. Most plan prospectuses either repeated the full text of the legal document adopting the plan or summarized the legal document using the same legal language. In the release, the SEC recognized that the chief goal of registration is to provide investors with disclosures that they can readily understand, concluding that ''* * * failure to use language that is clear and understandable by the investor may operate to defeat the purpose of the prospectus.'' [25]

When the SEC adopted the integrated disclosure system in 1982, it encouraged issuers to deliver their more readable glossy annual reports to shareholders, rather than the legalistic annual report on Form 10–K. The SEC believed that the more readable annual reports would ''promote the goal of concise, effective communication in the Securities Act context.''[26]

Also in 1982, the SEC codified, in Rule 421 of Regulation C, the requirement for clear, concise and understandable presentation of information in prospectuses.[27] This rule calls for descriptive captions or headings, and reasonably short paragraphs or sections. The rule also permits summaries of the information required in the prospectus, except for financial or tabular information.

Several of the existing disclosure items already require companies to use plain English tools—a table or chart—to improve clarity and increase the likelihood that investors can grasp the information. For example, disclosure of managements' compensation must be in

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[18] 15 U.S.C. 77a *et seq.*

[19] H.R. Rep. No. 85, 73rd Cong., 1st Sess. 8 (1933).

[20] See, e.g., Letter from American Association of Retired Persons, the Consumer Federation of America, and the National Council of Individual Investors on the Private Securities Litigation Reform Act of 1995 regarding the Act's provision requiring a study on protections for senior citizens and qualified retirement plans (May 1, 1996).

[21] See, Richard C. Wydick, *Plain English for Lawyers,* 3 (1994).

[22] See, AARP/CFA/NASAA Background Report: The Five Biggest Problems ''Legitimate'' Investing Poses For Older Investors (March 1995).

[23] *Disclosure to Investors: A Reappraisal of Administrative Policies under the '33 and '34 Acts* 77–78 (1969) (Wheat Report) (citing Loss, *Securities Regulation* 148—66 (1st. ed. 1951).

[24] Wheat Report at 77. *See also Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission. Appendix to the Report of the Advisory Committee on Corporate Disclosure,* 6, 21–22 (November 3, 1977).

[25] Securities Act Release No. 4844 (August 5, 1966) [31 FR 10667].

[26] Securities Act Release No. 6383 (March 3, 1982) [45 FR 11380].

[27] In 1982, the SEC rescinded the guidelines for the preparation of prospectuses in Securities Act Release No. 4936 (December 9, 1968) [33 FR 18617] except for the guide requiring clear, concise prospectus information, which was moved to Rule 421 of Regulation C.

tables.[28] Proxy statements must use a table showing the identity, background, and security holdings of nominees for the board of directors,[29] and the security ownership of management and significant owners of an issuer's equity securities.[30] Another provision encourages the use of tables, schedules, charts, and graphic illustrations to make financial information more understandable.[31]

In 1991, the U.S. Congress and others expressed serious concern about the complexity and length of limited partnership prospectuses, and particularly the documents used to roll up limited partnerships. In congressional hearings on the need for legislation to reform the roll-up process, former SEC chairman Richard Breeden addressed the problem of unreadable disclosure: ''I have taken a look at some of the documents filed with us in these roll-up transactions and I would like to meet the person who can understand all of the disclosures in some of these documents.'' [32]

To address these concerns, the SEC issued an interpretive release to advise issuers on the requirements for clear, concise, and understandable disclosure in limited partnership offerings.[33] Even with the interpretive release, our review staff in the Division of Corporation Finance continues to see documents that do not clearly explain the terms of these complex offerings.

Beginning in 1994, we renewed our efforts to promote more readable disclosure documents, which led us to explore alternatives. With the support and participation of various industry groups and public companies, we instituted pilot projects to encourage the use of plain English and to gain practical experience on how to fashion rule changes that would improve the disclosure to investors. We recognize that everyone involved in the process—issuers, accountants, lawyers, underwriters, investment bankers, and the SEC—has a role in creating more readable documents.

B. SEC Plain English Initiatives

We are committed to providing investors with better and more understandable disclosure documents. Our ultimate goal is to have all disclosure documents written in plain English, and we have undertaken several initiatives to improve the readability of these documents. With the cooperation of the Investment Company Institute and several large mutual fund groups, we recently organized a pilot program to permit mutual funds to use ''profiles'' with their prospectuses. [34] The ''profile'' provides a standard format summary of eleven specific items of information so that investors can compare funds more easily. We are developing a proposed rule for public comment that would build on this experience.

In the spring of 1996, our Division of Corporation Finance began a plain English pilot program that encourages companies to draft their prospectuses and other disclosure documents more clearly. The Division, together with our Office of Investor Education and Assistance, offers advice on how to organize these documents, as well as examples of how to rewrite the legalese in plain English. To companies that undertake plain English disclosure, the Division offers expedited review of their documents. [35] The reception to our plain English pilot program has been positive, and the pilot participants' documents are serving as examples of clearer disclosure. [36]

C. Arguments for Plain English

The plain English movement started in the early 1970s with the simplification of insurance contracts, and gained momentum when more than half the states enacted statutes requiring plain English insurance contracts. A number of state bar associations, starting with Michigan, established plain English committees. Federal agencies, such as the Federal Communications Commission, the Small Business Administration, and the Department of the Interior, redrafted some or all of their regulations, as well as legal documents such as subpoenas, in plain English. The movement is also active in Canada, England, and Australia.

Plain English has been implemented successfully in many areas. For example, after Citibank started using a plain English promissory note, the number of collection lawsuits dropped considerably because borrowers had a better understanding of their obligations.[37] One law review article on using plain English in contracts under the Uniform Commercial Code, concluded that ''. . . [p]reparing documents in plain English will decrease the number of good faith disputes over the meaning of the words of the agreement.'' [38] Past experience with plain English suggests that its adoption in the securities area will increase investors' understanding of the business and financial condition of companies and lessen misunderstandings that lead to costly legal disputes. Clearer disclosure also should assist market professionals in making recommendations to clients and assist the courts in determining whether a company has made proper disclosure.

D. Criticisms of Plain English

When initially considering the change from a formal, legalistic writing style to plain English, the following reservations often are raised: (1) Legal language is more precise and is necessary to make complex material clear and accurate; and (2) federal securities law liability provisions particularly the strict liability provisions of section 11 of the Securities Act [39] requires legal language. Neither case law nor the experience of

[28] Item 402(b) of Regulation S–K, 17 CFR 229.402.

[29] Item 7, Schedule 14A of Regulation 14A and Item 1, Schedule 14C of Regulation 14C Securities Exchange Act, 17 CFR 240.14a–101, 240.14c–101.

[30] Item 403 of Regulation S–K, 17 CFR 229.403.

[31] Note to Item 11 of Rule 14a–3 of Regulation 14A, Securities Exchange Act, 17 CFR 240.14a–3.

[32] H.R. Rep. No. 102–254, 102d Cong., 1st Sess. (1991).

[33] Securities Act Release No. 6900 (June 17, 1991) [56 FR 28979].

[34] Letter from Jack W. Murphy, Associate Director and Chief Counsel, Division of Investment Management, SEC, to Paul Schott Stevens, General Counsel, ICI (July 31, 1995). The Division has permitted the pilot program, with some modifications, to continue for another year. See, letter from Heidi Stam, Associate Director, Division of Investment Management, SEC, to Craig S. Tyle, Vice President and Senior Counsel, ICI (July 29, 1996).

[35] The first companies to participate in this pilot project, Bell Atlantic and NYNEX, drafted a plain English cover page and summary for their joint merger proxy statement (File No. 333–11573). The lawyers involved reported that writing in plain English did not increase their costs. *See* B. Fromson, *At Last, A Proxy in Plain English*, Washington Post (Sept. 22, 1996), at H4.

[36] For example, Baltimore Gas and Electric Company (File No. 333–19263) has filed a plain English prospectus for their medium term note offering; ITT Corporation (File No. 333–7221) filed a universal shelf offering with the front of the document in plain English and plain English techniques applied to the entire document; Unisource Worldwide, Inc. (File No. 1–14482) filed a Form 10 registration statement under the Exchange Act with the front of the document written in plain English; General Mills, Inc./Ralcorp, Inc. (File No. 333–18849) filed a merger proxy statement with the front of the document written in plain English; SCANA (File No. 333–18149) filed a registration statement covering their dividend reinvestment plan written in plain English; Antec Corporation/TSX Corporation (File No. 333–19129) filed a merger proxy statement with the front of the document written in plain English; and Keyspan Energy Corp. (File No. 333–18025) filed a merger proxy statement with the front of the document written in plain English.

[37] *How Plain English Works for Business, Twelve Case Studies*, U.S. Department of Commerce, Office of Consumer Affairs (March 1984).

[38] Steven O. Weise, *''Plain English'' Will Set the UCC Free*, 28 Loy. L.A.L. Rev. 376 (1994). The article notes that ''[p]arties to contracts can reduce [inaccurate interpretations] by presenting courts and juries with documents that permit only one reasonable interpretation. . . .'' See also Mark Duckworth and Christopher Balmford, *Convincing Business That Clarity Pays*, Michigan B. J. 1314 (Dec. 1994).

[39] 15 U.S.C. 77k.

plain English practitioners appear to support these arguments.

1. Plain English Is Imprecise and Unsuited for Complex Material

In using plain English, you are *not* forced to choose between clarity and precision. The disclosure obviously must be correct, but plain English often is more precise than the obscure and complex writing style that is prevalent in prospectuses. While legal terms like ''hereafter,'' ''hereinafter,'' and ''herein'' may give a legal flavor to writing, they do not add precision.[40] Needlessly wordy documents can actually increase ambiguity and usually hide important facts. Ambiguities and omissions that go unnoticed in long and turgid documents become more obvious when these documents are written in plain English, and are more likely to be detected and corrected by those who review these documents for accuracy.[41]

Unfortunately, some equate the term ''plain'' with ''simplistic.'' They fear their writing will be reduced to a simple style and restricted to a limited vocabulary ill-suited to conveying complex information. But plain English does not mean ''dumbing down'' complex information. It means writing it well so that it is not needlessly difficult to understand.

Some in the legal profession have used plain English techniques to clarify a number of complex legal procedures and statutes. The Judicial Conference Advisory Committee on the Federal Rules of Appellate Procedure has proposed revising these rules using elements of plain English.[42] While these rules are currently being circulated for public comment, initial reaction to the rewrites appears to be positive. Such efforts are not limited to the United States. In Australia, a task force is rewriting Australia's Corporation Law under a mandate to simplify it.[43] Earlier, the Law Reform Commission of Victoria, Australia, redrafted Victoria's Takeover Code in plain English.[44]

2. Plain English Will Increase Liability

Stemming largely from the misconceptions addressed above, some practitioners expressed concern that the use of plain English will expose companies to greater liability under section 11. Liability should not increase. First, the rule proposals do not reduce the substantive information that must be given to an investor; plain English does not mean leaving out anything important or material. Second, we know of no case that has held anyone liable under Section 11 for clearly disclosing material information to investors.[45] In all likelihood, liability should decrease with the use of plain English because it results in less confusing and ambiguous disclosure.

III. Elements of Plain English

Plain English simply means writing well.[46] Plain English, or plain language, has been described as follows:

> There is no one absolute form of plain language. It does not consist only of one-syllable words and one-clause sentences. It is not simplified or reduced English. It is the opposite not of elaborate language but of obscure language, for it seeks to have the message understood on the first reading. The plainness of a passage is defined in terms of the audience for that passage. It is clear, straightforward language for that audience.[47]

In summary, plain English requires you to:

- Know your audience;
- Know what material information needs to be disclosed;
- Use clear writing techniques to communicate the information; and
- Design and structure your document so it is easy and inviting to read.

A. Know Your Audience

Since the purpose of using plain English is to communicate substantive information clearly to investors and the marketplace, you must first identify the investor groups to whom you are writing.[48] The educational background and financial sophistication of your current or prospective investors should dictate the language you use.

If your company has a mix of sophisticated institutional investors and less experienced institutional and individual investors, you should write at a level that the less experienced investors would understand. While the language may change, the information will not. To serve an audience of various levels of sophistication such as securities analysts and others in the marketplace, some issuers present information in a format that makes it easy for investors to locate the basic information while providing additional detailed information for anyone who is interested.[49] Where an offering is directed at only the most sophisticated institutional investors, clear writing still is necessary for your audience to understand the disclosure and to serve the needs of the securities markets.

B. Know What Information Needs To Be Disclosed

You can only communicate clearly when you understand the substance precisely and accurately.[50] A failure common to disclosure documents is the tendency to indiscriminately combine material and immaterial information in dense and long sentences, in effect dumping large amounts of information on the reader. Disclosure documents typically fail to prioritize information and organize it logically so the reader can process it intelligently and quickly. All too often, details are disclosed before investors even know why they are receiving or reading a document. Plain English requires you to make judgments as to the importance of this information and the order in which you present it to investors.

A standard prospectus cover page—the cover page for an initial public offering, a merger, or a shelf offering—usually has dense print running to each of the four corners of the page. The sentences typically run 60 to 100 words long, with superfluous information and defined terms that interrupt the readers' attention. The name of the company, terms of the security, and underwriters' compensation are repeated two or three times. We believe that the cover page of the prospectus should invite the investor to read the document and should highlight key information about the offering. This information includes

[40] David Mellinkoff, *The Language of the Law* 312–16 (1963). See also David Mellinkoff, ''The Myth of Precision and the Law Dictionary,'' 31 *UCLA L. Rev.* 31 423 (1983).

[41] See Joseph Kimble, ''Answering the Critics of Plain Language,'' 5 *Scribes J. of Legal Writing* 51 (1994–1995).

[42] Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, *Preliminary Draft of Proposed Revision of the Federal Rules of Appellate Procedure Using Guidelines for Drafting and Editing Court Rules and Preliminary Draft of Proposed Amendments to Appellate Rules 27, 28 and 32,* (April 1996). See also Bryan A. Garner, *Guidelines For Drafting And Editing Court Rules* (Administrative Office of the United States Courts 1996).

[43] See Note 41 above at 59.

[44] *Id* at 56–57.

[45] The staff's review of the few reported cases finding section 11 liability indicates that no case required the use of specific legal language or turned on the use of legal language.

[46] George Hathaway, *An Overview of the Plain English Movement for Lawyers . . . Ten Years Later,* Michigan B. J. 26, (Jan. 1994).

[47] Robert D. Eagleson, *What Lawyers Need To Know About Plain Language,* Michigan B. J. 44 (1994).

[48] See, Janice C. Redish, *How To Write Regulations And Other Legal Documents In Clear English,* 8 (Sept. 1991) (available at American Institutes for Research Document Design Center, Washington, D.C. 20007).

[49] See Caterpillar Inc., Third Quarter 1996 Financial Results (a two part document with statistical highlight and condensed financial information and a detailed analysis including financial statements for those who want additional detailed information).

[50] Bryan A. Garner, *The Elements of Legal Style* 4 (1991).

such items as the name of the company, the type of security, price and amount offered, and whom an investor should contact to purchase the security. The original cover pages and the plain English rewrites of the cover page of pilot participants documents in Appendix A give you examples of how to address this issue.

When a prospectus summary is included in the document, it frequently runs 10 to 30 pages. These so-called summaries often provide a long description of the company's business and its business strategy. Where the prospectus provides a description of the security, it is often copied from the indenture or other legal document that is filed as an exhibit to the registration statement.

The summary should not, and is not required to, contain all of the detailed information in the prospectus. As current Rule 421 states and as explained in the interpretive release on limited partnerships, the summary should provide investors with a clear, concise, and coherent ''snapshot'' description of the most significant aspects of the offering. The summary should be balanced, giving investors both the pluses and the minuses of investing in your company or participating in the proposed transaction.

C. Use Clear Writing Techniques To Communicate Information

Although it is impossible to give a precise formula for clear writing, using the following plain English principles will help you produce clearer and more readable disclosure documents. Our proposed rule would require you, at a minimum, to comply substantially with each of these plain English principles in drafting the front and back cover pages and the summary and risk factors sections of the prospectus:

- Active voice;
- Short sentences;
- Definite, concrete, everyday language;
- Tabular presentation and ''bullet lists'' for complex material whenever possible;
- No legal jargon or highly technical business terms; and
- No multiple negatives.

Success in clear writing is, of course, ultimately a question of how well all the elements are put together, and requires a good faith effort to achieve clarity. The draft plain English handbook offers numerous examples of how to use these and other plain English tools to write more clearly. We provide examples of these requirements only to illustrate the plain English principle. You should make sure that your disclosure reflects the facts of your particular situation.

1. Active Voice

The active voice generally is easier to understand than the passive because the reader can clearly identify the person or the thing performing the action. The passive voice delays readers' comprehension, and in some cases, allows the writer to delete who is performing the action altogether, further hindering comprehension. When the sentence is long and complicated, the passive voice forces the reader to go back and start at the beginning. The passive voice usually results in needlessly longer sentences. Consider the following examples:

Before	After
No person has been authorized to give any information or make any representation other than those contained or incorporated by reference in this joint proxy statement/prospectus, and, if given or made, such information or representation must not be relied upon as having been authorized.	You should rely only on the information contained in this document or incorporated by reference. We have not authorized anyone to provide you with information that is different.
The proxies solicited hereby for the Heartland Meeting may be revoked, subject to the procedures described herein, at any time up to and including the date of the Heartland Meeting.	You may revoke your proxy at any time up to and including the day of the meeting by following the directions on page 18.

Notice that in the proxy example, the passive legalese is ambiguous because it never states who can revoke a proxy. Also, when you use a vague cross-reference, you hinder your readers' ability to locate the information. The rewrite is clearer because it uses everyday language and provides the page number where investors can find out how to revoke their proxies.

2. Short Sentences

The plain English requirement for short sentences addresses one of the most critical language problems in disclosure documents. It is fairly common for sentences in prospectuses or other disclosure documents to be 60 to 100 words or more, with clauses and parenthetical phrases that increase their complexity. Needlessly complex sentences, which often mix substantive information with definitions and numerous qualifications, can overwhelm the reader. You should strive to have shorter sentences, typically 25 to 30 words. We believe that the rewrites in the following examples are shorter, clearer and less vague:

Before	After
Machine Industries and Great Tools, Inc., are each subject to the information requirements of the Securities Exchange Act of 1934, as amended (the ''Exchange Act''), and in accordance therewith file reports, proxy statements, and other information with the Securities and Exchange Commission (the ''Commission'').	We must comply with the Securities Exchange Act of 1934. Accordingly, we file annual, quarterly and current reports, proxy statements, and other information with the Securities and Exchange Commission.

Before	After
The Drake Capital Corporation (the ''Company'') may offer from time to time its Global Medium-Term Notes, Series A, Due from 9 months to 60 Years From Date of Issue, which are issuable in one or more series (the ''Notes''), in the United States in an aggregate principal amount of up to U.S. $6,428,598,500, or the equivalent thereof in other currencies, including composite currencies such as the European Currency Unit (the ECU) (provided that, with respect to Original Issue Discount Notes (as defined under Description of Notes—Original Issue Discount Notes), the initial offering price of such Notes shall be used in calculating the aggregate principal amount of Notes offered hereunder).	The Drake Capital Corporation may offer from time to time up to $6,428,598,500 of Global Medium-Term Notes, Series A, that will mature from 9 months to 60 years from the date issued. We will offer our notes, in one or more series, in U.S., foreign, and composite currencies, like the European Currency Unit. If we offer original discount notes, we will use their initial offering prices to calculate when we reach $6,428,598,500.

3. Definite, Concrete, Everyday Language

Language that is vague or abstract begs for further explanation. It is not enough merely to translate information into clearer language. As the following example shows, you must reassess the disclosure to determine whether more information is needed to make it understandable. *You should note that the rewrite reflects an analysis of all of the information in the prospectus.*

Before	After
History of Net Losses. The Company has recorded a net loss under generally accepted accounting principles for each fiscal year since its inception in May 1990, as well as for the nine months ended June 30, 1995. However, these results include the effect of certain significant, non-cash accounting charges related to the accounting for the Company's acquisitions and related transactions.	History of Net Losses. We have recorded a net loss under generally accepted accounting principles for each year since we started in 1990, and for the nine months ended June 30, 1995. Our losses were caused, in part, by the annual write-off of a portion of the goodwill resulting from the ten acquisitions we made during this period.

In the rewrite, the reasons for the history of net losses replaces the general, vague language on the ''significant, non-cash accounting charges'' causing the loss.

4. Tabular Presentations

A tabular presentation organizes complex material in a manner that greatly facilitates investor comprehension. For example, an ''if-then'' table highlights for investors the events of defaults and their remedy under the indenture. An illustration follows:

Before
The following will be ''Events of Default'' under the Indenture:
(i) failure to pay any interest on any Note when it becomes due and payable, and such failure shall continue for a period of 30 days; (ii) failure to pay the principal of (or premium, if any) on any Note at its Maturity (upon acceleration, optional or mandatory redemption, required repurchases or otherwise); (iii) there shall have been the entry by a court of competent jurisdiction of (a) a decree or order for relief in respect of the Company, in an involuntary case or proceeding under any applicable Bankruptcy Law or (b) a decree or order adjudging the Company bankrupt or insolvent, or seeking reorganization, arrangement, adjustment or composition of or in respect of the Company, under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company, or of any substantial part of their respective properties, or ordering the winding up or liquidation of their affairs, and any such decree or order for relief shall continue to be in effect, or any such other decree or order shall be unstayed and in effect, for a period of 60 consecutive days, the Trustee or the holders of not less than 25% in aggregate principal amount of the Notes then outstanding may, and the Trustee at the request of such Holders shall, declare all unpaid principal of (and premium, if any, on) and accrued interest on all the Notes to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the Holders of the Notes); If an Event of Default specified in clause (iii) occurs, then all the Notes shall *ipso facto* become and be immediately due and payable, in an amount equal to the principal amount of the Notes, together with accrued and unpaid interest, if any, to the date the Notes become due and payable, without any declaration or other act on the part of the Trustee or any holder.

After	
Event of default (If)	Remedy (Then)
• Interest payment 30 days late	• Trustee or holders of at least 25% of these notes outstanding may notify the company in writing that the principal, premium, if any, and accrued interest are immediately due and payable; or Upon written request of the holders of at least 25% of these notes outstanding, the Trustee shall notify the company in writing that the principal, premium, if any, and accrued and unpaid interest are immediately due and payable.
• Failure to pay principal or premium at maturity, acceleration, redemption, or repurchase.	• Same as above.
• Court ordered bankruptcy, insolvency, reorganization, liquidation, or similar action continuing for 60 consecutive days.	• Neither the Trustee nor holders are required to act. The principal, accrued and unpaid interest will be immediately payable.

Before	After
The Indenture provides that no Holder of any Senior Debt Securities of any series may institute any proceeding, judicial or otherwise, with respect to the Indenture or the Senior Debt Securities of such series, or for the appointment of a receiver or trustee, or for any other remedy under the Indenture, unless: (i) such Holder has previously given to the Trustee written notice of a continuing Event of Default with respect to the Senior Debt Securities of such series; (ii) the Holders of at least 25% in aggregate principal amount of outstanding Senior Debt Securities of all such series affected shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee under the Indenture; (iii) such Holder or Holders have offered to the Trustee indemnity reasonably satisfactory to the Trustee against any cost, liabilities or expenses to be incurred in compliance with such request; (iv) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and (v) during such 60-day period, the Holders of a majority in aggregate principal amount of the outstanding Senior Debt Securities of all such affected series have not given the Trustee a direction that is inconsistent with such written request.	Before you may take legal or any other formal action relating to the indenture or this series of securities, the following must take place: • You must give the trustee written notice of a continuing event of default; • The holders of at least 25% of the principal amount of all affected senior debt securities outstanding of this series must make a written request of the trustee to take action because of the default; • The holders must have offered indemnification, reasonably satisfactory to the trustee, against the cost, liabilities and expenses for taking such action; • The trustee must not have taken action for 60 days after receipt of notice, request for action, and the indemnification offer; and • During this 60 day period, the holders of a majority of the principal amount of all affected senior debt securities outstanding of this series have not asked the trustee to take any action inconsistent with the request.

5. No Legal Jargon or Highly Technical Business Terms

One of the persistent criticisms of the prospectus writing style is the use of legal jargon and legalese. Here are two examples from debt offerings replete with legalese:

Before	After
The new debt will rank *pari passu* with other senior debt of the company..	The new debt will rank equally with the other senior debt of the company.
The following description encompasses all the material terms and provisions of the Notes offered hereby and supplements, and to the extent inconsistent therewith replaces, the description of the general terms and provisions of the Debt Securities (as defined in the accompanying Prospectus) set forth under the heading ''Description of Debt Securities'' in the Prospectus, to which description reference is hereby made.	We disclose information about our notes in two separate documents that progressively provide more detail on the note's specific terms: the prospectus, and this pricing supplement. Since the specific terms of notes are made at the time of pricing, rely on information in the pricing supplement over different information in the prospectus.

When you use defined terms and excessive cross-references, practices common to legal drafting, you force the reader to learn a new vocabulary—your vocabulary. These writing conventions may be a short hand for the writer but they inhibit the reader's ability to understand the information.

6. No Multiple Negatives

Negative sentences and multiple negatives within a sentence hinder comprehension as the reader deciphers the meaning of the negatives. Ask yourself which sentences are clearer.

Before	After
No clause can become valid unless approved by both parties.	A clause becomes valid only if both parties approve it.
Except when an applicant has submitted a request for withdrawal without the appropriate tax identification number, the request will be honored within one business day..	We will send your money within one business day if you include your tax identification number in your withdrawal request.

D. Design And Organize Your Document So It Is Easy and Inviting To Read

We believe the dense copy used in the typical prospectus coupled with its legal tone, discourages investors from reading the document. By importing into your disclosure documents the design concepts you already use in your annual reports to shareholders, you can make disclosure documents visually inviting and easier to read.

Experts believe, generally, that the eye can only comfortably scan 50–70 characters in a line without losing its place.[51] It is thus difficult to read dense blocks of text that run across an entire page. A number of the plain English pilot participants solved the problem by using two columns. White space also relieves the eye and encourages the investor to read the document. The use of all capital letters, right-hand margins that are justified, and tissue-like paper can make the job of reading a document extremely hard.

If your prospectus includes a table of contents with descriptive captions, subcaptions, and page numbers, an investor will be able to locate information easily in the prospectus. Captions and descriptive headings throughout the document also cue the reader as to the subject matter.

Depending on the type of offering and the audience, a question-and-answer format can greatly increase the readability of your document. We have

[51] Duncan A. MacDonald, *Drafting Documents in Plain Language*, Practicing Law Institute, 229 (1979).

encouraged the use of the question-and-answer format for employee stock purchase plans.[52] Several of the plain English pilot participants used a question and answer format to answer common questions raised by investors.

Although not part of our proposed rules, another effective tool for producing plain English documents is to use personal pronouns. Personal pronouns immediately engage your readers' attention. A familiar writing style where ''we'' or ''I'' refers to management or the company, and ''you'' refers to the investor, involves your reader and increases comprehension. If you avoid distant and abstract language like ''the company'' and ''a shareholder,'' your writing becomes clearer and more appealing because you are communicating directly with your reader.

Take, for example, a recent offering made by Berkshire Hathaway.[53] The cover page of the prospectus contains the following personal communication: ''Warren Buffet, as Berkshire's Chairman, and Charles Munger, as Berkshire's Vice Chairman, want you to know the following (and urge you to ignore anyone telling you that these statements are 'boilerplate' or unimportant).''

This introduction is followed by clear warnings regarding the company's asset growth, share price, and the market for the securities offered. A similar personal approach, with the frequent use of the pronoun ''we'' to refer to the company, Warren Buffet, or Charles Munger, is used in Berkshire Hathaway's 1995 annual report to shareholders.

Several of the pilot participants used personal pronouns throughout their documents. Others employed a modified approach in which personal pronouns were used when referring to the company but a more formal designation like ''holder'' or ''noteholder'' was used when referring to the investor.[54]

IV. Plain English Rule Proposals

The Task Force on Disclosure Simplification recommended developing a plain English introduction to the prospectus and, to enhance the prospectus's readability, eliminating boilerplate ''legalese,'' requiring a summary of key information, and enhancing the disclosure to include significant financial ratios and other information. The Task Force also recommended that the Commission issue a plain English interpretive release. Our proposals include most of the Task Force's specific recommendations for improving the readability of documents. This release serves as our interpretative advice on plain English. We have decided to defer action on the Task Force's recommendation to provide investors with disclosure on significant financial ratios. Further study is needed to determine the best format for providing important financial indicators to investors and the ratios that should be provided.

A. Proposed Plain English Rule 421(d)

While all prospectuses must be clear and understandable, our proposals would also require the front of the prospectus to meet the plain English requirements in proposed Rule 421(d). In addition, we are proposing to codify our interpretive advice, first given for limited partnership offerings, to give you more guidance on how to meet the requirements for clear, concise and understandable disclosure in prospectuses.

If adopted as proposed, Rule 421(d) would require you, when drafting the cover page, summary, and risk factors sections, to use the plain English principles, discussed above in the section, Elements of Plain English. You should design these sections of the document to make them inviting and easy to read. This design could take many forms, including the use of pictures, logos, charts, graphs, or other features, so long as the design is not misleading and the required information is clear. The examples from pilot participants' documents, included in Appendix A, and the staff's draft handbook give you guidance in this area. We will include on our Internet site examples of other plain English documents to help you draft more readable disclosure documents.

Our proposals for plain English cover pages, prospectus summary, and risk factors sections should improve greatly the readability of the entire document. We encourage you to use plain English techniques to draft the entire prospectus. We also encourage you to use these techniques for drafting your other disclosure documents.

We request your comments on all aspects of the proposed rule. Your comments should provide any factual support for your position. Please comment on whether you believe the proposed plain English requirements will achieve clearer disclosure and improve readability. We also request your comments as to whether compliance with the proposed rule changes will cause registrants to highlight key information for investors and eliminate redundant or uninformative information.

B. Clear, Concise and Understandable Prospectuses—Rule 421(b)

We are proposing the following expansion of Rule 421(b) to give you guidance on the minimum requirements to meet the current provision for clear, concise, and understandable disclosure in the prospectus and to identify drafting problems to avoid. These standards and common prospectus drafting problems were identified in our interpretive release on limited partnership offerings. In drafting the disclosure in the prospectus you should apply the following techniques:

- Information must be presented in clear, concise paragraphs and sentences. If possible, information should be presented in short explanatory sentences and ''bullet'' lists;
- Captions and subheading titles must describe specifically the information included in the section;
- Terms that are not clear from the context generally should be defined in a glossary or other section of the document. Glossaries are recommended where they facilitate understanding of the disclosure. Frequent reliance on glossaries or defined terms as the primary means of explaining information in the body of the prospectus should be avoided; and
- Legal and highly technical business terminology should be avoided.

Our proposals also include a Note to Rule 421(b) that lists drafting conventions that you should avoid in presenting prospectus information. The proposed Note to Rule 421(b) identifies the following problems in drafting prospectus disclosure:

- Legalistic, overly complex presentations that make the substance of the disclosure difficult to understand;
- Vague ''boilerplate'' explanations that are imprecise and readily subject to differing interpretations;
- Complex information copied directly from legal documents without any clear and concise explanation of the provision(s); and
- Disclosure repeated in different sections of the document that increases the size of the document, does not enhance the quality of the information, and does not enlighten the reader.

[52] Securities Act Release No. 4844 (August 5, 1966) (31 FR 10667).

[53] Berkshire Hathaway Inc., Form S–3, filed April 2, 1996, effective May 8, 1996, File No. 333–2141.

[54] Bell Atlantic Corporation used personal pronouns for both the company and the shareholder in their merger proxy statement. ITT Corporation and Baltimore Gas and Electric Corporation used the modified approach. See Appendix A. Bell Atlantic also used personal pronouns in the management's discussion and analysis section of the Form 10–Q for the quarter ended September 30, 1996 (File No. 1–8606).

Some have suggested that the undue length of many prospectus also makes them difficult to read. You are encouraged to use the current provision of Rule 421 which allows you to condense or summarize information in the prospectus, information other than the financial statements.

C. Proposed Revisions to Regulation S–K

1. Front of Registration Statement and Outside Front Cover Page of Prospectus

We propose to revise the requirements for the outside front cover page of the prospectus to eliminate the stylized format and require legal warnings in plain English. We believe that the legal language specified by the requirements is not informative to investors. More importantly, we believe the dense format of the cover page discourages investors from reading the important business and financial disclosures in the prospectus.

Substantially the same changes are being proposed to the requirements for small business issuers, except Regulation A offerings. In 1992, we adopted major revisions to the Regulation A offering process for companies not subject to our reporting requirements. Because few Regulation A offerings were made last year, we are not proposing changes to the disclosure requirements for these offerings. We request your comments, however, on whether the legal legends required in these offerings should be changed to conform to our proposals to draft these legends in plain English.[55] The table below shows the current requirements of Regulation S–K and our proposed changes.[56]

REGULATION S–K—ITEM 501

Current	Proposed
• Information in highly formatted design	• Information formatted in clear, inviting design.
• Company name	• Same.
• Title and amount of securities offered	• Same.
• By whom securities offered	• Same.
• Formatted distribution table showing price, underwriting commission, and proceeds of offering.	• Bullet list or other design that highlights the price, underwriting commission, and proceeds of offering.
• Instruction on showing bona fide estimate of range of maximum offering price.	• Retain.
• Instruction on showing how price determined	• Retain.
• Formatted best efforts distribution table	• Bullet list or other design that highlights the information.
• Specific language and print type for legal warnings	• Clear language with no type specified.
• No requirement	• Name of underwriters and type of underwriting arrangements.
• Cross-references to disclosure in prospectus	• Delete.
• Specific cross-reference to risk factors	• Delete.
• Underwriters' over-allotment option	• Move to underwriting section.
• Expenses of offering	• Move to underwriting section.
• Commissions paid by others and other non-cash consideration	• Move to underwriting section.
• Finders fees	• Move to underwriting section.

Our proposals would require you to format the outside front cover page in a design that invites an investor to read the information. The proposals would allow you to use pictures, graphs, charts, and other designs that accurately depict your company, its business, products, or financial condition, so long as the information is not misleading. The proposals would eliminate the current requirements for cover page cross-references, including the cross-reference to risk factors. A cross-reference may unnecessarily clutter the cover page and duplicate the information in the table of contents. We believe that our proposed requirement for risk factors in plain English will improve the disclosure to investors, making the cross-reference unnecessary. We propose to retain the cross-reference to risk factors on the cover page for small business issuers since often these companies present greater risks because of their limited operations and financial condition.

Your comments are requested, however, as to whether the existing requirements should be retained, and if so, which ones. We also request that you indicate other information or design elements for the cover page that would provide clearer, more readable disclosure. We ask you to give us your comments on whether the proposed disclosure requirements are sufficiently flexible to permit you to meet the plain English requirements. Your comments are requested on whether the cross-reference to risk factors should be retained for all offerings or whether the plain English requirements make it unnecessary for any offering, including small business issuer offerings.

The legal warnings required by our regulations would be in plain English.[57] Because the current requirement for printing the legend in all capital letters makes the information difficult to read, no print type or size is proposed. We offer one example of a plain English legend, however, you are encouraged to draft your own plain English version, so long as the content is retained. One example of the current legend rewritten in plain English is as follows:

[55] Regulation A requires a bold-face, all-capital legend that the SEC does not approve or disapprove of the securities offered, 17 CFR 230.253, and a legend indicating the document is incomplete, 17 CFR 230.255. In addition, Form 1–A requires legal warnings in all-capital letters regarding the risk of the offering in the Model 1–A disclosure alternative.

[56] See Item 501 of Regulation S–K, 17 CFR 229.501 and Item 501 of Regulation S–B, 17 CFR 228.501. See Appendix B for a chart showing the changes to Regulation S–B.

[57] The staff is working with the North American Securities Administrators Association, Inc.'s Disclosure Reform Task Force to coordinate our efforts to assure clearer communications with investors. The Disclosure Reform Task Force is considering the effect of our plain English initiatives on the states' disclosure requirements, particularly the language used in state-required legends.

Before	After
THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.	The Securities and Exchange Commission has not approved or disapproved these securities, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

Our proposals would require the legend indicating an incomplete prospectus, commonly called the ''red herring'' legend, to be in any plain English format. One example of the current legend in plain English would read as follows:

Before	After
Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any State.	The information in this prospectus is not complete and may be amended. We may not sell these securities until the registration statement filed with the SEC is effective. This prospectus is not an offer to sell nor is it seeking an offer to buy these securities in any state where the offer or sale is not permitted.

Although no requirement currently exists to disclose the name of the underwriter and the type of offering, this information is usually provided on the cover page. Our proposal would specifically provide for this information in plain English on the cover page.

We have not proposed any specific print size or font type for the plain English portion of the prospectus. Our proposals allow you the flexibility to use a print type and font size that enhances your document design so long as the information is easily readable. We request your comments as to whether we should require or prohibit any specific print type or font size and the reason for your position.

Your comments should address specifically the proposed revisions to the legends and suggest alternative plain English legends. Your comments should address whether the plain English legends adequately inform investors, and whether the proposed cover page information should be mandated, or whether other information should be permitted and, if so, what information. For example, should information on the cover page be limited to the name of the company and the securities offered, with the other information disclosed in the summary section of the document?

In addition, we request public comment on whether specific information should be required for the cover pages of merger proxy statements, registered exchange offers, or other offerings. Please provide examples of the types of information that should be required. We specifically request your comments on whether the limited partnership roll-up transactions should be subject to these plain English proposals or should different standards apply to these transactions and, if so, what standard should apply. For example, the current roll-up disclosure provisions [58] provide for a detailed discussion of risks of the offering, while the proposals made today would require risk factors to be brief. Also, risk factors are required on the cover page, summary section and risk factors section in limited partnership roll-up prospectuses.[59] Our proposals would require the risks to be described in plain English only in the risk factor section.

2. Inside Front and Outside Back Cover Pages of Prospectus

Currently, information of a highly technical nature is required on either the inside front or outside back cover page of the prospectus.[60] Except for the availability of Exchange Act reports,[61] the table of contents, and the legend concerning the dealer's prospectus delivery obligation, we propose to move this technical information to the body of the prospectus, as shown in the following table.

REGULATION S–K—ITEM 502

Current	Proposed
• Stabilization activities by underwriters	• Move to underwriting section.
• Underwriters' passive market making activities legend	• Delete because it duplicates information in underwriting section.
• Disclosure of dealer prospectus delivery obligation	• Move to back cover page.
• Availability of Exchange Act reports generally	• Move to back cover page or include with incorporation by reference disclosure in short form registration statements.
• Availability of Exchange Act reports incorporated by reference in short form registration statements.	• Move to registration statement forms permitting incorporation by reference.

[58] Item 904 of Regulation S–K, 17 CFR 229.904.

[59] See Items 902(b)(2) of Regulation S–K 17 CFR 229.902(b)(2); Item 903(b)(1) of Regulation S–K, 17 CFR 229.903(b)(1); and Item 904(a)(2) of Regulation of S–K, 17 CFR 229.904(a)(2).

[60] See Item 502 of Regulation S–K, 17 CFR 229.502 and Item 502 of Regulation S–B 17 CFR 228.502.

[61] Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*

REGULATION S–K—ITEM 502—Continued

Current	Proposed
• Availability of annual reports to shareholders with GAAP audited financial statements for foreign issuers and others not subject to our proxy rules.	• Move to business description section.
• Enforceability of civil liability provisions of federal securities laws against foreign persons.	• Move to business description section.
• Table of contents	• Move to inside front cover page or immediately following the cover page.

Much of the currently required information is highly technical and drafted in legal language that often confuses rather than informs investors. We believe that placing this information in the front of the prospectus overshadows the essential business and financial information fundamental to an investment decision. Because the disclosure will be elsewhere in the prospectus, the information provided investors will be the same. Moving this information to the body of the prospectus will give you the freedom to design an inviting cover page which highlights key information for investors.

We believe the current information on the underwriter's stabilization activities, passive market making activities, and the dealer's obligations to deliver prospectuses is key information on the orderly distribution of the offering. But this information is not essential for the front of the document. We propose relocating the stabilization information to the underwriting section of the prospectus.[62] Information on passive market making activities currently is required both in the underwriting section of the prospectus and as a legal legend on either the inside front or outside back cover page. Duplication of this information on the cover page is unnecessary and we propose to delete it from the cover page but retain the information in the underwriting section.

We also propose to retain the requirement to disclose the dealer's prospectus delivery obligations on the back cover page of the prospectus. This will help dealers meet their obligations to deliver a prospectus in connection with the distribution of the securities. However, we request your views as to whether this information is necessary and, if so, whether we should require that this notice to dealers be disclosed elsewhere in the document, like the inside front cover page.

You have an obligation to send to security holders, upon request and at no charge, the Exchange Act reports incorporated by reference in short-form registration statements. We currently require you to disclose this obligation on the inside front cover page or elsewhere, as appropriate. We propose to relocate this information to the section of the short form registration statements detailing what information you must incorporate by reference.

We propose to move the disclosure regarding the availability of Exchange Act reports to the back cover page of the prospectus. Alternatively, it could be included as part of the disclosure incorporating Exchange Act reports by reference into short form registration statements. Moving the information to the back cover page would provide you the flexibility to design the front of the document in a clear manner. Requiring this information to be provided where the Exchange Act reports are incorporated by reference would eliminate duplication in short form registration statements.[63]

Because we now have an 800 number that gives information on how to obtain the reports filed with us and because copies of these reports are now available on the Internet, the proposed revisions would delete the requirement that our headquarters and regional office addresses be given. For this reason, we are also proposing to delete the requirement to disclose the availability of these reports at the exchange where the issuers' securities are listed. Of course, you must continue to send copies of your Exchange Act reports to the exchange where your securities are listed.[64] We request your comments on whether the information should be required elsewhere in the document, or whether the requirements should give companies greater flexibility to place the information where it is highlighted best for investors, given the design of the document. If your Exchange Act reports are on your Internet site, our rule proposals encourage you to give the web site address in your documents.

One example of a plain English rewrite of this disclosure follows:

Before	After
Our company is subject to the informational requirements of the Securities Exchange Act of 1934, as amended (the ''Exchange Act''), and, in accordance therewith, files reports and other information with the Securities and Exchange Commission (the ''Commission''). The reports and other information filed by our company with the Commission can be inspected and copied at the Commission's public reference room located at 450 Fifth Street, N.W., Room 1024, Washington, D.C. 20549, and at the public reference facilities in the Commission's regional offices located at: 7 World Trade Center, 13th Floor, New York, New York 10048; and at Northwest Atrium Center, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661. Copies of such material can be obtained at prescribed rates by writing to the Securities and Exchange Commission, Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549..	Our company files annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any reports, statements or other information we file at the SEC's public reference room in Washington, D.C. You can request copies of these documents, upon payment of a duplicating fee, by writing to the SEC. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference rooms. Our SEC filings are also available to the public on the SEC Internet site (http://www.sec.gov.).

[62] Item 508 of Regulation S–K, 17 CFR 229.508 and Item 508 of Regulation S–B, 17 CFR 228.508.

[63] Our proposals would amend Forms S–2, S–3, S–4, F–3 and F–4 to include the requirement to disclose the availability of documents incorporated by reference with the disclosure on incorporation by reference of Exchange Act reports.

[64] Rule 12b–11, 17 CFR 240.12b–11.

Our proposals would move to the body of the prospectus the information on the availability of audited financial statements, where the company is a foreign private issuer or is not subject to our proxy rules. As proposed, we would require the information to appear, under a descriptive heading, as part of the business description.[65] We believe that relocating this information in the business section of the prospectus would inform investors of the continued availability and type of financial information your company will provide.

Currently, you may provide information as to the enforceability of civil liabilities against foreign persons on the inside front cover page or in the front of the prospectus. We propose to move this information to the business description section of the prospectus.[66] The staff's experience is that this information is often provided as a generic risk factor. If enforceability of civil liabilities presents a material risk to an investor given the company and its operations, our proposal for plain English prioritized risk factors would require risk disclosure. Your comments should address whether, given our global markets, the information now is sufficiently routine to make this disclosure more appropriate in the business description and required as a risk factor only when it is a material risk relating to an investment in the company. If you believe the information should be disclosed in another section of the prospectus, please give us the reason(s) for your position.

As currently permitted, the table of contents often appears on the back cover page. We question whether a reader goes to the back of the document first to locate a guide to the document, so our proposals would require this information to be on the inside front cover or immediately behind the cover page. We request your comments on whether the information flow of the document should permit you the flexibility to place the table of contents where you believe it best serves as a guide to the document, and the reasons for your position.

3. Prospectus Summary, Risk Factors and Ratio of Earnings to Fixed Charges[67]

Currently, you are required to include a summary of the information contained in the prospectus where the length or complexity of the prospectus makes a summary appropriate. The existing requirements also specify that a risk factor section be provided, where appropriate, and that this section immediately follow either the summary section or the cover page. In addition, information is required as to the ratio of earnings to fixed charges.

a. Summary

Our proposals would require a prospectus summary in plain English. To address the problem where the summary is ten to twenty-five pages long, we have revised the current provision to require that the summary section be brief. The current requirement continues to be a general provision giving you the flexibility to draft a meaningful summary appropriate to the type of offering.

We request your comment as to whether the summary should be further limited to a specific number of pages. For example, should the summary be no more than three, four, or five pages? We also request your comments as to whether we should require specific information in this section, such as condensed financial information and a summary of management's discussion and analysis. Please indicate any specific information you believe should be in the summary.

A recent review by the staff of a number of the short form registration statements indicates that these offerings often include a summary or similar section describing the company's business and operations. This discussion contains a lengthy discussion of the company's business, risk factors, and summarized financial information. The information is not specifically required, but apparently is considered important to the selling effort. If you elect to include this information, the disclosure would be subject to the same plain English disclosure requirements as we propose for the front of the document. Please give us your comments on whether short registration forms should have a summary and, if so, which offerings, and the reasons for your position. We also request your comments as to whether a summary section should be required for all prospectuses, given the current complexity of these documents.

b. Risk Factors

Our proposals would require the risk factors to be in plain English and be listed in order of their importance. As is currently the case, the discussion would immediately follow the summary, if one is provided, or the cover page of the prospectus. Often the risk factor disclosure in a prospectus is boilerplate, listing risks that could apply to any offering or that are not likely to occur. Because boilerplate risks do not provide meaningful information to investors, we believe they should not be used and our proposals specifically prohibit them.

For example, if your company is making an initial public offering of common stock and the securities will be listed and traded on a national securities exchange, it is not helpful to investors to provide a statement that management can give no assurance that an active market will develop in the company's securities. If, given these facts, you believe that a market will develop for the securities, then the risk factor is not helpful to an investor. On the other hand, if, given these facts, you believe that a market reasonably may not develop, additional information would be necessary as to why a trading market may not develop.

We are concerned, however, that plain English alone will not address the problem of listing many risk factors that are so general that they are not meaningful and add to the length of the document making the document difficult to read. We request your comments on whether we should require disclosure of a specific number of risk factors, such as eight, or alternatively limit the risk factor discussion to no more than two pages.

Your comments specifically are requested as to whether there should be any limit on the number of prioritized risk factors or the number of pages, or whether the limit should be higher or lower than eight risk factors or the two pages. For instance, should there be no more than four risk factors discussed in this section, divided equally between company and offering risks, or should the number of permitted risk factors be increased to 10 or 12 with no allocation as to the nature of the risk? Should there be a page limit and should the limit be no more than two pages, three pages, four pages or higher?

c. Ratio of Earnings to Fixed Charges

When you issue debt or a class of preferred equity, you are required to disclose a ratio of earnings to fixed charges. Since this information usually is included in the prospectus with selected financial data, we propose to move the requirement to that section.[68] Where a prospectus summary is included, we propose that the ratio of earnings to fixed charges be shown as part of the summarized financial data, as is currently the practice.

[65] Item 101 of Regulation S-K and Regulation S-B.

[66] Item 101 of Regulation S-K and Regulation S-B.

[67] See Item 503 of Regulation S-K, 17 CFR 229.503 and Item 503 of Regulation S-B, 17 CFR 228.503.

[68] Item 301 of Regulation S–K, 17 CFR 229.301.

D. Proposed Rules for Investment Companies

Current disclosure standards direct investment companies to provide clear, concise, and understandable disclosure in prospectuses.[69] We are concerned, however, that fund prospectuses are overly complex and difficult to follow. We have commenced significant disclosure initiatives to improve the information provided to fund investors, including consideration of a summary disclosure document or ''profile'' for funds and updating prospectus disclosure requirements. We expect to announce proposals that would implement these initiatives in the near future.

The plain English disclosure proposals complement these disclosure initiatives. The proposed changes to Rule 421 would apply to funds.[70] The proposed revisions in Regulation S–K intended to improve the clarity of disclosure in prospectuses of corporate issuers would not apply to funds, although similar legal legends and other requirements are included in specific rules for investment companies.[71] We plan to consider conforming changes to the rules for fund prospectuses in connection with the disclosure initiatives for investment companies. We request your comments on whether the proposed changes to Rule 421 should be modified for fund prospectuses.

The phase-in of plain English requirements proposed for corporate issuers discussed below may need to be modified for investment companies since they are engaged in continuous offerings of securities. We also request comment on special requirements that may be necessary to allow for the orderly phase-in of the proposed plain English requirements for investment companies.

[69] See, e.g., General Instruction G of Form N–1A.

[70] While the disclosure in fund prospectuses must be clear, concise, and understandable, the proposed plain English principles in Rule 421(d) would apply to the front and back cover pages of the prospectus and summary, if any. The specific requirement for plain English risk factors disclosure referred to in proposed Rule 421(d) would not apply to funds since the same disclosure is not required in their prospectuses.

[71] See, e.g., proposed Item 501(b) (5) and (8) of Regulation S–K (SEC legend and subject to completion legend); similar legends are required for mutual funds by Rule 481(b) (1) and (2) of Regulation C, 17 CFR 230.481(b) (1) and (2). Many of the proposed revisions to Regulation S–K would, if applied to funds, affect relatively few offerings of fund securities, e.g., descriptions of underwritten offerings in proposed Item 501(b)(6).

V. Staff Review

A. Plain English Pilot Program

The Division of Corporation Finance has established a pilot program to work with public companies on drafting plain English documents filed under either the Securities Act or the Exchange Act. We also expedite the review of these filings. The staff's comments, in plain English, will be consistent with these plain English proposals. The staff has issued five interpretive letters under the plain English pilot program. The staff granted interpretive relief from compliance with the legend requirements in the front of the prospectus, the distribution table showing the price, underwriters' commissions and proceeds of the offering, and the disclosure regarding the availability of Exchange Act reports.[72] The staff also stated its view that identification of a company's web site and the statement ''[o]ur SEC filings are also available to the public from our web site'' will not, by itself, include or incorporate by reference any information into the registration statement that is included or hot linked to the issuer's regular web site that is not otherwise incorporated by reference into the registration statement.[73] Because the staff's interpretive position on these matters is now well established, other pilot participants may rely on these positions and do not need to submit a specific written request.

B. Denial of Request for Acceleration

Currently, we consider a number of factors in determining whether the statutory requirements for acceleration of registration statements for public offerings, including mutual fund offerings, have been met, and may refuse to accelerate the effective date in appropriate circumstances. Among the factors that we consider is the clarity of the disclosure. We may refuse to accelerate a registration statement:

> Where there has not been a bona fide effort to make the prospectus reasonably concise and readable, so as to facilitate an understanding of the information required or permitted to be contained in the prospectus.'' [74]

Our proposals amend this provision to reflect the proposed requirement for plain English. To effectively implement plain English we are committed to administering this rule in a manner that achieves its goal of readable documents. If your document, when filed, indicates a good faith effort to meet the requirement, our staff will work with you, in the review and comment process, to meet any plain English requirements adopted and your financing schedule. We request your views as to other actions that we should take to make the prospectus clearer to investors and implement the plain English requirements.

[72] Division of Corporation Finance letters to ITT Corporation (dated November 12, 1996 and January 6, 1997), Baltimore Gas and Electric Corporation (two letters dated January 6, 1997) and SCANA Corporation (dated January 6, 1997).

[73] Division of Corporation Finance letter to ITT Corporation (December 6, 1996) and BGE Corporation (dated January 6, 1997).

[74] Rule 461 of Regulation C.

C. Phase-In of Plain English Requirements

To make sure that our plain English proposals do not interfere with your need to access the capital markets on a timely basis, any plain English rule that is finally adopted would be phased in as follows:

- Registration statements pending on the effective date of the rule would not need to be revised to meet the plain English requirements;
- An updating amendment to a registration statement filed to meet section 10(a)(3) of the Securities Act [75] would be required to comply with the rule in effect at the time of filing;
- Any shelf registration statement affected by the plain English rule would be required to comply with the requirement at the time a new shelf registration statement is filed, but no later than December 31, 1998.
- All filings would be required to comply with the rule no later than December 31, 1998.

Please give us your comments on whether this schedule provides you the necessary flexibility to meet the proposed revisions, if adopted.

VI. Request for Comments

We request your comments on whether plain English should be mandated or only recommended, and whether there are other alternatives that will provide for a more reader-friendly and understandable disclosure document. Your comments are also requested on whether or not plain English should be required for the entire prospectus and not just the cover page, prospectus summary, and risk factors section. Please furnish the specific reasons for your position. We request your comment on whether additional plan English techniques should be required and, if so, which ones. If you have concerns that plain English will increase liability we request information on the substantive basis for your

[75] 15 U.S.C. 77j(a)(3).

concern and, if available, the factual data in support of your position.

We specifically request that investors provide comments on the proposals.

VII. Cost-Benefit Analysis

Our plain English proposals streamline existing requirements and require a clear writing style and format. We believe the proposals, if adopted, would result in little additional costs as issuers implement the organizational, language, and document structure changes necessary to comply with these proposals. Additional cost, if any, should be short-term and would be outweighed by the significant improvement in disclosure to investors. In addition, a number of the proposals simplify the cover page format, which should result in some printing and other cost savings in preparing prospectuses.

We request your comment on whether the proposed rules would be ''major rules'' for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996. We have tentatively concluded that the proposed rules would not result in a major increase in costs or prices for consumers or individual industries or significant adverse effects on competition, employment, investment, productivity, innovation, or small business. We request comments on whether the proposed rules are likely to have a $100 million or greater annual effect on the economy. Your comments should provide empirical data to support your views.

As an aid in evaluating the cost and benefits of the proposals, we request your comments and those of others involved in the registration process on this cost/benefit analysis. Please provide empirical data in support of your position to assist us in determining the cost and benefits of the proposals. We specifically request individual investors to provide us their views on the cost and benefits of the proposals.

VIII. Summary of the Initial Regulatory Flexibility Analysis

We have prepared an initial regulatory flexibility analysis, IRFA, in accordance with 5 U.S.C. 603 concerning the proposed rules. As discussed more fully in the IRFA, the proposed rules would codify our interpretive advice, eliminate requirements that are no longer useful, and require plain English to be used to simplify the language used in the front of the documents. The rule amendments are proposed under sections 6, 7, 8, 10, and 19(A) of the Securities Act, and sections 3, 12, 13, 14, 14(d), 23(a), and 35A of the Exchange Act.

As the IRFA describes, we are aware of approximately 1100 Exchange Act reporting companies and approximately 800 active registered investment companies that currently satisfy the definition of ''small businesses'' under Rule 157 of the Securities Act. However, there is no reliable way to determine how many businesses may become subject to reporting obligations in the future or may otherwise be impacted by the rule proposals. The proposed rules do not affect the substance of disclosures registrants must make. The proposals do not impose any new recordkeeping requirements or require reporting of additional information. Thus, we believe that the proposals will not increase reporting, recordkeeping, or compliance burdens, and in some cases may slightly reduce those burdens for small businesses. Our view is also based on the experience of participants in the plain English pilot program. Pilot participants reported that the time required to understand the reporting requirements and prepare disclosures was the same, and in some cases a little less, than under existing rules. Although none of the program participants is a ''small business'' as defined by our rules, we believe the proposals will affect all registrants in the same way.

As discussed more fully in the IRFA, several possible significant alternatives to the proposals were considered. These included establishing different compliance or reporting requirements for small entities, or exempting them from all or part of the proposed requirements. We believe that such alternatives are not appropriate for the following reasons: (i) They would be inconsistent with our mandate to require prospectuses to fully and fairly disclose all material information to investors; (ii) they would negate the important benefits of the proposals; and (iii) they would not reduce small issuers' compliance costs. The IRFA also indicates that there are no current federal rules that duplicate, overlap, or conflict with the proposed rules.

We encourage written comments on any aspect of the IRFA. In particular, we seek comment on: (i) The number of small entities that would be affected by the proposed rules; and (ii) the determination that the proposed rules would not increase, and in some cases might slightly reduce, reporting, recordkeeping, and other compliance requirements for small entities. If you believe the proposals will significantly impact a substantial number of small entities please describe the nature of the impact and estimate the extent of the impact. For purposes of making determinations required by the Small Business Regulatory Enforcement Act of 1966, we are also requesting data regarding the potential impact of the proposed rules on the economy on an annual basis. Your comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed amendments are adopted. A copy of the analysis may be obtained by contacting Ann D. Wallace, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

IX. Paperwork Reduction Act

The proposed amendments would affect several regulations and forms [76] that contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995.[77] In order to obtain Office of Management and Budget approval, we previously submitted estimates to that Office of the time and cost burdens imposed on public companies by each regulation and form. Each of the regulations and forms currently is approved by that Office and displays a Paperwork Reduction Act control number.

We believe that the proposed amendments would not result in a substantive or material change to the collection of information requirements based on our experience with the plain English pilot programs. Pilot participants have indicated that they do not believe that drafting plain English documents has increased their time or cost burdens. In addition, the proposed rules do not affect the substance of the disclosure required. We anticipate that the proposals would not materially change the annual burden reporting and burden hours, because the proposals provide guidance on meeting existing disclosure obligations and simplify the format of the disclosure provided to investors.

We solicit comment on our determination that the proposals would not result in a substantive or material change to the collection of information requirement and burdens. If you believe the proposals will affect materially the annual burden, you are asked to provide

[76] We are proposing changes to Rules 421 and 461 of Regulation C, Items 101, 501, 502, 503 and 508 of Regulation S–K and Regulation S–B and Item 301 of Regulation S–K. We also are proposing minor amendments to registration Forms S–2, S–3, S–4, S–20, F–3 and F–4 under the Securities Act. Regulation S–K, Regulation S–B and Regulation C do not impose reporting burdens directly on public companies. For administrative convenience, each of these regulations is assigned one burden hour. The burden hours imposed by the disclosure regulations are reflected in the estimates for the forms that refer to the regulations.

[77] 44 U.S.C. 3501 *et seq.*

an estimate of the change in the burden and the basis for your position.

X. Statutory Authority

The rule amendments outlined above are proposed pursuant to Sections 6, 7, 8, 10 and 19(a) of the Securities Act and Sections 8, 30, 31 and 38 of the Investment Company Act of 1940.

List of Subjects in 17 CFR Parts 228, 229, 230 and 239

Reporting and recordkeeping requirements, Securities and Investment companies.

XI. Text of the Proposals

In accordance with the foregoing, Title 17, Chapter 11 of the Code of Federal Regulations is proposed to be amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. By amending § 228.101 to add paragraphs (c) and (d) to read as follows:

§ 228.101 (Item 101) Description of business.

* * * * *

(c) *Reports to security holders.* If the small business issuer is not required to deliver an annual report to security holders, indicate whether it will voluntarily send an annual report and whether the report will include audited financial statements.

(d) *Canadian Issuers.* Canadian issuers shall provide the information required by Item 101(f) of Regulation S–K (§ 228.101(f)) (Enforceability of Civil Liabilities Against Foreign Persons).

3. Section 228.501 is amended by adding an introductory text, revising paragraphs (a)(4), (a)(5), (a)(7) and (a)(8) and removing paragraph (a)(11) to read as follows:

§ 228.501 (Item 501) Front of registration statement and outside front cover of prospectus.

The following information must be provided in plain English as required by § 230.421(d) of Regulation C of this chapter.

(a) * * *

(4) Cross reference to and identify the location in the prospectus (e.g., by page number or other specific location) of the risk factors section of the prospectus. The information should be highlighted by prominent type or otherwise.

(5) The small business issuer must provide disclosure that informs investors that the Securities and Exchange Commission has not approved the securities or passed on the adequacy of the disclosures in the prospectus and that any representation to the contrary is a criminal offense. The disclosure may be in one of the following formats or other clear and concise language.

Example A: The Securities and Exchange Commission has not approved or disapproved these securities or passed upon the adequacy of the prospectus. Any representation to the contrary is a criminal offense.

Example B: The Securities and Exchange Commission (''SEC'') has not approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

(6) * * *

(7) If the securities are to be offered for cash, the small business issuer should set forth the price to the public, and the cash underwriting discounts and commissions. The information may be set forth in a table, term sheet format or other clear presentation. The small business issuer may present the information in any format that fits the design of the cover page so long as the information can be easily read and is not misleading. The information must be shown on a per unit and aggregate basis. If the offering is made on a minimum/maximum basis, information on the aggregate minimum/maximum must be shown. For best efforts or best efforts minimum/maximum offerings the cover page should disclose the date the offering will end and the provisions to place the funds in an escrow, trust, or similar account. Note that Item 508(a) requires all compensation and expenses of the underwriters to be disclosed in that section.

(8) A prospectus used before the effective date of the registration statement must include a prominent statement that indicates that:

(i) The information in the prospectus will be amended or completed;

(ii) The securities may not be sold until the registration statement becomes effective; and

(iii) The prospectus is not an offer to sell nor is it seeking an offer to buy the securities in any State where the offering is not permitted. The legend may be in the following language or other clear, and understandable language:

The information in this prospectus is not complete. We may not sell these securities until the registration statement filed with the SEC is effective. This prospectus is not an offer to sell nor is it seeking an offer to buy these securities in any state where the offer or sale is not permitted.

(iv) Comparable information must be provided if the prospectus is used before the determination of the initial public offering price in the case of a prospectus that omits this information as permitted by § 230.430A of this chapter.

* * * * *

4. Section 228.502 is revised to read as follows:

§ 228.502 (Item 502) Inside front and outside back cover page of prospectus.

A small business issuer must disclose the following information in plain English as required by § 230.421(d) of Regulation C of this chapter.

(a) *Information available to security holders.* (1) On the inside front or outside back cover page of the prospectus, the small business issuer must state whether it is a reporting company; and

(2) The small business issuer shall describe the nature and frequency of the reports and other information the issuer is required to file with the Securities and Exchange Commission (SEC) that are available to investors. The small business issuer shall indicate that the documents can be reviewed and copied at the Commission's Public Reference Room in Washington, DC. 20549. In addition, if the small business issuer is an electronic filer, the disclosure shall indicate that the reports may be viewed on the SEC's Internet site (http://www.sec.gov) or that copies may be obtained, upon payment of a duplicating fee, by writing to the SEC's Public Reference Section. The small business issuer should indicate that information on the operation of the public reference room may be obtained by calling the SEC at 1–800–SEC–0330. Small business issuers are encouraged to give their Internet site address, if one is available.

(3) The small business issuer shall state the name of any national securities exchange on which its securities are listed.

(b) *Address and telephone number.* The small business issuer must include on the inside front cover page, or in the summary of the prospectus, the complete mailing address and telephone number of the small business issuer's principal executive offices.

(c) *Dealer Prospectus Delivery Obligations.* The small business issuer must set forth information on the outside back cover page of the prospectus which advises dealers conducting transactions in the securities, whether or not they are participating in the distribution, that

they may be required to deliver a prospectus. The disclosure should specify the time period during which dealers must deliver a prospectus as specified in section 4(3) of the Securities Act and § 230.174 of this chapter. The following legend may be used or any other format that includes the required content and is clear and concise;

Until (insert date) all dealers that buy, sell or trade these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

(d) *Table of Contents.* On the inside front cover page of the prospectus, or immediately following the cover page, the small business issuer should provide a reasonably detailed table of contents showing the location in the prospectus, including page number, if practicable, of the subject matter of the various sections or subdivisions of the prospectus, including the risk factors section required by Item 503 of Regulation S–B.

(e) *Financial Data Graphs.* Registrants are encouraged to use tables, schedules, charts and graphic illustrations of the results of operations, balance sheet, or other financial data that presents the data in an understandable manner. Any presentation must be consistent with the financial statements and related non-financial information. The graphs and charts must be drawn to scale and the information provided must not be misleading.

5. By revising § 228.503 to read as follows:

§ 228.503 (Item 503) Summary information and risk factors.

The following information must be furnished in plain English as required by § 230.421(d) of Regulation C of this chapter.

(a) *Summary.* Provide a summary of the information contained in the prospectus where the length and complexity of the prospectus make a summary useful. The summary should be brief. The summary should not and is not required to contain all of the detailed information in the prospectus.

(b)(1) *Risk factors.* Discuss under the caption ''Risk Factors'' any factors that make the offering speculative or risky. The risk factor disclosure should highlight critical factors that the investor must consider in making an investment decision. Generic and boilerplate risks that could apply to any issuer or any offering should not be provided. The risk factors must be discussed in the order of their importance. The factors may include, among other things, the following:

(i) The small business issuer's lack of recent profits from operations;

(ii) The small business issuer's poor financial position;

(iii) The small business issuer's business or proposed business; or

(iv) The lack of a market for the small business issuer's common equity securities.

(2) The risk factor discussion should immediately follow the summary section. If no summary section is necessary, the risk factor discussion should immediately follow the cover page of the prospectus or, if included, a pricing information section that immediately follows the cover page.

Instruction to Item 503(b)(2)

''Pricing information'' as used in paragraph (b) of this section shall mean price and price-related information of the type that may be omitted from the prospectus in an effective registration statement in reliance on § 230.430A(a) of this chapter and information disclosed in a prospectus but is subject to change as a result of pricing.

6. Section 228.508 is amended to add a sentence to the end of paragraph (a) and paragraph (j) to read as follows:

§ 228.508 (Item 508) Plan of distribution.

* * * * *

(a) *Underwriters and underwriting obligations.* * * * Disclose in a table all underwriting compensation including the other expenses of the offering specified in Item 511 of this Regulation S–B.

* * * * *

(j) *Stabilization and other transactions.* The small business issuer must provide disclosure which briefly describes any transaction that the underwriters intend to conduct during the offering that stabilizes, maintains or otherwise affects the market price of the offered securities. Disclosure should be provided to indicate, if true, that the underwriters may discontinue these transactions at any time and indicate the exchange or other market on which these transactions may occur.

(1) If the stabilizing begins before the effective date of the registration statement, the small business issuer must state the amount of securities bought, the prices at which they were bought and the period within which they were bought. If § 230.430A of this chapter is used, the final prospectus must include information on the stabilizing transactions before the public offering price was set.

(2) In connection with warrant or rights offerings to existing security holders, where securities not purchased by security holders are reoffered to the public, give the following information in the reoffer prospectus:

(i) The amount of securities bought in stabilization activities during the rights offering period and the price or range of prices at which the securities were bought;

(ii) The amount of the securities subscribed for during the rights offering period;

(iii) The amount of the securities purchased by the underwriter during the rights offering period; and

(iv) The amount of the securities reoffered to the public and the offering price.

Instruction to Paragraph (j)

The disclosure should include information on stabilizing transactions, syndicate short covering transactions, penalty bids or any other transaction that affects the offered security's price. The nature of the transactions should be described in a clear understandable manner.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

7. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

8. By amending § 229.101 to add paragraphs (e) and (f) before ''Instructions to Item 101'' to read as follows:

§ 229.101 (Item 101) Description of business.

* * * * *

(e) *Reports to security holders.* Where a registrant is not required to deliver an annual report to security holders (or holders of American Depositary Receipts) by Section 14 of the Exchange Act (15 U.S.C. 78n) or stock exchange requirements, describe briefly the nature and frequency of reports that will be given to security holders. Specify whether or not such reports will contain financial information that has been examined and reported upon, with an opinion expressed by, any independent public or certified public accountant. In the case of the reports of a foreign private issuer, state whether the report will contain financial information prepared in accordance with United States generally accepted accounting

principles, or whether the report will include a reconciliation of such information with such accounting principles.

(f) *Enforceability of civil liabilities against foreign persons.* (1) A foreign private issuer shall provide disclosure which informs an investor as to whether actions may be brought under the civil liabilities provisions of the Federal securities laws against the registrant, its officers and directors, the underwriters or experts located in or residents of a foreign country or whose assets are located outside the United States. The disclosure shall address the following matters:

(i) The investor's ability to effect service of process within the United States on the foreign private issuer or any person;

(ii) The investor's ability to enforce judgments obtained in United States courts against the persons based upon the civil liability provisions of the Federal securities laws;

(iii) The investor's ability to enforce, in an appropriate foreign court, judgments of United States courts based upon the civil liability provisions of the Federal securities laws; and

(iv) The investor's ability to bring an original action in an appropriate foreign court to enforce liabilities against the foreign private issuer or any person based upon the Federal securities laws.

(2) If any of the disclosures are based upon an opinion of counsel, counsel must be named in the prospectus. The foreign private issuer must file a signed consent of counsel, to the use of counsel's name and opinion, as an exhibit to the registration statement.

9. By amending § 229.301 by designating the introductory text as paragraph (a), introductory text, redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (a)(2); redesignating existing instruction as ''Instructions to Item 301(a)'' and adding paragraph (b) to read as follows:

§ 229.301 (Item 301) Selected financial data.

* * * * *

(b) *Ratio of Earnings to Fixed Charges.* If debt securities are registered, a ratio of earnings to fixed charges must be shown. If preference equity securities are registered, a ratio of combined fixed charges and preference dividends to earnings must be shown. The ratio must be presented for each of the last five fiscal years and the latest interim period for which financial statements are presented. If proceeds from the sale of debt or preference securities will be used to repay any of the registrant's outstanding securities, and the change in the ratio would be ten percent or greater, a pro forma ratio must be shown.

Instructions to Item 301(b)

1. *Definitions.* The following definitions apply when calculating the ratio of earnings to fixed charges.

A. *Fixed charges.* The term ''fixed charges'' means the sum of the following: (i) Interest expensed and capitalized, (ii) amortized premiums, discounts and capitalized expenses related to indebtedness, (iii) an estimate of the interest within rental expense, and (iv) preference security dividend requirements of consolidated subsidiaries.

B. *Preference security dividend.* The term ''preference security dividend'' is the amount of pre-tax earnings that is required to pay the dividends on outstanding preference securities. The dividend requirement shall be computed as the amount of the dividend divided by (1—the effective income tax rate applicable to continuing operations).

C. *Earnings.* The term ''earnings'' is the amount resulting from adding and subtracting the following items. Add: (i) Pretax income from continuing operations before adjustment for minority interests in consolidated subsidiaries or income or loss from equity investees, (ii) fixed charges; (iii) amortization of capitalized interest, (iv) distributed income of equity investees, and (v) the registrant's share of pre-tax losses of equity investees for which charges arising from guarantees are included in fixed charges. Subtract: (i) interest capitalized, (ii) preference security dividend requirements of consolidated subsidiaries, and (iii) the minority interest in pre-tax income of subsidiaries that have not incurred fixed charges. Equity investees are investments that are accounted for using the equity method. Public utilities following SFAS 71 should not add amortization of capitalized interest in determining earnings, nor reduce fixed charges by any allowance for funds used during construction.

2. *Disclosure.* The following disclosure should be provided when showing the ratio of earnings to fixed charges.

A. *Deficiency.* If a ratio indicates less than one-to-one coverage, the registrant must disclose the dollar amount of the deficiency.

B. *Pro forma ratio.* The pro forma ratio may only be shown for the most recent fiscal year and the latest interim period. Only the net change in interest or dividends of the refinancing may be used to calculate the ratio.

C. *Foreign private issuer.* A foreign private issuer must show the ratio based on the figures in the primary financial statement. If materially different, the ratio also must be shown based on the figures resulting from the reconciliation to U.S. generally accepted accounting principles.

D. *Summary Section.* If a summary section is provided in the prospectus, registrants should show the ratios in that section.

3. *Exhibit.* The registrant must file an exhibit to the registration statement to show the figures used to calculate the ratios. See paragraph (12) of Item 601 of Regulation S–K.

10. By revising § 229.501 to read as follows:

§ 229.501 (Item 501) Front of the registration statement and outside front cover page of the prospectus.

(a) *Facing Page.* The facing page must indicate the approximate date of the proposed sale to the public and, where appropriate, must include the delaying amendment legend required by § 230.473 of Regulation C of this chapter.

(b) *Outside Front Cover Page of Prospectus.* The following information, if applicable, must appear on the outside cover page of the prospectus, and must be in plain English as required by § 230.421(d) of Regulation C of this chapter. The information may be presented in a table, bullet list, term sheet format or other clear design. Registrants should design the outside cover page in a manner and format that is easy to read and encourages the investor to read the disclosure. Registrants may use any design that does not diminish the required information and is not misleading.

(1) *Name.* The registrant's name should be set forth. A foreign private registrant must give the English translation of the name.

Instruction to Paragraph 501(b)(1)

If the registrant's name is the same as that of a company that is well known, the registrant must include information to eliminate any possible confusion with the other company. If the name indicates a line of business in which the registrant is not engaged or is engaged only to a limited extent, the registrant must include information to remove a misleading inference as to the registrant's business. In some circumstances disclosure may not be sufficient and the registrant may be required to change its name. A name change is not required where the registrant is an established company, the character of its business has changed, and the investing public is aware generally of the change and the registrant's current business.

(2) *Title and amount of securities.* The title and amount of securities offered must be given. The amount of securities offered by selling security holders must be stated separately. A brief description of the securities must also be given except where the information is clear from the title of the security. For example, no description is necessary for common stock that has full voting rights, dividends and liquidation rights usually associated with common stock.

(3) *Offering price, underwriting commissions and offering proceeds.* Where securities are to be offered for cash, the price to the public, the underwriting discounts and commissions, and the proceeds to be received by the registrant and the proceeds to be received by the selling shareholders, if any, should be shown.

Instructions to Paragraph 501(b)(3)

1. If a preliminary prospectus is circulated and the registrant is not subject to the reporting requirements of Section 13(a) or 15 (d) of the Exchange Act, set forth either:

(A) A *bona fide* estimate of the range of the maximum offering price and the maximum number of securities offered; or

(B) A *bona fide* estimate of the principal amount of the debt securities offered.

2. If it is impracticable to state the price to the public, the method by which the price is to be determined should be explained. If the securities are to offered at the market price, or if the offering price is to be determined by a formula related to the market price, indicate the market and market price of the securities as of the latest practicable date.

3. The term ''commissions'' is defined in paragraph (17) of Schedule A of the Securities Act. Only cash commissions paid by the registrant or selling security holders are to be shown. See Item 508 of Regulation S–K as to the requirements to disclose other expenses of the offering.

4. The proceeds shown should be the gross proceeds of the offering less underwriting discounts and commissions. The price and proceeds information should be shown on both a per unit and an aggregate basis. Registration statements on Form S–8 relating to employee benefit plans, Form S–4 or F–4 covering securities issued in a merger transaction or Form S–3 or F–3 relating to a dividend reinvestment plan are not required to comply with this paragraph.

(4) *State Legend.* Any legend or statement required by the law of any State in which the securities are to be offered should be set forth.

(5) *Commission Legend.* Disclosure should be furnished that indicates that the Securities and Exchange Commission has not approved the securities or passed upon the adequacy of the disclosures in the prospectus and that any contrary representation is a criminal offense. The legend may be in one of the following formats or other clear and concise language:

Example A: The Securities and Exchange Commission has not approved or disapproved these securities or passed upon the adequacy of this prospectus. Any representation to the contrary is a criminal offense.

Example B: The Securities and Exchange Commission (SEC) has not approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

(6) *Underwriting.* Identify the underwriter(s) and briefly indicate the nature of the underwriting arrangements. If the securities are offered on a best efforts basis, set forth the termination date of the offering, any minimum required purchase and any arrangements to place the funds received in an escrow, trust, or similar account. If no such arrangements have been made, so state. Registrants may use any clear, concise, and accurate description of the underwriting arrangements. The following descriptions of underwriting arrangements may be used, where appropriate:

Example A: *Best efforts offering.* The underwriters are not required to sell any specific number or dollar amount of securities but will use their best efforts to sell the securities offered.

Example B: *Best efforts, minimum-maximum offering.* The underwriter must sell the minimum number of securities offered (insert number) but is only required to use their best efforts to sell the maximum number of securities offered (insert number).

Example C: *Firm commitment.* The underwriters are required to purchase all of the securities if any of the securities are purchased.

(7) *Date of Prospectus.* The approximate date of the prospectus should be given.

(8) *''Subject to Completion'' Legend.* Any prospectus used before the effective date of the registration statement must include a prominent statement that indicates that:

(i) The information in the prospectus will be amended or completed;

(ii) The securities may not be sold until the registration statement becomes effective; and

(iii) The prospectus is not an offer to sell nor is it seeking offers to buy the securities in any State where offers or sales is not permitted. The legend may be in the following language or other clear, and understandable language:

The information in this prospectus is not complete. We may not sell these securities until the registration statement filed with the SEC is effective. This prospectus is not an offer to sell nor is it seeking an offer to buy these securities in any state where the offer or sale is not permitted.

(iv) Comparable information must be provided if the prospectus is used before to the determination of the initial public offering price in the case of a prospectus that omits this information as permitted by § 230.430A of this chapter.

11. By revising § 229.502 to read as follows:

§ 229.502 (Item 502) Inside front and outside back cover pages of prospectus.

This information must be furnished in plain English as required by § 230.421(d) of Regulation C of this chapter.

(a) *Available Information.* Registrants subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78*o*(d)) at the time the registration statement is filed must provide disclosure indicating:

(1) That the registrant is subject to the information requirements of the Exchange Act and files reports and other information with the Securities and Exchange Commission;

(2) That reports (and where registrant is subject to sections 14(a) and 14(c) of the Exchange Act (15 U.S.C. 78n(a) and (c)), proxy and information statements) and other information filed by the registrant can be reviewed and copied at the Commission's Public Reference Room in Washington, DC 29549. In addition, if the registrant is an electronic filer, the disclosure must indicate that the reports may be viewed on the SEC's Internet site (http://www.sec.gov) or that copies may be obtained, upon payment of a duplicating fee, by writing to the SEC's Public Reference Section. The registrant must indicate that information on the operation of the public reference rooms may be obtained by calling the SEC at 1–800–SEC–0330. Registrants are encouraged to give their Internet site address, if one is available. This information must appear on the back cover page or in the prospectus where the registrant discloses the reports incorporated by reference;

(3) The name of any national securities exchange on which the registrant's securities are listed.

(b) *Table of Contents.* The registrant must provide on the inside front cover page, or immediately following the cover page, a reasonably detailed table of contents. The table of contents should show the location in the prospectus, including the page number, if practicable, of the subject matter of the various sections or subdivisions of the prospectus, including the risk factor section required by Item 503 of Regulation S–K.

(c) *Address and Telephone Number.* Registrants must include the complete mailing address, including zip code, and the telephone number, including area code, of their principal executive offices.

(d) *Financial Data Graphs.* Registrants are encouraged to use tables, schedules, charts and graphic illustrations of the results of operations, balance sheet, or other financial data that presents the data in an understandable manner. Any presentation must be consistent with the financial statements and related non-financial information. The graphs and charts must be drawn to scale and the information provided must not be misleading.

(e) *Dealer Prospectus Delivery Obligations.* Information must be set forth on the outside back cover page of the prospectus that advises brokers of their prospectus delivery obligation, including the expiration date specified by section 4(3) of the Securities Act (15 U.S.C. 77d(3)) and § 230.174 of this chapter. If the expiration date is not known on the effective date of the registration statement, the date must be included in the copy of the prospectus filed under § 230.424(b) of this chapter. The legend can be in any format so long as the content is set forth. No legend is required if dealers are not required to deliver a prospectus under § 230.174 of this chapter or section 24(d) of the Investment Company Act (15 U.S.C. 80a–24). The legend may read as follows:

Until (insert date) all dealers that buy, sell or trade these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

12. By revising § 229.503 to read as follows:

§ 229.503 (Item 503) Prospectus summary and risk factors.

The following information must be furnished in plain English as required by § 230.421(d) of Regulation C of this chapter. The information may be presented in table, bullet list, term sheet format, or other clear design. Registrants should structure and organize the prospectus summary and risk factors discussion in a manner and format that is easy to read and encourages investors to read the disclosure. Registrants may use any format or design that does not obscure the required information and is not misleading.

(a) *Prospectus Summary.* Registrants must include a summary of the information in the prospectus where the length or complexity of the prospectus makes a summary appropriate. The summary section should be brief. The summary should not and is not required to contain all of the detailed information in the prospectus.

Instruction to paragraph (a)

The summary section must provide investors with a clear, concise and coherent ''snapshot'' description of the most significant aspects of the offering. Summaries should not randomly repeat the text of the prospectus but should provide a brief overview of the key aspects of the offering. Registrants must carefully consider and identify the aspects of an offering that are the most significant and determine how best to highlight these points in everyday language.

(b) *Risk Factors.* Where appropriate, registrants must set forth under the caption ''Risk Factors'' a discussion of the most significant factors that make the offering speculative or one of high risk. The risk factors must be discussed in the order of their importance. The risk factors discussion should be short, concise and organized in a logical manner. The prioritized risk factors must highlight critical factors the investor must weigh in making an investment decision. Generic and boilerplate risk that could apply to any registrant or any offering should not be provided. Each risk factor must be set forth under a subcaption that adequately describes the risk. The risk factor discussion should immediately follow the summary section, if one is included, or the cover page of the prospectus. The factors may include, among other things, the following:

(1) The registrant's lack of an operating history;

(2) The registrant's lack of profitable operations in recent periods;

(3) The registrant's financial position;

(4) The registrant's business or proposed business; or

(5) The lack of a market for the registrant's common equity securities or securities convertible into or exercisable for common equity securities.

13. By amending § 229.508 by revising paragraphs (b) and (e) and adding paragraph (l) to read as follows:

§ 229.508 (Item 508) Plan of distribution.

* * * * *

(b) *New Underwriters.* Where securities being registered are those of a registrant that has not previously been required to file reports under section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78*o*(d)) and any of the managing underwriter(s) (or where there are no managing underwriters, a majority of the principal underwriters) was organized, reactivated, or first registered as a broker-dealer within the past three years, these facts should be disclosed in the prospectus. If appropriate, disclosure that the principal business function of the underwriters is to sell the securities to be registered, or that the promoters of the registrant have a material relationship with such underwriter(s) should be provided. Sufficient details shall be given to allow full appreciation of the underwriter(s)' experience and its relationship with the registrant, promoters and their controlling persons.

* * * * *

(e) *Underwriters' compensation.* Set forth in tabular form the nature of the compensation and the amount of discounts and commissions to be allowed or paid to the underwriters. Separately show amounts to be paid by the company and the selling shareholders. In addition, all other items deemed by the National Association of Securities Dealers to constitute underwriting compensation for purposes of the Association's Rules of Fair Practice must be shown in the table.

Instructions to Paragraph 508(e)

1. The term ''commissions'' is defined in paragraph (17) of Schedule A of the Securities Act. Show cash commissions paid by the registrant or selling security holders separately in the table. Commissions paid by other persons also shall be set forth in the table. Any finder's fee or similar payments shall be disclosed in a note in the table.

2. Where an underwriter has received an over-allotment option, maximum-minimum information shall be presented in the table, based on the purchase of all or none of the shares subject to the option. The terms of the option should be described in the narrative.

* * * * *

(*l*) *Stabilization and other transactions.* (1) The registrant must provide disclosure which briefly describes any transaction that the underwriter(s) intends to conduct during the offering that stabilizes, maintains or otherwise affects the market price of the offered securities. Disclosure should be provided to indicate, if true, that the underwriter(s) may discontinue these transactions at any time and indicate the exchange or other market on which these transactions may occur.

(2) If the stabilizing began before the effective date of the registration statement, set forth the amount of securities bought, the prices at which the securities were bought and the period within which they were bought. In the event that § 230.430A of this chapter is used, the prospectus filed pursuant to § 230.424(b) of this chapter or included in a post-effective amendment must include information

as to stabilizing transactions effected before the determination of the public offering price set forth in such prospectus.

(3) If the securities being registered are to be offered to existing security holders pursuant to warrants or rights and any securities not taken by security holders are to be reoffered to the public after the expiration of the rights offerings period, the registrant shall be set forth, in a supplement or otherwise, in the prospectus used in connection with such reoffering:

(i) The amount of securities bought in stabilization activities during the rights offering period and the price or range of prices at which such securities were bought;

(ii) The amount of the offering securities subscribed for during such period;

(iii) The amount of the offered securities subscribed for by the underwriters during the period;

(iv) The amount of the offered securities sold during such period by the underwriters and the price, or range of prices, at which the securities were sold; and

(v) The amount of the offered securities to be reoffered to the public and the public offering price.

Instruction to Paragraph (j)

The disclosure should include information on stabilizing transactions, syndicate short covering transactions, penalty bids or any other transaction that affects the offered security's price. The nature of the transactions should be described in a clear, understandable manner.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

14. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78(d), 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

15. By amending § 230.421 by revising paragraph (b) and adding paragraph (d) to read as follows:

§ 230.421 Presentation of information in prospectuses.

* * * * *

(b) The information set forth in a prospectus should be presented in a clear, concise and understandable fashion. All information contained in a prospectus shall be set forth under appropriate captions or headings reasonably indicative of the principal subject matter set forth thereunder. Except as to financial statements and other tabular data, all information set forth in a prospectus shall be divided into reasonably short paragraphs or sections. Registrants shall prepare the prospectus using the following standards:

(1) Information shall be presented in clear, concise paragraphs and sentences. If possible, information shall be presented in short explanatory sentences and ''bullet'' lists;

(2) Captions and subheading titles shall specifically describe the disclosure included in the section;

(3) Terms that are not clear from the context generally should be defined in a glossary or other section of the document. Glossaries are recommended where they facilitate understanding. Frequent reliance on defined terms as the primary means of explaining information in the body of the prospectus must be avoided; and

(4) Legal and highly technical business terminology should be avoided.

Notes to § 230.421(b)

In drafting prospectus information, registrants should avoid the following:

1. Legalistic, overly complex presentations that make the substance of the disclosure difficult to understand;

2. Vague ''boilerplate'' explanations that are imprecise and readily subject to differing interpretations;

3. Complex information copied directly from legal documents without any clear and concise explanation of the provision(s); and

4. Disclosure repeated in different sections of the document that increases the size of the document, does not enhance the quality of the information, and overwhelms the reader.

(d)(1) The registrant must use plain English principles in the organization, language, and structure of the front and back cover pages, and the summary and risk factors sections, if any, included in the prospectus. These sections should communicate the information clearly to investors. At a minimum, the disclosure should substantially comply with each of the following plain English writing principles:

(i) Active voice;

(ii) Short sentences;

(iii) Definite, concrete, everyday words;

(iv) Tabular presentation or ''bullet'' list for complex material, whenever possible;

(v) No legal jargon, or highly technical business terms; and

(vi) No multiple negatives.

(2) The design of these sections or other sections of the prospectus may include pictures, logos, charts, graphs or other design elements so long as the design is not misleading and the required information is clear.

16. By amending § 230.461 by adding a sentence to the end of paragraph (b)(1) to read as follows.

§ 230.461 Acceleration of effective date.

* * * * *

(b) * * *

(1) * * * Where the plain English prospectus requirements of § 230.421(d) of this chapter have not been met.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

17. The authority citation for Part 239 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

§ 229.12 [Form S–2 Amended]

18. By amending Form S–2 (referenced in § 239.12), Item 12 to add paragraph (d) to read as follows:

[Note: The text of Form S–2 does not, and this amendment will not, appear in the Code of Federal Regulations]

FORM S–2

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Item 12. Incorporation of Certain Information by Reference.

* * * * *

(d) The registrant shall indicate that it will provide, without charge to each person, including any beneficial owner to whom a prospectus is delivered, upon their written or oral request, a copy of any and all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus. Registrants are not required to send the exhibits to the information that is incorporated by reference unless such exhibits are specifically incorporated by reference into the information that the prospectus incorporates. The registrant shall give the title or department including the address and telephone number where the request should be made.

* * * * *

§ 239.13 [Form S–3 Amended]

19. By amending Form S–3 (referenced in § 239.13) Item 12 to add paragraph (c) before the instruction to read as follows:

[Note: The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations]

FORM S–3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Item 12. Incorporation of Certain Information by Reference.

* * * * *

(c) The registrant shall indicate that it will provide, without charge to each person, including any beneficial owner to whom a prospectus is delivered, upon their written or oral request, a copy of any and all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus. Registrants are not required to send the exhibits to the information that is incorporated by reference unless such exhibits are specifically incorporated by reference into the information that the prospectus incorporates. The registrant shall give the title or department including the address and telephone number where the request should be made.

* * * * *

§ 239.20 [Form S–20 Amended]

20. By amending Form S–20 (referenced in § 239.20) to revise the reference in Item 1 ''Item 502(f) of Regulation S–K [§ 229.502(f) of this chapter]'' to read ''Item 101(f) of Regulation S–K [§ 229.101(f) of this chapter]''.

§ 239.25 [Form S–4 Amended]

21. By amending Form S–4 (referenced in § 239.25) to revise Item 2 to read as follows:

[Note: The text of Form S–4 does not, and this amendment will not, appear in the Code of Federal Regulations]

FORM S–4

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Item 2. Inside Front and Outside Back Cover Pages of the Prospectus.

Set forth the information required by Item 502 of Regulation S–K (§ 229.502 of this chapter). In addition, on the inside front cover page, the registrant shall include information that highlights by print type or otherwise that the prospectus incorporates by reference important business and financial information about the company that is not included in or delivered with the document but which is available to security holders upon request. Give the name, address and telephone number where the request should be directed. In addition, the registrant should indicate that in order to obtain timely delivery, the request should be made no later than five business days prior to the date on which the investment decision must be made.

* * * * *

§ 239.33 [Form F–3 amended]

22. By amending Form F–3 (referenced in § 239.33) by adding paragraph (d) to Item 12 before the instruction to read as follows:

[Note: The text of Form F–3 does not, and this amendment will not, appear in the Code of Federal Regulations]

FORM F–3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Item 12. Incorporation of Certain Information by Reference.

* * * * *

(d) The registrant shall indicate that it will provide, without charge to each person, including any beneficial owner to whom a prospectus is delivered, upon their written or oral request, a copy of any and all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus. Registrants are not required to send the exhibits to the information that is incorporated by reference unless such exhibits are specifically incorporated by reference into the information that the prospectus incorporates. The registrant shall give the title or department including the address and telephone number where the request should be made.

* * * * *

§ 239.34 [Form F–4 Amended]

23. By amending Form F–4 (referenced in § 239.34) to revise Item 2 to read as follows:

[Note: The text of Form F–4 does not, and this amendment will not, appear in the Code of Federal Regulations]

FORM F–4

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Item 2. Inside Front and Outside Back Cover Pages of the Prospectus.

Set forth the information required by Item 502 of Regulation S–K (§ 229.502 of this chapter). In addition, on the inside front cover page, the registrant shall include information that highlights by print type or otherwise that the prospectus incorporates by reference important business and financial information about the company that is not included in or delivered with the document but which is available to security holders upon request. Give the name, address and telephone number where the request should be directed. In addition, the registrant should indicate that in order to obtain timely delivery, the request should be made no later than five business days prior to the date on which the investment decision must be made.

* * * * *

Dated: January 14, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendix A to the Preamble does not appear in the Code of Federal Regulations and the examples to Appendix A will not be in the Federal Register but may be viewed on our Internet site (http://www.sec.gov)

Appendix A—Examples of Plain English Disclosure Documents

The following pages are before and after samples taken from document filed by some of the Plain English Pilot participants:

- Bell Atlantic Corporation
- ITT Corporation
- Baltimore Gas and Electric Company
- Unisource Worldwide, Inc.

Some of the ''after'' examples do not contain all of the information that appears in the corresponding ''before''. To make these documents clearer and easier for investors to understand, these registrants either moved this information to a more logical section of the document or eliminated it because it was redundant.

Note: Appendix B to the Preamble does not appear in the Code of Federal Regulations

Appendix B—Chart on Small Business Issuer Rule Proposals

REGULATION S–B—ITEM 501—FRONT OF REGISTRATION STATEMENT AND OUTSIDE FRONT COVER OF PROSPECTUS

Current	Proposed
• Small business issuer name	• Same.
• Title, amount and description of securities offered	• Same.
• Selling security holders' offering identified	• Same.
• Cross-reference to risk-factors	• Same.
• SEC legal legend	• Rewritten in plain English.
• Formatted distribution table showing price, underwriting commission, and proceeds.	• Bullet list or other design that highlights the information
• Instruction on bona fide estimate of price	• Retain
• Instruction requiring terms of best efforts offering	• Retain on cover page. No longer permitted in summary.
• Legal legend where preliminary prospectus incomplete	• Rewritten in plain English.
• Legend required by state law	• Rewritten in plain English.
• Date of prospectus	• Retain.

REGULATION S–B—ITEM 501—FRONT OF REGISTRATION STATEMENT AND OUTSIDE FRONT COVER OF PROSPECTUS—Continued

Current	Proposed
• Expenses of offering	• Move to underwriting section.

REGULATION S–B—ITEM 502—INSIDE FRONT AND OUTSIDE BACK COVER PAGES OF PROSPECTUS

Current	Proposed
• Availability of Exchange Act Reports	• Retain on back cover page or include with incorporation by reference disclosure in short-form registration statements.
• Availability of reports with audited financial statements	• Move to business description section.
• Availability of reports incorporated by reference	• Move to prospectus where incorporation by reference disclosure provided.
• Stabilization legend	• Move to underwriting section.
• Passive market making legend	• Delete.
• Dealer prospectus delivery legend	• Move to back cover page of prospectus.
• Table of contents	• Inside front cover page or immediately following cover page.
• Canadian issuers disclosure on enforceability of civil liability against foreign person.	• Retain as part of business description.

REGULATION S–B—ITEM 503—SUMMARY INFORMATION AND RISK FACTORS

Current	Proposed
• Summary	• Retain in plain English. Propose to require discussion to be brief.
• Small business issuer address and telephone number	• Move to inside cover page or summary.
• Risk factors	• Retain in plain English. Codify prior interpretation to prioritize risk factors.

[FR Doc. 97–1300 Filed 1–17–97; 8:45 am]

BILLING CODE 8010–01–P

federal register

Tuesday
January 21, 1997

Part IV

Department of Education

Applications for New Awards for Fiscal Year 1997 and Final Priorities; Notices

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Notice of Final Priorities

AGENCY: Department of Education.

SUMMARY: The Secretary announces final priorities for three programs administered by the Office of Special Education and Rehabilitative Services (OSERS) under the Individuals with Disabilities Education Act. The Secretary may use these priorities in Fiscal Year 1997 and subsequent years. The Secretary takes this action to focus Federal assistance on identified needs to improve results for children with disabilities. These final priorities are intended to ensure wide and effective use of program funds.

EFFECTIVE DATE: These priorities take effect on February 20, 1997.

FOR FURTHER INFORMATION CONTACT: The address, and telephone number at the Department to contact for information on each final priority is listed under that priority.

SUPPLEMENTARY INFORMATION: This notice contains six final priorities under three programs authorized by the Individuals with Disabilities Education Act, as follows: Research in Education of Individuals with Disabilities Program (one priority); Educational Media Research, Production, Distribution, and Training Program (four priorities); and Technology, Educational Media, and Materials for Individuals with Disabilities Program (one priority). The purpose of each program is stated separately under the title of that program.

On October 9, 1996, the Secretary published a notice of proposed priorities for these programs in the Federal Register (61 FR 53032).

These final priorities support the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

The publication of these priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements. Funding of particular projects depends on the availability of funds, and the quality of the applications received. Further, FY 1997 priorities could be affected by enactment of legislation reauthorizing these programs.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under these competitions is published in a separate notice in this issue of the Federal Register.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, one party submitted comments. An analysis of the comment follows. Technical and other minor changes—as well as suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comment: One commenter suggested that the Initial Career Awards priority should: (1) include individuals who have completed a professional degree, such as physical therapists, but who are not doctorally prepared; and (2) permit researchers to request up to five years of research support.

Discussion: The Department has a basic three-pronged approach to develop the capacity of the special education research community. First, there is the Student-Initiated Research Projects priority (begun in 1974) that targets students at the post-secondary level to encourage students to pursue special education research. Under the Student-Initiated Research Projects priority, awards are made for up to a 12-month period. Second, the Initial Career Awards (ICA) competition (begun in 1990) is intended to bridge the gap between students and established researchers by providing support to individuals who are in the initial phases of their careers to initiate and develop promising lines of research. Under the ICA competition, awards are made for up to three years. Third, the Field-Initiated Research Projects (FIR) competition (begun in 1964) provides support to researchers who may be associated with institutions of higher education, State and local educational agencies, and other public agencies and nonprofit private organizations. Awards under the FIR competition may be for up to 5 years. The Department believes this approach should be maintained because historically the students and beginning researchers have a difficult time competing against established researchers, and the Department believes it is important to encourage and support their participation to expand the special education research capacity into as broad a range as possible. The Department believes that limiting the ICA competition to individuals who are doctorally prepared supports the commitment to increase the capacity of individuals who intend to pursue careers in special education research, rather than individuals who may be capable of conducting research, but who are not making special education research a career. The Department has limited ICA to three years since these awards are intended as start-up rather than long-term investments.

Changes: None.

Research in Education of Individuals With Disabilities Program

Purpose of Program: To advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services—including professionals who work with children with disabilities in regular education environments—to provide children with disabilities effective instruction and enable these children to learn successfully.

Priority: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only those applications that meet this absolute priority:

Absolute Priority—Initial Career Awards

The Secretary establishes an absolute priority for the purpose of awarding grants to eligible applicants for the support of individuals in the initial phases of their careers to initiate and develop promising lines of research consistent with the purposes of the program. For purposes of this priority, the initial phase of an individual's career is considered to be the first four years after completing a doctoral program and graduating (e.g., for fiscal year 1997 awards, projects may support individuals who completed a doctoral program and graduated no earlier than the 1991–92 academic year).

Projects must—

(a) Pursue a line of inquiry that reflects a programmatic strand of research emanating either from theory or a conceptual framework. The line of research must be evidenced by a series of related questions that establish directions for designing future studies extending beyond the support of this award. The project is not intended to represent all inquiry related to the particular theory or conceptual framework; rather, it is expected to initiate a new line or advance an existing one;

(b) Include, in its design and conduct, sustained involvement with nationally recognized experts having substantive or methodological knowledge and expertise relevant to the proposed research. Experts do not have to be at the same institution or agency at which the project is located, but the interaction must be sufficient to develop the

capacity of the researcher to pursue effectively the research into mid-career activities. At least 50 percent of the researcher's time must be devoted to the project;

(c) Prepare its procedures, findings, and conclusions in a manner that informs other interested researchers and is useful for advancing professional practice or improving programs and services to infants, toddlers, children, and youth with disabilities and their families; and

(d) Disseminate project procedures, findings, and conclusions to appropriate research institutes and technical assistance providers.

A project's budget must include funds to attend the two-day Research Project Directors' meeting to be held in Washington, DC each year of the project.

For Further Information Contact: For further information on the priority under the Research in Education of Individuals with Disabilities Program contact the U.S. Department of Education, 600 Independence Avenue, SW., room 3529, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–9864. FAX: (202) 205–8105. Internet: Claudette—Carey@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Program Authority: 20 U.S.C. 1441.

Educational Media Research, Production, Distribution, and Training Program

Purpose of Program: To promote the general welfare of individuals who are deaf or hard of hearing and individuals with visual disabilities, and to promote the educational advancement of individuals with disabilities.

Priorities: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet any one of the following priorities. The Secretary will fund under these competitions only applications that meet any one of these absolute priorities:

Absolute Priority 1—Closed-Captioned Sports Programs

Background

This priority supports cooperative agreements to continue and to expand closed-captioning of major national sports programs shown on national commercial broadcast or basic cable television networks. Captioning provides a visual representation of the audio portion of the programming and enables individuals who are deaf or hard of hearing to participate in the shared educational, social, and cultural experiences of national sporting events. Funds provided under this priority may be used to support no more than sixty percent of the captioning costs for the first year of the project, fifty-five percent for the second year, and fifty percent for the third year.

Priority

To be considered for funding under this competition, a project must—

(1) Include criteria for selecting programs for captioning that take into account the preference of consumers for particular sports programs, the diversity of programming available, and the contribution of programs to the general educational, social, and cultural experiences of individuals who are deaf or hard of hearing;

(2) Provide a flexible plan, including back-up systems, to ensure closed-captioning of sports programs without interruption, while accommodating last-minute program substitutions and new programs;

(3) Identify the total number of hours and the projected cost per hour for each of the programs to be captioned;

(4) Identify for each proposed program to be captioned the source of private or other public support and the projected dollar amount of that support;

(5) Identify the methods of captioning to be used for each program—indicating whether captioning is provided in real-time, live display, offline, or reformatted—and the projected cost per hour for each method used;

(6) Demonstrate the willingness of major national commercial broadcast or basic cable networks to permit captioning of their programs; and

(7) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Absolute Priority 2—Video Description

Background

This priority supports cooperative agreements to provide video description in two areas: (1) Broadcast and cable television programs; and (2) home video. The purpose of this activity will be to describe television programs and videos to make television programming and home videos more accessible to children and adults with visual disabilities. The intent of this priority is to provide access to described television programming and home videos in order to enhance shared educational, social, and cultural experiences for children and adults with visual disabilities.

Priority

To be considered for funding under this priority, a project must—

(1) Include criteria for selecting programs and videos that take into account the preference of consumers for particular topics of interest, the diversity of programs or videos available, and the contribution of these programs or videos to the general educational, social, and cultural experiences of individuals with visual disabilities;

(2) Identify the total number of hours to be described and the projected cost per hour for each program or video to be described;

(3) Identify the source of private or public support, if any, for each program or video to be described, and the projected dollar amount of that support;

(4) Demonstrate the willingness of program or video producers to permit video description and distribution of their program or video; and,

(5) Evaluate the effectiveness of the methods and technologies used in providing this service and the impact on intended populations.

Absolute Priority 3—Educational Video Selection and Captioning

Background

This priority supports one cooperative agreement that would screen, evaluate, obtain, caption, and make available educational videos, including classics and general interest titles, for use by students and other individuals who are deaf or hard of hearing, parents of individuals who are deaf or hard of hearing, and other individuals directly involved in activities promoting the advancement of individuals who are deaf or hard of hearing. This activity includes the preparation of captions on computer diskettes or CD–ROM, as appropriate, and the preparation of lesson guides for educational videos. This priority would ensure that students and other individuals who are deaf or hard of hearing may benefit from the same educational and general interest videos used to enrich the educational experiences of students and other individuals without hearing disabilities.

Priority

To be considered for funding under this priority, the project must—

(1) Develop strategies and procedures to be used in determining curricular needs of students who are deaf or hard of hearing in all types of school settings for captioned videos;

(2) Develop and implement an on-going evaluation program for incorporating the reaction and

suggestions of users into the selection and captioning process;

(3) Develop and implement criteria and procedures for screening, evaluating, and captioning selected videos;

(4) Obtain videos from film and video distributors for screening, evaluation, and possible captioning. Select from among video titles submitted by evaluators those that closely match the curricular needs identified under paragraph (1) of this proposed priority, taking into account the videos most commonly used in school districts across the Nation for all students;

(5) Make arrangements with respective producers and distributors to have selected videos captioned and made available through general distribution mechanisms (such as video sales catalogues), as well as through the captioned film and video loan service authorized under Part F of IDEA and 34 CFR Part 330 (by purchasing up to 100 copies of each captioned title, which must be open-captioned). Closed-captioned masters must be made available to producers and distributors in an effort to promote the use of captioned videos.

(6) For selected titles, prepare captions on computer diskettes or CD–ROM, as appropriate, and check for accuracy. These captions would take into account the age and reading levels of the likely target audience;

(7) For selected educational videos, prepare lesson guides;

(8) Identify, select, and, if necessary, provide training or technical assistance to video evaluators, caption checkers, and captioning service providers; and

(9) Develop and implement quality control guidelines and procedures for checking videocassettes after they are captioned.

Absolute Priority 4—Research on Educational Captioning

Background

This priority supports research on captioning of educational media and materials. Research can be based on the instructional use of captioning or the use of captioning as a language development tool for enhancing the reading and literacy skills of individuals who are deaf or hard of hearing. Media and technologies explored or used by projects funded under this priority may include, but are not limited to: (1) Television—including high-definition television; (2) videos; and (3) other media and multi-media technologies such as interactive videodiscs and CD–ROMs.

Priority

Under this competition, projects must—

(1) Identify specific technological approaches that would be investigated;

(2) Carry out the research within a conceptual framework, based on previous research or theory, that provides a basis for the strategies to be studied, the research design, and target population;

(3) Collect, analyze and report (a) characteristics and outcome data (actual rather than expected results), including the settings, the service providers, and the individuals targeted by the project; and (b) multiple, functional outcome data on the individuals who are the focus of the technological approaches;

(4) Conduct the research in realistic settings such as residential or integrated schools or colleges, or in community settings, as appropriate; and

(5) Conduct the research using methodological procedures that would: (a) Produce unambiguous findings regarding the effects of approaches and effects of the interaction among particular approaches and particular groups of individuals or particular settings; and (b) permit use of the findings in policy analyses.

For Further Information Contact: For further information on the four priorities under the Educational Media Research, Production, Distribution, and Training Program contact the U.S. Department of Education, 600 Independence Avenue SW., room 4627, Switzer Building, Washington, DC 20202–4641. Telephone: (202) 205–8894. FAX: (202) 205–8971. Internet: Jeffrey__Payne@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Program Authority: 20 U.S.C. 1451, 1452.

Technology, Educational Media, and Materials for Individuals With Disabilities Program

Purpose of Program: To support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with disabilities and the provision of related services and early intervention services to infants and toddlers with disabilities.

Priority: Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority:

Absolute Priority—Technology, Educational Media, and Materials Projects That Create Innovative Tools for Students With Disabilities

This priority provides support for development projects that design or adapt technology, assistive technology, educational media, or materials to improve the education of children and youth with disabilities.

Invitational Priority

Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

The Secretary is particularly interested in projects that—

(a) *Create Innovative Tools*—by encouraging development of varied and integrated technologies, media, and materials that open up and expand the lives of those with disabilities. This work should enable individuals with disabilities to achieve the outcomes expected of all students, such as independence, productivity and an improved quality of life, that promote equity in opportunity; or

(b) *Foster the Creation of State-of-the-Art Instructional Environments*—both in and out of school. These environments should use technology, educational media, and materials to enable students with disabilities to access knowledge, develop skills and problem-solving strategies, and engage in educational experiences necessary for their success as adults who are fully included in our society.

For Further Information Contact: For further information on the priority under the Technology, Educational Media, and Materials for Individuals with Disabilities Program contact the U.S. Department of Education, 600 Independence Avenue, S.W., Room 4617, Switzer Building, Washington, D.C. 20202–2734. Telephone: (202) 205–9884. FAX: (202) 205–8971. Internet: Robin Murphy@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Program Authority: 20 U.S.C. 1461.

Intergovernmental Review

The programs (except for the Research in Education of Individuals with Disabilities Program) included in this notice are subject to the requirements of

Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

(Catalog of Federal Domestic Assistance Numbers: Research in Education of Individuals with Disabilities Program, 84.023; Media Research, Production, Distribution, and Training Program, 84.026; and Technology, Educational Media, and Materials for Individuals with Disabilities Program, 84.180)

Dated: January 14, 1997.

Katherine D. Seelman,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–1391 Filed 1–17–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Notice Inviting Applications for New Awards for Fiscal Year 1997

AGENCY: Department of Education.

SUMMARY: This notice provides closing dates and other information regarding the transmittal of applications for fiscal year 1997 competitions under three programs authorized by the Individuals with Disabilities Education Act. This notice supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

Note: The Department of Education is not bound by any estimates in this notice.

Research in Education of Individuals With Disabilities Program

[CFDA No. 84.023]

Purpose of Program: To advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services—including professionals who work with children with disabilities in regular education environments—to provide children with disabilities effective instruction and enable these children to learn successfully.

Eligible Applicants: State and local educational agencies; institutions of higher education; and other public agencies and nonprofit private organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 324.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Absolute Priority—Initial Career Awards (84.023N)

The priority for Initial Career Awards in the notice of final priority for this program, published elsewhere in this issue of the Federal Register, applies to this competition.

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: March 28, 1997.

Estimated Number of Awards: 4.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $75,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the Federal Register.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 30 double-spaced 8½×11″ pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 36 months.

For Application Information Contact: For the priority under the Research in Education of Individuals with Disabilities Program contact the U.S. Department of Education, 600 Independence Avenue, S.W., room 3529, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–9864. FAX: (202) 205–8105. Internet: Claudette__Carey@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Program Authority: 20 U.S.C. 1441.

Educational Media Research, Production, Distribution, and Training Program

[CFDA No. 84.026]

Purpose of Program: To promote the general welfare of individuals who are deaf or hard of hearing and individuals with visual impairments, and to promote the educational advancement of individuals with disabilities.

Eligible Applicants: Profit and nonprofit public and private agencies, organizations, and institutions.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 332.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

(Note: If an applicant wishes to apply under more than one of these absolute priorities, the applicant must submit a separate application under each affected priority.)

Absolute Priority 1—Closed-Captioned Sports Programs (84.026A)

The priority for Closed-Captioned Sports Programs in the notice of final priority for this program, published elsewhere in this issue of the Federal Register, applies to this competition.

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: March 28, 1997.

Deadline for Intergovernmental Review: May 27, 1997.

Estimated Number of Awards: 4.

Maximum Award: The Secretary rejects and does not consider an

application that proposes a budget exceeding $175,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the Federal Register.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 50 double-spaced 8½×11″ pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 36 months.

Absolute Priority 2—Video Description (84.026C)

The priority for Video Description in the notice of final priority for this program, published elsewhere in this issue of the Federal Register, applies to this competition.

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: March 28, 1997.

Deadline for Intergovernmental Review: May 27, 1997.

Estimated Number of Awards: 4.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $200,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the Federal Register.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 50 double-spaced 8½×11″ pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 36 months.

Absolute Priority 3—Educational Video Selection and Captioning (84.026D)

The priority for Educational Video Selection and Captioning in the notice of final priority for this program, published elsewhere in this issue of the Federal Register, applies to this competition.

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: March 28, 1997.

Deadline for Intergovernmental Review: May 27, 1997.

Estimated Number of Awards: 1.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $2,000,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the Federal Register.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 60 double-spaced 8½×11″ pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 48 months.

Absolute Priority 4—Research on Educational Captioning (84.026R)

The priority for Research on Educational Captioning in the notice of final priority for this program, published elsewhere in this issue of the Federal Register, applies to this competition.

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: March 28, 1997.

Deadline for Intergovernmental Review: May 27, 1997.

Estimated Number of Awards: 2.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $120,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the Federal Register.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 50 double-spaced 8½×11″ pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 36 months.

For Application Information Contact: For the priorities under the Educational Media Research, Production, Distribution, and Training Program contact the U.S. Department of Education, 600 Independence Avenue, S.W., room 4627, Switzer Building, Washington, D.C. 20202–2734. Telephone: (202) 205–8894. FAX: (202) 205–8971. Internet: Jeffrey—Payne@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Program Authority: 20 U.S.C. 1451, 1452.

Technology, Educational Media, and Materials for Individuals With Disabilities Program

[CFDA No. 84.180]

Purpose of Program: To support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with disabilities and the provision of related services and early intervention services to infants and toddlers with disabilities.

Eligible Applicants: Institutions of higher education; State educational agencies; local educational agencies; public agencies; and nonprofit or for-profit private organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) the regulations for this program in 34 CFR part 333.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Absolute Priority—Technology, Educational Media, and Materials Projects That Create Innovative Tools for Students With Disabilities (84.180T)

The priority for Technology, Educational Media, and Materials Projects That Create Innovative Tools for Students With Disabilities in the notice of final priority for this program, published elsewhere in this issue of the Federal Register, applies to this competition.

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: April 14, 1997.

Deadline for Intergovernmental Review: June 13, 1997.

Estimated Number of Awards: 5.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $200,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the Federal Register.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 50 double-spaced 8½×11″ pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 24 months.

For Application Information Contact: For the priority under the Technology, Educational Media, and Materials for Individuals with Disabilities Program contact the U.S. Department of Education, 600 Independence Avenue, SW., room 4617, Switzer Building, Washington, DC 20202–2734. Telephone: (202) 205–9884. FAX: (202) 205–8971. Internet: Robin—Murphy@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Program Authority: 20 U.S.C. 1461.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). In addition, information on downloading application packages from the World

Wide Web can be obtained at the Office of Special Education Programs homepage (at http://www.ed.gov/offices/OSERS/OSEP). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register. Application packages are available in an alternate format upon request.

(Catalog of Federal Domestic Assistance Numbers: Research in Education of Individuals with Disabilities Program, 84.023; Educational Media Research, Production, Distribution, and Training Program, 84.026; and Technology, Educational Media, and Materials for Individuals with Disabilities Program, 84.180)

Dated: January 14, 1997.

Katherine D. Seelman,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–1392 Filed 1–17–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
January 21, 1997

Part V

Department of Education

Individuals With Disabilities; Applications for New Awards for Fiscal Year 1997; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Individuals With Disabilities; Applications for New Awards for Fiscal Year 1997

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1997.

SUMMARY: This notice provides closing dates and other information regarding the transmittal of applications for fiscal year 1997 competitions under five programs authorized by the Individuals with Disabilities Education Act. This notice supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

Note: The Department of Education is not bound by any estimates in this notice.

Early Education Program for Children With Disabilities [CFDA No. 84.024]

Purpose of Program: To support activities that are designed (a) to address the special needs of children with disabilities, birth through age eight, and their families; and (b) to assist State and local entities in expanding and improving programs and services for these children and their families.

Eligible Applicants: Public agencies and private nonprofit organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 309.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary funds under these competitions only those applications that meet one of these absolute priorities:

Absolute Priority 1—Model Demonstration Projects for Young Children with Disabilities (84.024B). The priority for Model Demonstration Projects for Young Children with Disabilities in the notice of final priority for this program, published in the Federal Register on February 2, 1996 at 61 FR 4171 applies to this competition.

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: March 28, 1997.

Deadline for Intergovernmental Review: May 27, 1997.

Estimated Number of Awards: 10.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $140,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the Federal Register.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 40 double-spaced 8½×11″ pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 48 months. (Applicants should note that the 48-month project period is a change from previous competitions that allowed for a project period of up to 60 months. Previously, in determining whether to continue a project funding for the fourth and fifth years, the Secretary considered, among other things, the evaluation by a review team in the project's third year. The Secretary has determined that this approach is too cumbersome, and that three years does not allow projects sufficient time to develop the model for projects under this program.)

The project period change in the priority is considered a change to a rule under 553 of the Administrative Procedure Act, which would normally require the Secretary to offer interested parties the opportunity to comment. However, because it is a procedural change the Secretary has determined, under 5 U.S.C. 553(b)(A), that rulemaking requirements do not apply.

Absolute Priority 2—Outreach Projects for Young Children with Disabilities (84.024D). The priority for Outreach Projects for Young Children with Disabilities in the notice of final priority for this program, published in the Federal Register on February 2, 1996 at 61 FR 4172, applies to this competition.

Competitive Priority

Under 34 CFR 75.105(c)(2), the Secretary gives a competitive preference to applications that are otherwise eligible for funding under this priority and that meet the following competitive priority:

Propose to provide services to one or more Empowerment Zones or Enterprise Communities that are designated within the areas served by the projects. To meet this priority an applicant must indicate that it will:

- Design a program that includes special activities focused on the unique needs of one or more Empowerment Zones or Enterprises Communities; or
- Devote a substantial portion of program resources to providing services within, or meeting the needs of residents of, these zones and communities.

As appropriate, the proposed project under the Individuals with Disabilities Education Act must contribute to the strategic plan of the Empowerment Zones or Enterprise Communities and be made an integral component of the Empowerment Zone or Enterprise Community activities.

The Secretary awards 5 points to an application that meets this competitive priority relating to Empowerment Zones and Enterprises Communities, which was published in the Federal Register on November 7, 1994 (59 FR 55534). These points are in addition to any points the application earns under the selection criteria for the program.

A listing of areas that have been selected as Empowerment Zones or Enterprises Communities is included in an appendix to a notice published in the Federal Register on December 6, 1995 (60 FR 62699).

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: March 28, 1997.

Deadline for Intergovernmental Review: May 27, 1997.

Estimated Number of Awards: 17.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $140,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the Federal Register.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 40 double-spaced 8½×11″ pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 36 months.

For Application Information Contact: For the priorities under the Early Education Program for Children with Disabilities contact the U.S. Department of Education, 600 Independence Avenue, S.W., room 3072, Switzer Building, Washington, D.C. 20202–2651. Telephone: (202) 205–8761. FAX: (202) 205–9070. Internet:

Ernestine__Jefferson@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 260–7381.

Training Personnel for the Education of Individuals With Disabilities—Grants for Personnel Training [CFDA 84.029]

Purpose of Program: The purpose of Grants for Personnel Training is to increase the quantity and improve the quality of personnel available to serve infants, toddlers, children, and youth with disabilities.

Eligible Applicants: Institutions of higher education; State agencies; and other appropriate nonprofit agencies.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 76, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 318.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority: Under 34 CFR 75.105(c)(3), and 34 CFR 318, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only those applications that meet this absolute priority:

Absolute Priority: Special Projects (84.029K). This priority supports projects that include development, evaluation, and distribution of innovative approaches to personnel preparation; development of curriculum materials to prepare personnel to educate or provide early intervention services; and other projects of national significance related to the preparation of personnel needed to serve infants, toddlers, children, and youth with disabilities.

(a) Appropriate areas of interest include—

(1) Preservice training programs to prepare regular educators to work with children and youth with disabilities and their families;

(2) Training teachers to work in community and school settings with children and youth with disabilities and their families;

(3) Inservice and preservice training of personnel to work with infants, toddlers, children, and youth with disabilities and their families;

(4) Inservice and preservice training of personnel to work with minority infants, toddlers, children, and youth with disabilities and their families;

(5) Preservice and inservice training of special education and related services personnel in instructive and assistive technology to benefit infants, toddlers, children, and youth with disabilities; and

(6) Recruitment and retention of special education, related services, and early intervention personnel.

(b) Both inservice and preservice training must include a component that addresses the coordination among all service providers, including regular educators. (See 34 CFR 318.11(a)(5).)

Invitational priorities: Within this absolute priority the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Projects that develop, demonstrate, evaluate, and disseminate—

(a) Approaches to prepare teachers with strategies, including behavioral management techniques, for addressing the conduct of children with disabilities that impedes their learning and that of non-disabled children in the classroom;

(b) Approaches to better enable faculty at schools and colleges of education to prepare teachers to serve students with disabilities in regular classrooms;

(c) Approaches to prepare teachers in innovative instructional methodologies designed to help children with disabilities improve their reading performance; or

(d) Intensive and sustained inservice training of teachers or teams of teachers through institutes or other methods designed to ensure that they have the knowledge and skills necessary to help children with disabilities meet challenging standards established for all children.

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: March 28, 1997.

Deadline for Intergovernmental Review: May 27, 1997.

Estimated Number of Awards: 16.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $180,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the Federal Register.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in

evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 40 double-spaced 8½×11″ pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, résumés, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch).

If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 36 months.

For Application Information Contact: For the priority under the Training Personnel for the Education of Individuals with Disabilities—Grants for Personnel Training program contact the U.S. Department of Education, 600 Independence Avenue, S.W., room 4623, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–9377. FAX: (202) 205–8971. Internet: Patricia__Wright@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Program Authority: 20 U.S.C. 1431.

Postsecondary Education Programs for Individuals With Disabilities [CFDA No. 84.078]

Purpose of Program: To provide assistance for the development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with disabilities.

Eligible Applicants: State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 338.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only those applications that meet this absolute priority:

Absolute Priority—Model Demonstration Projects to Improve the Delivery and Outcomes of Postsecondary Education for Individuals with Disabilities (84.078C). The priority for Model Demonstration Projects to Improve the Delivery and Outcomes of Postsecondary Education for Individuals with Disabilities in the notice of final priority for this program, published in the Federal Register on February 2, 1996 at 61 FR 4175, applies to this competition.

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: March 28, 1997.

Deadline for Intergovernmental Review: May 27, 1997.

Estimated Number of Awards: 11.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $140,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the Federal Register.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 40 double-spaced 8½ × 11″ pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 36 months.

For Applications and General Information Contact: For the priority under the Postsecondary Education Programs for Individuals with Disabilities contact the U.S. Department of Education, 600 Independence Avenue, S.W., room 4623, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–9377. FAX: (202) 205–8971. Internet: Patricia__Wright@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Program Authority: 20 U.S.C. 1424a.

Secondary Education and Transitional Services for Youth With Disabilities Program [CFDA No. 84.158]

Purpose of Program: To (1) assist youth with disabilities in the transition from secondary school to postsecondary environments, such as competitive or supported employment, and (2) ensure that secondary special education and transitional services result in competitive or supported employment for youth with disabilities.

Eligible Applicants: Institutions of higher education, State educational agencies, local educational agencies, and other public and nonprofit private institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 326.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet any one of the following priorities. The Secretary funds under this competition only those applications that meet any one of these absolute priorities:

Absolute Priority 1—Outreach Projects for Services for Youth with Disabilities (84.158Q). The priority for Outreach Projects for Services for Youth with Disabilities in the notice of final priority for this program, published in the Federal Register on February 2, 1996 at 61 FR 4176, applies to this competition.

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: March 28, 1997.

Deadline for Intergovernmental Review: May 27, 1997.

Estimated Number of Awards: 11.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $140,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the Federal Register.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 40 double-spaced 8½×11″ pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 36 months.

Absolute Priority 2—Model Demonstration Projects to Improve the Delivery and Outcomes of Secondary Education Services for Students with Disabilities (84.158V). The priority for Model Demonstration Projects to Improve the Delivery and Outcomes of Secondary Education Services for Students with Disabilities in the notice of final priority for this program, published in the Federal Register on February 2, 1996 at 61 FR 4177, applies to this competition.

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: March 28, 1997.

Deadline for Intergovernmental Review: May 27, 1997.

Estimated Number of Awards: 14.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $150,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the Federal Register.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 40 double-spaced 8½×11″ pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 36 months.

For Application Information Contact: For the priorities under the Secondary Education and Transitional Services for Youth with Disabilities Program contact the U.S. Department of Education, 600 Independence Avenue, S.W., room 4623, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–9377. FAX: (202) 205–8971. Internet: Patricia__Wright@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Program Authority: 20 U.S.C. 1425.

Special Studies Program [CFDA No. 84.159]

Purpose of Program: To support studies to assess the impact and effectiveness of the Individuals with Disabilities Education Act (IDEA), including State and local efforts to provide a free appropriate public education to children and youth with disabilities and early intervention services to infants and toddlers with disabilities, and to provide State, local, and Federal agencies with information relevant to program management, administration, delivery, and effectiveness with respect to that education and those early intervention services.

Eligible Applicants: Public or private agencies, institutions, organizations, and other appropriate parties as designated in the statute and regulations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, 82, 85,

and 86; and (b) The regulations for this program in 34 CFR Part 327.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Priority: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only those applications that meet this absolute priority:

Absolute Priority—State-Federal Administrative Information Exchange (84.159K). The priority for State-Federal Administrative Information Exchange in the notice of final priority for this program, published in the Federal Register on May 6, 1996 at 61 FR 20417, applies to this competition.

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: April 14, 1997

Estimated Number of Awards: 1.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $300,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the Federal Register.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 50 double-spaced 8 ½×11″ pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 36 months.

For Application Information Contact: For the priority under the Special Studies Program contact the U.S. Department of Education, 600 Independence Avenue, S.W., room 4627, Switzer Building, Washington, D.C. 20202–4641. Telephone: (202) 205–8894. FAX: (202) 205–8971. Internet: Jeffrey__Payne@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Program Authority: 20 U.S.C. 1418.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). In addition, information on downloading application packages from the World Wide Web can be obtained at the Office of Special Education Programs homepage (at http://www.ed.gov/offices/OSERS/OSEP). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register. Application packages are available in an alternate format upon request.

(Catalog of Federal Domestic Assistance Numbers: Early Education Program for Children with Disabilities, 84.024; Training Personnel for the Education of Individuals with Disabilities—Grants for Personnel Training, 84.029; Postsecondary Education Programs for Individuals with Disabilities, 84.078; Secondary Education and Transitional Services for Youth with Disabilities Program, 84.158; and Special Studies Program, 84.327)

Dated: January 14, 1997.

Katherine D. Seelman,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–1393 Filed 1–17–97; 8:45 am]

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federal register

Tuesday
January 21, 1997

Part VI

The President

Proclamation 6966—Religious Freedom Day, 1997

Federal Register
Vol. 62, No. 13
Tuesday, January 21, 1997

Presidential Documents

Title 3—

The President

Proclamation 6966 of January 16, 1997

Religious Freedom Day, 1997

By the President of the United States of America

A Proclamation

Every day, in neighborhoods and communities across our Nation, Americans come together to worship and to reaffirm their most deeply held spiritual values. Our right to worship freely—each in our own way—is essential to our well-being. Religious Freedom Day offers us an invaluable opportunity to reflect on this precious human right and to give thanks for its protection in our Nation.

Freedom from religious persecution was of such profound importance to our founders that they placed it first among the freedoms guaranteed by the Bill of Rights. History has proved the wisdom of that decision. America's commitment to religious tolerance has empowered us to achieve an atmosphere of understanding, trust, and respect in a society of diverse cultures and religious traditions. And today, much of the world still looks to the United States as the champion of religious liberty.

Yet, even in America, we must be ever vigilant in protecting the freedoms so important to our ancestors and so admired by people throughout the world. The church arsons and the desecration of synagogues and mosques in recent years demonstrated for us all that our country is not entirely free from violence and religious hatred. My Administration took quick and decisive action, including working with the Congress to help churches rebuild and to prevent future incidents. And I am pleased that the American people are coming together as a national community to speak out against such crimes and to renew the climate of trust and tolerance so that all our people can worship without fear.

We must also support the aspirations of ethnic and religious minorities in other nations as they strive for their own right to worship freely. My Administration has established the Advisory Committee on Religious Freedom Abroad to provide counsel on how best to prevent persecution and promote reconciliation among people of different faiths. I invite all nations to join us in supporting individuals in houses of worship around the world as they exercise one of the most sacred of human rights.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 16, 1997, as Religious Freedom Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities, and I urge them to reaffirm their commitment to the principle of religious freedom.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of January, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

[FR Doc. 97–1609
Filed 1–17–97; 11:55 am]
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220–499	(869–028–00079–7)	13.00	May 1, 1996
500–699	(869–028–00080–1)	14.00	May 1, 1996
700–899	(869–028–00081–9)	13.00	May 1, 1996
900–1699	(869–028–00082–7)	21.00	May 1, 1996
1700–End	(869–028–00083–5)	14.00	May 1, 1996
25	(869–028–00084–3)	32.00	May 1, 1996
26 Parts:			
§§ 1.0-1–1.60	(869–028–00085–1)	21.00	Apr. 1, 1996
§§ 1.61–1.169	(869–028–00086–0)	34.00	Apr. 1, 1996
§§ 1.170–1.300	(869–028–00087–8)	24.00	Apr. 1, 1996
§§ 1.301–1.400	(869–028–00088–6)	17.00	Apr. 1, 1996
§§ 1.401–1.440	(869–028–00089–4)	31.00	Apr. 1, 1996
§§ 1.441-1.500	(869-028-00090-8)	22.00	Apr. 1, 1996
§§ 1.501–1.640	(869–028–00091–6)	21.00	Apr. 1, 1996
§§ 1.641–1.850	(869–028–00092–4)	25.00	Apr. 1, 1996
§§ 1.851–1.907	(869–028–00093–2)	26.00	Apr. 1, 1996
§§ 1.908–1.1000	(869–028–00094–1)	26.00	Apr. 1, 1996
§§ 1.1001–1.1400	(869–028–00095–9)	26.00	Apr. 1, 1996
§§ 1.1401–End	(869–028–00096–7)	35.00	Apr. 1, 1996

Title	Stock Number	Price	Revision Date
2–29	(869–028–00097–5)	28.00	Apr. 1, 1996
30–39	(869–028–00098–3)	20.00	Apr. 1, 1996
40–49	(869–028–00099–1)	13.00	Apr. 1, 1996
50–299	(869–028–00100–9)	14.00	Apr. 1, 1996
300–499	(869–028–00101–7)	25.00	Apr. 1, 1996
500–599	(869–028–00102–5)	6.00	[4] Apr. 1, 1990
600–End	(869–028–00103–3)	8.00	Apr. 1, 1996
27 Parts:			
1–199	(869–028–00104–1)	44.00	Apr. 1, 1996
200–End	(869–028–00105–0)	13.00	Apr. 1, 1996
28 Parts:			
1-42	(869–028–00106–8)	35.00	July 1, 1996
43-end	(869-028-00107-6)	30.00	July 1, 1996
29 Parts:			
0–99	(869–028–00108–4)	26.00	July 1, 1996
100–499	(869–028–00109–2)	12.00	July 1, 1996
500–899	(869–028–00110–6)	48.00	July 1, 1996
900–1899	(869–028–00111–4)	20.00	July 1, 1996
1900–1910 (§§ 1900 to 1910.999)	(869–028–00112–2)	43.00	July 1, 1996
1910 (§§ 1910.1000 to end)	(869–028–00113–1)	27.00	July 1, 1996
1911–1925	(869–028–00114–9)	19.00	July 1, 1996
1926	(869–028–00115–7)	30.00	July 1, 1996
1927–End	(869–028–00116–5)	38.00	July 1, 1996
30 Parts:			
1–199	(869–028–00117–3)	33.00	July 1, 1996
200–699	(869–028–00118–1)	26.00	July 1, 1996
700–End	(869–028–00119–0)	38.00	July 1, 1996
31 Parts:			
0–199	(869–028–00120–3)	20.00	July 1, 1996
200–End	(869–028–00121–1)	33.00	July 1, 1996
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–028–00122–0)	42.00	July 1, 1996
191–399	(869–028–00123–8)	50.00	July 1, 1996
400–629	(869–028–00124–6)	34.00	July 1, 1996
630–699	(869–028–00125–4)	14.00	[5] July 1, 1991
700–799	(869–028–00126–2)	28.00	July 1, 1996
800–End	(869–028–00127–1)	28.00	July 1, 1996
33 Parts:			
1–124	(869–028–00128–9)	26.00	July 1, 1996
125–199	(869–028–00129–7)	35.00	July 1, 1996
200–End	(869–028–00130–1)	32.00	July 1, 1996
34 Parts:			
1–299	(869–028–00131–9)	27.00	July 1, 1996
300–399	(869–028–00132–7)	27.00	July 1, 1996
400–End	(869–028–00133–5)	46.00	July 1, 1996
35	(869–028–00134–3)	15.00	July 1, 1996
36 Parts			
1–199	(869–028–00135–1)	20.00	July 1, 1996
200–End	(869–028–00136–0)	48.00	July 1, 1996
37	(869–028–00137–8)	24.00	July 1, 1996
38 Parts:			
0–17	(869–028–00138–6)	34.00	July 1, 1996
18–End	(869–028–00139–4)	38.00	July 1, 1996
39	(869–028–00140–8)	23.00	July 1, 1996
40 Parts:			
●1–51	(869–028–00141–6)	50.00	July 1, 1996
●52	(869–028–00142–4)	51.00	July 1, 1996
●53–59	(869–028–00143–2)	14.00	July 1, 1996
60	(869-028-00144-1)	47.00	July 1, 1996
●61–71	(869–028–00145–9)	47.00	July 1, 1996
●72–80	(869–028–00146–7)	34.00	July 1, 1996
●81–85	(869–028–00147–5)	31.00	July 1, 1996
86	(869–028–00148–3)	46.00	July 1, 1996
●87-135	(869–028–00149–1)	35.00	July 1, 1996
●136–149	(869–028–00150–5)	35.00	July 1, 1996
●150–189	(869–028–00151–3)	33.00	July 1, 1996
●190–259	(869–028–00152–1)	22.00	July 1, 1996
●260–299	(869–028–00153–0)	53.00	July 1, 1996
●300–399	(869–028–00154–8)	28.00	July 1, 1996
●400–424	(869–028–00155–6)	33.00	July 1, 1996
●425–699	(869–028–00156–4)	38.00	July 1, 1996
●700–789	(869–028–00157–2)	33.00	July 1, 1996
●790–End	(869–028–00158–7)	19.00	July 1, 1996
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–028–00159–9)	12.00	July 1, 1996
101	(869–028–00160–2)	36.00	July 1, 1996
102–200	(869–028–00161–1)	17.00	July 1, 1996
201–End	(869–028–00162–9)	17.00	July 1, 1996
42 Parts:			
*●1–399	(869–028–00163–7)	32.00	Oct. 1, 1996
●400–429	(869–028–00164–5)	34.00	Oct. 1, 1996
●430–End	(869–026–00165–1)	39.00	Oct. 1, 1995
43 Parts:			
●1–999	(869–028–00166–1)	30.00	Oct. 1, 1996
●1000–3999	(869–026–00167–7)	31.00	Oct. 1, 1995
4000–End	(869–026–00168–5)	15.00	Oct. 1, 1995
●44	(869–026–00169–3)	24.00	Oct. 1, 1995
45 Parts:			
●1–199	(869–028–00169–6)	28.00	Oct. 1, 1996
200–499	(869–028–00170–0)	14.00	[6] Oct. 1, 1995
●500–1199	(869–028–00171–8)	30.00	Oct. 1, 1996
1200–End	(869–026–00173–1)	26.00	Oct. 1, 1995
46 Parts:			
●1–40	(869–026–00174–0)	21.00	Oct. 1, 1995
●41–69	(869–026–00175–8)	17.00	Oct. 1, 1995
●70–89	(869–028–00175–1)	11.00	Oct. 1, 1996
●90–139	(869–026–00177–4)	15.00	Oct. 1, 1995
140–155	(869–026–00178–2)	12.00	Oct. 1, 1995
156–165	(869–026–00179–1)	17.00	Oct. 1, 1995
●166–199	(869–026–00180–4)	17.00	Oct. 1, 1995
●200–499	(869–028–00180–7)	21.00	Oct. 1, 1996
●500–End	(869–026–00182–1)	13.00	Oct. 1, 1995
47 Parts:			
●0–19	(869–026–00183–9)	25.00	Oct. 1, 1995
●20–39	(869–026–00184–7)	21.00	Oct. 1, 1995
40–69	(869–026–00185–5)	14.00	Oct. 1, 1995
●70–79	(869–026–00186–3)	24.00	Oct. 1, 1995
80–End	(869–026–00187–1)	30.00	Oct. 1, 1995
48 Chapters:			
1 (Parts 1–51)	(869–026–00188–0)	39.00	Oct. 1, 1995
●1 (Parts 52–99)	(869–026–00189–8)	24.00	Oct. 1, 1995
●2 (Parts 201–251)	(869–026–00190–1)	17.00	Oct. 1, 1995
●2 (Parts 252–299)	(869–028–00190–4)	16.00	Oct. 1, 1996
●3–6	(869–026–00192–8)	23.00	Oct. 1, 1995
●7–14	(869–026–00193–6)	28.00	Oct. 1, 1995
15–28	(869–028–00193–9)	38.00	Oct. 1, 1996
●29–End	(869–028–00194–7)	25.00	Oct. 1, 1996
49 Parts:			
*1–99	(869–028–00195–5)	32.00	Oct. 1, 1996
100–177	(869–026–00197–9)	34.00	Oct. 1, 1995
●178–199	(869–026–00198–7)	22.00	Oct. 1, 1995
200–399	(869–026–00199–5)	30.00	Oct. 1, 1995
400–999	(869–026–00200–2)	40.00	Oct. 1, 1995
1000–1199	(869–026–00201–1)	18.00	Oct. 1, 1995

Title	Stock Number	Price	Revision Date
●1200–End	(869–028–00201–3)	15.00	Oct. 1, 1996
50 Parts:			
1–199	(869–026–00203–7)	26.00	Oct. 1, 1995
200–599	(869–026–00204–5)	22.00	Oct. 1, 1995
600–End	(869–026–00205–3)	27.00	Oct. 1, 1995
CFR Index and Findings Aids	(869–028–00051–7)	35.00	Jan. 1, 1996
Complete 1996 CFR set		883.00	1996
Microfiche CFR Edition:			
Subscription (mailed as issued)		264.00	1996
Individual copies		1.00	1996
Complete set (one-time mailing)		264.00	1995
Complete set (one-time mailing)		244.00	1994

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1996. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.