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

Rules and Regulations

Federal Register
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Thursday, February 6, 1997

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 210 and 226

RIN 0584–AC42

Child and Adult Care Food Program, Improved Targeting of Day Care Home Reimbursements; Correction and Extension of Comment Period

AGENCY: Food and Consumer Service, USDA.

ACTION: Interim rule; correction and extension of comment period.

SUMMARY: This document contains corrections to the preamble, regulatory text, and economic impact analysis (appendix) of the interim rule published on January 7, 1997 (62 FR 889). The interim rule contained changes required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 relating to the implementation of a two-tiered reimbursement structure for day care homes participating in the Child and Adult Care Food Program. The comment period is also being extended to provide the public sufficient opportunity to comment on the interim rule in light of these corrections.

DATES: Effective July 1, 1997, except for §§ 210.9(b)(20), 210.19(f), 226.6(f)(2) and 226.6(f)(9), which are effective March 10, 1997. To be assured of consideration, comments on the interim rule must be postmarked on or before May 7, 1997, except for comments on the information collection which must be received by March 10, 1997.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, Department of Agriculture, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302 or telephone 703–305–2620.

SUPPLEMENTARY INFORMATION:

Background

On January 7, 1997, the Department published an interim rule incorporating provisions from the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193) concerning implementation of a two-tiered reimbursement structure for day care homes participating in the Child and Adult Care Food Program (CACFP). Under this structure, the level of reimbursement for meals served to enrolled children will be determined by economic need based on: the location of the day care home; the income of the day care provider; or the income of individual children's households.

However, the interim rule as published contains errors in the preamble, regulatory text, and economic impact analysis (appendix) that need correction.

Correction of Publication

Accordingly, the publication on January 7, 1997 at 62 FR 889 is corrected as follows:

1. On page 898, first column, the preamble is corrected by removing the second full paragraph and by adding three new paragraphs in its place to read as follows:

The claiming percentages/blended rates alternative set forth in section 708(e)(1) of the Act indicates that the claiming percentage or blended rate be established based on the percentage of identified income-eligible children enrolled in a home ''in a specified month or other period.'' This interim regulation prescribes that the claiming percentage or blended rate be based on one month's data concerning the children enrolled in a particular day care home. The Department will allow sponsors to use either of two approaches to making this calculation, and is interested in receiving comments on whether both of these alternative methods should continue to be permitted.

The first alternative would involve the day care home submitting an attendance list for the specified month to the sponsor. The sponsor would then use the attendance list to determine the claiming percentage or blended rate for the home based on a weighted average of each enrolled child's level of participation during the month. The second alternative would involve a sponsor calculating the claiming percentage or blended rate based on a home's enrollment for an entire month using a list of enrolled children submitted by the day care home. The sponsor would assess the income eligibility status of each of the children enrolled in the home during the month and, using the enrollment list, derive the appropriate claiming percentage or blended rate. For example, if a home's enrollment list for the month of January indicates that 10 children were enrolled during the month, the home's claiming percentage or blended rate would be based on the number of identified income-eligible children, divided by 10.

The Department believes that either of these methods will achieve greater accuracy in reimbursement payments than basing the six-month calculation on a single point in time (that is, one day's data, which could misrepresent typical enrollment or attendance in that home). Although the attendance list may impose an additional burden on the sponsor and day care homes, it would certainly provide a higher level of accuracy than using an enrollment list.

2. On page 899, third column, in the second full paragraph, line 10, the preamble is corrected by removing the word ''submit'' and replacing it with the word ''collect''.

3. On page 903, in line 1 of the second column, § 226.13(d)(3)(ii) is corrected by adding the words ''one month's data concerning'' after the words ''basis of''.

4. On page 904, third column, § 226.23(h)(6) is corrected by italicizing the paragraph heading ''Verification procedures for sponsoring organizations of day care homes.''.

5. The appendix to the preamble which appears on pages 905–915 is corrected as follows:

a. On page 905, second column, in line 13 of the second full paragraph:

1. the words '', and supplements'' are added after the word ''breakfasts'' in the parentheses;

2. the comma after the right parentheses is removed and replaced with a period; and

3. the words ''and such'' before the word ''changes'' are removed and the word ''These'' is added in their place.

b. On page 905, Table 1, in footnote a, in the first sentence, the first word ''Percentage'' is removed and the word ''Percentages'' is added in its place; and the word ''hoseholds'' is removed and the word ''households'' is added in its place.

c. On page 905, Table 1, in footnote a, in the second sentence, the word ''to'' is added after the word ''propensities''; and the word ''benefirts'' is removed and the word ''benefits'' is added in its place.

d. On page 905, first column, in line 3, the first paragraph after Table 1, the words ''Associates, Inc.'' are added after the word ''Abt''.

e. On page 906, Table 2, in the column labeled ''Difference,'' a negative sign (−) is added before all of the numbers in the column.

f. On page 906, third column, the fourth line of text after Table 3, the word ''ing'' is removed and the words ''the costs resulting'' are added after the words ''most of''.

g. On page 907, Table 4, in the column labeled ''Dollars,'' the number ''−332,324'' is removed and the number ''−332,334'' is added in its place.

h. On page 907, first column, after Table 4, in the third paragraph, on line 6, a period is added after the first occurrence of the word ''DCHs''.

i. On page 907, first column, after Table 4, in the third paragraph, on line 6, the words ''Virtually all'' are added after the newly added period.

j. On page 907, second column, after Table 4, in the last paragraph, in line 3, the footnote ''3'' is removed and a footnote ''5'' is added in its place.

k. On page 908, first column, in the last paragraph, on the third-to-last line, the word ''er'' is removed and the words ''impact of $133 per'' are added.

l. On page 908, second column, in the second paragraph under the ''Costs to Families'' heading, on line 15, the word ''recent'' is removed and the words ''represent a 10 percent'' are added in its place.

m. On page 909, second column, in the first paragraph under the ''Intended Effect of Tiering'' heading, on line 5, a period is added after the words ''P.L. 104–193''.

n. On page 909, second column, in the first paragraph under the ''Tiering Determination Burden'' heading, line 13, the word ''sponsor'' is removed and the words ''the DCH provider'' are added in its place.

o. On page 909, third column, in the first full paragraph, line 23, the word ''93–35'' is removed and the word ''97–35'' is added in its place.

p. On page 909, third column, in the first full paragraph, line 32, the word ''enrollment'' is removed and the words ''two types of income'' are added in its place.

q. On page 910, first column, in the first full paragraph, line 13, the words ''percent of'' are added after the word ''6'', and the words ''DCHs that are only area-eligible implies that 16 percent of all DCHs will be approved for tier I'' are added after the words ''6 percent of tier I''.

r. On page 910, third column, in the paragraph under the heading ''Data Collection and Reporting Burden for Sponsors,'' 4th from last line, the words ''CACFP State'' are added after the words ''submits to its''.

s. On page 912, second column, after Table 7, in the first paragraph, the words ''The assumption that 40 percent of children in mixed tier II DCHs are income eligible. There is a clear financial incentive for providers to encourage their low-income families to submit income information to sponsors. This incentive and providers' close relationships with parents suggest that providers will attempt to persuade parents to provide the income information and will thereby achieve a response rate greater than the NSLP's 80 percent; ninety percent was chosen.'' are removed.

t. On page 912, third column, after Table 7, in the first full paragraph, line 20, the word ''DC'' is removed and the words ''DCHs will be about'' are added in its place.

u. On page 913, first column, after Table 8, in the first paragraph under the heading ''Costs to CACFP State Agencies,'' line 19, the word ''hof'' is removed and the words ''household income of'' are added in its place.

v. On page 914, third column, in the footnote at the bottom of the column, the letter ''m'' is added to the beginning of the footnote.

Dated: January 30, 1997.

William E. Ludwig,

Administrator.

[FR Doc. 97–2942 Filed 2–5–97; 8:45 am]

BILLING CODE 3410–30–U

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 96–054–2]

Ports Designated for the Exportation of Animals; Georgia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the ''Inspection and Handling of Livestock for Exportation'' regulations by adding Atlanta Hartsfield International Airport, Atlanta, GA, as a port of embarkation from which animals may be exported from the United States and by adding three Georgia facilities, the Atlanta Equine Complex in Atlanta, Tumbleweed Farm in Mableton, and Southern Cross Ranch in Madison, to the list of approved export inspection facilities. These actions update the regulations by adding a port and three inspection facilities through which animals may be processed for export.

EFFECTIVE DATE: March 10, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Andrea Morgan, Senior Staff Veterinarian, Import/Export Animals, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737–1231, (301) 734–8354.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, ''Inspection and Handling of Livestock for Exportation'' (referred to below as the regulations), prescribe conditions for exporting animals from the United States. The regulations state, among other things, that all animals, except animals being exported by land to Canada or Mexico, must be exported through designated ports of embarkation.

Section 91.14(a) contains a list of designated ports of embarkation and export inspection facilities. To receive designation as a port of embarkation, a port must have export inspection facilities available for the inspection, holding, feeding, and watering of animals prior to exportation to ensure that the animals meet certain requirements specified in the regulations. To receive approval as an export inspection facility, the regulations provide that a facility must meet specified standards in § 91.14(c) concerning materials, size, inspection implements, cleaning and disinfection, feed and water, access, testing and treatment, location, disposal of animal wastes, lighting, office and restroom facilities, and walkways.

On October 7, 1996, we published in the Federal Register (61 FR 52387–52388, Docket No. 96–054–1) a proposal to amend the regulations by adding the Atlanta Equine Complex in Atlanta, GA, Tumbleweed Farm in Mableton, GA, and Southern Cross Ranch in Madison, GA, to the list in § 91.14(a) of designated export inspection facilities. We also proposed to add Atlanta Hartsfield International Airport, Atlanta, GA, to the list in § 91.14(a) of designated ports of embarkation.

We solicited comments concerning our proposal for 60 days ending December 6, 1996. We did not receive any comments. The facts presented in the proposed rule still provide the basis for this final rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action,

the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule designates Atlanta Hartsfield International Airport as a port of embarkation and three facilities in Georgia—the Atlanta Equine Complex in Atlanta, Tumbleweed Farm in Mableton, and Southern Cross Ranch in Madison—as approved export inspection facilities. The Atlanta Equine Complex and Tumbleweed Farm are located in the immediate vicinity of the Atlanta Hartsfield International Airport. The location of Southern Cross Ranch less than 60 miles from the airport, or approximately an hour's driving time, offers businesses within the Madison, GA, area a convenient alternative location at which animals destined for export could receive inspections.

We do not expect that designating these three facilities as export inspection facilities and Atlanta Hartsfield International Airport as a port of embarkation will have any adverse impact on businesses. These actions should benefit exporters of animals in the region by reducing their animal transportation costs. Currently, the closest designated ports of embarkation from which exporters in Georgia may ship their animals are in Kentucky and Florida. From past export activity in the area, we anticipate that, at least initially, a yearly average of about 50 exportations of animals, mostly horses and some goats, will take place through Atlanta.

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

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 91 is amended as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 136, 136a, 612, 613, 614, and 618; 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 91.14, paragraphs (a)(3) through (a)(17) are redesignated as paragraphs (a)(4) through (a)(18), and a new paragraph (a)(3) is added to read as follows.

§ 91.14 Ports of embarkation and export inspection facilities.

(a) * * *

(3) *Georgia.*

(i) Atlanta Hartsfield International Airport.

(A) Atlanta Equine Complex, 1270 Woolman Place, Atlanta, GA 30354, (404) 767–1700.

(B) Tumbleweed Farm (horses only), 1677 Buckner Road, Mableton, GA 30059, (770) 948–3556.

(C) Southern Cross Ranch (horses only), 1670 Bethany Church Road, Madison, GA 30650, (706) 342–8027.

* * * * *

Done in Washington, DC, this 28th day of January 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–2959 Filed 2–5–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–003; Order No. 587–B]

Standards for Business Practices of Interstate Natural Gas Pipelines

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its open access regulations by incorporating by reference standards promulgated by the Gas Industry Standards Board (GISB). These standards require interstate natural gas pipelines to conduct certain standardized business transactions across the Internet according to protocols.

DATES: This rule is effective March 10, 1997.

The incorporation by reference of certain publications listed in regulations is approved by the Director of the Federal Register as of March 10, 1997.

Pipelines are to implement the Internet protocols beginning April 1, 1996, according to a staggered schedule established in Order No. 587, 61 FR 19211 (May 1, 1996).

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC, 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2294

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–1283

Kay Morice, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0507.

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Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

Final Rule

January 30, 1997.

The Federal Energy Regulatory Commission (Commission) is amending its open access regulations to adopt standards by which interstate natural gas pipelines will conduct business transactions with their business partners over the Internet. The regulations incorporate by reference standards promulgated by the Gas Industry Standards Board (GISB), a private standards organization devoted to developing standards representing a consensus of the interests in the natural gas industry.

I. Background

In Order No. 587,[1] the Commission incorporated by reference consensus standards developed by GISB covering certain industry business practices—Nominations, Flowing Gas, Invoicing, and Capacity Release—as well as GISB datasets in Electronic Data Interchange ASC X12 (EDI) format that detailed the data requirements needed to conduct business transactions in these areas. These standards are to be implemented by the pipelines according to a staggered compliance schedule from April to June 1997.

In Order No. 587, the Commission did not adopt GISB standards governing the method for transmitting the business transaction datasets (the electronic delivery mechanism (EDM)) because GISB was still in the process of testing its standards governing Internet communications. The Commission anticipated that the EDM standards for the business transactions would be implemented in April through June 1997 in conjunction with the implementation of the business practices standards.

After a successful pilot test, GISB filed, on September 30, 1996, consensus EDM standards for conducting the standardized business transactions across the Internet. It also included in the filing additional standards for providing other information using the Internet and additional business practice standards. For communications involving business transactions, the GISB standards would require trading partners (pipelines and their customers as well as others communicating with pipelines, such as producers or point operators that confirm nominations) to maintain Internet servers and Internet addresses and to exchange files formatted in ASC X12 using HTTP (hyper-text transfer protocol) as the Internet protocol (hereinafter Internet server model).[2]

On November 13, 1996, the Commission issued a Notice of Proposed Rulemaking (NOPR)[3] proposing to adopt all the standards GISB submitted on September 30, 1996.[4] The Commission proposed to follow the implementation schedule suggested by GISB. Under this schedule, the standards for Internet communication of business transactions would be implemented according to the staggered schedule adopted in Order No. 587, beginning April 1, 1997. With respect to the other Internet standards and the additional business practice standards, GISB proposed a March 1997 final rule, with implementation of the additional Internet standards in August of 1997 and pipeline tariff filings for the business practices standards to be made in May, June, and July of 1997, with implementation in November 1997.

Thirteen comments were filed on the NOPR from Natural Gas Supply Association, Williams Interstate Natural Gas System (WINGS), Burlington Resources Oil & Gas Company, Natural Gas Clearinghouse, Conoco, Inc., and Vastar Gas Marketing Inc.(filing jointly) (NGC/Conoco/Vastar), Pacific Gas and Electric Company (PG&E), Williston Basin Interstate Pipeline Company (Williston Basin), Altra Energy Technologies, L.L.C. (Altra), Gas Industry Standards Board (GISB), NorAm Gas Transmission Company and Mississippi River Transmission Corporation (filing jointly) (NorAm), ANR Pipeline Company and Colorado Interstate Gas Pipeline Company (filing jointly), Enron Capital & Trade Resources Corp., Southern California Edison Company (SoCal Edison), and the PanEnergy Companies.

II. Discussion

The Commission is incorporating by reference the GISB Internet server standards for conducting business transactions. Pipelines will be required to implement these standards according to the April through June schedule for implementing the associated business practice standards. Since the additional Internet standards and business practice standards are not to be implemented as quickly, the Commission will address these standards in a later order.

The industry and GISB have developed a communication infrastructure that is at the forefront of the use of Internet-based protocols to conduct business transactions.[5] The protocols adopted in this rule promise to provide the gas industry with the ability to use automated computer-to-computer communications to more efficiently conduct crucial and time-sensitive business transactions, such as nominating and confirming daily gas flows, as well as invoicing and payment. The impact of these standards is not limited to the Commission-regulated aspect of communication between customers and pipelines. These protocols also carry the potential for enhancing the effectiveness of communication between all members of the gas industry, including confirmations between pipelines and upstream point operators, confirmations among upstream and downstream pipelines, as well as business transactions involving local distribution companies, marketers, and producers.

Under the GISB Internet server standards adopted in this rule, pipelines and their trading partners would each maintain an Internet server and an Internet address. Files would be transmitted, when ready, to the trading partners' Internet address and these files will be received and processed automatically by the recipient's server,

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), III FERC Stats. & Regs. Regulations Preambles ¶ 31,039 (Jul. 17, 1996), *reh'g denied*, 61 FR 55208 (Oct. 25, 1996), 77 FERC ¶ 61,061 (Oct. 21, 1996).

[2] See Standards 4.3.1–4.3.4 and 4.3.7–4.3.15.

[3] Standards for Business Practices of Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking, 61 FR 58790 (Nov. 19, 1996), IV FERC Stats. & Regs. Proposed Regulations ¶ 35,521 (Nov. 13, 1996).

[4] The NOPR also gave notice of a staff technical conference to discuss the future direction of standardization and disputed issues.

[5] See EDI Industry Poised to Invade the Internet, EDI News, January 6, 1997 (Vol. 11, No. 1); Dave Kosiur, Electronic Commerce Edges Closer, PCWeek On Line, Oct. 10, 1996, http://www.pcweek.com/@netweek/1007/07set.html (Jan.9, 1997).

with a response sent to the sender indicating successful receipt or identifying the nature of certain errors, such as the use of an improper common code identifier.

WINGS, SoCal Edison, and PG&E object to the adoption of the Internet server approach, principally because of concerns about the cost and difficulty to customers of establishing and operating an Internet server. Instead, they recommend what they term a more traditional Internet approach in which the pipeline would establish an Internet World Wide Web page which the customer can access by contracting with a traditional Internet Service Provider (ISP) and then using a standard Internet browser, such as Netscape Navigator or Microsoft Internet Explorer (hereinafter Web Browser model).[6]

Under the Web browser model, like the Internet server approach, a customer can send a document to the pipeline's Internet server. Unlike the Internet server approach, however, the customer's computer would not automatically receive responsive documents or confirmations from the pipeline. The customer would have to reconnect to the pipeline's Web page to retrieve all confirmations and responses from the pipeline. SoCal Edison maintains that the Web browser model has the capability of transmitting gas transactions in a standardized file format using the normal Internet file transfer protocol (FTP). It further maintains that the Web browser model has the capability for on-line data entry and validation of time critical nominations, like the pipeline's current Electronic Bulletin Boards (EBBs).

SoCal Edison further states that, based on its estimates, the minimum cost of using the Internet server model is $18,000 per year (under a contract with a ''specialized'' third-party service provider) compared with a yearly cost of $240 for the Web browser model. SoCal maintains that even if the Internet server model is adopted for users capable of using the ASC X12 formats and an Internet server, a lower-cost interactive solution, such as the Web browser model, also should be provided.

GISB, Altra, Williston Basin, and NGC/Conoco/Vastar support the consensus agreement to use the Internet server approach as the appropriate model for time-sensitive transactional data. The Internet server approach, they contend, allows for automatic transmittal and reception of documents, which will facilitate computer-to-computer exchanges of information. They argue that the Web browser approach is more appropriate for one-way communication where customers wish to gather information from the pipeline, without having to return information, than it is for the two-way communication of business transactions where both parties have to send and receive data. They regard the Web browser approach as more appropriate for transmitting non-transactional data where humans seek to obtain information from computers, for example, if a person sought information about a tariff provision and needed to search the pipeline's electronic tariff to find the information. Altra emphasizes that the time-stamping feature of the Internet server approach provides significant benefits to the industry, because it enables the sender of a document to know that the document has been received by the server of the other party to the transaction and has not been lost in transmission. It also maintains that the GISB Future Technology Task Force considered using the FTP protocol, but concluded it presented numerous problems.

Altra maintains the capital and operating cost of the Internet server approach for the pipelines' customers will vary depending on each customer's needs, the size of its business, and the number of pipelines with which it deals. GISB points out that there are many ISP's who provide everything from basic worldwide web access to complete Internet server sites at reasonable prices. Altra and GISB further maintain that many customers can effectively share the cost (and minimize individual outlays) by using a third-party service provider to maintain the Internet server.

Williston Basin is concerned that its shippers may not be willing to make the investment to support the Internet server model if they perceive that another, different model may be developed in the future. It, therefore, requests a definitive decision and implementation schedule so pipelines, shippers, and third-party service providers have certainty in the process.

GISB finally points out that none of these standards have yet been implemented and suggests that until they are, no assessment can be made of any need for changes or modifications. It urges that the standards be given a chance to accomplish their intended goal of helping to create a seamless national marketplace for natural gas.

The Commission is adopting the consensus view of the industry that the Internet server model is needed to provide customers with a framework for conducting these business transactions efficiently. For example, each standardized business transaction requires parties to exchange numerous files, including ''Quick Response'' transmissions at varying points in the process to verify receipt and errors in communication. The Internet server model provides that these multiple files can be sent and received automatically by computers at both ends. It further enables the party sending the document to obtain a time stamp establishing whether the transmission has been received and whether there are any errors. If a problem occurs, the sender can resubmit the information. In addition, the model provides customers with significant flexibility to manage their gas business in the way that most effectively meets their needs. Customers (or third-party providers) will be receiving transaction information directly from the pipelines when the information is ready and can program their computers to process such information automatically.

In contrast, the Web browser approach advocated by WINGS, PG&E, and SoCal Edison does not provide the same level of functionality as the Internet server model. The Web browser model does not support automatic computer-to-computer exchanges; an employee of the customer must access the pipeline's home page in order to obtain each quick response and confirmation document. There also would be no record that the recipient has received a transmitted document.

As GISB and Altra point out, the Internet server model also provides a standardized platform which computer software developers and third-party service providers can use to provide customers, including smaller customers, with the interface that meets their business needs. Third-party service providers should enjoy scale economies in establishing Internet servers, which would reduce the costs to smaller customers. According to SoCal Edison's cost estimates, for instance, the use of a specialized third-party service provider would be the most cost-effective way for it to use the Internet server approach, with an estimated cost of $1,500/month. Such cost estimates prior to implementation are necessarily tentative, since the market has not yet had a full opportunity to develop competing products and interfaces to meet market demand. However, even if the Internet server model ultimately costs more than the Web browser approach advocated by WINGS, PG&E, and SoCal Edison, the Internet server model provides benefits not available

[6] This model is similar to the GISB model for disseminating additional information over the Internet, such as pipeline tariffs, affiliated marketer information, and an index of customers.

from the Web browser approach, such as permitting direct computer-to-computer communications and automatic processing of information as well as reducing the inefficiency, and cost, to shippers of having their personnel access the pipeline's home page each time they need to check on whether the pipeline has sent a quick response, confirmation, or other information.

Whether changes to the Internet server model or a lower-cost, lower-functionality model for transactional exchanges may be needed in the future can be determined only after the Internet server model has been implemented and GISB, the industry, and the Commission have the opportunity to evaluate its performance. Even if it is ultimately determined that a lower-cost model is needed for smaller customers, an investment in the Internet server model is still needed to provide computer-to-computer communication, which appears necessary to provide an efficient communication system. Moreover, since the Internet server model uses many of the same protocols as the Web browser model, the investment and learning involved in developing the Internet server approach also would be valuable in the development of additional Internet approaches. In the meantime, the Commission has not eliminated the pipeline EBBs, so that customers can continue using this means of transacting business while the computer services market is developing.

NorAm requests consideration of three issues as the transition from EBBs to the Internet is occurring. First, although GISB has seemingly resolved data security and transmission reliability concerns with the Internet, NorAm contends the Commission should consider providing pipelines protection from negligence claims based on unreliability or interference with communications. Second, since the Internet is a third-party controlled media, NorAm believes customers should still be able to communicate using proprietary pipeline EBBs, the costs of which, it asserts, should remain in the pipeline's cost-of-service. Third, as a related matter, NorAm asks that the Commission be sensitive to the costs and the technological newness of the Internet server model and not require customers to incur large costs for implementing the Internet server model. On the other hand, Altra expresses a long-run concern that if pipelines continue to provide non-standard electronic services as a cost-of-service item, third-party vendors will be at a competitive disadvantage.

The Commission sees no need to provide unspecified protection from liability since NorAm has not shown that existing negligence principles are inadequate to deal with transmission problems. Indeed, one of the benefits of the Internet server approach is that it should provide notice whether a transmission has been received.

Both the Internet and the telephone system used to connect EBBs are third-party networks, and both systems require computers on both sides of the transaction to function properly, with the more likely breakdown occurring on the computer systems at either end than on the network in between.[7] Thus, pipelines and their customers should consider, if they have not already, fail-safe procedures to deal with such problems. Moreover, the Commission is not, at this point, proposing to eliminate the pipeline EBBs, so that customers will still have the ability to use these systems while the Internet mechanism is fully implemented.

III. Implementation Procedures

Pipelines are required to implement the standards adopted in this final rule according to the staggered schedule set forth in Order No. 587, beginning on April 1, 1997.[8] When a pipeline files its tariff sheets (as distinct from its *pro forma* tariff sheets) under section 154.203 of the Commission's regulations to implement Order No. 587, it must incorporate by reference into its tariff the Electronic Delivery Mechanism Standards adopted in this rule. A pipeline must further conform the definitions and its personnel contacts in its tariff to reflect any changes or additions related to the adoption of these standards. In complying with the requirements of section 154.203 of the Commission's regulations, a pipeline must file a marked version of the tariff sheets (under section 154.201) identifying all changes to the *pro forma* tariff sheets previously filed. In addition, the pipeline must file, as part of its statement of the nature, the reasons, and the basis for the filing, a complete table showing for each GISB standard adopted by the Commission, in Order No. 587 and in this rule, the complying tariff sheet number, and an explanatory statement, if necessary, describing any reasons for deviations from or changes to each GISB standard. Any pipeline seeking waiver or extension of the requirements of this rule is required to file its request within 30 days of the issuance of this rule.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[9] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations adopted in this rule impose requirements only on interstate pipelines, which are not small businesses, and, these requirements are, in fact, designed to reduce the difficulty of dealing with pipelines by all customers, including small businesses. Accordingly, pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations adopted in this rule will not have a significant adverse impact on a substantial number of small entities.

V. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[10] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[11] The action taken here falls within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[12] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

VI. Information Collection Statement

OMB's regulations in 5 CFR 1320.11 require that it approve certain reporting and recordkeeping requirements

[7] What is now termed the Internet initially was conceived during the cold war as a communication method to maintain continuing transmission capability in the event of nuclear war. The concept was to replace the then current point-to-point networks, where each site on the network was dependent on the link before it, with a web network, where information could find its own path even if a section was destroyed. *See e.g.*, Life on the Internet, The Online Edition of the PBS Series About the People Who are Shaping the Internet, Net History, http://www.pbs.org.internet/history (Jan. 7, 1997). The more likely eventuality, therefore, is an individual problem such as a pipeline or customer's Internet service provider going down, just as in the current EBB system a pipeline or customer's EBB computer can malfunction.

[8] 61 FR at 39066–67; III FERC Stats. & Regs. Preambles at 30,076–78.

[9] 5 U.S.C. 601–612.

[10] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[11] 18 CFR 380.4.

[12] See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

(collections of information) imposed by an agency. Upon approval of a collection of information, OMB shall assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this Rule shall not be penalized for failing to respond to these collections of information unless the collections of information display valid OMB control numbers.

The cost estimates for complying with the Internet protocols for transmission of the business practice standards were included in the FERC–549C information collection costs estimates in Order No. 587. OMB has approved the information collection under FERC–549C, Standards for Business Practices of Interstate Natural Gas Pipelines, (OMB Control No. 1902–0174), through September 30, 1999.

The adoption of the Internet protocols by this rule will create a more efficient communication medium for conducting business with interstate pipelines and reduce the burdens created by the disparity in log-on and other procedures among the pipeline's EBBs. The information collection requirements in this final rule will be reported directly to the industry users and later be subject to audit by the Commission. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act and coincide with the current regulatory environment which the Commission instituted under Order No. 636 and the restructuring of the natural gas industry.

Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415] or the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission (202) 395–3087].

VII. Effective Date

These regulations are effective March 10, 1997. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 10, 1997.

List of Subjects in 18 CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for Part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C 7101–7532; 43 U.S.C. 1331–1356.

2. In § 284.10, paragraph(b)(1)(iv) is redesignated (b)(1)(v), and new paragraph (b)(1)(iv) is added to read as follows:

§ 284.10 Standards for Pipeline Business Operations and Communications.

* * * * *

(b) * * *

(1) * * *

(iv) Electronic Delivery Mechanism Related Standards, Principles 4.1.1 through 4.1.15 and Standards 4.3.1 through 4.3.4 and 4.3.7 through 4.3.15 (Version 1.0, October 24, 1996); and

* * * * *

[FR Doc. 97–2931 Filed 2–5–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Amoxicillin Bolus and Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to codify two previously approved supplemental new animal drug applications (NADA's) filed by Pfizer, Inc. The supplemental NADA's provide for the use of amoxicillin boluses and soluble powder in preruminating calves including veal calves.

EFFECTIVE DATE: February 6, 1997.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, is sponsor of NADA 55–087 Amoxi-Bol® (amoxicillin trihydrate) bolus and NADA 55–088 Amoxi-Sol® (amoxicillin trihydrate) soluble powder which provide for treatment of bacterial enteritis when due to susceptible *Escherichia coli* in preruminating calves including veal calves. Use is by or on the order of a licensed veterinarian. These supplemental NADA's were approved on October 7, 1993, but the regulations were inadvertently not amended at that time to reflect these approvals. The regulations are now being amended in §§ 520.88d(d) and 520.88e(d) (21 CFR 520.88d(d) and 520.88e(d)) to reflect the approvals. In addition, the term ''nonruminating'' is being changed to ''preruminating'' to better describe the type of animal being treated.

The supplemental approvals provided for further clarification of the class of animals indicated for treatment. No additional safety or effectiveness data were required. Therefore, a freedom of information (FOI) summary is not required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.88d is amended by revising the heading for paragraph (d), paragraph (d)(2), and the third sentence in paragraph (d)(3) to read as follows:

§ 520.88d Amoxicillin trihydrate soluble powder.

* * * * *

(d) *Conditions of use. Preruminating calves including veal calves*—

* * * * *

(2) *Indications for use.* Treatment of bacterial enteritis when due to susceptible *Escherichia coli* in preruminating calves including veal calves.

(3) * * * For use in preruminating calves including veal calves only, not for use in other animals which are raised for food production. * * *

3. Section 520.88e is amended by revising the heading for paragraph (d), paragraph (d)(2), and the first sentence in paragraph (d)(3) to read as follows:

§ 520.88e Amoxicillin trihydrate boluses.

* * * * *

(d) *Conditions of use. Preruminating calves including veal calves*—

* * * * *

(2) *Indications for use.* Treatment of bacterial enteritis when due to susceptible *Escherichia coli* in preruminating calves including veal calves.

(3) *Limitations.* For oral use in preruminating calves including veal calves only, not for use in other animals which are raised for food production. * * *

Dated: January 27, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine

[FR Doc. 97–3015 Filed 2–5–97; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Tilmicosin Phosphate Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health, a Division of Eli Lilly and Co. The supplemental NADA provides for subcutaneous use of tilmicosin phosphate injection for the control of respiratory disease in cattle at high risk of developing bovine respiratory disease (BRD) associated with *Pasteurella haemolytica*.

EFFECTIVE DATE: February 6, 1997.

FOR FURTHER INFORMATION CONTACT: Naba K. Das, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1659.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, a Division of Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285, is sponsor of NADA 140–929, which provides for the subcutaneous use of Micotil® 300 (tilmicosin phosphate) Injection for the treatment of cattle with bovine respiratory disease (BRD) associated with *P. haemolytica*. The drug is limited to use by or on the order of a licensed veterinarian. The firm filed a supplemental NADA, which provides for use of Micotil® for the control of respiratory disease in cattle at high risk of developing BRD associated with *P. haemolytica*. The supplement is approved as of December 30, 1996, and 21 CFR 522.2471(d)(1)(ii) is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Also, certain limitation statements for use of the product are revised to reflect current wording. Section 522.2471(d)(1)(iii) is amended by revising two sentences.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning December 30, 1996, because the supplemental application contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety, or, in the case of food producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval of the supplement and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to the new claim, control of respiratory disease in cattle at high risk of developing BRD associated with *P. haemolytica*, for which the the supplemental application was approved.

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

List of Subjects

21 CFR Part 522

Animal drugs

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2.Section 522.2471 is amended by revising paragraph (d)(1)(ii) and the last four sentences of paragraph (d)(1)(iii) to read as follows:

§ 522.2471 Tilmicosin phosphate injection.

* * * * *

(d) * * *

(1) * * *

(ii) *Indications for use.* For the treatment of bovine respiratory disease (BRD) associated with *Pasteurella haemolytica*. For the control of respiratory disease in cattle at high risk of developing BRD associated with *P. haemolytica*.

(iii) * * * A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Do not slaughter within 28 days of last treatment. Federal law restricts this drug to use or on the order of a licensed veterinarian.

* * * * *

Dated: January 27, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine

[FR Doc. 97–3016 Filed 2–5–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Juan 96–077]

RIN 2115–AA97

Safety Zone Regulations: Southeast End of Vieques Island, PR

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the

southeast end of Vieques Island during small boat operations and testing conducted by the U.S. Navy. This safety zone will remain in effect for all vessels during the following times: from 5 p.m. until 6 a.m. local time, between February 5 to February 9, 1997, and from 5 p.m. until 6 a.m. local time, between February 11, to February 15, 1997. The U.S. Navy will be testing vessels at high speed in the safety zone. Therefore, these regulations are necessary to provide for the safety of life on navigable waters during the naval operations. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on January 31, 1997, at 5 p.m. local time. The safety zone will terminate on February 15, 1997 at 6 a.m. local time.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Junior Grade M.J. Simbulan or Ensign Jose A. Pena at (787) 729–6800, ext. 380/381, Marie Safety Office, San Juan, P.O. Box 9023666, San Juan, PR 00902–3666.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to minimize the potential for hazards to the vessels affected and the environment. The information on this event was received within sufficient time to publish proposed rules in advance or provide for a delayed effective date.

Discussion of Regulations

The Coast Guard is establishing a safety zone on the southeast end of Vieques Island during small boat operations and testing conducted by the U.S. Navy. This safety zone will remain in effect for all vessels during the following times: from 5 p.m. until 6 am local time, between January 31 to February 4, 1997, from 6:30 a.m. until 4 p.m. local time, between February 5 to February 9, 1997, and from 5 p.m. until 6 a.m. local time, between February 11 to February 15, 1997. The U.S. Navy will be testing vessels at high speed in the safety zone. Therefore, these regulations are necessary to provide for the safety of life on navigable waters during the naval operations. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

The safety zone will encompass an area of approximately 13 square miles. The safety zone extends northward from latitude 18–05.0 N to the South coast of Vieques Island or latitude 18–08.0 N. The safety zone is bound on the east by longitude 065–21.0 W and on the west by longitude 065–16.0 W. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory polices and procedures of DOT is unnecessary. This safety zone will be effective for a limited number of days and affect a small area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdiction with populations of less than 50,000. The Coast Guard certifies that this rule will not have a significant economic impact on a substantial number of small entities because the regulation will be effective for a limited number of days and affect a limited area.

Collection of Information

This rule contain no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2. of Commandant Instruction M16475.1B, (as revised by 59 FR 38654, July 29, 1994), this rule is categorically excluded from further environmental documentation. In accordance with section 2.B.2.e.(34)(g), the Coast Guard has completed an Environmental Impact Determination and a Categorical Exclusion Checklist.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Temporary Regulations

In consideration of the foregoing, Subpart C of Part 165 of title 33, Code of Federal Regulations, the Coast Guard amends as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A new 165.T96–077 is added to read as follows:

§ 165.T96–077 Safety Zone: Southeast end of Vieques Island, PR.

(a) *Location.* The following area is a safety zone:

A four-sided box bounded on the north by the south shore of Vieques or latitude 18–08.0 N, bounded on the south by latitude 18–05.0 N, bounded on the east by longitude 65–16.0 W, and bounded on west by longitude 65–21.0 W.

(b) *Effective date.* This regulation becomes effective at 5 p.m. local time on 31 January 1997. It will terminate at approximately 6 am local time on 15 February 1997, unless terminated sooner by the Coast Guard Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port.

Dated: January 24, 1997.

B.M. Salerno,

Commander, U.S. Coast Guard, Captain of the Port, San Juan, Puerto Rico.

[FR Doc. 97–3002 Filed 2–5–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AI47

Dependency and Income

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) adjudication regulations to exclude payments of accrued pension benefits from countable income in determining entitlement to VA improved death pension benefits. This change is needed to implement a decision of the United States Court of Veterans Appeals. The intended effect of this change is to bring the regulations into conformance with the decision of the Court.

EFFECTIVE DATE: This amendment is effective November 29, 1994.

FOR FURTHER INFORMATION CONTACT: Bradley Flohr, Consultant, Program Management, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7241.

SUPPLEMENTARY INFORMATION: Under Title 38 United States Code, Chapter 15, eligible veterans may be entitled to nonservice-connected disability pension benefits and eligible surviving spouses and/or children may be entitled to payment of nonservice-connected death pension benefits subject to statutory annual income limitations. In determining annual income under Chapter 15, all payments of any kind or from any source are countable unless specifically excluded by statute. 38 U.S.C. 1503(a)(2) specifically excludes ''payments under this chapter,'' i.e., Chapter 15, from countable income.

Under the provisions of 38 U.S.C. 5121, certain periodic monetary benefits to which an individual was entitled at death under existing ratings or decisions, or based on evidence in file at date of death, that are due and unpaid for a period not to exceed two years shall, upon the death of such individual, be paid to certain individuals as set forth in 5121(a).

The United States Court of Veterans Appeals has held that, since accrued benefits paid to a veteran's surviving spouse and/or child based on pension benefits owed to a veteran at the time of his or her death are derivative in nature, they are no more than payments of pension under 38 U.S.C. Chapter 15 that VA owed a veteran at the time of death and are, therefore, excluded from countable annual income for VA improved death pension purposes. See *Martin* v. *Brown*, 7 Vet. App. 196, 199–200 (1994). The department is amending 38 CFR 3.272(c) to incorporate this holding of the Court.

VA is issuing a final rule to implement this decision of the Court. Because this amendment is an interpretive rule that reflects a decision of the Court, publication as a proposal for public notice and comment under Title 5 U.S.C. 553, the Administrative Procedures Act, is unnecessary.

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601–612). Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

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

Approved: January 23, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

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

§ 3.272 [Amended]

2. In § 3.272, paragraph (c) is amended by removing ''Code.'' and adding, in its place, ''Code, including accrued pension benefits payable under 38 U.S.C. 5121.''

[FR Doc. 97–2901 Filed 2–5–97; 8:45 am]

BILLING CODE 8320–01–P

38 CFR Part 3

RIN 2900–AI36

Spouse and Surviving Spouse

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) adjudication regulations to replace gender-specific language with gender-neutral language. The amendments are necessary to conform the adjudication regulations with the VA policy that all of its publications will be stated in a manner that does not seem to preclude benefits for female veterans, dependents or beneficiaries.

EFFECTIVE DATE: This amendment is effective February 6, 1997.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Compensation and Pension Service (213), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7218.

SUPPLEMENTARY INFORMATION: It is our policy that in any VA publication and in any communications, words and statements denoting gender shall avoid any appearance of seeming to preclude benefits for female veterans, dependents, or beneficiaries. We believe that the best way to do so is to use gender-neutral terms such as ''spouse'' or ''surviving spouse'' rather than gender-specific terms such as ''husband,'' ''wife,'' ''widow,'' or ''widower.''

This document deletes references throughout 38 CFR part 3 to ''wife,'' ''husband,'' ''widow,'' or ''widower,'' and replaces them with the terms ''spouse'' and ''surviving spouse.'' In 38 CFR 3.205(a)(6), ''held themselves out as married'' has been substituted for ''held themselves out as husband and wife.'' 38 CFR 3.50 is revised to provide a new definition of ''spouse'' and ''surviving spouse'' to reflect statutory requirements. Because of this change, it is no longer necessary to define ''wife'' and ''widow.'' These terms are therefore removed. 38 CFR 3.51 previously provided that the term ''wife'' includes the husband of a female veteran and the term ''widow'' includes the widower of a female veteran. Because we have substituted gender-neutral terms such as ''spouse'' and ''surviving spouse'' for terms such as ''wife,'' ''husband,'' ''widow,'' or ''widower'' throughout the adjudication regulations, 38 CFR 3.51 is no longer necessary and we have removed it.

Since these amendments make no substantive change to the regulations, the Secretary finds that notice and public procedure thereon are unnecessary. Accordingly, these amendments are promulgated without

regard to the notice-and-comment and effective-date provisions of 5 U.S.C. 553.

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601–612). Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109, 64.110.

List of Subjects in 38 CFR Part 3

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

Approved: January 27, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwised noted.

2. Section 3.50 is revised to read as follows:

§ 3.50 Spouse and surviving spouse.

(a) *Spouse.* ''Spouse'' means a person of the opposite sex whose marriage to the veteran meets the requirements of § 3.1(j).

(b) *Surviving spouse.* Except as provided in § 3.52, ''surviving spouse'' means a person of the opposite sex whose marriage to the veteran meets the requirements of § 3.1(j) and who was the spouse of the veteran at the time of the veteran's death and:

(1) Who lived with the veteran continuously from the date of marriage to the date of the veteran's death except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse; and

(2) Except as provided in § 3.55, has not remarried or has not since the death of the veteran and after September 19, 1962, lived with another person of the opposite sex and held himself or herself out openly to the public to be the spouse of such other person.

§ 3.51 [Removed]

3. Section 3.51 is removed.

§ 3.106 [Amended]

4. In § 3.106, paragraph (e) is amended by removing ''widow'' and adding, in its place, ''surviving spouse''.

§ 3.205 [Amended]

5. In § 3.205, the last sentence of paragraph (a)(6) is amended by removing ''husband and wife'' and adding, in their place, ''married''.

§ 3.214 [Amended]

6. In § 3.214, the section heading is amended by removing ''widows'' and adding, in its place, ''surviving spouses''.

§ 3.252 [Amended]

7. In § 3.252, paragraph (b) is amended by removing ''widow or widower'' each time they appear and adding, in their place, ''surviving spouse''; and paragraph (e) is revised to read as follows:

§ 3.252 Annual income; pension; Mexican border period and later war periods.

* * * * *

(e) *Surviving spouse with a child*—(1) *Child.* The term ''child'' means a child as defined in § 3.57. Where a veteran's child is born after the veteran dies, the surviving spouse will not be considered a surviving spouse with a child prior to the child's date of birth.

(2) *Veteran's child not in surviving spouse's custody.* Where the veteran was survived by a surviving spouse and by a child, the income increments for a surviving spouse and child apply even though the child is not the child of the surviving spouse and not in his or her custody.

(3) *Income of child.* The separate income received by a child or children, regardless of custody, will not be considered in computing the surviving spouse's income. Where the separate income of the child is turned over to the surviving spouse, only so much of the money as is left after deducting any expenses for maintenance of the child will be considered the surviving spouse's income.

(4) *Alternative rate.* Whenever the monthly pension rate payable to the surviving spouse under the formula in 38 U.S.C. 1541(c) is less than the rate payable for one child under section 1542 if the surviving spouse were not entitled, the surviving spouse will be paid the child's rate.

* * * * *

8. Section 3.257 is revised to read as follows:

§ 3.257 Children; no surviving spouse entitled.

Where pension is not payable to a surviving spouse because his or her annual income exceeds the statutory limitation or because of his or her net worth, payments will be made to or for the child or children as if there were no surviving spouse.

§ 3.262 [Amended]

9. In § 3.262, paragraph (k)(6) is amended by removing ''widow'' and adding, in its place, ''surviving spouse''.

§ 3.400 [Amended]

10. In § 3.400, paragraph (e)(2) is amended by removing ''widow's or widower's'' each time they appear and adding, in their place, ''surviving spouse's'' and by removing ''widow or widower'' and adding, in their place, ''surviving spouse''.

§ 3.401 [Amended]

11. In § 3.401, paragraph (c), the heading is amended by removing ''wife (husband)'' and adding, in their place, ''spouse''.

§ 3.666 [Amended]

12. In § 3.666, paragraph (b)(1) is amended by removing ''widow or widower'' and adding, in their place, ''surviving spouse''.

§ 3.702 [Amended]

13. In § 3.702, paragraph (e), the heading is amended by removing ''Widow (widower)'' and adding, in their place, ''Surviving spouse''.

§ 3.805 [Amended]

14. In § 3.805, paragraphs (d) and (e) are amended by removing ''widow (widower)'' each time they appear and adding, in their place, ''surviving spouse''; and paragraph (f) is amended by removing ''herself (himself)''.

§ 3.857 [Amended]

15. In § 3.857, the heading and text are amended by removing ''widow or widower'' each time they appear and adding, in their place, ''surviving spouse''.

§ 3.1000 [Amended]

16. In § 3.1000, paragraph (a)(2) is amended by removing ''widow or remarried widow'' and adding, in their place, ''surviving spouse or remarried surviving spouse''; paragraph (b)(3) is amended by removing ''widow's'' and adding, in its place, ''surviving spouse's''; the introductory text of paragraph (c) is amended by removing ''widow'' and adding, in its place, ''surviving spouse''; paragraph (d)(1) is amended by removing ''widow or

widower'' and adding, in their place, ''surviving spouse''; and paragraph (f) is amended by removing ''widow or widower'' and adding, in their place, ''surviving spouse'' and by removing ''wife or husband'' and adding, in their place, ''spouse''.

[FR Doc. 97–2903 Filed 2–5–97; 8:45 am]
BILLING CODE 8320–01–P

38 CFR Part 36

RIN 2900–AH63

Loan Guaranty: Flood Insurance Requirements

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its loan guaranty regulations regarding loans in areas having special flood hazards. This action is required by statute to implement the provisions of the National Flood Insurance Reform Act of 1994, Title V of Public Law 103–325. VA is amending its regulations to strengthen requirements for procuring and maintaining flood insurance on properties in areas having special flood hazards which secure loans guaranteed by VA, and to include new requirements for VA as a ''Federal agency lender.'' The new requirements include escrow requirements for flood insurance premiums, the requirement to ''force place'' flood insurance under certain circumstances, enhanced flood hazard notice requirements, new authority for VA to charge fees for determining whether a property is located in a special flood hazard area, and various other provisions necessary to implement the National Flood Insurance Reform Act of 1994.

EFFECTIVE DATE: This final rule is effective February 6, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION: Title V of the Riegle Community Development and Regulatory Improvement Act of 1994, which is called the National Flood Insurance Reform Act of 1994 (Reform Act), comprehensively revised existing Federal flood insurance statutes. The Reform Act was intended to increase compliance with flood insurance requirements and participation in the National Flood Insurance Program in order to provide additional income to the National Flood Insurance Fund and to decrease the financial burden of flooding on the Federal government, taxpayers, and flood victims. The Reform Act requires the Federal entities for lending regulation to issue regulations fulfilling its statutory requirements, and Federal agency lenders to issue regulations consistent with and substantially identical to the regulations issued by the Federal entities for lending regulation. The Federal entities for lending regulation published a joint final rule on August 29, 1996.

VA is amending its regulations in order to set forth the requirement of flood insurance coverage on properties located in special flood hazard areas which secure loans made or guaranteed by VA, and to fulfill the statutory requirement that VA issue regulations consistent with and substantially identical to the regulations issued by the Federal entities for lending regulation.

Existing VA regulations regarding flood insurance requirements are based on several provisions of Title 42 U.S.C., Chapter 50, which were in place prior to the enactment of the Reform Act. 42 U.S.C. 4106(a) provides that no Federal agency shall approve any financial assistance (guarantee or make a loan) for acquisition or construction purposes on and after July 1, 1975, for use in any area that has been identified by the Director of the Federal Emergency Management Agency (FEMA) as an area having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program. 42 U.S.C. 4012a(a) provides that no Federal agency shall approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Director of FEMA as having special flood hazards and in which the sale of flood insurance is available under the National Flood Insurance Act of 1968 unless the building or manufactured home and any personal property to which such financial assistance relates is covered by flood insurance.

The Reform Act added 42 U.S.C. 4012a(b) which provides that regulated lending institutions and Federal agency lenders cannot make, increase, extend, or renew any loan secured by improved real estate or a manufactured home located or to be located in an area that has been identified by the Director of FEMA as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or manufactured home and any personal property securing such loan is covered by flood insurance. Further, lenders selling loans to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation must ensure that any loan secured by improved real estate or a manufactured home identified as being in a special flood hazard area at the time of origination or any time during the term of the loan is covered by flood insurance.

One significant impact of the new provisions on VA is a greater emphasis on ensuring flood insurance coverage during the entire term of loans guaranteed or made by VA which require such insurance, taking into account any remapping of special flood hazard areas by FEMA. VA is amending 38 CFR 36.4222 regarding hazard insurance coverage for manufactured home loans guaranteed by VA, 38 CFR 36.4326 regarding hazard insurance coverage for other loans guaranteed by VA, and 38 CFR 36.4600(c)(3) regarding hazard insurance coverage for loans sold by VA subject to guaranty, by adding language to emphasize that the flood insurance requirement applies any time during the term of the loan that the security is located in a special flood hazard area, not just when the loan is made. VA is adding language to 38 CFR 36.4512(b) which provides that it cannot make, increase, extend, or renew any loan secured by improved real estate or a manufactured home located or to be located in a special flood hazard area unless the security is covered by flood insurance for the term of the loan.

Under 42 U.S.C. 4106(a), Federal agencies are prohibited from providing financial assistance for acquisition or construction purposes for use in any area that has been identified by FEMA as an area having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program. Although this is not a new provision of the law, VA is using this opportunity to ensure program participants are aware of the prohibition. VA is incorporating the prohibition into 38 CFR 36.4222, 36.4326, 36.4402 and 36.4512.

In 38 CFR 36.4326 and 36.4402(a)(6), the reference to the Secretary of Housing and Urban Development is replaced by a reference to the FEMA.

38 CFR 36.4500(b) is amended to make the provisions of 38 CFR 36.4512 applicable to Native American veteran direct loans. Editorial changes are also made to 38 CFR 36.4512.

The Reform Act requires that VA issue regulations consistent with and substantially identical to those issued

by the Federal entities for lending regulation. The regulations issued by the Federal entities for lending regulation restate the requirements of the law as applied to regulated lending institutions. VA is adding this language, as applied to its role as a Federal agency lender, to its regulations as sections 38 CFR 36.4700 through 36.4709. These regulations apply whenever VA makes, increases, extends or renews, and, in some cases, sells a loan secured by improved real estate or a manufactured home located in an area identified by FEMA as having special flood hazards. The regulations include the following requirements: VA will maintain the required amount of flood insurance for the term of the loan; VA will escrow for flood insurance premiums if it requires the escrow of taxes, insurance, or other charges; VA will use the standard flood hazard determination form prescribed by FEMA, retain a copy of each completed form, and may charge a fee for flood determinations under certain circumstances; VA will force placement of flood insurance under certain circumstances; VA will provide notice of special flood hazards and availability of Federal disaster relief assistance, in a specific written format, to the borrower and servicer of the loan, and retain a record of receipt of the notices by these parties; and VA will notify the Director of FEMA, or the Director's designee, of the identity of the servicer of the loan and of any change in the servicer. VA is omitting the references to table funding contained in the regulations issued by the Federal entities for lending regulation from its amendments because they are not applicable to its role as a Federal agency lender.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The final rule essentially restates statutory provisions and reflects statutory requirements. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program numbers are 64.106, 64.114, 64.118, 64.119 and 64.126.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing Loan programs—housing and community development, Manufactured homes, Veterans.

Approved: January 24, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is amended as set forth below.

PART 36—LOAN GUARANTY

1. An authority citation for part 36 is added to read as follows:

Authority: 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, 3762, unless otherwise noted.

2. In § 36.4222, paragraph (a)(1) is revised to read as follows:

§ 36.4222 Hazard insurance.

(a) * * *

(1) Flood insurance will be required on any manufactured home, building or personal property securing a loan at any time during the term of the loan that such security is located in an area identified by the Federal Emergency Management Agency as having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act, as amended. The amount of flood insurance must be at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage available for the particular type of property under the National Flood Insurance Act, as amended. The Secretary cannot guarantee a loan for the acquisition or construction of property located in an area identified by the Federal Emergency Management Agency as having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program.

(Authority: 42 U.S.C. 4012a, 4106(a))

* * * * *

3. Section 36.4326 is revised to read as follows:

§ 36.4326 Hazard insurance.

The holder shall require insurance policies to be procured and maintained in an amount sufficient to protect the security against the risks or hazards to which it may be subjected to the extent customary in the locality. All moneys received under such policies covering payment of insured losses shall be applied to restoration of the security or to the loan balance. Flood insurance will be required on any building or personal property securing a loan at any time during the term of the loan that such security is located in an area identified by the Federal Emergency Management Agency as having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act, as amended. The amount of flood insurance must be at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage available for the particular type of property under the National Flood Insurance Act, as amended. The Secretary cannot guarantee a loan for the acquisition or construction of property located in an area identified by the Federal Emergency Management Agency as having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program.

(Authority: 42 U.S.C. 4012a, 4106(a))

4. In § 36.4402, paragraph (a)(6) is revised to read as follows:

§ 36.4402 Eligibility.

(a) * * *

(6) The housing unit, if it is located or becomes located in an area identified by the Federal Emergency Management Agency as having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act, as amended, is or will be covered by flood insurance. The amount of flood insurance must be at least equal to the lesser of the full insurable value of the property or the maximum limit of coverage available for the particular type of property under the National Flood Insurance Act, as amended. The Secretary cannot approve any financial assistance for the acquisition or construction of property located in an area identified by the Federal Emergency Management Agency as having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program.

(Authority: 42 U.S.C. 4012a, 4106(a))

* * * * *

5. In § 36.4500, paragraph (b) is revised to read as follows:

§ 36.4500 Applicability.

* * * * *

(b) Sections 36.4501, 36.4512, and 36.4527, which concern direct loans to Native American veterans shall be applicable to loans made by the Secretary pursuant to 38 U.S.C. 3761 through 3764.

(Authority: 42 U.S.C. 4012a)

* * * * *

6. Section 36.4512 is revised to read as follows:

§ 36.4512 Taxes and insurance.

(a) In addition to the monthly installment payments of principal and

interest payable under the terms of the loan agreement, the borrower will be required to make payments monthly to the Secretary in such amounts as may be determined by the Secretary from time to time to be necessary for the purpose of accumulating funds sufficient for the payment of taxes and assessments, ground rents, insurance premiums, and similar levies or charges on the security property. The borrower at loan closing shall pay in cash to the Secretary such sum as it estimates may be necessary as the initial deposit to the borrower's tax and insurance reserve account.

(Authority: 38 U.S.C. 3720)

(b) The borrower shall procure and maintain insurance of a type or types and in such amounts as may be required by the Secretary to protect the security against fire and other hazards. The Secretary cannot make a loan for the acquisition or construction of property located in an area identified by the Federal Emergency Management Agency as having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program. The Secretary shall not make, increase, extend, or renew a loan secured by a building or manufactured home that is located or to be located in an area identified by the Federal Emergency Management Agency as having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act, as amended, unless the building or manufactured home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of flood insurance must be at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage available for the particular type of property under the National Flood Insurance Act, as amended. The requirements of 38 CFR 36.4700 through 36.4709 shall apply to direct loans made pursuant to 38 U.S.C. 3711 and 3761 through 3764. All hazard and flood insurance shall be carried with a company or companies satisfactory to the Secretary and the policies and renewals thereof shall be held in the possession of the Secretary and contain a mortgagee loss payable clause in favor of and in a form satisfactory to the Secretary.

(Authority: 42 U.S.C. 4012a, 4106(a))

7. In § 36.4600, paragraph (c)(3) is revised to read as follows:

§ 36.4600 Sale of loans, guarantee of payment.

* * * * *

(c) * * *

(3) To maintain insurance in an amount sufficient to protect the security against risks or hazards to which it may be subjected to the extent customary in the locality, and to apply the proceeds of loss payments to the loan balance or the restoration of the security, as the holder may in the holder's discretion deem proper. Flood insurance will be required on any building or personal property securing a loan at any time during the term of the loan that such security is located in an area identified by the Federal Emergency Management Agency as having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act, as amended. The amount of flood insurance must be at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage available for the particular type of property under the National Flood Insurance Act, as amended. The notice requirements of 38 CFR 36.4709 shall apply to loans sold pursuant to this section.

(Authority: 42 U.S.C. 4012a, 4104a)

* * * * *

8. Sections 36.4700 through 36.4709 are added to read as follows:

§ 36.4700 Authority, purpose, and scope.

(a) *Authority.* Sections 36.4700 through 36.4709 of this part are issued pursuant to 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

(b) *Purpose.* The purpose of sections 36.4700 through 36.4709 of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(c) *Scope.* Sections 36.4700 through 36.4709 of this part, except for §§ 36.4705 and 36.4707, apply to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Sections 36.4705 and 36.4707 apply to loans secured by buildings or mobile homes, regardless of location.

(Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128)

§ 36.4701 Definitions.

(a) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001–4129).

(b) *Secretary* means the Secretary of Veterans Affairs.

(c) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(d) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(e) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

(f) *Director of FEMA* means the Director of the Federal Emergency Management Agency.

(g) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term mobile home does not include a recreational vehicle. For purposes of this part, the term mobile home means a mobile home on a permanent foundation. The term mobile home includes a manufactured home as that term is used in the NFIP.

(h) *NFIP* means the National Flood Insurance Program authorized under the Act.

(i) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(j) *Servicer* means the person responsible for:

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(k) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Director of FEMA.

(Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128)

§ 36.4702 Requirement to purchase flood insurance where available.

In general. The Secretary shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least

equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located.

(Authority: 42 U.S.C. 4012a)

§ 36.4703 Exemptions.

The flood insurance requirement prescribed by 38 CFR 36.4702 does not apply with respect to:

(a) Any State-owned property covered under a policy of self-insurance satisfactory to the Director of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

(b) Property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less.

(Authority: 42 U.S.C. 4012a(c))

§ 36.4704 Escrow requirement.

If the Secretary requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after October 1, 1996, the Secretary shall also require the escrow of all premiums and fees for any flood insurance required under 38 CFR 36.4702. The Secretary, or a servicer acting on behalf of the Secretary, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Director of FEMA or other provider of flood insurance that premiums are due, the Secretary, or a servicer acting on behalf of the Secretary, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(Authority: 42 U.S.C. 4012a(d))

§ 36.4705 Required use of standard flood hazard determination form.

(a) *Use of form*. The Secretary shall use the standard flood hazard determination form developed by the Director of FEMA (as set forth in appendix A of 44 CFR part 65) when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner.

(b) *Retention of form*. The Secretary shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the Secretary owns the loan.

(Authority: 42 U.S.C. 4104b)

§ 36.4706 Forced placement of flood insurance.

If the Secretary, or a servicer acting on behalf of the Secretary, determines at any time during the term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under 38 CFR 36.4702, then the Secretary or a servicer acting on behalf of the Secretary, shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under 38 CFR 36.4702, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the Secretary or a servicer acting on behalf of the Secretary, shall purchase insurance on the borrower's behalf. The Secretary or a servicer acting on behalf of the Secretary, may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

(Authority: 42 U.S.C. 4012a(e))

§ 36.4707 Determination fees.

(a) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973 as amended (42 U.S.C. 4001–4129), the Secretary, or a servicer acting on behalf of the Secretary, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) *Borrower fee.* The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Director of FEMA's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Director of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Director of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the Secretary or a servicer acting on behalf of the Secretary, on behalf of the borrower under 38 CFR 36.4706.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

(Authority: 42 U.S.C. 4012a(h))

§ 36.4708 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) *Notice requirement.* When the Secretary makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the Secretary shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) A warning, in a form approved by the Director of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

(4) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally declared disaster.

(c) *Timing of notice.* The Secretary shall provide the notice required by paragraph (a) of this section to the

borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the Secretary provides notice to the borrower and in any event no later than the time the Secretary provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) *Record of receipt.* The Secretary shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the Secretary owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, the Secretary may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The Secretary shall retain a record of the written assurance from the seller or lessor for the period of time the Secretary owns the loan.

(f) *Use of prescribed form of notice.* The Secretary will be considered to be in compliance with the requirement for notice to the borrower of this section by providing written notice to the borrower containing the language presented in appendix A to this part within a reasonable time before the completion of the transaction. The notice presented in appendix A to this part satisfies the borrower notice requirements of the Act.

(Authority: 42 U.S.C. 4104a)

§ 36.4709 Notice of servicer's identity.

(a) *Notice requirement.* When the Secretary makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the Secretary shall notify the Director of FEMA (or the Director's designee) in writing of the identity of the servicer of the loan. The Director of FEMA has designated the insurance provider to receive the Secretary's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee.

(b) *Transfer of servicing rights.* The Secretary shall notify the Director of FEMA (or the Director's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

(Authority: 42 U.S.C. 4104a)

9. Appendix A to part 36 is added to read as follows:

Appendix A to Part 36—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards. The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's Flood Insurance Rate Map or the Flood Hazard Boundary Map for the following community: _____. This area has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

____ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

- Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.
- At a minimum, flood insurance purchased must cover the lesser of:

(1) the outstanding principal balance of the loan; or

(2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

____ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

(Authority: 42 U.S.C. 4104a)

[FR Doc. 97–2902 Filed 2–5–97; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7657]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Executive Associate Director of the Federal Emergency

Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Executive Associate Director finds that the delayed effective dates would be contrary to the public interest. The Executive Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Executive Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U. S. C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final 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.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 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.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
NEW ELIGIBLES—Emergency Program			
Missouri: Diehlstadt, village of, Scott County	290925	Dec. 4, 1996.	
Georgia: Dallas, city of, Paulding County	130372	Dec. 5, 1996.	
North Carolina: Burgaw, town of, Pender County	370483	.....do.	
Michigan:			
Crockery, township of, Ottawa County	260981	Dec. 17, 1996.	
Sylvan, township of, Osceola County	260982	.....do.	
Greenwood, township of, Wexford County	260947	Dec. 20, 1996.	
NEW ELIGIBLES—Regular Program			
Florida: Fort Myers Beach, town of, Lee County[1]	120673	Dec. 17, 1996.	
REINSTATEMENTS			
Minnesota: Koochiching County, unincorporated areas	270233	July 1, 1974, Emerg; June 1, 1988, Reg; Sept. 26, 1996, Susp; Dec. 4, 1996, Rein.	Sept. 29, 1996.
Pennsylvania: West View, borough of, Allegheny County.	420086	April 26, 1974, Emerg; June 30, 1976, Reg; Oct. 4, 1995, Susp; Dec. 4, 1996, Rein.	Oct. 4, 1995.
Pennsylvania:			
Penn, township of, Chester County	421487	October 15, 1975, Emerg; Dec. 17, 1982, Reg; Nov. 20, 1996, Susp; Dec. 9, 1996, Rein.	Nov. 20, 1996.
Parkesburgh, borough of, Chester County	422277	June 11, 1975, Emerg; June 1, 1983, Reg; Nov. 20, 1996, Susp; Dec. 31, 1996, Rein.	July 16, 1996.

[1] The Town of Fort Myers Beach has been participating in the NFIP as part of the unincorporated areas of Lee County. The Town has adopted Lee County's (125120) Flood Insurance Study and accompanying Flood Insurance Rate Map (FIRM) dated 6/15/84 and any revisions thereto, for flood insurance and floodplain management purposes.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Issued: January 28, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–2966 Filed 2–5–97; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 43 and 64

[CC Docket No. 90–337, FCC 96–459]

Regulation of International Accounting Rates

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted a Report and Order that will permit flexibility in its accounting rate polices. The Commission concluded that U.S. carriers should be permitted to negotiate alternative settlement payment arrangements that deviate from the International Settlements Policy (ISP) with foreign correspondents in

countries that satisfy the Commission's economic competitive opportunity (ECO) test. In addition, the Commission will consider alternative settlement arrangements between a U.S. carrier and a foreign correspondent in a country that does not satisfy the ECO test where the U.S. carrier can demonstrate that deviation from the ISP will promote market-oriented pricing and competition, while precluding abuse of market power by the foreign correspondent. The Commission also adopted safeguards to ensure that its new flexibility policy does not have anticompetitive effects in the international market. The safeguards that are alternative arrangements between affiliated carriers and those involved in non-equity joint ventures must be filed with the Commission and made public, and alternative arrangements affecting more than twenty-five percent of the inbound or twenty-five percent of the outbound traffic on a particular route must be filed with the Commission and made public, and not contain unreasonably discriminatory terms and conditions. The Commission's action will encourage the development of competitive market conditions in other countries and lead to more economically efficient contractual arrangements for terminating service that ultimately will benefit U.S. consumers through lower calling prices.

DATES: The amendments to §§ 43.51 and 64.1001 will become effective March 10, 1997. The amendments to §§ 43.61 and 64.1002 take effect either upon approval by the Office of Management and Budget (OMB) or March 10, 1997, whichever occurs later. When approval is received, the agency will publish a document announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Kathryn O'Brien, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION This is a summary of the Commission's Fourth Report and Order in CC Docket 90–337, Phase II, adopted on November 26, 1996, and released on December 3, 1996 (FCC 96–459). The full text of the decision is available for inspection and copying during normal business hours in the FCC's Docket Reference Center, Room 239, 1919 M Street, NW., Washington, DC 20554. Copies also may be obtained from the Commission's contractor for public service records duplication: ITS, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800.

Summary of Fourth Report and Order

1. For years, U.S. carriers have been required to comply with the Commission's International Settlements Policy (ISP) in their bilateral accounting rate negotiations with monopoly foreign carriers. The ISP prevents foreign carriers from discriminating among U.S. carriers and requires: (1) The equal division of accounting rates; (2) nondiscriminatory treatment of U.S. carriers; and (3) proportionate return of inbound traffic. On January 31, 1996, the Commission issued a Policy Statement (61 FR 11163, March 19, 1996) that set forth a new approach for regulating accounting rates that could, when appropriate, rely on competitive forces to determine termination costs and efficient resource allocation. This was one of the Commission's initial steps to lower international telephone costs by reforming the international accounting rate system. In light of the Policy Statement the Commission reopened the record in CC Docket No. 90–337, Phase II, In the Matter of Regulation of International Accounting Rates (Second Further Notice of Proposed Rulemaking) (58 FR 3522, January 11, 1993) for the submission of supplemental comments and reply comments. (Public Notices Seeking Additional Comments, 61 FR 11172 (March 19, 1996) and 61 FR 11173 (March 19, 1996).

2. On December 3, 1996, the Commission released the Fourth Report and Order (FCC 96–459) adopting rules to permit flexibility in international accounting rate policies. With this additional step to reform the accounting rate system, the Commission created a framework for competition in the market for U.S. international telecommunications services that is more closely patterned on the competitive market for domestic long distance services. The Commission concluded that the new rules should increase options for U.S. carriers to negotiate arrangements to terminate their international traffic and result in lower prices and greater choices for U.S. consumers. In its decision, the Commission fully describes the differences between the new flexible approach and the current accounting rate policies.

3. The Commission rejected arguments to delay adopting a more flexible regulatory framework until effectively competitive markets exist. The Commission concluded that creating a more flexible regulatory framework at this time will serve its objectives to promote competitive behavior, improve economic performance, and rely on competitive market forces to determine call termination charges to the maximum extent permitted by market conditions. The new framework for flexibility permits carriers to deviate from the ISP only with carriers in markets where the legal, regulatory, and economic conditions support competition and in certain other limited circumstances. The Commission adopted competitive safeguards to ensure that where it permits flexibility, it does not lead to anticompetitive effects in the U.S. market for international services.

4. The Commission adopted a framework for alternative payment arrangements that affords U.S. carriers maximum flexibility to take advantage of competitive pressures in foreign markets to negotiate alternative arrangements that will enhance competition. At the same time, this framework continues to safeguard against anticompetitive behavior of foreign carriers that favors one correspondent U.S. carrier at the expense of its U.S. competitors.

5. The Commission concluded U.S. carriers will be allowed to negotiate alternative settlement arrangements that deviate from the ISP with foreign correspondents in countries that satisfy the ECO test set forth in Section 63.18(h)(6) of the Commission's regulations. The Commission stated that, where the ECO test has been satisfied, the ability of foreign carriers to exercise market power is constrained by the existence, or potential for, competitive entry. Where the FCC permits flexibility in its ISP, new entrants in foreign markets will have both the incentive and the opportunity to compete with the incumbent foreign carrier to terminate U.S.-originated traffic. The Commission will consider alternative settlement arrangements between a U.S. carrier and a foreign correspondent in a country that does not satisfy the ECO test where the U.S. carrier can demonstrate that deviation from the ISP will promote market-oriented pricing and competition, while precluding abuse of market power by the foreign correspondent.

6. The Commission declined to limit its ISP flexibility policy to certain categories of carriers, such as non-dominant foreign and U.S. carriers or ''small'' carriers. Instead, it concluded that, subject to certain safeguards, any U.S. carrier should be allowed to negotiate alternative payment arrangements with any carrier in a foreign country that satisfies the ECO test. This conclusion is consistent with the policy of allowing market forces, where possible, to determine the

allocation of resources. Moreover, allowing flexibility in the ISP is the best support for development of more competitive market structures and therefore should not be unduly restricted. In addition, the Commission rejected MFSI's proposal to preclude U.S. carriers with market shares of greater than five percent of U.S.-outbound traffic from entering into alternative settlement arrangements because the proposal could impede the effectiveness in reducing U.S. carrier costs to terminate traffic.

7. Although it declined to preclude dominant or large carriers from negotiating alternative arrangements, the Commission adopted competitive safeguards to protect against potential anticompetitive actions by foreign and U.S. carriers with a significant share of their markets, and to provide a ''safety net'' for possible unanticipated consequences of its ISP flexibility policy. In particular, it will require that a copy of all alternative settlement arrangements affecting more than either twenty-five percent of the outbound traffic on a particular route or twenty-five percent of the inbound traffic on a particular route be filed with the Commission and made public. Also, the Commission will require that any alternative arrangement that affects more than twenty-five percent of the outbound traffic or twenty-five percent of the inbound traffic on a particular route not contain unreasonably discriminatory terms and conditions. This safeguard will require carriers that negotiate innovative price and return traffic terms in agreements that affect more than twenty-five percent of either the inbound or outbound traffic on a given route to demonstrate that the terms are not unreasonably discriminatory, or to offer such terms on a nondiscriminatory basis to competing carriers. This safeguard will apply whether the arrangement is between separate carriers on the U.S. and foreign ends, between two affiliates, or when a carrier is self-corresponding. The Commission will not permit carriers to circumvent this twenty-five percent threshold by negotiating two or more agreements with one individual correspondent carrier or its affiliate, each of which affects less than twenty-five percent of the inbound or outbound traffic on a particular route. Carriers will be required to file a summary of the terms and conditions of all arrangements that do not trigger the Commission's safeguards and a full copy of all alternative arrangements that do trigger these safeguards. The Commission reserved the right to request a full copy of arrangements that do not trigger its safeguards in order to detect any potential circumvention of the safeguards by carriers.

8. As an additional measure to guard against unintended market disruptions as a result of the new policy, the Commission will not permit U.S.-inbound traffic that still is subject to the ISP (*i.e.*, traffic from a foreign carrier with whom a U.S. carrier does not have an alternative payment arrangement) to be routed through a foreign carrier that has an alternative payment arrangement with a U.S. carrier. The Commission reserved the right to impose additional safeguards on a case-by-case basis as a condition of granting approval to enter an alternative payment arrangement if it finds that such safeguards are necessary to prevent market distortions in the U.S. IMTS market or to prevent significant adverse results on net settlements payments with a foreign country. If alternative settlement arrangements indicate a need, the Commission will consider additional safeguards in the future.

9. Because the new policy has an impact on the ''no special concessions'' policy which was established in the Foreign Carrier Entry Order, the Commission created an exception to that rule. This exception applies only to alternative payment arrangements that between U.S. carriers and foreign carriers in countries that satisfy the ECO test, or foreign carriers in countries that do not satisfy the ECO test where the U.S. carrier can demonstrate that deviation from the ISP will promote market-oriented pricing and competition. Where these criteria have not been met, the Commission will continue to enforce vigorously its no special concessions policy. The Commission amended Section 63.14 of its rules to reflect this limited exception to the no special concessions policy.

10. The Commission determined that the issue of tailoring settlement policies to address the special circumstances presented by developing countries, would be better considered in the context of a separate proceeding. Thus, the Commission transferred the record on this issue to its future benchmarks proceeding.

11. To ensure that U.S. carriers are not faced with undue delay in implementing alternative payment arrangements, the Commission established an expedited process whereby U.S. carriers may obtain approval to enter an alternative payment arrangement by filing a detailed petition for declaratory ruling that the alternative payment arrangement is permitted under the criteria for deviating from the ISP. Each petition for declaratory ruling will be placed on public notice and interested parties will be allowed to file a formal opposition to the petition within twenty-one days of the date of public notice. If no formal opposition is filed and the Commission's International Bureau has not notified the carrier that grant of the petition may not serve the public interest and that implementation of the alternative arrangement must await formal staff action on the petition, the petition will be deemed granted and the alternative settlement arrangement may be implemented as of the twenty-eighth day after the date of public notice without any formal staff action being taken. If a formal opposition is filed, the requesting carrier may file a response pursuant to § 1.45 of the Commission's rules, and implementation of the alternative payment arrangement must await formal action by the FCC's International Bureau.

12. A U.S. carrier may seek approval to enter an alternative payment arrangement with a foreign carrier in a country that has already been found to satisfy the ECO test in the context of a prior Section 214 facilities application to serve that country. When a U.S. carrier seeks approval to enter an alternative payment arrangement with a carrier in a foreign country where the Commission has not yet made an ECO determination, the carrier must submit sufficient evidence to support a finding that either the ECO test has been satisfied, or that deviation from the ISP will promote market-oriented pricing and competition, while precluding abuse of market power by the foreign correspondent. In all cases, a petitioning carrier must state whether the alternative arrangement triggers our safeguards, either because the arrangement affects more than twenty-five percent of the inbound or twenty-five percent of the outbound traffic on the affected route, or because the U.S. carrier and its foreign correspondent are affiliated or involved in a non-equity joint venture affecting the provision of basic services on the affected route.

13. The Commission required that a full copy of all negotiated alternative arrangements that trigger its safeguards be filed with each petition. Where an alternative arrangement does not trigger the safeguards, a summary of the terms and conditions must be filed with each petition, and the Commission reserved the right to request a copy of the arrangement. Where an alternative arrangement does not trigger the safeguards, the Commission's review generally will focus on whether the criteria for allowing flexibility have

been met, rather than on the specific terms of the alternative arrangement. The Commission reserved the right to review and, if need be, reject the terms and conditions of all alternative arrangements, regardless of whether they trigger the safeguards, to ensure that they meet the FCC's policy objectives and will not have a significant adverse impact on U.S. net settlement payments and resulting traffic volumes.

14. The Commission will conduct periodic reviews of alternative settlement arrangements to ensure that the arrangements meet the objectives of creating a competitive market for IMTS and achieving cost-based accounting rates. The Commission will monitor the operating results of alternative arrangements along with foreign market conditions to ensure that the arrangements fulfill its objective of achieving market-determined terms and conditions of payment that approximate competitive levels. As part of the evaluation of alternative arrangements, the Commission will compare the results of each individual arrangement with other alternative arrangements and with its benchmark accounting rates.

15. The Commission will monitor the operating results of approved alternative arrangements to ensure that they do not have significant adverse impacts on traffic volumes and U.S. net settlement payments. In their annual report of international telecommunications traffic filed pursuant to Section 43.61, U.S. carriers will be required to include the number of minutes of outbound and inbound traffic settled pursuant to each alternative arrangement. In the event an alternative arrangement causes significant increases in net settlement payments with a foreign country, the Commission will consider appropriate action, including unilaterally ordering an end to the arrangement and reinstituting traditional settlement practices. The Commission emphasized its concern about increases in net settlement outpayments that result from distortions in market competition that harm consumer interests.

16. The Commission amended §§ 43.51 and 64.1001 of its rules to refer to ''waiver requests'' submitted under § 64.1001 as ''modification requests''. This change conforms its rules to the historic practice of treating waiver requests filed under § 64.1001 as non-restricted proceedings, in the same manner as Section 214(a) proceedings are treated under the Commission's *ex parte* rules. Because this rule change involves agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act are inapplicable.

17. The Commission codified its proportionate return policy as a rule. The issue of whether to codify the policy was initially raised in the Foreign Carrier Entry proceeding, but the record was transferred to this proceeding. The proportionate return requirement has long been a cornerstone of the Commission's ISP, and the Commission contends that by codifying this requirement, it is sending a strong signal to foreign carriers that the FCC does not allow U.S. carriers to be whipsawed.

18. The Commission decided not to apply the ISP to the global MSS industry. Based on the record, the Commission found no clear evidence that the global MSS market necessarily shares the anticompetitive characteristics addressed by the ISP. The Commission encouraged the MSS industry to adopt an approach to terminating international traffic that leads to more cost-based results than the current accounting rate regime. The Commission reserved the authority to apply the ISP or other safeguards to the MSS industry in the future if it finds that market conditions merit such actions.

Final Regulatory Flexibility Act Analysis

As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 (''RFA''), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated into the Second Report and Order and Second Further Notice of Proposed Rulemaking (''Second Further NPRM'') in CC Docket No. 90–337, Phase II. The Commission sought written public comments on the proposals in the Second Further NPRM, including the IRFA. The Commission's Final Regulatory Flexibility Analysis (''FRFA'') in this Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847 (1996).

A. Need For and Objective of the Rules

This Report and Order: (1) Permits U.S. carriers to deviate from the requirements of the Commission's International Settlements Policy (ISP) where appropriate market conditions exist; and (2) codifies the Commission's preexisting proportionate return policy, which is one of the requirements of the ISP, as a rule of general applicability to all facilities-based carriers.

With respect to our action permitting U.S. carriers to deviate from the requirements of the Commission's ISP where appropriate market conditions exist, our objective is to create a more flexible framework for regulating international accounting rates that permits U.S. carriers to take advantage of competitive market conditions in foreign countries to negotiate more economically efficient settlement rates. This action is an important step toward a transition from the traditional accounting rate system to competitive markets for originating and terminating international traffic. A more flexible approach to the accounting rate system will enable U.S. carriers to respond more rapidly to changing conditions in the global telecommunications market, reduce their call termination costs and the U.S. net settlement payments, and provide for lower calling prices for U.S. consumers.

With respect to our action codifying the Commission's preexisting proportionate return policy, our objective is to restrict the ability of foreign carriers to manipulate the allocation of return traffic and whipsaw U.S. carriers. This policy has long been a cornerstone of our ISP, and codifying it will send a strong signal to foreign carriers that we will not allow U.S. carriers to be whipsawed. We note, however, the flexible regulatory framework we adopt in this Report and Order permits carriers to deviate from this requirement where appropriate market conditions exist.

B. Summary of Issues Raised by the Public Comments in Response to the IRFA

No comments were submitted in direct response to the IRFA. We also reviewed the general comments for potential impact on small business. Some commenters raised the concern that allowing flexibility for large and/or dominant carriers would put smaller carriers at a disadvantage. These commenters contend that larger carriers will be able to negotiate more favorable terms and conditions than smaller carriers due to their greater traffic volumes. We believe that these concerns are addressed by the safeguards we adopt in this Report and Order.

C. Description and Estimate of Small Entities Subject to Which Rules Will Apply

The Commission has not developed a definition of small entities applicable to international facilities-based common carriers. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is expressed

as one with $11.0 million or less in annual receipts. Based on preliminary 1995 data, at present there are 29 international facilities-based common carriers that qualify as small entities pursuant to the SBA's definition. The number of small international facilities-based common carriers has been growing significantly, and by the end of 1996 that number could increase to approximately 50. The flexibility rules adopted in this decision will apply to these carriers only if they enter an alternative accounting rate arrangement with a foreign carrier, and the proportionate return rules codified in this Report and Order apply to all these carriers that enter into an operating agreement that provides for return traffic with a foreign carrier.

The IRFA and a Public Notice seeking supplemental comments were issued in November 1992 and January 1996, respectively. Therefore, the record in this proceeding was closed prior to the effective date of SBREFA. The Commission was thus unable to request information regarding the number of international facilities-based common carriers that qualify as small entities.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rules

International facilities-based common carriers must file a petition for declaratory ruling and obtain Commission approval before implementing an alternative settlement rate arrangement with a foreign carrier that deviates from the regulatory requirements of the Commission's ISP. In addition, carriers that implement such alternative arrangements must include in their annual report of international telecommunications traffic filed pursuant to Section 43.61 of the Commission's rules the number of minutes of outbound and inbound traffic settled pursuant to each alternative arrangement. Carriers already are required to file this annual traffic report; this Report and Order requires only that carriers that enter alternative arrangements include in their annual traffic report a description of the minutes settled pursuant to those arrangements. This reporting requirement and the requirement that carriers obtain approval of alternative arrangements are necessary to enable the Commission to review and monitor alternative arrangements for possible adverse effects on the U.S. market for international telecommunications services. These rules apply only to those small entities that take advantage of the opportunity to negotiate alternative settlement arrangements that deviate from the regulatory requirements of the Commission's ISP. Compliance with these rules may require the use of accounting and legal skills.

A U.S. international facilities-based common carrier that enters into an operating agreement with a foreign correspondent may not receive an allocation of return traffic from the foreign correspondent to the U.S. carrier that is not proportionate to the amount of traffic that the U.S. carrier sends outbound to the foreign correspondent. This requirement previously has applied to all carriers, including small entities, as part of the Commission's ISP. This Report and Order also adopts a flexible regulatory framework that permits carriers to deviate from this requirement where appropriate market conditions exist. Compliance with this rule may require the use of accounting and legal skills.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities Consistent With Stated Objectives

We have not identified, and commenters have not provided, any significant alternatives that may minimize the economic impact on small entities consistent with the stated objectives. We recognize that all carriers, including small entities, may have an increased paperwork burden; however, this Report and Order will reduce regulatory requirements on small entities that enter into operating agreements with foreign correspondents that include a negotiated accounting rate. Small entities entering alternative settlement arrangements pursuant to this Report and Order will not have to comply with the requirements of the Commission's ISP, including the proportionate return requirement that is codified in this Report and Order.

Several parties raised concerns that allowing flexibility in our ISP may harm smaller carriers because larger carriers may be able to obtain more favorable alternative arrangements due to their large market share. This Report and Order recognizes that there exists the potential for anticompetitive behavior by large carriers. However, rather than preclude large carriers from entering into alternative arrangements or postpone our flexibility policy, this Report and Order adopts competitive safeguards to help prevent potential anticompetitive behavior. These safeguards address the concerns raised by commenters, but at the same time enable the Commission to meet its objectives of allowing U.S. carriers, including small entities, to respond more rapidly to changing conditions in the global telecommunications market, reduce their call termination costs and the U.S. net settlement payments, and provide for lower calling prices for U.S. consumers.

The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

Paperwork Reduction Act

The Report and Order revises an existing information collection and imposes a new information collection. We recognize that the implementation of these requirements will be subject to review and approval of the Office of Management and Budget. Both the new and revised information collections contained in these rules will be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995. To obtain copies of the information collections contact Dorothy Conway at (202) 418–0217 or via internet at dconway@fcc.gov. Persons wishing to comment on this collection of information should direct their comments to Dorothy Conway, Federal Communications Commission, Records Management Division, Room 234, Paperwork Reduction Project (3060–0572), Washington, D. C. 20554. For Further information Contact Dorothy Conway, (202) 418–0217.

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 Commission's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

OMB Number: 3060–0106.

Title: Common Carrier International Telecommunications Services.

Type of Review: Revision of existing collection.

Respondents: U.S. common carriers providing international telecommunications services.

Number of Respondents: 248 (based on number of international carriers filing traffic reports in 1995).

Estimated Annual Burden: 8 hours including the time for reviewing instructions, searching existing data

sources, segregating the data needed, and completing and reviewing the collection of information.

Total Annual Burden: 1,984 hours.

Estimated costs per respondent: None.

Needs and Uses: The collection of information for which approval is here sought is contained in amendments to Part 43 in the Order adopting such amendments. The information collections are authorized and necessary for the Commission to carry out its statutory mandate, pursuant to Sections 1, 4, 201–205, 211, 214, 218–220, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154, 201–205, 211, 214, 218–220, and 303, and Part 43 of the Commission's Rules.

The information collections contained in amendments to Part 43 are necessary to assist us in reviewing the impact, if any, that alternative settlement agreements have on our international accounting rate policies. The information collections will also enhance the ability of the Commission and interested parties to monitor this policy for anticompetitive effects in the U.S. market for international service, thus increasing competitive options for U.S. carriers and resulting in lower prices and greater choices for U.S. consumers. The information collection will enable the Commission to promote competitive behavior, improve economic performance, and preserve the integrity of our accounting rate policies. The information collections also will enable the Commission and interested parties to determine whether or not the competitive safeguards are sufficient to protect U.S. carriers and consumers against harmful discriminatory practices by foreign carriers.

The information will be used by the Commission staff in carrying out its duties under the Communications Act. Common carriers engaged in providing international telecommunications service are required to file annual reports of international telecommunications traffic. The new rules require that the report shall include the number of minutes of outbound and inbound traffic settled pursuant to each alternative arrangement entered into pursuant to the new Section 64.1002.

OMB Number: 3060–0000.

Title: Common Carrier International Telecommunications Services.

Type of Review: New Collection.

Respondents: U.S. common carriers providing international telecommunications services.

Frequency of Response: As needed basis.

Number of Respondents: 30. It is difficult to estimate the number of respondents filing this information because the information will be filed only by those carriers seeking permission to enter agreements that do not comply with the §§ 43.41(e)(1), 63.14, and 64.1001 of our rules. Such agreements will only be permitted under certain circumstances. Given the limitations on negotiating such agreements, we estimate that no more than 30 such agreements will be negotiated, and very likely, significantly fewer than that number.

Estimated Annual Burden: 16 hours including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. It is difficult to estimate the estimated annual burden for filing the information because it will depend on how many agreements the carriers wish to enter.

Total Annual Burden: 480 hours.

Cost per respondent: $1,600. This amount is an estimate depending on whether the respondents use in-house legal staff or professional law firms to prepare the filing.

Needs and Uses: The collection of information for which approval is here sought is contained in amendments to Part 64 in the Order adopting such amendments. This information collection is authorized and necessary for the Commission to carry out its statutory mandate, pursuant to Sections 1, 4, 201–205, 211, 214, 218–220, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154, 201–205, 211, 214, 218–220, and 303, and Part 43 of the Commission's Rules.

The information collection contained in amendments to Part 64 is necessary to allow U.S. carriers to enter into alternative settlement agreements that do not comply with §§ 43.41(e)(1), 63.14, and 64.1001 of our rules. The information collected pursuant to this section will enable the Commission to consider alternative agreements that are outside the scope of its current rules. The information collected will be used to monitor the alternative agreements to ensure that competitive opportunities are available. The information collected will also enable interested parties to monitor the alternative agreements and determine potentially anticompetitive arrangements. In addition, the information collected will be the only information available to the Commission and interested parties on alternative accounting settlement arrangements. This information collection will provide the agency with sufficient data to review the impact, if any, that the alternative settlement agreement will have on our international accounting rate policies. The information collection will also enhance the ability of the Commission and interested parties to monitor for anticompetitive effects in the U.S. market for international service, thus increasing competitive options for U.S. carriers and resulting in lower prices and greater choices for U.S. consumers. The information collection will enable the Commission to promote competitive behavior, improve economic performance, and preserve the integrity of our accounting rate policies. The information collections also will enable the Commission and interested parties to determine whether or not the competitive safeguards are sufficient to protect U.S. carriers and consumers against harmful discriminatory practices by foreign carriers.

The information will be used by the Commission staff in carrying out its duties under the Communications Act.

Ordering Clauses

19. Accordingly, §§ 43.51 and 64.1001 will become effective March 10, 1997. Sections 43.61 and 64.1002 take effect either upon approval by the Office of Management and Budget (OMB) or March 10, 1997 whichever occurs later. When approval is received, the agency will publish a document announcing the effective date.

20. This action is taken pursuant to Sections 4(i), 4(j), 303(r), and 201–205 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r) and sections 201–205, Constitution of the International Telecommunications Union, Special Arrangements Article, and International Telecommunications Regulations, Article 9. Special Arrangements.

List of Subjects in 47 CFR Parts 43 and 64

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 43 and 64 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for Part 43 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 211, 219, 220, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

2. Section 43.51 is amended by revising paragraph (d) to read as follows:

§ 43.51 Contracts and concessions.

* * * * *

(d) *International settlements policy.* (1) If a carrier files an operating agreement (whether in the form of a contract, concession, license, etc.) referred to in paragraph (a) of this section to begin providing switched voice, telex, telegraph, or packet-switched service between the United States and a foreign point and the terms and conditions of such agreement relating to the exchange of services, interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, the allocation of return traffic, or the basis of settlement of traffic balances, are not identical to the equivalent terms and conditions in the operating agreement of another carrier providing the same or similar service between the United States and the same foreign point, the carrier must also file with the International Bureau a notification letter or modification request, as appropriate, under § 64.1001 of this chapter. No carrier providing switched voice, telex, telegraph, or packet-switched service between the United States and a foreign point shall bargain for or agree to accept more than its proportionate share of return traffic.

(2) If a carrier files an amendment to the operating agreement referred to in paragraph (a) of this section under which it already provides switched voice, telex, telegraph, or packet-switched service between the United States and a foreign point, and other carriers provide the same or similar service to the same foreign point, and the amendment relates to the exchange of services, interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, the allocation of return traffic, or the basis of settlement of traffic balances, the carrier must also file with the International Bureau a notification letter or modification request, as appropriate, under § 64.1001 of this chapter.

3. Section 43.61 is amended by revising paragraph (b) to read as follows:

§ 43.61 Reports of international telecommunications traffic.

* * * * *

(b) The information contained in the reports shall include actual traffic and revenue data for each and every service provided by a common carrier, divided among service billed in the United States, service billed outside the United States, and service transiting the United States. In addition, it shall include the number of minutes of outbound and inbound traffic settled pursuant to each alternative arrangement entered into pursuant to § 64.1002 of this chapter.

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 continues to read as follows:

Authority: Secs. 4, 201–205, 211, 218–220, 303, 48 Stat. 1066, 1070, 1072–73, 1077–78, as amended; 47 U.S.C. 154, 201–205, 211, 218–220, 303.

2. Section 64.1001 is amended by revising the heading for Subpart J, the section heading, paragraph (d), (e)(7), (f) introductory text, (g) introductory text, and paragraphs (i), (j), (k), and (l) to read as follows:

Subpart J—International Settlements Policy and Modification Requests

§ 64.1001 International settlements policy and modification requests.

* * * * *

(d) If the operating agreement or amendment referred to in §§ 43.51(d)(1) and (d)(2) of this chapter is not subject to notification under paragraphs (b) and (c) of this section, the carrier must file a modification request under paragraph (f) of this section.

(e) * * *

(7) A statement that there has been no other modification in the operating agreement with the foreign correspondent regarding the exchange of services, interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, allocation of return traffic, or the basis of settlement of traffic balances.

(f) A modification request must contain the following information:

* * * * *

(g) Notification letters and modification requests must contain notarized statements that the filing carrier:

* * * * *

(i) If a carrier files a notification letter for an operating agreement or amendment that should have been filed as a modification request, the Bureau will return the notification letter to the filing carrier and the Bureau will notify the carrier that, before it can implement the proposed modification, it must file a modification request under paragraph (f) of this section.

(j) An operating agreement or amendment filed under a modification request cannot become effective until the modification request has been granted under paragraph (l) of this section.

(k) On the same day the notification letter or modification request is filed, carriers must serve a copy of the notification letter or modification request on all carriers providing the same or similar service to the foreign administration identified in the filing.

(l) All modification requests will be subject to a twenty-one (21) day pleading period for objections or comments, commencing the date after the request is filed. If the modification request is not complete when filed, the carrier will be notified that additional information is to be submitted, and a new 21 day pleading period will begin when the additional information is filed. The modification request will be deemed granted as of the twenty-second (22nd) day without any formal staff action being taken: *provided*

(1) No objections have been filed, and

(2) The International Bureau has not notified the carrier that grant of the modification request may not serve the public interest and that implementation of the proposed modification must await formal staff action on the modification request. If objections or comments are filed, the carrier requesting the modification request may file a response pursuant to § 1.45 of this chapter. Modification requests that are formally opposed must await formal action by the International Bureau before the proposed modification can be implemented.

3. New § 64.1002 is added to Subpart J to read as follows:

§ 64.1002 Alternative settlement arrangements.

(a) A communications common carrier engaged in providing switched voice, telex, telegraph, or packet switched service between the United States and a foreign point may seek approval to enter into an operating agreement with a foreign telecommunications administration containing an alternative settlement arrangement that does not comply with the requirements of § 43.51(e)(1) and § 63.14 of this chapter and § 64.1001 by filing a petition for declaratory ruling in compliance with the requirements of this section.

(b) A petition for declaratory ruling must contain the following:

(1) Information to demonstrate that either:

(i) The Commission has made a previous determination that the

effective competitive opportunities test in § 63.18(h)(6)(i) of this chapter has been satisfied on the route covered by the alternative settlement arrangement; or

(ii) The effective competitive opportunities test in § 63.18(h)(6)(i) of this chapter is satisfied on the route covered by the alternative settlement arrangement; or

(iii) The alternative settlement arrangement is otherwise in the public interest.

(2) A certification as to whether the alternative settlement arrangement affects more than 25 percent of the outbound traffic or 25 percent of the inbound traffic on the route to which the alternative settlement arrangement applies.

(3) A certification as to whether the parties to the alternative settlement arrangement are affiliated, as defined in § 63.18(h)(1)(i) of this chapter, or involved in a non-equity joint venture affecting the provision of basic services on the route to which the alternative settlement arrangement applies.

(4) A copy of the alternative settlement arrangement if it affects more than 25 percent of the outbound traffic or 25 percent of the inbound traffic on the route to which the alternative settlement arrangement applies, or if it is between parties that are affiliated, as defined in § 63.18(h)(1)(i) of this chapter, or that are involved in a non-equity joint venture affecting the provision of basic services on the route to which the alternative settlement arrangement applies.

(5) A summary of the terms and conditions of the alternative settlement arrangement if it does not come within the scope of paragraph (b)(4) of this section. However, upon request by the International Bureau, a full copy of such alternative settlement arrangement must be forwarded promptly to the International Bureau.

(c) An alternative settlement arrangement filed for approval under this section cannot become effective until the petition for declaratory ruling required by paragraph (a) of this section has been granted under paragraph (e) of this section.

(d) On the same day the petition for declaratory ruling has been filed, the filing carrier must serve a copy of the petition on all carriers providing the same or similar service with the foreign administration identified in the petition.

(e) All petitions for declaratory ruling shall be subject to a 21 day pleading period for objections or comments, commencing the day after the date of public notice listing the petition as accepted for filing. The petition will be deemed granted as of the 28th day without any formal staff action being taken: *provided*

(1) The petition is not formally opposed within the meaning of § 1.1202(e) of this chapter; and

(2) The International Bureau has not notified the filing carrier that grant of the petition may not serve the public interest and that implementation of the proposed alternative settlement arrangement must await formal staff action on the petition. If objections or comments are filed, the petitioning carrier may file a response pursuant to § 1.45 of this chapter. Petitions that are formally opposed must await formal action by the International Bureau before the proposed alternative settlement arrangement may be implemented.

[FR Doc. 97–2922 Filed 2–5–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB88

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for ''Pseudobahia bahiifolia'' (Hartweg's golden sunburst) and Threatened Status for ''Pseudobahia peirsonii'' (San Joaquin adobe sunburst), Two Grassland Plants From the Central Valley of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines endangered status for *Pseudobahia bahiifolia* (Hartweg's golden sunburst) and threatened status for *Pseudobahia peirsonii* (San Joaquin adobe sunburst) pursuant to the Endangered Species Act of 1973, as amended (Act). The two plants occur primarily in nonnative grasslands in the eastern and southeastern portions of the San Joaquin Valley, but also at a few sites at the ecotone between grasslands dominated by nonnative species and blue oak woodland communities. Both plants are threatened primarily by conversion of habitat to residential development. To a lesser extent, the species are variously threatened by agriculture (ag-land development), competition from nonnative plants, incompatible grazing practices, transmission line maintenance, recreational activities, mining, road construction and maintenance, a flood control project, and other human impacts. Potential threats include herbicide application to control herbaceous and weedy taxa. This rule implements the Federal protection and recovery provisions afforded by the Act for these species.

EFFECTIVE DATE: March 10, 1997.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Sacramento Field Office, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821–6340.

FOR FURTHER INFORMATION CONTACT: Elizabeth Warne (see **ADDRESSES** section) telephone 916/979–2120; facsimile 916/979–2128.

SUPPLEMENTARY INFORMATION:

Background

Pseudobahia bahiifolia (Hartweg's golden sunburst) and *Pseudobahia peirsonii* (San Joaquin adobe sunburst) are endemic to the nonnative grassland and grassland-blue oak woodland community ecotone of the southern Sacramento Valley and San Joaquin Valley of California. These two valleys comprise the Central Valley. The prehistoric composition of the native grasslands and adjoining plant communities likely will remain a mystery (Brown 1982), although numerous authors have speculated as to the composition of the ''pristine'' flora of the Central Valley (Clements 1934, Munz and Keck 1950, Biswell 1956, Twisselmann 1956, White 1967, McNaughton 1968, Bakker 1971, Ornduff 1974, Heady 1977, Bartolome and Gremmill 1981, and Wester 1981). Nonnative annual grasses and forbs invaded the low elevation plant communities of California during the days of the Franciscan missionaries in the 1700's. These nonnative grasses now account for up to 80 percent or more of the floral composition of the grasslands of California (Heady 1956). The nonnative grasses have outcompeted the native flora throughout much of California because these exotics germinate in late fall prior to the germination of the native forbs, including the two sunflower species discussed herein, *Pseudobahia bahiifolia* and *Pseudobahia peirsonii*. Each species, however, occurs in a distinctive microhabitat within the larger matrix of nonnative annual grassland. *Pseudobahia bahiifolia* prefers the top of ''Mima'' mound topography where the grass cover is

minimal (Stebbins 1991). Vernal pools, an increasingly rare California landform, are often interspersed with the Mima mounds (Stebbins 1991). *Pseudobahia peirsonii* prefers heavy adobe clay soils where the water retention properties are high.

Karl Hartweg, a German botanist, first collected *Pseudobahia bahiifolia* on Cordua's farm near the junction of the Yuba and Feather Rivers in Yuba County, California in April of 1847. George Bentham described the species as *Monolopia bahiaefolia* in 1849. Edward L. Greene placed the species in the genus *Eriophyllum* in 1897. In 1915, Per Rydberg established the genus *Pseudobahia* on the basis of leaf and floral morphology and formed the new combination *Pseudobahia bahiaefolia*. Dale Johnson (1978) recognized a spelling error in the specific epithet *bahiaefolia* and used *Pseudobahia bahiifolia* in his doctoral dissertation.

Pseudobahia bahiifolia, a member of the sunflower or aster family (Asteraceae), is one of three species of *Pseudobahia* in the subtribe Eriophyllinae of the tribe Helenieae (Johnson 1978). The species is a few-branched annual about 6 to 15 centimeters (cm) (2 to 6 inches (in.)) tall, covered throughout with white, wooly hairs. Its leaves are narrow, alternate, three-lobed or entire with three blunt teeth at the apex, and about 1 to 2 cm (0.4 to 0.8 in.) long. The bright yellow flower heads, produced in March or April, are solitary at the ends of the branches. The ray flowers are equal in number to the sub-floral bracts (phyllaries) and the pappus is absent. *Pseudobahia bahiifolia* is distinguished from other members of the genus by having the largest leaves, entire or three-lobed versus once or twice pinnatifid, as in *Pseudobahia heermanii* and *Pseudobahia peirsonii*. The range of *Pseudobahia bahiifolia* is strongly correlated with the distribution of the Amador and Rocklin soil series (Stebbins 1991). Both series generally consist of shallow, well-drained, medium-textured soils that exhibit strong Mima mound microrelief (Stebbins 1991). Such topography is characterized by a series of mounds that may range from 30 cm to 2 meters (m) (1.0 to 6.6 feet (ft)) in height and 3 to 30 m (10 to 98 ft) in basal diameter interspersed with shallow basins that may pond water during the rainy season (Bates and Jackson 1987). *Pseudobahia bahiifolia* nearly always occurs on the north or northeast facing slopes of the mounds, with the highest plant densities on upper slopes with minimal grass cover (Stebbins 1991). A variant of one of the two soil series is concentrated near Friant in Madera County and contains large quantities of pumice, which is mined for use as an industrial binder and is used in making concrete blocks (Chesterman and Schmidt 1956). According to a status survey by John Stebbins (1991), *Pseudobahia bahiifolia* may have existed throughout the Central Valley of California from Yuba County in the north to Fresno County in the south, a range of approximately 322 kilometers (km) (200 miles (mi)). The plant presently occurs only in the eastern San Joaquin Valley in Stanislaus, Madera, and Fresno Counties, a range of approximately 153 km (95 mi). One population occurs on land owned and managed jointly by the Bureau of Reclamation and a private owner; the remaining populations all occur on privately owned property (California Natural Diversity Data Base (CNDDB) 1996).

Over 90 percent of all *Pseudobahia bahiifolia* plants occur in two general locations. One site, in Madera County, approximately 0.8 km (0.5 mile) long and containing about 16,000 plants, is the remnant of one large population that now has become fragmented. The second large population, in Stanislaus County, covers about 2 hectares (ha) (5 acres (ac)) and contains approximately 15,000 plants. Although the number of individuals per population of annual species is highly variable from year to year, 11 of 16 extant populations are very small, and numbered fewer than 200 plants during the 1990 field season (Stebbins 1991).

Conversion of native habitat to residential development is the primary threat to the existence of *Pseudobahia bahiifolia*. To a lesser degree, agriculture (ag-land development), competition from aggressive exotic plants, incompatible grazing practices, mining, and other human impacts actions also threaten the species (CNDDB 1996).

In March 1925, Philip Munz first collected specimens of *Pseudobahia peirsonii* in a grassy flat near Ducor in Tulare County, California. Until Munz described *Pseudobahia peirsonii* as a species in 1949, specimens had been included in *Monopolia heermani*, *Eriophyllum heermani*, or *Pseudobahia heermani*, depending on the prevailing treatment of the time (Stebbins 1991). Sherwin Carlquist (1956) and Johnson (1978) supported Munz's taxonomic position with additional morphological and cytological evidence.

Pseudobahia peirsonii, like *Pseudobahia bahiifolia*, is a member of the Asteraceae family and is an erect annual herb about 1 to 6 decimeters (dm) (4 to 18 in.) tall, loosely covered with white, wooly hairs. Its alternate leaves are twice divided into smaller divisions (bipinnatifid), triangular in outline, and 2 to 6 cm (1 to 3 in.) in length. Flower heads, which appear in March or April, are solitary at the ends of the branches. The ray flowers are bright yellow and equal in number to the subfloral bracts and about 3 millimeters (mm) (0.1 in.) long with many disk flowers; the pappus is absent. The dry fruits, called achenes, are black. *Pseudobahia peirsonii* is distinguished from *Pseudobahia heermani*, the species most similar in appearance, primarily by its subfloral bracts, which are united only at the base versus united to half their length in the latter species.

Pseudobahia peirsonii occurs only on heavy adobe clay soils over a range of approximately 193 km (120 mi) through Fresno, Tulare, and Kern counties. One population occurs on land owned and managed by the Fresno Flood Control District; two populations occur on land owned by the U. S. Army Corps of Engineers (Corps); all other populations occur on privately owned land (CNDDB 1996). Stebbins (1991) speculates that the edaphic restriction is associated with the ability of these clay soils to retain moisture longer into the summer dry season. These soils are mainly distributed in the valleys and flats near the foothills of the southeastern San Joaquin Valley (Stebbins 1991). *Avena fatua*, *Brassica kaber*, *Bromus mollis*, *Bromus rubens*, and *Erodium cicutarium* are some of the common nonnative associates of *Pseudobahia peirsonii* (Stebbins 1991). The intrusive and aggressive characteristics of herbaceous weedy species appear to be detrimental to habitat quality of this rare plant.

Pseudobahia peirsonii is concentrated in three major locations—east of Fresno in Fresno County; west of Lake Success in Tulare County; and northeast of Bakersfield in Kern County. Of the 36 known occurrences, 20 are small and contain fewer than 250 plants (Stebbins 1991; Karen and Gregory Kirkpatrick, KAS Consultants, *in litt.* 1993; CNDDB 1996). Approximately 80 percent of all plants are contained in 4 populations (CNDDB 1996, Mark Mebane, rancher, *in litt.* 1993). Conversion of natural habitat to residential development is the primary threat to *Pseudobahia peirsonii*. In addition, road maintenance projects, recreational activities, competition from nonnative plants, ag-land development, incompatible grazing practices, a flood control project, transmission line maintenance, and other human impacts also may threaten the species.

Previous Federal Action

Federal government actions on these two plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. The report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In the report, *Pseudobahia bahiifolia* was included as a threatened species and *Pseudobahia peirsonii* as an endangered species.

On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) (now section 4(b)(3) of the Act), and its intention thereby to review the status of the plant taxa named therein. *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* were included in that notice. On June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, Federal Register publication. *Pseudobahia bahiifolia* and the *Pseudobahia peirsonii* were included in the June 16, 1976 Federal Register document.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, Federal Register publication (43 FR 17909). The Act Amendments of 1978 required that all existing proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. On December 10, 1979, the Service published a notice in the Federal Register (44 FR 70796) of withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four proposals that had expired due to a procedural requirement of the 1978 Amendments.

On December 15, 1980, the Service published a revised Notice of Review of native plants in the Federal Register (45 FR 82480). *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* were included as category 1 candidate species, meaning that the Service had in its possession substantial information on biological vulnerability and threats to support preparation of a listing proposal. On November 28, 1983, the Service published in the Federal Register (48 FR 53640) a supplement to the 1980 Notice of Review. This supplement treated *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* as category 2 species, meaning that the data in the Service's possession indicated listing may be appropriate, but that substantial data on biological vulnerability and threats were not currently known or on file to support preparation of a proposed rule. The plant notice was again revised on September 27, 1985 (50 FR 39526). Both species remained in category 2. In the February 21, 1990, revision of the plant notice (55 FR 6184), *Pseudobahia bahiifolia* remained as a category 2 candidate species and *Pseudobahia peirsonii* returned to category 1 status. On February 28, 1996, the Service published a Notice of Review in the Federal Register (61 FR 7596) that discontinued the designation of category 2 species as candidates.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding required the petition to be recycled, pursuant to section 4(b)(3)(c)(I) of the Act. The finding was reviewed annually in October of 1984 through 1991.

A proposed rule to list *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* as endangered was published in the Federal Register on November 30, 1992 (57 FR 56549). That proposal was based, in large part, on the status survey and occurrence data, and information on pending projects that would adversely affect the two species. *Pseudobahia bahiifolia* was included in the proposal after a review of existing information indicated that the species should be assigned category 1 status and that the proposal for listing was warranted. The Service now determines *Pseudobahia bahiifolia* to be an endangered species and *Pseudobahia peirsonii* to be a threatened species with the publication of this rule.

Summary of Comments and Recommendations

In the November 30, 1992, proposed rule (57 FR 56549) and associated notifications, all interested parties were requested to submit factual reports or information to assist the Service in determining whether these two species warrant listing. Appropriate Federal and State agencies, county and city governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting general comment were published on December 16, 1992, in the Hanford Sentinel, and Porterville Recorder; on December 17, 1992, in the Bakersfield Californian, Fresno Bee, Madera Daily Tribune, Modesto Bee, Union Democrat, and Advance-Register; and on December 18, 1992, in the Visalia Times-Delta. The Service received written requests for a public hearing from Congressman Bill Thomas, Kern County Farm Bureau, Tulare County Cattlemen's Association, and Kern County Cattlemen's Association. As a result, the Service published a notice of a public hearing on April 2, 1993 (58 FR 17376), and extended the deadline for the comment period to May 3, 1993. The Service conducted the public hearing on April 21, 1993, at the Kern County Administrative Center Board Chambers in Bakersfield, California.

During the comment period, the Service received 28 comments (letters and oral testimony), including representatives from a Federal agency, a State agency, a County agency, and 21 individuals. Eight commenters supported listing, 15 opposed listing or favored delaying the listing, and five were neutral. In addition, several individuals presented oral and written testimony during the public comment period concerning the 1989 *Tulare Pseudobahia Species Management Plan*, written for the California Department of Fish and Game. This document was not written for the Service, nor was it used to support the Federal listing action of the two species. Comments or portions of comments that were submitted to the Service addressing this plan are considered not substantive and are not considered in the response section of this rule.

Written comments or oral statements obtained during the public hearing and comment period are combined in the following discussion. Opposing comments and comments questioning the listing have been organized into specific issues. The majority of comments concerned *Pseudobahia peirsonii*. These issues and the Service's

response to each are summarized as follows:

Issue 1

The status survey covered only known documented sites; the listing should be delayed until a more thorough survey is conducted.

Service Response

The field survey for both species (Stebbins 1991) examined 55 previously documented sites. Data from observations at the known sites were used to identify suitable habitat areas to search for undocumented populations of the two species. As a result, 69 additional sites within and adjoining the population concentrations within the ranges of the species were explored. It should be noted that, in cases where access was denied by private landowners of historical sites, these sites were not surveyed. The current status on these sites is unknown. Surveys conducted on *Pseudobahia peirsonii* after 1990, showed that many populations continued to decrease in size during 1991 and 1992 in spite of increased rainfall (J. Stebbins, California State University, Fresno, pers. comm. 1993). One commenter who supported the listing of *Pseudobahia peirsonii*, submitted additional population data from an extensive survey conducted in Tulare County in 1992. This information has been incorporated into this rule. This commenter also noted that portions of eastern Kern County contain the only remaining suitable *Pseudobahia peirsonii* habitat that has not been thoroughly surveyed for the species. A landowner in Kern County commented that he discovered one population that had been presumed extirpated in the status survey, as well as four previously unrecorded populations, the largest of which contained approximately 10,000 plants. Information on all newly recorded populations has been incorporated into this rule. Much of the suitable habitat for these species has been surveyed. In the period of time since the publication of the proposed rule in 1993, no data have been presented to contradict the Service's contention that these species are imperiled by habitat loss and other threats described in the Summary of Factors. The Service believes that sufficient information is available on these species to warrant determination of *Pseudobahia bahiifolia* as endangered and *Pseudobahia peirsonii* as threatened.

Issue 2

The Service should consider economic effects in determining whether to list these species under the Act.

Service Response

Under section 4(b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to ''ensure'' that listing decisions are ''based solely on biological criteria and to prevent non-biological considerations from affecting such decisions'', H.R. Rep. No. 97–835, 97th Cong. 2d Sess. 19 (1982). As further stated in the legislative history, ''Applying economic criteria * * * to any phase of the species listing process is applying economics to the determinations made under section 4 of the Act and is specifically rejected by the inclusion of the word ''solely'' in this legislation.'' H.R. Rep. No. 567, part I, 97th Cong., 2d Sess. 20 (1982).

Issue 3

Extensive grazing poses no threat to *Pseudobahia peirsonii*. Populations of this species have been grazed for 100 years or more with no adverse effects. Grazing is necessary for the species to compete against aggressive weeds.

Service Response

Any assessment of the historical range and population size of the species is complicated by the fact that most records of plant populations were begun after widespread agricultural development had occurred (Stebbins 1991). No range or population data exists for *Pseudobahia peirsonii* prior to 1925, the year this species was first collected by Phillip Munz. All known extant populations are found in grazed grasslands dominated by nonnative grasses and forbs. Populations not grazed by domestic livestock are unknown. Because the extent and size of populations prior to introduction of domestic livestock is also unknown, it cannot be shown that there has been no historical decline in *Pseudobahia peirsonii* due to grazing.

Appropriate grazing practices may, in fact, prove beneficial to *Pseudobahia peirsonii*. Some populations of *Pseudobahia peirsonii* appear to be stable under current grazing practices at their sites (CNDDB 1996). Grazing reduces the cover and probably the amount of seed produced by weedy species that compete with *Pseudobahia peirsonii*. Several botanists experienced with *Pseudobahia peirsonii* commented that ''well-managed, moderate'' grazing is conducive to the survival of the plant and that ''removing the cattle entirely can promote the rapid growth of nonnative plants against which *Pseudobahia peirsonii* has difficulty competing.'' Timing of grazing also may affect weedy species abundance. A controlled sheep grazing study showed that early spring grazing resulted in a higher frequency of native grasses than did later grazing (Amme and Pitschel 1989).

Inappropriate grazing practices may, however, be detrimental to the species in several ways. Soil disturbance by grazing animals may allow nonnative or weedy species that are adapted to growing in disturbed sites to become established (Zedler 1987); these species may, for various reasons, have an advantage over *Pseudobahia peirsonii* in competition for water, light, or nutrients. Excessive trampling by livestock also can degrade habitat by compacting the soil and promoting erosion. Although the palatability of *Pseudobahia peirsonii* to cattle is unknown, grazing animals are less selective at heavy grazing pressure when less forage is available per animal (Kothmann 1983). Any remaining plants, therefore, have a higher probability of being grazed. This increased grazing pressure in turn affects seed production and can result in population decline (Heady 1961). Reduced population sizes during periods of drought may be more susceptible to the impacts of inappropriate grazing practices. Over half of all known populations of *Pseudobahia peirsonii* had fewer than 250 individuals in 1991.

Issue 4

The status survey was conducted in a drought year, which resulted in abnormally low population counts.

Service Response

The Service used the best available data at the time the proposal was written. It was not possible to predict the duration of the drought or to postpone the survey until a favorable rainfall year. Although the drought may have had adverse effects on the size of the *Pseudobahia peirsonii* populations, surveys conducted on *Pseudobahia peirsonii* after 1990 revealed that despite increased rainfall, many populations continued to decrease in size during 1991 and 1992. Observations made in the spring of 1993 showed that most populations covered more area and contained more plants than in previous years; however, extirpated sites did not reappear (J. Stebbins, pers. comm. 1993). Population counts of annual species would be expected to fluctuate yearly according to climatic conditions.

Moreover, the factors threatening the remaining habitat of these species are not diminished by annual population fluctuations. As stated earlier, no data have been presented to contradict the Service's contention that these species are threatened by factors described in the Summary of Factors.

Issue 5

The sampling period for *Pseudobahia peirsonii* (1 month during 1 year), was too short; more sites may have been found during a longer sampling period.

Service Response

Pseudobahia peirsonii and *Pseudobahia bahiifolia* are small annual plants with a short blooming period of 3 to 4 weeks in March and April. The period of time in which population surveys can be conducted most efficiently is during the blooming period, when the plants are most readily detectible and identifiable. The plants are less visible later in the year as the surrounding vegetation becomes denser and *Pseudobahia peirsonii* and *Pseudobahia bahiifolia* begin to produce seed and die. To determine the range of both species, all sites from historical records, as well as potential sites, were surveyed during this 1 month period. The goal of the survey was not to determine actual plant numbers but rather the location, condition, and relative size of the populations and habitat. Actual plant numbers are not as useful an index of population health as is condition of occupied habitat and general population condition. Annual species can vary widely from year to year in numbers of plants due to variation in environmental conditions. The Service believes that the properly-timed survey period during 1990 was appropriate to evaluate the status of both species. No significant distributional data affecting the status of either species has been reported during subsequent surveys. Although several new populations have been reported, most are small, isolated, occur within the known range of the species, and are threatened by the same activities affecting previously known populations.

Issue 6

The status survey was not ''peer-reviewed'' before being accepted by the Service; all data were collected by one botanist and, therefore, subject to personal bias.

Service Response

During the compilation of the document, the author of the survey consulted frequently with several respected botanists, all of whom had recent experience with *Pseudobahia peirsonii* and *Pseudobahia bahiifolia*. Historical population data were compiled by CNDDB from records dating back to 1897. Field data from 1990 were collected by several technicians and were field checked by the author.

Issue 7

Statements contained in the proposed rule concerning the low numbers of seeds of *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* in the seed bank are speculative because no samples were taken.

Service Response

Pseudobahia bahiifolia and *Pseudobahia peirsonii*, when growing in marginal habitats, produce few seeds in comparison to the vigorous seed output of the surrounding nonnative grasses and forbs (Stebbins, pers. comm., 1993). All remaining populations of *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* are considered to occur in marginal or degraded habitat dominated by nonnative species and may suffer from reduced seed output resulting from poor physical condition and competition (J. Stebbins, pers. comm., 1993). In addition to proportionally low seed input to the seed bank, the overall seed bank of these two species may become smaller if reduction in population size and consequent reduction in seed production occurs.

Issue 8

No populations of *Pseudobahia peirsonii* are threatened by highway construction.

Service Response

The status of the highway construction projects discussed in the proposed rule has been reviewed. The present status of these projects indicates that they do not pose a threat to the species; the final rule has been revised to reflect this information. Nine populations of *Pseudobahia peirsonii*, however, are threatened by county and private road maintenance as mentioned under Factor A of Summary of Factors Affecting the Species.

Issue 9

Current zoning laws and economic conditions make future protection an unnecessary duplication of existing regulations.

Service Response

As was previously stated in the proposed rule (57 FR 56549), existing State and local regulations are inadequate to protect these species. Nearly all populations of both species occur entirely on private land. State and Federal laws are limited in their ability to regulate potentially detrimental activities on private property. *Pseudobahia peirsonii* and *Pseudobahia bahiifolia* are listed as endangered under the Natural Plant Protection Act of 1977 and the California Endangered Species Act of 1984. Although both statutes prohibit the ''take'' of State listed species, State law exempts the taking of plant species via habitat modification or land use change by the landowner. Current county zoning ordinances do not offer protection from land conversion. In each of the five counties in which the two species occur, no ordinances exist that regulate the conversion of land use from grazing to agricultural use. The Madera County General Plan states that the proposed permitted residential development in that county likely will result in the significant degradation or complete elimination of the two populations of *Pseudobahia bahiifolia* that occur in Madera County (Madera County Planning Department 1994). These populations represent approximately half of all *Pseudobahia bahiifolia* plants. The majority of habitat loss that has already occurred for both species has been a result of conversion of natural land to agricultural use. Current economic conditions do not represent a safeguard against future development and change in land use.

Issue 10

The status survey on which the listing is partially based was unpublished and not available to the public before the species were proposed to be listed.

Service Response

The status survey was prepared to assist the Service in compiling available scientific and commercial information, including additional field surveys and habitat evaluation. The status report was completed in January 1991 and has been available to the public upon request since that time.

Issue 11

Methods used to collect population data for the status survey were not scientific and not described.

Service Response

The method used to examine the populations of both species was a meandering transect (Stebbins, pers. comm. 1993). This is an established method for surveying for rare plant species (Nelson 1985). Population data consisting of numbers and size class

distribution of individual plants were collected. Additionally, data relating to physical site characteristics, physiographic and topographic characteristics, edaphic and erosion factors, and vegetation type and associated species were collected and discussed in the status survey (Stebbins 1991). These environmental characteristics are widely accepted as important information upon which to partially determine habitat viability and suitability, and population threats.

Issue 12

Threats to *Pseudobahia peirsonii* from agriculture are opinions of the author of the status survey and are not supported by facts.

Service Response

Historically, many populations of both species have probably been lost to agriculture. *Pseudobahia peirsonii* is restricted to the heavy clay soil type found in the valleys and flats which is used for row crops and orchards. With increased irrigation, foothill areas also are being converted for agriculture. Of the 30 historic populations of this species surveyed in 1990, eight were found to have been extirpated due to conversion of land use to agriculture (Stebbins 1991). Six remaining populations are adjacent to farm land and may be converted to agricultural use in the future. Several other sites currently are used only for grazing, but also could face conversion to agriculture because of proximity to active agricultural land.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists of endangered and threatened species. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Pseudobahia bahiifolia* (Bentham) Rydberg (Hartweg's golden sunburst) and *Pseudobahia peirsonii* Munz (San Joaquin adobe sunburst) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* are restricted to specific habitats in nonnative valley grassland and occasionally the grassland-woodland ecotone of the San Joaquin Valley and neighboring foothills. The primary threat facing the two plants is ongoing and threatened destruction and adverse modification of their habitat. The habitat of the two species is being threatened or eliminated primarily by residential development. Ag-land development, a flood control project, competition from nonnative plants, incompatible grazing practices, mining, recreational activities (including ORVs), transmission line maintenance, road maintenance, and other human impacts pose threats to these species.

Urbanization and ag-land development eliminated the type locality in Yuba County, the only documented occurrence of this plant in the Sacramento Valley. The species likely was extirpated in the area between Stanislaus and Yuba counties before other collections were documented, as valley soils in this area were rapidly converted to agricultural use in the late 1800's (Stebbins 1991). *Pseudobahia bahiifolia* is now known only from 16 sites in two localized areas in the eastern portion of the San Joaquin Valley—the Friant region in Madera and Fresno counties, and the Cooperstown-La Grange region in Stanislaus County (CNDDB 1996). Habitat alteration from residential development, ag-land development, ORVs, and mining threatens populations of *Pseudobahia bahiifolia* in all three counties.

Two historical occurrences of *Pseudobahia bahiifolia* have been eliminated or seriously degraded in Madera County by conversion to orchards, mining, unauthorized dumping, and grazing. The remaining populations in Madera County are threatened by residential development. The Madera County General Plan states that the proposed permitted residential development in that county will likely result in the complete elimination or significant degradation of the two populations that occur in Madera County (Madera County Planning Department 1995). These populations represent approximately half of all *Pseudobahia bahiifolia* plants. Habitat supporting the plants is proposed to be replaced by low density residential housing. In addition, these Madera County occurrences are threatened by quarry activities and ORV use (Stebbins 1991). The largest of these two populations, containing approximately 16,000 plants, is located 0.3 km (0.2 mi) north of a pumicite quarry. Ongoing quarry operations and associated ORV use may damage this population, which likely represents a fragment of an even larger population that once occurred west of Cottonwood Creek and east of State Route 145, north of the San Joaquin River at Friant Bridge. Off road vehicle use occurs throughout the area (Stebbins 1991). A similar quarry in Stanislaus County is located 0.4 km (0.25 mi) east of the second largest population of *Pseudobahia bahiifolia*. Although there are no current plans to expand either mining operation, the threat of expansion is dependent on product demand.

In Fresno County, one population grows on three land parcels, two of which are protected. One parcel is jointly managed by the U.S. Bureau of Reclamation and The Nature Conservancy and one parcel is protected by conservation easement. The third parcel is in private ownership and is threatened by incompatible grazing practices and residential development. The other Fresno County population occurs entirely on private lands. Both privately-held Fresno County occurrences are threatened by urbanization associated with the ''Millerton New Town'' development, the Friant Redevelopment Plan, incompatible grazing practices, and water tank access and maintenance (Stebbins 1991).

In the Cooperstown-La Grange area of Stanislaus County, three of the remaining 12 occurrences are variously threatened by ORV, incompatible grazing practices, erosion resulting from over grazing, potential quarry expansion, and ag-land development (Stebbins 1991). At one of the three threatened sites, habitat was present but no *Pseudobahia bahiifolia* plants were found during the 1990 survey. The remaining nine populations, all of which occur on private land, are small, containing less than 250 plants each. Although the populations appear to be stable under current grazing practices, they may suffer if grazing pressures or land use is changed.

Pseudobahia peirsonii is known from 36 sites in Fresno, Tulare, and Kern counties (Stebbins 1991; K. and G. Kirkpatrick, *in litt.* 1993; M. Mebane, in litt. 1993; CNDDB, 1996). Habitat loss and alteration from increased urbanization are the primary threats to *Pseudobahia peirsonii.* Transmission line maintenance, ag-land development, water projects, inappropriate grazing practices, and road construction and maintenance also threaten populations of this species. These activities collectively have reduced the species to a small number of isolated colonies that occur in three areas in three counties in the southeastern portion of the San Joaquin Valley—the Round Mountain region in Fresno County, the Porterville-Fountain Springs region in Tulare County, and the Pine Mountain-Woody

region in Kern County. Ag-land development, urbanization, flooding and shore erosion at Lake Success, recreational activities, grazing, and water projects have extirpated eight historical occurrences, all of which were in Tulare County.

Until recently, two of the largest known populations of Pseudobahia peirsonii, comprising approximately 34 percent of all plants of this species, were found in Fresno County. Both populations have now been impacted by habitat alteration. The largest population, containing approximately 5,000 plants spread over 1.2 hectares (ha) (3 acres (ac)), is being impacted by a large, residential project (Quail Lakes) and an adjacent, recreational water park (Clovis Lakes). The Quail Lakes project, currently under construction, consists of a 20.4 ha (51-ac) lake and 730 housing units spread over 152 ha (375 ac) (Valley Planning Consultants, Inc. 1993, EIP 1993). Part of the mitigation for the project includes preservation of the two highest density of four subpopulations of *Pseudobahia peirsonii* on the site and the establishment of a third new subpopulation using topsoil salvaged from an area to be destroyed. The salvaged topsoil would be planted with seeds collected from a high density population eliminated by the project. The success of the proposed mitigation is unknown. Frequently, propagation of rare species is not successful. In a study funded by California Department of Fish and Game (CDFG), the success of 40 projects attempting to transplant, relocate, or reintroduce endangered or threatened plant species in California, was evaluated; only 20 percent of the projects were deemed fully successful (Fiedler 1991).

The second largest population of *Pseudobahia peirsonii*, also located in Fresno County, had nearly 4,500 plants spread over 17 ha (42 ac), and was located in the Fancher Creek Reservoir Project Area. The Fancher Creek Reservoir Project was constructed several years ago by the Fresno Metropolitan Flood Control District to temporarily detain water during flood periods. which it has done at various times over the past two years. The project was predicted to impact approximately 40 percent of this population (Jones and Stokes 1990). The three other Fresno County sites are threatened variously by the proposed residential expansion in the greater Fresno area, ag-land development, incompatible grazing practices, competition from nonnative plants, and livestock trampling (Stebbins 1991).

Most Tulare County populations of *Pseudobahia peirsonii* lie in the Porterville-Fountain Springs area, although several small, isolated populations recently have been discovered in the northern part of the county (K. and G. Kirkpatrick, *in litt.* 1993). Maintenance and repair of the Southern California Edison transmission lines pose a potential threat to two Tulare County populations of *Pseudobahia peirsonii* located under the transmission line right-of-way south of Fountain Springs. Another population, located near the high water line at Lake Success east of Porterville could be impacted or extirpated by inundation or erosion resulting from a rise in water level. Although the Corps has no current plans to increase water storage, such a project has been proposed in the recent past.

Numerous other human impacts threaten populations of *Pseudobahia peirsonii.* In Fresno County, potentially harmful runoff from State Route 180 may impact a population growing on both sides of the highway on the soft shoulder (Stebbins 1991). Road stabilization and maintenance practices threaten four populations in Kern County, three in Tulare County, and two in Fresno County (Stebbins 1991; K. and G. Kirkpatrick, *in litt.*, 1993; CNDDB 1996). Off road vehicle use and hiking threaten one population of approximately 200 plants spread over 1.2 ha (3 ac) in Tulare County.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There are no known significant existing or potential threats to *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* as a result of these activities. However, the increased publicity associated with proposing these species may make them attractive to researchers and collectors of rare plants.

C. *Disease or predation. Pseudobahia bahiifolia* and *Pseudobahia peirsonii* have been subjected to various levels of livestock grazing. Several populations of *Pseudobahia peirsonii* appear to be stable under the current grazing practices on their sites (CNDDB 1996). Stebbins (1991) concluded that moderate levels of grazing help to control the aggressive nonnative forbs and grasses against which *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* must compete in their respective habitat areas. Others have also noted that livestock grazing appears to be compatible and possibly beneficial to *Pseudobahia peirsonii* if managed properly, and that the biggest threat to the species comes not from routine and moderate grazing practices, but from land conversion or extensive overgrazing of the population sites (K. and G. Kirkpatrick, *in litt.*, 1993; R. Hansen, *in litt.*, 1993; T. Mallory, *in litt.*, 1993). Both *Pseudobahia* species may benefit, in particular, from a reduction of grazing levels during flowering and fruiting in March and April. Excessive trampling of the plants by livestock may also be detrimental because of direct and indirect effects of soil compaction on soil-water relations and erosion. One historical occurrence in Tulare County of *Pseudobahia peirsonii* is thought to have been extirpated by incompatible grazing practices (Stebbins 1991).

D. *The inadequacy of existing regulatory mechanisms.* Nearly all populations of both plants occur entirely on private land. State and Federal laws are limited in their ability to regulate potentially detrimental human activities on private property (Clausen 1989). For example, local zoning ordinances in the five counties in which both species occur, do not regulate the conversion of open rangeland to ag-land. Under the Native Plant Protection Act of 1977 (Chapter 10 § 1900 *et seq.* of the California Fish and Game Code) and California Endangered Species Act of 1984 (Chapter 1.5 § 2050 *et seq.*), the California Fish and Game Commission has listed both *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* as endangered (14 California Code of Regulations Section 670.2). Though both statutes prohibit the ''take'' of State-listed plants (Chapter 10 § 1908 and Chapter 1.5 § 2080), State law exempts the taking of such plants via habitat modification or land use change by the landowner. After the CDFG notifies a landowner that a State-listed plant grows on his or her property, State law requires only that the landowner notify the agency ''at least 10 days in advance of changing the land use to allow possible salvage of such plant.'' (Chapter 10 § 1913).

The California Environmental Quality Act (CEQA) requires a full public disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with other agencies concerned with resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to ''reduce the number or restrict the range of a rare or endangered plant or animal.'' Once significant impacts are identified, the project agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations

make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is therefore at the discretion of the project agency involved.

E. *Other natural or manmade factors affecting its continued existence.* The typical variation in rainfall characteristics of the regional climate very likely will subject populations of both species to periodic drought, which may threaten the remaining small, marginal populations of both species. Marginal habitat conditions and past disturbances could exacerbate already critically low population sizes and decrease the amount and/or viability of stored seed banks for both species. Annuals and other monocarpic plants (individuals that die after flowering and fruiting), like both species considered herein, may be more vulnerable to random fluctuations or variation (stochasticity) in annual weather patterns and other environmental factors than plant species with different life histories (Huenneke *et al.* 1986). Fifty percent of all populations of both species have been observed with fewer than 100 plants, which may make them more vulnerable to random chance extirpation (Stebbins 1991, K. and G. Kirkpatrick, *in litt.* 1993). Moreover, nonnative species germinate in late fall and likely outcompete *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* for sunlight, nutrients, and water. Competition from nonnative plants threatens the *Pseudobahia bahiifolia* population at the botanical preserve in Fresno County (Rosalie Faubion, U.S. Bureau of Reclamation, pers. comm. 1992). Competition from nonnative plants also threatens four occurrences of *Pseudobahia peirsonii* in Tulare County (Stebbins 1991, K. and G. Kirkpatrick, *in litt.* 1993). The invasion of nonnative plants likely has been a significant factor in the degradation of the habitat of both plants throughout their respective ranges (Heady 1977, Amme and Pitschel 1989).

The Service has assessed carefully the best scientific and commercial information available regarding the past, present, and future threats faced by both species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Pseudobahia bahiifolia* as endangered and *Pseudobahia peirsonii* as threatened. Both species occupy specific habitat within a restricted geographic area. All remaining populations of both species are considered to occur in marginal or degraded habitat (J. Stebbins, pers. comm. 1993). Remaining habitat is highly fragmented and most remaining populations are quite small. The largest populations of both species are imminently threatened by residential development. In addition, a significant portion of the remaining range of both species is threatened by ag-land development, a flood control project, mining, grazing, and competition from nonnative species.

Over 90 percent of all *Pseudobahia bahiifolia* plants occur in two general locations. One site, approximately 0.8 km (0.5 mi) long and containing about 16,000 plants, is the remnant of one large population that now has become fragmented. This occurrence, representing approximately half of all plants of this species, is proposed to be eliminated by a residential development project. The second large population contains approximately 15,000 plants and is located 0.4 km (0.25 mi) from a quarry. Although there are no current plans to expand the quarry, the threat of quarry expansion is dependent on product demand. Moreover, degradation from off-road vehicle use on these sites is on-going. Grazing occurs at both locations and appears to be accelerating soil erosion at the smaller site. Neither of these two sites is protected.

Over 80 percent of *Pseudobahia peirsonii* plants occur at 4 sites; 32 additional smaller sites contain 1,000 plants or fewer. The Quail Lakes population, largest of all known populations with 18 percent of the total plant population, is being impacted by urban development. The second largest population, with 16 percent of the total plant population, lies in the Fancher Creek Flood Control Project area. This project, completed several years ago, was predicted to impact 40 percent of the population. Gradual conversion of range land in eastern San Joaquin Valley to residential use also threatens the species (J. Stebbins pers. comm. 1996). Anthropogenic actions have degraded and reduced the habitat of most of the remaining populations. As a result, *Pseudobahia bahiifolia* is in danger of extinction and *Pseudobahia peirsonii* is likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of their ranges.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (1) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that the determination of critical habitat is not prudent for either species at this time. Because the two species face numerous anthropogenic threats (see Factor A, Factor C, and Factor E in the ''Summary of Factors Affecting the Species'') and occur predominantly on private land, the publication of precise maps and descriptions of critical habitat in the Federal Register would make both plants more vulnerable to incidents of vandalism and, therefore, could contribute to the decline of the two plants. The listing of these species also publicizes the rarity of the plants and, thus, may make them attractive to researchers or collectors of rare plants. The proper agencies will be notified of the location and importance of protecting the habitat of both species. Protection of both species' habitat will be addressed through the recovery process and through the section 7 consultation process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing

this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal involvement for these species is expected to include the U.S. Bureau of Reclamation, which operates, as part of the Central Valley Project, the Friant-Kern canal system located within 0.4 km (0.25 mile) of six *Pseudobahia bahiifolia* and two *Pseudobahia peirsonii* populations. In addition, the Corps operates the facilities at Lake Success located within 0.8 km (0.50 mi) of three *Pseudobahia peirsonii* colonies and sponsored the Redbank-Fancher Creek Flood Control Project, which currently impacts another *Pseudobahia peirsonii* colony near Round Mountain. Any future construction or maintenance activities on these government projects that may affect the plant populations, as well as water contract renewals, would require section 7 consultation with the Service. The Service may develop, in cooperation with other knowledgeable parties, grazing recommendations for habitats supporting the two species. The goal of the recommendations would be to encourage grazing practices which, if implemented, would benefit growth and reproduction of *Pseudobahia bahiifolia* and *Pseudobahia peirsonii*.

A *Pseudobahia bahiifolia* population in Fresno County is provided some protection on one parcel by joint management by The Nature Conservancy (TNC) and the Bureau of Reclamation, and on a second parcel by a conservation easement between a private landowner and TNC. This site is difficult to protect, however, because of its proximity to residential housing, the Friant-Kern Canal, and a Friant water tank.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plant species and 17.71 and 17.72 for threatened plant species set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. With respect to *Pseudobahia bahiifolia* and *Pseudobahia peirsonii*, all trade prohibitions of sections 9(a)(2) of the Act, implemented by 50 CFR 17.61 or 17.71, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, deliver, receive, carry, transport or ship in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale these species in interstate or foreign commerce; or remove and reduce to possession these species from areas under Federal jurisdiction. Other prohibitions of section 9(a)(2) of the Act make it illegal to maliciously damage or destroy any such plant species on any area under Federal jurisdiction; or to remove, cut, dig up, damage, or destroy any such plant species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provides for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. The Service anticipates few trade permits would ever be sought or issued for the two species because the plants are not common in cultivation or in the wild.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Populations of both species occur on Federal lands. Collection, damage, or destruction of the two species on Federal lands is prohibited, although, in appropriate cases, a Federal endangered species permit may be issued to allow collection for scientific or recovery purposes. Such activities on non-Federal lands would constitute a violation of California State laws or regulations. California law requires a ten day notice be given before taking of plants on private land. Activities, such as landscape maintenance, and clearing vegetation for firebreaks, and livestock grazing on privately-owned lands not under Federal funding or authorization, would not be considered a violation of section 9 of the Act.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Sacramento Field Office. Requests for copies of the regulations on plants and inquires regarding them may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (phone 503/231–2063, facsimile 503/231–6243).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments or Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

Author

The primary author of this rule is Elizabeth Warne, U.S. Fish and Wildlife Service, Sacramento Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

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

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

2. Section 17.12(h) is amended by adding the following, in alphabetical order under [FLOWERING PLANTS], to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants. (h) * * *

* * * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	* *	*	*	*			*
Pseudobahia bahiifolia	Hartweg's golden sunburst.	U.S.A. (CA)	Asteraceae	E	609	NA	NA
Pseudobahia peirsonii	San Joaquin adobe sunburst.	U.S.A. (CA)	Asteraceae	T	609	NA	NA
*	* *	*	*	*			*

Dated: December 5, 1996.

John G. Rogers,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–2875 Filed 2–5–97; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 62, No. 25
Thursday, February 6, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 136CE, Special Condition 23–ACE–88]

Special Conditions; Ballistic Recovery Systems Cirrus SR–20 Installation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the type certification of the Ballistic Recovery Systems, Inc., (BRS) parachute recovery system installed in the Cirrus SR–20 Model airplane. This system is referred to as the General Aviation Recovery Device (GARD). Airplanes modified to use this system will incorporate novel or unusual design features for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. These special conditions contain the additional airworthiness standards that the Administrator considers necessary to establish a level of safety equivalent to the original certification basis for these airplanes.

DATES: Comments must be received on or before March 10, 1997.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 136CE, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 136CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Lowell Foster, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communication received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 136CE.'' The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Background

On March 7, 1996, Cirrus Design, 4515 Taylor Circle, Duluth, MN 55811, filed an application for a type certificate (TC). Included in this TC application was the provision to install the BRS GARD parachute recovery system as standard equipment on each Cirrus Model SR–20 airplane. The parachute recovery system is intended to recover an airplane in emergency situations such as mid-air collision, loss of engine power, loss of airplane control, severe structural failure, pilot disorientation, or pilot incapacitation with a passenger on board. The GARD system, which is only used as a last resort, is intended to prevent serious injuries to the airplane occupants by parachuting the airplane to the ground.

The parachute recovery system consists of a parachute packed in a canister mounted on the airframe. A solid propellant rocket motor deploys the canopy and is located on the side of the canister. A door positioned above the canister seals the canister, parachute canopy, and rocket motor from the elements and provides free exit when the canopy is deployed. The system is deployed by a mechanical pull handle mounted so that the pilot and passenger can reach it. At least two separate and independent actions are required to deploy the system.

A multi-cable bridle attaches the canopy bridle to the airplane primary structure. The cable lengths are sized to provide the best airplane touchdown attitude. The cables are routed from the parachute canister thru the fuselage and run externally to the fuselage attach points. The external portion of these cables are covered with small frangible fairings.

Discussion

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(1) do not contain adequate or appropriate safety standards because of the novel and unusual design features of the airplane modification. Special conditions, as appropriate, are issued after public notice in accordance with § 11.49 (as amended September 25, 1989), as required by §§ 11.28 and 11.29(b). The special conditions become part of the type certification basis, as provided by § 21.17(a)(2).

The installation of parachute recovery systems in 14 CFR part 23 airplanes was not envisioned when the certification basis for these airplanes was established. In addition, the Administrator has determined that current regulations do not contain adequate or appropriate safety standards for a parachute recovery system; therefore, this system is considered a novel and unusual design feature. The flight test demonstration requirements will ensure that the parachute recovery system will perform its intended function without exceeding its strength capabilities. Demonstrations will be required to show that the parachute will deploy in specified flight conditions at both ends of the flight envelope. These conditions are a high speed deployment and deployment during a one-turn spin entry. If the airplane is spin resistant,

the condition is the maneuver that results from pro-spin control inputs held for one turn, or three seconds, whichever comes first.

Occupant restraint requirements will ensure that the airplane is equipped with a restraint system designed to protect the occupants from injury during parachute deployment and ground impact. Each occupant seat must meet the requirements of 14 CFR part 23, § 23.562 as part of the original certification basis.

Requirements for parachute performance will ensure all of the following: (a) The parachute complies with the applicable section of TSO-C23c (SAE AS8015A) at the maximum airplane weights. (b) The parachute deployment loads do not exceed the structural strength of the airplane. (c) The system will provide a ground impact that does not result in serious injury of the passengers. (d) The system will operate in adverse weather conditions.

The requirements for the functions and operations of the parachute recovery system will ensure all of the following: (a) There is no fire hazard associated with the system. (b) The failure of this system has to be shown to be extremely improbable. The installation of this system allows relief from another part 23 requirement, spins. For this reason, it will need to be a dispatch item and have a high level of reliability. (c) That the system will work in all adverse weather conditions that the airplane is approved to operate in, including the IFR and icing environments. (d) The sequence of arming and activating the system will prevent inadvertent deployment. (e) The system can be activated from either the pilot's or the copilot's position by various sized people. (f) The system will be labeled to show its identification function and operating limitations. (g) A warning placard will be located on the fuselage near the rocket motor to warn rescue crews of the ballistic system. (h) The FAA-approved flight manual will include a thorough explanation of system's operation and limitations as well as the safe deployment envelope. (i) The occupants are protected from serious injury after touchdown in adverse weather.

Requirements for protection of the parachute recovery system will ensure the following: the system is protected from deterioration due to weathering, corrosion, and abrasion; provisions are made to provide adequate ventilation and drainage of the airplane structure that houses the parachute canister.

Requirements for a system inspection provision will ensure that adequate means are available to permit examination of the parachute recovery system components and that instructions for continued airworthiness are provided.

Requirements for the system to function throughout the entire operational flight envelope are incorporated because it is reasonable to expect pilots to deploy the system any time that there is a catastrophic failure.

Requirements for operating limitations of the parachute recovery system will ensure that the system operating limitations and deployment envelope are prescribed, including inspection, repacking, and replacing the system's parachute deployment mechanism at approved intervals.

Conclusion

This action affects only novel and unusual design features on specified model/series airplanes. It is not a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 101; and 14 CFR 11.28 and 11.49

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes the following special conditions as part of the type certification basis for the Cirrus Model SR–20 airplanes:

1. Flight Test Demonstration

(a) The system must be demonstrated in flight to satisfactorily perform its intended function, without exceeding the system deployment design loads, for the critical flight conditions.

(b) Satisfactory deployment of the parachute must be demonstrated, at the most critical airplane weight and balance, for the following flight conditions:

(1) One of the two maneuvers, (i) or (ii), must be performed for the low speed end of the flight envelope;

(i) Spin with deployment at one turn or 3 seconds, whichever is longer; or (ii) Deployment immediately following the maneuver that results from a pro-spin control input held for one turn or 3 seconds, whichever is longer.

(2) Never exceed speed with 1g normal load.

2. Occupant Restraint

Each seat in the airplane must be equipped with a restraint system, consisting of a seat belt and shoulder harness, that will protect the occupants from head and upper torso injuries during parachute deployment and ground impact at the critical load conditions.

3. Parachute Performance

(a) The parachute must comply with the applicable requirements of TSO–C23c, or an approved equivalent, for the maximum airplane weight at paragraph 1(b)(2).

(b) The loads during deployment must not exceed 80 percent of the ultimate design load for the attaching structure, the cabin structure surrounding the occupants, and any interconnecting structure of the airplane.

(c) It must be shown that, although the airplane structure may be damaged, the airplane impact during touchdown will result in an occupant environment in which serious injury to the occupants is improbable.

(d) It must be shown that, with the parachute deployed, the airplane can impact the ground in various adverse weather conditions, including winds up to 15 knots, without endangering the airplane occupants.

4. System Function and Operations

(a) It must be shown that there is no fire hazard associated with activation of the system.

(b) The system must be shown to perform its intended function and system failure must be shown to be extremely improbable.

(c) It must be shown that reliable and functional deployment in the adverse weather conditions that the airplane is approved for have been considered. For example, if the aircraft is certified for flight into known icing, and flight test in actual icing reveals that ice may cover the deployment area, then the possible adverse effects of ice or an ice layer covering the parachute deployment area should be analyzed.

(d) It must be shown that arming and activating the system can only be accomplished in a sequence that makes inadvertent deployment extremely improbable.

(e) It must be demonstrated that the system can be activated without difficulty by various sized people, from a 10th percentile female to a 90th percentile male, while sitting in the pilot or copilot seat.

(f) The system must be labeled to show its identification, function, and operating limitations.

(g) A warning placard must be located on the fuselage near the rocket motor warning of the rocket.

(h) The FAA-approved flight manual must include a thorough explanation of operation and limitations as well as the safe deployment envelope.

(i) It must be shown that the occupants will be protected from serious injury after touchdown under various adverse weather conditions, including high winds.

5. System Protection

(a) All components of the system must provide protection against deterioration due to weathering, corrosion, and abrasion.

(b) Adequate provisions must be made for ventilation and drainage of the parachute canister and associated structure to ensure the sound condition of the system.

6. System Inspection Provisions

(a) Instructions for continued airworthiness must be prepared for the system that meet the requirements of § 23.1529.

(b) Adequate means must be provided to permit the close examination of the parachute and other system components to ensure proper functioning, alignment, lubrication, and adjustment during the required inspection of the system.

7. Operating Limitations

(a) Operating limitations must be prescribed to ensure proper operation of the system within its deployment envelope. A detailed discussion of the system, including operation, limitations and deployment envelope must be included in the Airplane Flight Manual.

(b) The deployment envelope of the GARD system must be the same as the normal operating envelope of the airplane.

(c) Operating limitations must be prescribed for inspecting, repacking, and replacing the parachute and deployment mechanism at approved intervals.

Issued in Kansas City, Missouri on January 21, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–2960 Filed 2–5–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 62, 70, and 71

RIN 1219–AA53

Health Standards for Occupational Noise Exposure

AGENCY: Mine Safety and Health Administration, (MSHA) Labor.

ACTION: Proposed rule; extension of comment period and notice of hearings.

SUMMARY: MSHA is extending the period for public comment regarding the Agency's proposed rule for occupational noise exposure, which was published in the Federal Register on December 17, 1996. The Agency also is announcing that it intends to hold public hearings. These hearings will be held under section 101 of the Federal Mine Safety and Health Act of 1977. The rulemaking record will remain open until June 16, 1997.

DATES: Comments must be received on or before April 21, 1997. All requests to make oral presentations for the record should be submitted at least 5 days prior to each hearing date. However, you do not have to give a written request to be provided an opportunity to speak. The public hearings are scheduled to be held at the following locations on the dates indicated:

May 6, 1997–Beaver, West Virginia (Beckley)
May 8, 1997–St. Louis, Missouri
May 13, 1997–Denver, Colorado
May 15, 1997–Las Vegas, Nevada
May 20, 1997–Atlanta, Georgia
May 22, 1997–Washington, DC

Each hearing will last from 9:00 a.m. to 5:00 p.m., but will continue into the evening if necessary.

The record will remain open after the hearings until June 16, 1997.

ADDRESSES: Comments on the proposed rule may be transmitted by electronic mail, fax, or mail. Comments by electronic mail must be clearly identified as such and sent to this e-mail address: noise@msha.gov. Comments by fax must be clearly identified as such and sent to: MSHA, Office of Standards, Regulations, and Variances, 703–235–5551. Send mail comments to: MSHA, Office of Standards, Regulations, and Variances, Room 631, 4015 Wilson Boulevard, Arlington, VA 22203–1984, or any MSHA district or field office. The Agency will have copies of the proposal available for review by the mining public at each district and field office location, and each technical support center. The document will also be available for loan to interested members of the public on an as needed basis. MSHA will also accept written comments from the mining public in the field and district offices and technical support centers. These comments will be a part of the official rulemaking record. Interested persons are encouraged to supplement written comments with computer files or disks; please contact the Agency with any questions about format.

Send requests to make oral presentations to: MSHA, Office of Standards, Regulations, and Variances, Room 631, 4015 Wilson Boulevard, Arlington, VA 22203–1984.

The hearings will be held at the following locations:

May 6, 1997, National Mine Health & Safety Academy, Auditorium, 1301 Airport Road, Beaver, West Virginia (Beckley) 25813.

May 8, 1997, Harley Hotel, North Ballroom, 3400 Rider Trail South, St. Louis, Missouri 63134.

May 13, 1997, Four Points Sheraton Hotel, Mount Evans Room, 3535 Quebec Street, Denver, Colorado 80207.

May 15, 1997, Quality Inn, 377 E. Flamingo Road, Las Vegas, Nevada 89109.

May 20, 1997, Holiday Inn Airport, 5010 Old National Highway, Atlanta, Georgia 30349.

May 22, 1997, Department of Labor, Frances Perkins Building, Auditorium, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, phone 703–235–1910.

SUPPLEMENTARY INFORMATION: On December 17, 1996, MSHA published in the Federal Register (61 FR 66348) a proposed rule to revise the Agency's existing health standards for occupational noise, allowing 60 days for public comment. The Agency has received a number of requests from the mining community to extend the period for comment. These requests include a range of from 15 to 180 additional days. The comment period was scheduled to close on February 18, 1997. MSHA does not believe that an extension of 180 days (until August 17, 1997) is warranted. The Agency believes that a more reasoned response is an extension until April 21, 1997, an additional 60 days beyond the original comment period. The Agency believes that this extension will provide sufficient time for all interested parties to review and comment on the proposal, and does not

anticipate that any further extensions are necessary or appropriate.

In addition to this action extending the comment period, MSHA will hold public hearings to receive comments. The hearings will address any issues relevant to the rulemaking such as the requirements for dose determination, threshold level, exchange rate, action level, permissible exposure level, administrative/engineering controls, dual hearing protection level, ceiling level, operator exposure monitoring, employee notification, hearing protectors, training, audiometric testing, follow-up evaluation, follow-up corrective measures, notification of results, reporting requirements, access to records, and transfer of records.

The hearings will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearings and may exclude irrelevant or unduly repetitious material and questions.

Each session will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. The hearing panel may ask questions of speakers. At the discretion of the presiding official, the time allocated to speakers for their presentations may be limited. In the interest of conducting productive hearings, MSHA will schedule speakers in a manner that allows all points of view to be heard as effectively as possible.

Verbatim transcripts of the proceedings will be prepared and made a part of the rulemaking record. Copies of the hearing transcripts will be made available for public review.

MSHA will accept additional written comments and other appropriate data for the record from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA will be included in the rulemaking record. To allow for the submission of posthearing comments, the record will remain open until June 16, 1997. This provides a total of 6 months from publication for the public to comment on this proposed rule.

Dated: January 31, 1997.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 97–3001 Filed 2–5–97; 8:45 am]

BILLING CODE 4510–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[LA–38–1–7322; FRL–5683–5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Louisiana; Approval of the Maintenance Plan for Calcasieu Parish; Redesignation of Calcasieu Parish to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document announces the Regional Administrator's decision to propose approval of a request from the State of Louisiana to redesignate Calcasieu Parish to attainment for ozone. On December 20, 1995, the State of Louisiana submitted a maintenance plan and request to redesignate the Calcasieu Parish marginal ozone nonattainment area to attainment. Under the Clean Air Act (the Act), nonattainment areas may be redesignated to attainment if sufficient data are available to warrant the redesignation and the area meets the other Act redesignation requirements. In this action, EPA is proposing approval of Louisiana's redesignation request and maintenance plan because they meet requirements set forth in the Act. The EPA is also proposing approval of the 1993 base year emissions inventory for Calcasieu Parish. If approved, the maintenance plan and emissions inventory will become a federally enforceable part of the State Implementation Plan (SIP) for Louisiana.

DATES: Comments on this proposed rule must be postmarked by March 10, 1997.

ADDRESSES: Comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's submittal and other information relevant to this action are available for inspection during normal hours at the following locations:

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

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

Anyone wishing to review this proposal at the Region 6 EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote, Air Planning Section (6PD–L), EPA Region 6, telephone (214) 665–7219.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act, as amended in 1977, required areas that were designated nonattainment based on a failure to meet the ozone National Ambient Air Quality Standards (NAAQS) to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard. Calcasieu Parish was designated under section 107 of the 1977 Clean Air Act as nonattainment with respect to the ozone NAAQS on September 11, 1978. For purposes of redesignations, the State of Louisiana has an approved ozone SIP for Calcasieu Parish.

The LDEQ has collected ambient monitoring data since 1992 that show no violations of the ozone NAAQS of 0.12 parts per million. The LDEQ has developed a maintenance plan for Calcasieu Parish, and solicited public comment. Subsequently, LDEQ submitted a request, through the Governor's office, to redesignate this parish to attainment with respect to the ozone NAAQS. This maintenance plan and redesignation request for Calcasieu Parish was submitted to EPA on December 20, 1995.

II. Analysis of State Submittal

A. Evaluation Criteria

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

(1) Attainment of the NAAQS for Ozone

Attainment of the ozone NAAQS is determined based on the expected number of exceedances in a calendar year. The method for determining

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

The State of Louisiana's request is based on an analysis of quality-assured ozone air quality data which is relevant to both the maintenance plan and to the redesignation request. The data come from the State and Local Air Monitoring Station network. This request is based on ambient air ozone monitoring data collected from four ozone monitoring stations for more than 3 consecutive years in the area. Ozone data has been collected since 1981 at the Westlake monitoring site, since 1984 at the Carlyss site, and since 1991 at the Vinton and LeBleu sites. The data clearly show an expected exceedance rate of less than 1 since 1992. Please see the technical support document (TSD) for the detailed air quality monitoring data.

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

In summary, EPA believes that the data submitted by the LDEQ provides an adequate demonstration that Calcasieu Parish attained the ozone NAAQS. Moreover, the monitoring data continue to show attainment to date.

If the State's monitoring data demonstrates a valid violation of the NAAQS before the final action is effective, approval of the redesignation will be withdrawn and a proposed disapproval substituted for the final approval.

(2) Section 110 Requirements

For purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the Act, EPA has reviewed the SIP to ensure that it contains all measures that were due under the Act prior to or at the time the State submitted its redesignation request, as set forth in EPA policy. The EPA interprets section 107(d)(3)(E)(v) of the Act to mean that, for a redesignation request to be approved, the State must have met all requirements that applied to the subject area prior to or at the same time as the submission of a complete redesignation request. In this case, the date of submission of a complete redesignation request is December 20, 1995.

Requirements of the Act that come due subsequently continue to be applicable to the area at later dates (see section 175A of the Act) and, if redesignation of any of the areas is disapproved, the State remains obligated to fulfill those requirements. These requirements are discussed in the following EPA documents: ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' John Calcagni, Director, Air Quality Management Division, September 4, 1992; ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' John Calcagni, Director, Air Quality Management Division, October 28, 1992; and ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Michael H. Shapiro, Acting Assistant Administrator, September 17, 1993.

The EPA has analyzed the Louisiana SIP and determined that it is consistent with the requirements of amended section 110(a)(2) of the Act. The SIP contains enforceable emission limitations; requires monitoring, compiling, and analyzing ambient air quality data; requires preconstruction review of new major stationary sources and major modifications to existing ones; provides for adequate funding, staff, and associated resources necessary to implement its requirements; and requires stationary source emissions monitoring and reporting. For purposes of redesignation, the Calcasieu SIP was reviewed to ensure that all requirements of section 110(a)(2) of the Act, containing general SIP elements, were satisfied. As noted above, EPA believes the SIP satisfies all of those requirements.

(3) Part D Requirements

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

(a) Subpart 1 of Part D—Section 172(c) Plan Provisions

Under section 172(b) of the Act, the Administrator established that States containing nonattainment areas shall submit a plan or plan revision meeting the applicable requirements of section 172(c) of the Act no later than three years after an area is designated as nonattainment, i.e., unless EPA establishes an earlier date. Calcasieu Parish had an attainment date of November 15, 1993. Due to technical problems with the Vinton monitoring site in 1993, EPA deferred making an attainment determination for Calcasieu Parish until the monitoring issue was resolved. The monitoring issue was recently resolved to EPA's satisfaction, and EPA agrees with the State that Calcasieu Parish has attained the ozone standard.

The EPA has determined that the Act's section 172(c)(2) reasonable further progress requirement is not applicable to Calcasieu Parish; likewise, the section 172(c)(9) contingency measures and additional section 172(c)(1) non-RACT reasonable available control measures beyond what may already be required in the SIP are not necessary, since section 182(a) of the Act specifically excludes marginal areas from these requirements.

The Act's section 172(c)(3) emissions inventory requirement has been met by the prior submission and approval of the 1990 base year inventory required under subpart 2 of part D, section 182(a)(1) of the Act.

As for the Act's section 172(c)(5) NSR requirement, EPA has determined that areas being redesignated need not comply with the NSR requirement prior to redesignation provided that the area demonstrates maintenance of the standard without part D NSR in effect. The maintenance plan proposed for approval with this notice does demonstrate maintenance of the ozone standard without NSR. *See* memorandum from Mary Nichols,

Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment''. The rationale for this view is described fully in that memorandum, and is based on EPA's authority to establish de minimis exceptions to statutory requirements. See, *Alabama Power Co.* v. *Costle*, 636 F. 2d 323, 360–61 (D.C. Cir. 1979).

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

Section 176 of the Act further provides that the conformity revisions to be submitted by the States must be consistent with Federal conformity regulations that the Act required EPA to promulgate. Congress provided for the State revisions to be submitted one year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, EPA's General Preamble for the implementation of title I of the Act informed the State that its conformity regulations would establish a submittal date. *See* 57 FR 13498, 13557 (April 16, 1992). The EPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62118) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under section 175A of the Act.

Pursuant to 40 CFR 51.396 of the transportation conformity rule and 40 CFR 51.851 of the general conformity rule, the State of Louisiana was required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, Louisiana was required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994.

Louisiana submitted both its transportation and general conformity rules to EPA on November 10, 1994. Although this redesignation request was submitted to EPA after the due dates for the SIP revisions for transportation conformity (58 FR 62188) and general conformity (58 FR 63214) rules, EPA believes it is reasonable to interpret the conformity requirements as not being applicable requirements for purposes of evaluating the redesignation request under section 107(d) of the Act. The rationale for this is based on a combination of two factors.

First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continues to apply to areas after redesignation to attainment. Therefore, the State remains obligated to adopt the transportation and general conformity rules even after redesignation and would risk sanctions for failure to do so. While redesignation of an area to attainment enables the area to avoid further compliance with most requirements of section 110 and part D of the Act, since those requirements are linked to the nonattainment status of an area, the conformity requirements apply to both nonattainment and maintenance areas. Second, EPA's federal conformity rules require the performance of conformity analyses in the absence of state-adopted rules. Therefore, a delay in adopting State rules does not relieve an area from the obligation to implement conformity requirements.

Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet adopted, EPA believes it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request.

Therefore, EPA has modified its national policy regarding the interpretation of the provisions of section 107(d)(3)(E) of the Act concerning the applicable requirements for purposes of reviewing an ozone redesignation request. This modified policy is discussed in a memorandum entitled ''Reasonable Further Progress; Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'', John S. Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), dated May 10, 1995. Under this new policy, for the reasons just discussed, EPA believes that the ozone redesignation request for Calcasieu Parish may be approved notwithstanding the lack of approved state transportation and general conformity rules.

(b) Subpart 2 of Part D—Section 182(a) Requirements

The Act was amended on November 15, 1990, Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The EPA was required to classify ozone nonattainment areas according to the severity of their problem. The EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 182 of the Act. Below is a summary of how the area has met the requirements of section 182(a) of the Act.

The Act required an inventory of all actual emissions from all sources, as described in section 172(c)(3) of the Act by November 15, 1992. On November 16, 1992, LDEQ submitted an emission inventory for Calcasieu Parish. The EPA approved this 1990 base year inventory on March 15, 1995. To be redesignated, all SIP revisions required by section 182(a)(2)(A) and 182(b)(2) of the Act concerning RACT requirements must have been submitted to EPA and fully approved. Louisiana has met all RACT requirements. Section 182(a)(3) of the Act required a SIP submission by November 15, 1992, to require stationary sources of NOX and VOCs to provide statements of actual emissions. Louisiana submitted an annual emissions statement SIP revision on March 3, 1993. This revision was approved in the Federal Register on January 6, 1995.

(3) Fully Approved SIP Under Section 110(k) of the Act

Based on the approval of provisions under the pre-amended Act and EPA's prior approval of SIP revisions under the Act, EPA has determined that Calcasieu Parish has a fully approved SIP under section 110(k)of the Act, which also meets the applicable requirements of section 110 and part D of the Act as discussed above.

(4) Improvement in Air Quality Due to Permanent and Enforceable Measures

The EPA approved the Louisiana SIP control strategy for Calcasieu Parish, satisfied that the rules and the emission reductions achieved as a result of those rules were enforceable. The control measures to which the emission reductions are attributed are VOC RACT regulations, the Federal Motor Vehicle Control Program (FMVCP), and lower Reid Vapor Pressure (RVP). In addition, the State permits program, the Prevention of Significant Deterioration permits program, and the Federal Operating Permits program will help counteract future emissions growth.

In association with its emission inventory discussed below, the State of

Louisiana has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the VOC emissions in the base year are not artificially low due to local economic downturn. The EPA finds that the combination of existing EPA-approved state and federal measures contribute to the permanence and enforceability of reduction in ambient ozone levels that have allowed the area to attain the NAAQS.

(5) Fully Approved Maintenance Plan Under Section 175A of the Act

Section 175A of the Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems. In this document EPA is proposing approval of the maintenance plan for Calcasieu Parish because EPA finds that Louisiana's submittal meets the requirements of section 175A of the Act.

On December 20, 1995, the State of Louisiana submitted comprehensive inventories of VOCs, NOx, and CO emissions from Calcasieu Parish. The inventories include area, stationary, and mobile sources using 1993 as the base year for calculations to demonstrate maintenance. The 1993 inventory is considered representative of attainment conditions because the NAAQS was not violated during 1993 and was one of the three years upon which the attainment demonstration was based. The EPA is proposing approval of the 1993 base year inventory in this document.

The State submittal contains the detailed inventory data and summaries by source category. Growth Projections were derived from the Bureau of Economic Analysis Factors, and were used to generate the growth projections for the emissions inventory. These factors were applied to the 1993 inventory to reflect the expected emission levels through 2010.

The following table is a summary of the revised average peak ozone season weekday VOC, NO_X, and CO emissions for the major anthropogenic source categories for the 1993 attainment year inventory.

SUMMARY OF EMISSION PROJECTIONS FOR CALCASIEU PARISH

[In Tons Per Day]

	1993	1995	2000	2005	2010
Point Source CO	27.35	26.93	26.80	26.22	25.79
Point Source VOC	35.87	35.18	35.30	34.42	33.54
Point Source NO_X	106.96	104.94	103.81	102.41	101.05
Area Source CO	0.54	0.54	0.55	0.55	0.55
Area Source VOC	6.94	7.00	7.04	7.03	7.01
Area Source NO_X	0.45	0.46	0.46	0.46	0.46
Nonroad CO	58.14	58.97	58.97	58.92	59.53
Nonroad VOC	9.81	9.95	9.95	9.94	9.91
Nonroad NO_X	38.05	38.59	38.59	38.56	38.43
Onroad CO	89.82	85.51	70.60	63.85	67.19
Onroad VOC	9.22	8.77	7.96	7.78	8.21
Onroad NO_X	17.93	17.72	16.31	15.67	16.53
Total CO	175.85	171.95	156.92	149.54	153.06
Total VOC	61.84	60.90	60.25	59.17	58.67
Total NO_X	163.39	161.71	159.17	157.10	156.47

Continued attainment of the ozone NAAQS in Calcasieu Parish will depend, in part, on the Federal and State control measures discussed previously. However, the ambient air monitoring network will remain active during the maintenance period. These data will be quality assured and submitted to the Aerometric Information and Retrieval System (AIRS) on a monthly basis. A monitored violation of the ozone NAAQS will provide the basis for triggering measures contained in the contingency plans. Additionally, as discussed above, during year 8 of the maintenance period, the LDEQ is required to submit a revised plan to provide for maintenance of the ozone standard in Pointe Coupee for the next ten years.

Section 175A of the Act requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area to attainment. The contingency plan should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the State. The State should also identify specific triggers which will be used to determine when the measures need to be implemented.

The LDEQ has selected new Control Techniques Guidelines or Alternative Control Technology rule implementation and NO_X RACT as contingency measures in Calcasieu Parish. If at any time during the maintenance period Calcasieu Parish records a violation of the ozone NAAQS, LDEQ will evaluate the source(s) of that violation and promulgate either VOC or NO_X RACT rules for the appropriate source category. The LDEQ will adopt rules within 9 months of the violation, and affected sources must be in compliance with the these rules within 2 years of the violation. These contingency measures and schedules for implementation satisfy the requirements of section 175A(d) of the Act.

In accordance with section 175A(b) of the Act, the State has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years.

III. Interim Implementation Policy (IIP) Impact

On December 13, 1996, EPA published proposed revisions to the ozone and particulate matter NAAQS. Also on December 13, 1996, EPA published its proposed policy regarding

the interim implementation requirements for ozone and particulate matter during the time period following any promulgation of a revised ozone or particulate matter NAAQS (61 FR 65751). This IIP includes proposed policy regarding ozone redesignation actions submitted to and approved by EPA prior to promulgation of a new ozone standard, as well as those submitted prior to and approved by EPA after the promulgation date of a new or revised ozone standard.

Complete redesignation requests, submitted and approved by EPA prior to the promulgation date of the new or revised ozone standard, will be allowed to redesignate to attainment based on the maintenance plan's ability to demonstrate attainment of the current 1-hour standard and compliance with existing redesignation criteria. Any redesignation requests submitted prior to promulgation, which are not acted upon by EPA prior to that promulgation date, must then also include a maintenance plan which demonstrates attainment of both the current 1-hour standard and the new or revised ozone standard to be considered for redesignation.

As discussed previously, the Calcasieu Parish redesignation request demonstrates attainment under the current 1-hour ozone standard. Since the EPA plans to approve this request prior to the promulgation date of the new or revised ozone standard, The Calcasieu Parish redesignation request meets the proposed IIP.

IV. Proposed Action

The EPA has evaluated the State's redesignation request for Calcasieu Parish for consistency with the Act, EPA regulations, and EPA policy. The EPA believes that the redesignation request and monitoring data demonstrate that this area has attained the ozone standard. In addition, EPA has determined that the redesignation request meets the requirements and policy set forth in the General Preamble and policy memorandum discussed in this notice for area redesignations, and today is proposing approval of Louisiana's redesignation request for Calcasieu Parish.

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.

IV. Administrative Requirements

A. Executive Order (E.O.) 12866

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

The 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 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 State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (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 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 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.

The EPA has determined that the proposed approval action will 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 proposes approval of preexisting requirements under State or local law, and imposes no new Federal 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 proposed approval in today's Federal Register. This proposal 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 Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 7, 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) of the Act.

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air Pollution control, Designation of areas for air quality planning purposes.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 24, 1997.

Jerry Clifford,

Acting Regional Administrator.

[FR Doc. 97–2998 Filed 2–5–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC65

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule to List Parish's Meadowfoam, as Threatened, and Cuyamaca Lake Downingia as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of withdrawal.

SUMMARY: The U.S. Fish and Wildlife Service (Service) withdraws the proposal to list Cuyamaca Lake downingia (*Downingia concolor* var. *brevior*) as an endangered species and Parish's meadowfoam (*Limnanthes gracilis* ssp. *parishii*) as a threatened species under the Endangered Species Act of 1973, as amended (Act).

The Service finds that information now available, discussed below, justifies withdrawal of the proposed listings of these species as endangered or threatened. Various local, State, and Federal agencies have developed and approved a Conservation Agreement that provides adequate protection for these species throughout a significant portion of their range. This agreement is entitled: Conservation Agreement for the Preservation of Cuyamaca Lake Downingia (*Downingia concolor* var. *brevior*) and Parish's Meadowfoam (*Limnanthes gracilis* ssp. *parishii*). The Helix Water District, Lake Cuyamaca Recreation and Park District, California Department of Parks and Recreation (State Parks), California Department of Fish and Game (CDFG), the Service, and the U.S. Forest Service are signatories to the Conservation Agreement, which the Service signed on August 5, 1996. The Conservation Agreement addresses threats to both species and recovery actions through a combination of measures. These measures address impacts resulting from alteration of hydrology in the Cuyamaca Valley, grazing, recreational activities, and off-road vehicle (ORV) access over the majority of the range of these two plant species. Because implementation of the measures in this conservation agreement significantly reduces the risks to *Downingia concolor* var. *brevior* and *Limnanthes gracilis* ssp. *parishii,* the Service concludes that listing is not warranted.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California, 92008.

FOR FURTHER INFORMATION CONTACT: Fred Roberts (see **ADDRESSES** section) telephone 619/431–9440.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 1994, the Service published in the Federal Register (59 FR 39879) a proposal to list *Downingia concolor* var. *brevior* (Cuyamaca Lake downingia) as endangered and *Limnanthes gracilis* ssp. *parishii* (Parish's meadowfoam) as threatened. These species occur in association with wetlands of the Peninsular Ranges of southwestern California from the Santa Ana Mountains of extreme southwestern Riverside County, south to the Laguna Mountains of southern San Diego County, California. Both plants are restricted to grassy meadows or drainages that are vernally wet (wet during the rainy season) with saturated soil conditions and shallow pools for several weeks at a time. In the vicinity of Lake Cuyamaca these shallow pools are associated with drier mounds called mima mounds. This type of physiography is referred to as montane meadow-vernal pool association.

Downingia concolor var. *brevior* is restricted to the Cuyamaca Valley in the Cuyamaca Mountains of central San Diego County, California. This locality also supports the largest concentration of *Limnanthes gracilis* ssp. *parishii.* Although the vernal pool and mima mound topography has been mostly obliterated, much of the unique montane, vernal pool flora remains. This flora includes a number of disjunct species that are more frequently associated with vernal pools of central California or coastal San Diego County (e.g., *Deschampsia danthonioides* (annual hairgrass), *Blennosperma nanum* (common blennosperma)), or occur in highly restricted distributions in the mountains of southern California (e.g., *Delphinium hesperium* ssp. *cuyamacae* (Cuyamaca larkspur)) (Beauchamp 1986a, Winter 1991).

Downingia concolor var. *brevior* (Cuyamaca Lake downingia) was described by McVaugh (1941) based on a collection by Abrams at Cuyamaca Lake, Cuyamaca Mountains, San Diego County, California. Beauchamp (1986b) elevated the plant to a subspecies following the suggestions of Thorne (1978). However, Ayers (1993) recognized this plant as *Downingia concolor* var. *brevior,* which is consistent with McVaugh's (1941) treatment of this taxon.

Downingia concolor var. *brevior* is a member of the bellflower family (Campanulaceae). This plant is a low, slightly succulent annual herb, with stems 5 to 20 centimeters (cm) (2 to 8 inches (in)) long. The flowers are blue and white with a 4-sided purple spot at the base of the united petals. The fruit is 12 to 15 millimeters (mm) (0.5 in) long and the seeds have linear striations (grooves). *Downingia concolor* var. *brevior* blooms from May to July and sets seed from June to August. The seeds are dispersed by flooding and require brief inundation for germination (Munz 1974, Bauder 1992).

Downingia concolor var. *brevior* can be distinguished from the only other two members of this genus that occur in southern California, *Downingia cuspidata* and *Downingia bella,* by the form of the striations on the seed, the color of the flower, and the hair or lack of hair on the corolla lobes. It can be distinguished from the more northern *Downingia concolor* var. *concolor* by the size of the fruit and how rapidly the fruit splits open when the seeds are mature (Ayers 1993).

Downingia concolor var. *brevior* is restricted to a single population at Lake Cuyamaca in the Cuyamaca Valley of San Diego County, California, on private land owned by the Helix Water District, public lands within Rancho Cuyamaca State Park and, to a lesser extent, other private lands. Historically, the population of *Downingia concolor* var. *brevior* was located throughout much of the valley floor. The plant has now been largely restricted to the shore of the lake, extending onto the valley floor only during dry years. From 1988 to 1992, one population existed in the vicinity of Lake Cuyamaca, consisting of between 9 and 24 stands. These stands occupied a total of less than 80 hectares (ha) (200 acres (ac)) and frequently occupied less than 40 ha (100 ac). In years with little flowering, the total observed distribution of *Downingia concolor* var. *brevior* is less than 0.4 ha (1 ac) (E. Bauder, *in litt.*, October 1994). The number of individuals within these stands, and the location and size of these stands vary in any given year in response to rainfall, the extent of winter flooding, and temperature (Bauder 1992).

Limnanthes gracilis ssp. *parishii* (Parish's meadowfoam) was first described by Jepson (1936) as *Limnanthes versicolor* var. *parishii.* The description was based on specimens collected by Parish at the Stonewall Mine on the southern edge of the Cuyamaca Valley, San Diego County,

California. Mason (1952) recognized *Limnanthes versicolor* var. *parishii* as *Limnanthes gracilis* var. *parishii,* based on flower and fruit morphology. Beauchamp (1986b) elevated the plant to a subspecies to be consistent with other treatments of this genus and noted the geographic separation (over 1,200 kilometers (km) (744 miles (mi)) of the taxon from *Limnanthes gracilis* ssp. *gracilis,* which is found in southern Oregon.

Limnanthes gracilis ssp. *parishii* is a member of the meadowfoam family (Limnanthaceae), a small family of wetland species found primarily along the Pacific coast of North America. The plant is a low, widely branching annual with stems 10 to 20 cm (4 to 8 in) long. The leaves are 2 to 6 cm (0.8 to 2.3 in) long and divided. The flowers are bowl-shaped, the petals are 8 to 10 mm (0.32 to 0.4 in) long with a white or occasionally a cream-colored base that becomes pink (Ornduff 1993). The fruit is rough textured. *Limnanthes gracilis* ssp. *parishii* blooms from April through May, setting seed in the late spring and early summer. Germination requires saturated soils or inundation (Munz 1974, Bauder 1992).

Limnanthes gracilis ssp. *parishii* is restricted to moist montane meadows, mudflats, and along stream courses in the Palomar, Cuyamaca, and Laguna Mountains of San Diego County, California. An additional small population is known from the Santa Rosa Plateau, Riverside County, California. Fewer than 20 populations of this taxon exist. The largest population occurs in the Cuyamaca Valley in the vicinity of Lake Cuyamaca and Stonewall Creek where it is restricted to the shore of Lake Cuyamaca at maximum inundation. About one third of this population is on private land (including land owned by the Helix Water District), one third is on California State Parks and Recreation lands, and the remainder is on Forest Service land (E. Bauder, *in litt.*, October 1994).

Historically, the Cuyamaca Valley population of *Limnanthes gracilis* ssp. *parishii* occurred throughout much of the valley floor. Recently, the Cuyamaca Valley population of *Limnanthes gracilis* ssp. *parishii* was described as consisting of 100 stands by Bauder (1992), and 8 small populations by the California Natural Diversity Data Base (CNDDB) (1992). However, these smaller groupings are contiguous, separated by less than 1.5 km (1 mi), and concentrated within a 9 square km (4 square mi) area. Approximately 120 ha (300 ac) of a potential 800 ha (2,000 ac) of the Cuyamaca Valley and Stonewall Creek area are occupied by *Limnanthes gracilis* ssp. *parishii.* The number of individuals and the location and size of stands within this area varies in any given year in response to rainfall, the extent of winter flooding, and temperature (Bauder 1992). Under favorable conditions, *Limnanthes gracilis* ssp. *parishii* can be a conspicuous element of the Cuyamaca Valley during the spring bloom (Craig Rieser, Pacific Southwest Biological Services, pers. comm., 1993).

Other populations of *Limnanthes gracilis* ssp. *parishii* are generally smaller than the Cuyamaca Valley population, both in number of individuals and the extent of occupied habitat. They range in size from less than 2 ha (5 ac) to as much as 40 ha (100 ac), and most populations contain fewer than 1000 individuals. However, at least 4 of the 6 populations that occur on Forest Service lands contain 5,000 to 30,000 individuals and one extends over 60 ha (150 ac). A single isolated population is located in vernal pools on the Santa Rosa Plateau of southwestern Riverside County, California. This area of approximately 2 ha (5 ac) is managed by The Nature Conservancy (TNC). An unauthorized attempt to introduce the plant to National Forest lands in the Laguna Mountains from seeds gathered from the Cuyamaca Valley population (Winter 1991, CNDDB 1992) was unsuccessful (Forest Service, *in litt.*, September 1994).

Previous Federal Action

Federal government action on the two plants considered in this rule began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened or extinct. This report, designated as House Document No. 94–51 and presented to Congress on January 9, 1975, recommended *Limnanthes gracilis* var. *parishii* (= *Limnanthes gracilis* ssp. *parishii*) for endangered status. The Service published a notice in the July 1, 1975, Federal Register (40 FR 27823), of its acceptance of the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)(A)) of the Act, and of the Service's intention to review the status of the plant taxa named therein, including *Limnanthes gracilis* ssp. *parishii.* The Service published a proposal in the June 16, 1976, Federal Register (42 FR 24523) to determine approximately 1,700 vascular plants to be endangered species pursuant to section 4 of the Act. *Limnanthes gracilis* ssp. *parishii* was also included in this Federal Register notice.

General comments received in response to the 1976 proposal were summarized in an April 26, 1978, Federal Register (43 FR 17909). Although the Act amendments of 1978 required all proposals over two years old to be withdrawn, a one-year grace period was given to those proposals published before the enactment of the 1978 amendments. In the December 10, 1979, Federal Register (44 FR 70796), the Service published a notice of withdrawal for that portion of the June 6, 1976, proposal that had not been finalized including *Limnanthes gracilis* ssp. *parishii.*

The Service published an updated Notice of Review of Plants in the Federal Register on December 15, 1980 (45 FR 82480). This notice included *Downingia concolor* var. *brevior* and *Limnanthes gracilis* ssp. *parishii* as category 1 candidate taxa (species for which data in the Service's possession were sufficient to support a proposal for listing). On November 28, 1983, the Service published a supplement to the Notice of Review of Plants in the Federal Register (48 FR 53640). This notice was again revised on September 27, 1985 (50 FR 39526). Both plant taxa were included in the 1983 and 1985 supplements as category 2 candidate taxa (species for which data in the Service's possession indicated listing may be appropriate, but for which additional biological information is needed to support a proposed rule). The plant Notice of Review was again revised on February 21, 1990 (55 FR 6184), and again on September 30, 1993 (58 FR 51144). *Downingia concolor* var. *brevior* was included as a category 1 candidate taxon, and *Limnanthes gracilis* ssp. *parishii* as a category 2 candidate taxon in both notices. On February 28, 1996, the Service published a Notice of Review in the Federal Register (61 FR 7596) that discontinued the designation of category 2 species as candidates, which included both species as candidates for listing.

Section 4(b)(3)(B) of the Act as amended in 1982, requires the Secretary to make findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982 be treated as having been newly submitted on that date. This was the case for *Limnanthes gracilis* ssp. *parishii* because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1983, the Service found that the petitioned listing of this species was warranted, but precluded by other pending listing proposals of higher priority pursuant to section 4(b)(3)(B)(iii) of the Act.

Notification of this finding was published in the Federal Register on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(I) of the Act. The finding was reviewed annually in October of 1984 through 1992.

The Service made a final ''not warranted'' finding on the 1975 petition with respect to *Limnanthes gracilis* ssp. *parishii* and 864 other species in the December 9, 1993, Federal Register (58 FR 64828). One reason was cited as the basis for this finding on this species: data was not then available to the Service in late summer 1993 relating to current threats (i.e., one of the five factors described within the proposed rule under 50 CFR 424.11) throughout a significant portion of the species'' range. The species was retained in category 2 on the basis that it may be subject to extinction or endangerment from uncontrolled loss of habitat or from other man-caused changes to its environment (58 FR 64840). In early 1994, the Service obtained completed survey and other data that adequately described those factors that placed *Limnanthes gracilis* ssp. *parishii* at risk of extinction.

On December 14, 1990, the Service received a petition dated December 5, 1990, from Mr. David Hogan of the San Diego Biodiversity Project, to list *Downingia concolor* ssp. *brevior* (=*D. c.* var. *brevior*) as an endangered species. The petitioner also requested the designation of critical habitat for this species. The Service evaluated the petitioner's requested action for *Downingia concolor* var. *brevior* and published a 90-day finding on August 31, 1991 (56 FR 42966) that substantial information existed indicating that the requested action may be warranted.

A proposed rule to list *Downingia concolor* var. *brevior* as endangered and *Limnanthes gracilis* ssp. *parishii* as threatened was published in the Federal Register on August 4, 1994 (59 FR 39879). The Service extended the public comment period to October 31, 1994 and held a public hearing on October 19, 1994, in Rancho Bernardo, California (59 FR 49045). On April 10, 1995, Congress enacted a moratorium prohibiting work on listing actions (Public Law 104–6) and eliminated funding for the Service to conduct final listing actions. The moratorium was lifted on April 26, 1996, by means of a Presidential waiver, at which time limited funding for listing actions was made available through the Omnibus Budget Reconciliation Act of 1996 (Public Law 104–134, 100 Stat. 1321, 1996). The Service published guidance for restarting the listing program on May 16, 1996 (61 FR 24722).

This withdrawal notice is in accordance with the listing priority guidance for fiscal year 1997 published on December 5, 1996 (61 FR 64475). The processing of a proposed listing, including the completion of a withdrawal notice, is a Tier 2 action under this guidance (61 FR 64479).

Development of a Conservation Agreement

Immediately prior to the Service's decision to propose *Downingia concolor* var. *brevior* for listing as endangered and *Limnanthes gracilis* ssp. *parishii* for listing as threatened, the Helix Water District initiated an effort to address conservation measures required to provide adequate protection of three plant taxa, including the two plants in this notice. Helix Water District manages the largest populations of both plant taxa. During the late summer and fall of 1994, the effort was expanded to include various local, State, and Federal agencies with the intent of producing a Memorandum of Understanding (MOU) that would provide adequate protection for these species throughout a significant portion of their ranges. Development of the MOU included guidance from local botanical experts familiar with these two rare plants. The resulting MOU and Conservation Agreement were signed by the Service on August 5, 1996. Signatories to the agreement include: the Helix Water District, Lake Cuyamaca Recreation and Park District, State Parks, California Department of Fish and Game (CDFG), the Service, and Forest Service. The Conservation Agreement addresses over 80 percent of the remaining *Downingia concolor* var. *brevior* population (Helix Water District, Lake Cuyamaca Recreation and Park District, and State Parks) and about 70 percent (as above and including U.S. Forest Service lands) of the *Limnanthes gracilis* ssp. *parishii* populations.

Under the terms of the Conservation Agreement, the Helix Water District and Lake Cuyamaca Recreation District have agreed to monitor and manage inundation of *Downingia* and *Limnanthes* habitat, control recreational access, and exclude livestock grazing of this habitat by maintaining fences. Helix Water District also will not transfer water from Lake Cuyamaca into the habitat for these species without prior consultation with CDFG and the Service.

Helix Water District and the Lake Cuyamaca Recreation District have identified sensitive areas for *Downingia concolor* var. *brevior* and *Limnanthes gracilis* ssp. *parishii.* These areas include the majority of the largest stands of these taxa within the eastern basin of the Cuyamaca Valley above the dike. No activities that impact these species are allowed within these sensitive areas. To the extent practicable, the Helix Water District, Lake Cuyamaca Recreation and Park District, State Parks and the Forest Service will relocate trails away from *Limnanthes* and *Downingia* habitat. Land management signatories also have agreed to allow monitoring of the status of these two taxa.

The Helix Water District, Lake Cuyamaca Recreational and Park District, and State Parks also will exclude livestock grazing and avoid activities that could result in erosion on *Limnanthes* and *Downingia* habitat. The Forest Service, conforming with a 1991 Habitat Management Plan for *Limnanthes gracilis* ssp. *parishii,* will continue to monitor and manage grazing activities to reduce impacts to the species. Additionally, under the Conservation Agreement, Helix Water District, Lake Cuyamaca Recreational and Park District, and State Parks agree to fully comply with California Environmental Quality Act (CEQA) requirements, section 404 of the Federal Clean Water Act, and section 1603 of the CDFG Code regarding projects that may affect these species. These parties also agree to consult with CDFG and the Service for activities that are beyond the normal activities of these agencies as defined in the Conservation Agreement. The Conservation Agreement will remain in effect until after August 1999. At the end of this period, the Conservation Agreement must be reviewed and either modified, renewed, or terminated. If the Conservation Agreement is terminated, the status of *Downingia concolor* var. *brevior* and *Limnanthes gracilis* var. *parishii* will be reassessed by the Service. If the Service determines at any time, that additional Federal protection is warranted, the Service will take appropriate listing action under the Act.

The Service believes that the Conservation Agreement ensures the implementation of conservation measures that reduce the threats to *Downingia concolor* var. *brevior* and *Limnanthes gracilis* ssp. *parishii* to the point that listing is not warranted. The Service therefore withdraws the proposal to list *Downingia concolor* var. *brevior* as endangered, and *Limnanthes gracilis* ssp. *parishii* as threatened.

Public Comments on the Proposed Rule

In the August 4, 1994, proposed rule (59 FR 39879), the Federal Register

notification of a public hearing (59 FR 49045), and during two comment periods (August 4 to September 19, 1994, and September 26 to October 31, 1994), all interested parties were requested to submit factual reports or information to be considered in making a final listing determination. Appropriate Federal and State agencies, local governments, scientific organizations, and other interested parties were contacted and asked to comment. Legal notices of the availability of the proposed rule were published in the *Riverside Press Enterprise* and *San Diego Union Tribune* on August 13, 1994. A legal notice of the public hearing which invited general public comment was published in the *Union Tribune* on September 29, 1994.

The Service received 23 written and oral comments. Of the 23 comments, 10 supported the proposed action, 9 opposed it, and 4 stated neither support nor opposition. The Service held a public hearing on October 19, 1994, at the Radisson Hotel in Rancho Bernardo, California. The hearing was conducted to allow comments on two additional proposed rules, which addressed the San Diego fairy shrimp (*Branchinecta sandiegonensis*), the Laguna Mountain skipper (*Pyrgus ruralis lagunae*) and the quino checkerspot (*Euphydryas editha quino*). A total of 24 individuals provided oral testimony. Fifteen of those individuals provided testimony regarding the proposed rule to list *Downingia concolor* var. *brevior* and *Limnanthes gracilis* ssp. *parishii*

Written and oral comments are incorporated into this withdrawal where appropriate. Two commenters recommended that a cooperative effort be made by all affected agencies to protect the species. About half the comments were directly related to the status of these plants in the Cuyamaca Valley. Many of the comments supporting or neutral to the listing provided substantive factual information that documented risks to these taxa, or provided additional background data. Substantive comments opposing the listing generally discussed the adequacy of existing regulatory mechanisms then in place to protect these plants, or the proposed Multispecies Conservation Plan (MSCP) of coastal San Diego County. Both species are outside the MSCP planning area. Because of the development and signing of the Conservation Agreement, which covers a majority of the known populations of both plants, a commitment to the conservation of these plants has been assured, rendering most of the comments addressing threats to the species as moot, outdated, or otherwise irrelevant to this withdrawal notice. The Service carefully considered all comments submitted relevant to this decision to withdraw the proposed listing. Comments submitted are available for review at the Carlsbad Field Office (see **ADDRESSES** section).

Summary of Factors Affecting the Species

The Service must consider five factors described in section 4(a)(1) of the Act when determining whether to list a species. These factors, and their application to the Service's decision to withdraw the proposal to list *Downingia concolor* E. Greene var. *brevior* McVaugh (Cuyamaca Lake downingia) and *Limnanthes gracilis* Howell ssp. *parishii* (Jepson) Beauchamp (Parish's meadowfoam), are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Impacts that result in the loss, degradation, and fragmentation of vernally moist wet meadows have contributed to the decline of *Limnanthes gracilis* ssp. *parishii* and *Downingia concolor* var. *brevior.* The habitat for both plants also has been threatened by alterations of hydrology, recreational developments, off-road vehicle (ORV) use, trampling, and the introduction of exotic plants.

The Conservation Agreement addresses factors described above that result in threatened destruction, modification, and reduction of habitat loss (see discussion under previous section titled ''Development of a Conservation Agreement''). The Service considers the required actions by the Helix Water District, Lake Cuyamaca Recreation and Park District, State Parks, and the Forest Service under the Memorandum of Understanding within the Conservation Agreement to be adequate for conservation and recovery of the two plants. Actions required under the Conservation Agreement terminate or minimize the impacts to habitat from inundation, recreational activities, off-road vehicle access, and the indirect effects of these activities on *Downingia concolor* var. *brevior* and *Limnanthes gracilis* ssp. *parishii.*

Hydrological Alteration

Historically, montane wet meadow and vernal pool habitats were much more abundant in the Peninsular Ranges of San Diego County (Winter 1991). The wet meadows surrounding Lake Cuyamaca reservoir support the most significant populations of *Limnanthes gracilis* ssp. *parishii* and *Downingia concolor* var. *brevior.* Nearly the entire Cuyamaca Valley was originally a montane meadow-vernal pool complex, except the western end, which supported a small marsh (Bauder 1992, Ball 1994). Dredging during dam construction in 1886–1887 altered the natural topography of the valley, the western marsh, and the valley's vernal pools. Mima mounds were likely excavated since ''much of the earth used for the dam was taken from the meadow north of the dam and from the valley floor'' (Allen and Curto 1987). Later, 160 ha (400 ac) of the valley outside the reservoir was leased from Helix Water District and planted in grain.

Further loss of wet meadow habitat can result from excessive water inundation at Lake Cuyamaca reservoir and within Cuyamaca Valley above the dike. Studies of *Limnanthes gracilis* ssp. *parishii* and *Downingia concolor* var. *brevior*, conducted between 1988 and 1992, have demonstrated that these species cannot tolerate long periods of out-of-season inundation and are currently absent entirely from areas with long duration impoundment (E. Bauder, *in litt.,* October 1994). The reservoir provides domestic water, flood control, and recreational activities such as fishing and duck hunting. These uses are administered through agreements between the Helix Water District, the City of San Diego's El Capitan Reservoir, and Lake Cuyamaca Recreation and Park District (Bauder 1992). Approximately 81 ha (150 ac) of potential meadow habitat are permanently inundated. The system of dikes built in 1967 allows an additional 273 ha (675 ac) to be inundated for extended periods of time during periods of high precipitation, a condition that has occurred as recently as 1993 (Hugh Marx, Lake Cuyamaca Recreation and Park District Manager, pers. comm., 1993). *Limnanthes gracilis* ssp. *parishii* is less able to recover from excessive inundation than *Downingia concolor* var. *brevior*, as shown by the lack of re-establishment in areas of previous inundation (Bauder 1992).

Under terms of the Conservation Agreement, the Helix Water District will closely monitor the status of inundation in the eastern basin within the Cuyamaca Valley above the dike. This area functions as habitat to the largest populations of *Downingia concolor* var. *brevior* and *Limnanthes gracilis* ssp. *parishii* and is inundated to varying degrees dependent on rainfall and pumping activities by Helix Water District. While under normal operating conditions, Helix Water District generally has removed most of the water from the east basin by May 15. However, in wet years, the basin can remain

flooded for longer periods. Additionally out-of-season flooding of the east basin has occurred. Extended inundation retards seed germination (Bauder 1992). Under section III.B.2.b of the MOU, Helix Water District has committed to remove water from the east basin by May 15 of each year. On April 1, Helix Water District will advise CDFG and the Service on the status of water transfer from the east basin. Operations that result in flooding of the east basin out-of-season are considered activities that occur beyond normal operations. Under section IV.B of the MOU, CDFG and the Service must be consulted prior to any non-routine operation that may result in extended or out-of-season inundation of *Downingia* and *Limnanthes* habitat.

A variety of indirect impacts are associated with the diversion of water entering the Lake Cuyamaca reservoir basin. Diversion can result in the alteration of small drainages by down cutting and streambank erosion, which contributes to the loss of potentially suitable habitat upstream of Lake Cuyamaca. Fluctuating lake levels also can increase channel erosion by changing the gradient and velocity of surrounding drainages. Erosion can further be intensified by a decrease in groundwater levels caused by numerous wells in the area. However, significant erosion resulting from fluctuating lake levels is not apparent at this time (Ball 1994). Roads without adequate culverts also divert water flow. Road maintenance and herbicidal weed abatement often precludes the re-establishment of seeds in areas of suitable habitat (Bauder 1992). In addition, the alteration of hydrology in Cuyamaca Valley promotes the invasion of alien species (e.g., *Polygonum* sp. (knotweed) and *Potentilla norvegica* (rough cinquefoil), or favors replacement by more disturbance tolerant native species (e.g., *Polygonum amphibium* (water smartweed), *Juncus xiphoides* (iris-leaved rush), and *Ranunculus aquatilus* (buttercup)) (E. Bauder, in litt., October 1994, L. Henrickson, in litt., October 1994). These indirect effects can have significant, long-term impacts on the meadow habitats and associated sensitive plant species.

Erosion damage resulting from water diversion and road maintenance must be minimized under terms of the Conservation Agreement. According to section III.B.2.c.(4), the Forest Service, Helix Water District, Lake Cuyamaca Recreation and Park District, and State Parks must cooperate in minimizing siltation and erosion on their lands to the extent practicable. Any such operations must be coordinated with CDFG and the Service. Any activities that take place beyond normal operations that result in water diversion related erosion would first require consultation with CDFG and the Service per section IV.B of the MOU. Water diversion will continue to occur unmonitored in areas that are not covered by the Conservation Agreement. Impacts in these areas, however, will not significantly affect the overall status of these plant taxa because these areas comprise only a small proportion of the total populations.

Applications of herbicidal weed treatments at Lake Cuyamaca are normal operations of the Lake Cuyamaca Recreation and Park District that could affect these two rare plant taxa. However, as stated in the Conservation Agreement, application of herbicides is being restricted to Cuyamaca Lake in the west basin. Any application of herbicides in the east basin would be considered beyond normal operations and thus the Lake Cuyamaca Park and Recreation district would consult CDFG and the Service prior to taking such action per section IV.B of the MOU.

Implementation of the above actions reduces the indirect effects of habitat modification that can result in alien plant species competition, or replacement by more tolerant and versatile native species that may displace rare plant species.

Recreation

Direct loss of both species' habitat from recreational activities has been substantial. In many cases, loss of habitat for both species has benefited from the construction of recreational facilities. Traffic from ORVs, horses, and hikers in the Laguna Mountains meadows indirectly impact *Limnanthes gracilis* ssp. *parishii* by altering the composition of the plant community over time. Such damage frequently occurs in spring when the soils are saturated and subject to compaction (Winter 1991). Loss and modification of *Limnanthes gracilis* ssp. *parishii* habitat has been documented as a result of trampling, erosion, and alteration of hydrology at most of the locations occupied by this species (Bauder 1992).

Under terms of the Conservation Agreement, traffic from ORVs and other recreational activities must be minimized or eliminated. Helix Water District and the Lake Cuyamaca Recreation and Park District are required to monitor and repair fencing in a timely manner to prevent human trespassing within sensitive species habitat (MOU section III.B.2.b). No recreational activities are allowed within designated sensitive areas. The Forest Service and the Al-Bahr Shrine Camp (a manager of a private inholding) will jointly maintain fencing to exclude vehicle traffic from sensitive species habitat (MOU section III.B.6.e). Within the National Forest, as per existing Habitat Management Guidelines (Forest Service 1991), hikers and riders are restricted to existing trails. State Parks is examining activities at Los Caballos Horse Camp to determine how impacts to these species can be reduced or eliminated (MOU section III.B.2.e.(10)). While some recreational impacts and ORV activity will persist in areas not under jurisdiction of the Conservation Agreement, these areas do not contain large populations and these impacts will not be significant to the overall status of the two species.

Development

Direct loss of both species' habitat has taken place as result of recreational development, trail construction, and reservoir development. However, significant additional development within the habitat of these two species is not anticipated. Within areas covered by the Conservation Agreement, Helix Water District and the Cuyamaca Lake Recreation and Park District have agreed that no activities detrimental to these species will occur within designated sensitive areas. Future development is not identified as ''normal operations'' on Helix Water District, State Park, or Forest Service lands. Development activities would be beyond normal operations and these agencies would consult with CDFG and the Service prior to taking actions that would harm these species. While these conditions would not apply on private lands managed by owners that are not signatories to the Conservation Agreement, the majority of the *Limnanthes gracilis* ssp. *parishii* populations are on inholdings within the National Forest and are not likely to be subject to significant development. Development could take place on private lands outside Helix Water District lands that support *Downingia concolor* var. *brevior.* These lands are adjacent to a major highway and are not National Forest inholdings. However, these populations represent less than 20 percent of the total known populations of this species. Development in these areas may also be restricted under regulations pertaining to water quality within the Cuyamaca Valley watershed.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not known to be a threat to the two plant taxa under consideration in this withdrawal.

C. *Disease or predation.* Disease is not known to be a factor affecting the taxa considered in this rule. Grazing by cattle was identified as a threat in the proposed rule. Consumption of individual plants by grazing animals has been known to impact the reproduction of these annual plants and has had other effects, such as trampling, erosion (see Factor A) and the introduction of non-native species (see Factor E). The extent of grazing impacts has been declining over time. Grazing was discontinued on Helix Water District-owned lands at Lake Cuyamaca in 1988 when water quality issues were raised and *Downingia concolor* var. *brevior* was believed to be extinct as a result of grazing (David Hogan, San Diego Biodiversity Project, *in litt.*, 1990; Larry Hendrickson, Friends of Cuyamaca Valley, *in litt.*, 1994). The plant re-established itself in the following season (Bauder 1992). Livestock grazing was terminated in Rancho Cuyamaca State Park in 1956, with the exception of a 16 ha (40 ac) inholding that was grazed until 1980 when it was acquired by the State Park. Following the adaption of a 1991 Habitat Management Guide for montane meadows and riparian areas, the Forest Service implemented a late season grazing regime (after meadowfoam plants have set seed); during the 4 subsequent years of monitoring no significant effects of grazing on *Limnanthes. gracilis* ssp. *parishii* have been detected (Forest Service, *in litt.*, September 1994). The Conservation Agreement specifically addresses grazing impacts and assures that grazing practices will not take place on Helix Water District lands or California Parks and Recreation Lands. On Forest Service lands, the management plan limits the number of animals grazing and controls the timing and duration of grazing so as to minimize impacts on *Limnanthes gracilis* ssp. *parishii.* The management plan also requires monitoring of the population status of the plant.

D. *The inadequacy of existing regulatory mechanisms.* The Service evaluated existing Federal, State, and local regulatory mechanisms prior to preparing the proposed rule for listing the two plant taxa. The Service found evidence of inadequacy of the existing regulatory mechanisms at that time. These regulatory mechanisms included: (1) Listing under the California Endangered Species Act (CESA); (2) the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA); (3) conservation provisions under the section 404 of the Federal Clean Water Act and Section 1603 of the California Fish and Game Code, (4) occurrence with other species protected by the Act; (5) land acquisition and management by Federal, State, or local agencies, or by private groups and organizations, and (6) local laws and regulations. The Service believes that actions prescribed and implemented in the Conservation Agreement are sufficient to assure that adequate regulatory mechanisms protect these two plant taxa.

The California Fish and Game Commission has listed *Downingia concolor* var. *brevior* and *Limnanthes gracilis* var. *parishii* as endangered under the Native Plant Protection Act (NPPA) (Div. 2, chapter 10, section 1900 *et seq.* of the CDFG Code) and the CESA. Projects that have impacted these species have occurred, however, without coordination with the State, or without the State's knowledge. While some decline is anticipated to continue, the majority of populations of both species receive the benefits of the Conservation Agreement, which already has resulted in increased coordination with the State and recognition by land managers.

The CEQA (Public Resources Code, section 21000 *et seq.*) requires full disclosure of the potential environmental impacts of proposed projects. The public agency with the primary authority or jurisdiction over the project is designated as the lead agency and is responsible for conducting a review of the project and for consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to ''reduce the number or restrict the range of a rare or endangered plant or animal.'' However, even if significant effects are identified, the lead agency has the option to require mitigation through changes to the project or to decide that ''overriding social and economic considerations'' make mitigation not feasible (California Public Resources Code, Guidelines, section 15093). In the latter case, projects may be approved that cause significant environmental damage, such as destruction of an endangered plant species. Protection of listed plant species under CEQA is therefore dependent upon the discretion of the lead agency.

Cuyamaca Recreation and Park District is the lead agency that is empowered to uphold and enforce CEQA regulations at Cuyamaca Lake. State Parks is the lead agency that is empowered to uphold and enforce CEQA regulations at Rancho Cuyamaca State Park. While these agencies have not consistently complied with CEQA requirements for projects that have affected *Downingia* and *Limnanthes*, under terms of the Conservation Agreement these agencies have agreed to use the State clearinghouse for full agency circulation and public review of all new projects requiring CEQA compliance that affect the sensitive habitats surrounding Lake Cuyamaca (MOU section III.B.2.c.(7)). Although protection of the species remains at the discretion of the lead agency, this agency is a signatory to the Conservation Agreement and is thereby obligated to protect the species. In addition, the use of the State clearinghouse will facilitate agency and public review, and comment on any proposed actions which might impact the species.

While CEQA pertains to projects on non-Federal land, the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 to 4347) requires disclosure of the environmental effects of projects within Federal jurisdiction. Species that are listed by the State, but not proposed or listed as threatened or endangered by the Federal government, are not protected when a proposed Federal action meets the criterion for a ''categorical exclusion.'' NEPA requires that each of the project alternatives recommend ways to ''protect, restore and enhance the environment'' and ''avoid and minimize any possible adverse effects'' when implementation poses significant adverse impacts. However, it does not require that the lead agency select an alternative with the least significant impacts to the environment (40 CFR 1500 *et seq.*). Federal actions that may affect Federal threatened or endangered species require consultation with the Fish and Wildlife Service under section 7 of the Endangered Species Act and must avoid jeopardizing the continued existence of a listed plant species.

The Cuyamaca Recreation and Park District also is subject to NEPA for recreational improvements that are funded through the Federal Land and Water Grant, a program that is administered by the National Park Service through the California Department of Parks and Recreation. Such projects would require NEPA review.

Land-use planning decisions at the local level are made on the basis of environmental review documents prepared in accordance with CEQA or NEPA that often do not adequately address ''cumulative'' impacts to non-listed species and their habitat. State listed species receive no special

consideration under NEPA. However, under the terms of the Conservation Agreement, both plant taxa receive special consideration that offers additional protective benefits that are not normally applied to non-listed species. For example, as specified in section IV of the MOU, for actions on lands managed by the signatory agencies that are beyond the normal operations as defined under section I of the MOU, agencies must consult with CDFG and the Service. This provides the opportunity for CDFG and the Service to recommend modifications or alternative actions to avoid or minimize potential impacts to the species for actions beyond normal operations. It also provides an early warning for any inadequacies in the MOU which need to be addressed in future conservation agreements.

The Service has considered the adequacy of NEPA and CEQA in regards to protecting these species. While inadequacies will continue to exist, the Service has determined that the implementation of the Conservation Agreement significantly reduces the risk of extinction for both plant species. While the Conservation Agreement does not apply to all populations, those populations that are not covered represent less than 30 percent of either species and many of these populations are on private inholdings within the National Forest where major projects are not likely to occur.

Section 1603 of the California Fish and Game Code authorizes the CDFG to regulate streambed alteration. The CDFG must be notified and approve any work that diverts, alters, or obstructs the natural flow or changes the bed, channel, or banks of any river, stream, or lake. The CDFG does not consider the creation of wetlands for duck habitat to be regulated under section 1603. Thus a streambed alteration permit was not required for flooding the streambed above Cuyamaca Lake reservoir for that purpose. Because the dam has been used continuously since its construction in 1886, and the dike has been in place since 1967, justification for their use has been grand fathered into law.

Similar activities are regulated by the Army Corps of Engineers under section 404 of the Clean Water Act. Under section 404 there are no specific provisions that adequately address species that are not listed under the Act. While neither *Downingia concolor* var. *brevior* or *Limnanthes gracilis* ssp. *parishii* are listed under the Act, the protections under the Conservation Agreement adequately offset these inadequacies. Section III.B.2.c.(8) of the MOU requires signatories to comply with the full extent of both the Clean Water Act and the Act. Inundation status is being monitored and signatory agencies must consult with CDFG and the Service on actions that are beyond normal operations which could alter drainages. Signatory agencies must also coordinate with the Service and CDFG on the use of herbicide application in sensitive wetlands, which is not regulated under section 404. Helix Water District and Lake Cuyamaca Recreation and Park District have also agreed to avoid all activities within sensitive areas that could alter hydrology.

Additional alterations requiring a 1603 permit or a 404 permit could occur on many drainages that support *Limnanthes gracilis* ssp. *parishii* and *Downingia concolor* var. *brevior.* Most of these are under management of the signatories of the Conservation Agreement. However the Service has determined that any impacts from such additional alterations would occur to only a small proportion of the populations of the species and therefore would not significantly put at risk the survival of either species.

No federally listed species inhabit vernally wet meadows in the Peninsular Ranges of southern California. Therefore these two species receive no Federal regulatory protection from sympatry with listed species. *Limnanthes gracilis* ssp. *parishii* is recognized as a ''sensitive species'' (Winter 1991). The Cleveland National Forest has policies to protect sensitive plant taxa under its jurisdiction. The policies include attempting to establish such species in unoccupied but suitable or historic habitat, encouraging land ownership adjustments to acquire and protect sensitive plant habitat, conserving meadow water tables, and protecting meadow habitats (Winter 1991). Alone, these policies have not been entirely effective but, combined with the benefits afforded by the Conservation Agreement, the Service considers the policies adequate for species protection on Forest Service lands. Actions taken by the Forest Service include placing interpretive signs and fences at the Al Shrine Camp, Prado Campgrounds, and Morris Ranch Meadow to reduce trampling impacts. In addition, an alternative location for a proposed campground at Filaree Flat is being considered to avoid impacts to *Limnanthes gracilis* ssp. *parishii.* A late season grazing regime has been enacted at several of these Meadows (Winter 1991; D. Volgrano, Forest Service, pers. comm., 1993). The Service acknowledges that fencing sensitive habitat areas minimizes impacts but does not prevent entry by hikers or mountain bikers. In some cases, plants that remain unprotected within campgrounds are severely trampled by campers. However, these impacts are restricted to a small number of plants and, when considered with protections for other populations, will not place the plant at risk of extinction.

State Parks has eliminated grazing from meadows containing *Limnanthes gracilis* ssp. *parishii* at Rancho Cuyamaca State Park. Other impacts to the species and their habitat continue to occur in this area, including trampling by horses, unauthorized trails, vehicle parking, ORV use, diversion of water flow, erosion, channelization, and water impoundment. Such impacts have been addressed in the Conservation Agreement which is currently being implemented. The Service concludes that, as a result of the implementation of this agreement, the risks to both plant species have diminished to the point that these impacts no longer contribute significantly to the decline of these species. For example, under section III.B.2.c.(4) of the MOU, State Parks must cooperate with CDFG and the Service in minimizing siltation and erosion on their land to the extent practicable. Under section III.B.2.c.(10) of the MOU, State Parks must review activities at Los Caballos Horse Camp to determine how impacts to these plants can be reduced or eliminated.

The Santa Rosa Plateau Preserve is managed by The Nature Conservancy for long-term protection of sensitive species. A single, small population of *Limnanthes gracilis* ssp. *parishii* is located within the preserve.

While the existing regulatory mechanisms alone may not be entirely adequate for protection of these species, the Service has determined that the combination of these regulations and the actions being implemented in the Conservation Agreement signed in 1996 is adequate to eliminate the risk of extinction for these species.

E. *Other natural or manmade factors affecting its continued existence.* The genetic variability of populations of *Downingia concolor* var. *brevior* may be depressed by virtue of its restricted distribution. The likelihood of finding a normal distribution of genetic variability is reduced in small populations (Jensen 1987). Reduced genetic variability may lower the ability of these populations to survive. The potential for local extirpation due to genetic complications in small population size can be increased by environmental conditions such as drought and flooding (Gilpin and Soulé'' 1986). In the case of *Downingia*

concolor var. *brevior,* the species is restricted to a single valley. However, there is no evidence that genetic problems exist in the species.

Due to their accessibility, populations of these two taxa are particularly vulnerable to trampling. As discussed under factor A above, trampling from cattle occurs in meadows occupied by *Limnanthes gracilis* ssp. *parishii* and *Downingia concolor* var. *brevior* in the National Forest and private land holdings. As discussed under factor D in the proposed rule (59 FR 39882–39884), several measures were initiated during the past decade to protect the vernally wet meadow ecosystem and associated sensitive plant species at Cuyamaca State Park and the Cleveland National Forest. The Conservation Agreement reenforces these measures and the Service believes that the threat from trampling by hikers and horses has been significantly reduced. Trampling is specifically addressed under section III.B. of the MOU, as described under Sensitive Habitat Areas (Appendix A), which excludes activities that might result in trampling from specified areas; section III.B.2.b. of the MOU obligates Helix Water District through monitoring and fence repair to prevent human trespassing and grazing on its lands; and section III.B.2.c. of the MOU, which excludes cattle from sensitive habitat in the growing season, establishes cattle exclosures, fencing in the vicinity of camp sites, and requires monitoring of sensitive areas.

Introduced species of grasses and forbs have invaded many of Californian plant communities. Such weedy species can displace the native flora by out-competing them for nutrients, water, light, and space. Weedy plant invasions are facilitated by disturbances such as grazing, urban and residential developments, and various recreational activities. Introduced weeds have become established in many portions of the Laguna Mountains and thereby reduce the amount of suitable habitat for native plant species (Sproul 1979). For example, the invasion of exotic species including *Polygonum* sp. (knotweed), *Lolium perenne* (ryegrass), and *Poa pratensis* (Kentucky bluegrass), and *Potentilla norvegica* (rough cinquefoil) has altered the composition of habitats supporting the two plant taxa (Sproul 1979; E. Bauder, *in litt.,* October 1994, L. Henrickson, *in litt.,* October 1994). Although actions required by the Conservation Agreement that reduce impacts from grazing, trampling, and minimizes alteration will not eliminate all threats from aggressive plant species competition, it will make conditions less favorable to these aggressive species.

Grazing by livestock typically changes the composition of native plant communities by reducing or eliminating species that cannot withstand trampling and predation (see Factors A and C), and enabling more resistant (usually exotic) species to increase in abundance. Seed from non-sterile hay and animal feces increases the likelihood of invasion of exotic species and prevents re-establishment of native plants. Exotic species may flourish with grazing and may reduce or eliminate native plant species through competition for resources. Grazing is considered to be a threat to all populations of *Limnanthes gracilis* ssp. *parishii* within the Cleveland National Forest, primarily as a result of trampling and the invasion of non-native species into sensitive plant habitats (Winter 1991).

In response to these threats, however, the Conservation Agreement (see ''Development of a Conservation Agreement'') mandates that grazing be strictly excluded from Helix Water District and State Parks land. In addition, grazing is managed and monitored on Forest Service lands to minimize impacts to the two plant taxa. The Service believes that these conditions of the Conservation Agreement have significantly reduced the threats from grazing and will permit the development of management techniques deemed necessary for the conservation of the species.

Finding and Withdrawal

Downingia concolor var. *brevior* and *Limnanthes gracilis* ssp. *parishii* are restricted to the Peninsular Ranges of southwestern California from the Santa Ana Mountains of extreme southwestern Riverside County, south to the Laguna Mountains of southern San Diego County, California. They occur in grassy meadows or drainages that are vernally wet (wet during the rainy season) with saturated soil conditions and shallow pools for several weeks at a time. *Downingia concolor* var. *brevior* is restricted to the Cuyamaca Valley in the Cuyamaca Mountains of central San Diego County, California. This locality also supports the largest concentration of *Limnanthes gracilis* ssp. *parishii,* which is more widely distributed.

The proposed rule identified alteration of wetland hydrology, cattle grazing, recreational activities, recreational development, inadequate regulatory mechanisms, and off-road vehicle activities as the primary threats to these two plant taxa. A Conservation Agreement initiated by Helix Water District in 1994 and finalized in August 1996, which includes the Helix Water District, Lake Cuyamaca Recreation and Park District, State Parks, the Forest Service, CDFG, and the Service as signatories, addresses these primary threats and significantly reduces the likelihood of extinction or endangerment for both species such that the species are not endangered or threatened, as those terms are defined in the Act.

After a thorough review and consideration of all information available, including the development and implementation of the Conservation Agreement, the Service has determined that listing of *Downingia concolor* var. *brevior* as endangered, and *Limnanthes gracilis* ssp. *parishii* as threatened is no longer warranted. The Service has carefully assessed the best scientific and commercial information available in the development of this withdrawal notice.

References Cited

A list of all references cited herein is available upon request from the U.S. Fish and Wildlife Service Carlsbad Field Office (see **ADDRESSES** section).

Author

The primary author of this withdrawal notice is Fred Roberts, Carlsbad Field Office (see **ADDRESSES** section).

Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 30, 1997.

John G. Rogers,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–2876 Filed 2–3–97; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 62, No. 25
Thursday, February 6, 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

Submission for OMB Review; Comment Request

January 31, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

- Food and Consumer Service

Title: Food Security Supplement to the Current Population Survey—III.
OMB Control Number: 0584-New.
Summary: This supplement will collect data on household food expenditures, food assistance and food adequacy that will allow the Food and Consumer Service to measure and analyze the extent of food insecurity and hunger in the United States.
Need and Use of the Information: The purpose of the Food-Security Supplement is to routinely obtain reliable data from a large representative national sample in order to tract the prevalence of food insecurity and hunger among U.S. households. The data will be used to address multiple programmatic and policy development needs.
Description of Respondents: Individuals or households.
Number of Respondents: 50,000.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 8,330.

- National Agricultural Statistics Service

Title: Equine Survey.
OMB Control Number: 0535-New.
Summary: Information will be collected concerning equine inventory, revenue and expenses.
Need and Use of the Information: The information will provide USDA with cash receipts data, census administrative data and equine demographics to be used in case of infectious diseases.
Description of Respondents: Farm; business or other for-profit.
Number of Respondents: 54,000.
Frequency of Responses: Reporting: One time only.
Total Burden Hours: 40,500.

- Food and Consumer Service

Title: Status of Claims Against Households.
OMB Control Number: 0584–0069.
Summary: Food Stamp Program regulations require that State agencies submit quarterly Form FCS–209, Status of Claims Against Households, reports. The required information provided on this report must be obtained from an accountable system of established claims, repayment demand letters, satisfied and compromised claim amounts, and outstanding claims.
Need and Use of the Information: The report provides the Food and Consumer Service with an accountability of the number of claims established, payment amounts and balances.
Description of Respondents: State, Local, or Tribal Government.
Number of Respondents: 53.
Frequency of Responses: Recordkeeping; reporting: Quarterly.
Total Burden Hours: 742.

- Farm Service Agency

Title: Conservation and Environmental Programs, 7 CFR Part 701.
OMB Control Number: 0560–0082.
Summary: Farm Service Agency in cooperation NRCS, Forest Service and other agencies and organizations, provides eligible producers and landowners, cost share incentives and technical assistance through several interrelated conservation and environmental programs to conserve soil, maintain the fertility of the land and develop the forest.
Need and Use of the Information: This data is necessary to allow agriculture producers to participate in the conservation programs and to receive compensation for performing conservation and environmental practices for which they had been previously approved.
Description of Respondents: Farms; State, Local or Tribal Government.
Number of Respondents: 275,000.
Frequency of Responses: Recordkeeping; Reporting: On occasion.
Total Burden Hours: 84,583.

Emergency processing of this submission has been requested by January 31, 1997.

Larry Roberson,
Deputy Departmental Clearance Officer.

[FR Doc. 97–2894 Filed 2–5–97; 8:45 am]
BILLING CODE 3410–01–M

Office of the Secretary

Privacy Act of 1974; Revision of System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act system of records.

SUMMARY: Notice is hereby given that the United States Department of

Agriculture (USDA) Privacy Act Systems of Records maintained by the Farm Service Agency (FSA) are being changed as follows: Twenty-eight Agricultural Stabilization and Conservation Service (ASCS) systems of records previously published are being redesignated as Farm Service Agency (FSA) systems; three systems formerly maintained by the former Farmers Home Administration (FmHA) are being redesignated as FSA systems; twelve systems are being redesignated numerically, updated, and stylistically changed; four systems are being deleted; twelve systems of records are being consolidated into one system; one system of records is being renamed; and new routine uses are being added to four systems. Redesignation of the former ASCS and FmHA systems is required as the result of the Federal Crop Insurance Reform and the Department of Agriculture Reorganization of 1994.

EFFECTIVE DATE: This action is effective, without further notice, April 7, 1997, unless modified by a subsequent notice to incorporate comments received from the public. Comments must be received by the contact person listed below on or before March 10, 1997, to be assured of consideration.

ADDRESSES: Interested persons may submit written comments to Marlyn E. Aycock, Acting Director, Public Affairs Staff, Farm Service Agency, U.S. Department of Agriculture, Public Affairs, STOP 0506, PO Box 2415, Washington, DC 20013–2415; telephone 202–720–5237. The public may inspect comments received on this proposed notice by contacting Mr. Aycock at the address previously listed.

FOR FURTHER INFORMATION CONTACT: Marlyn E. Aycock, Acting Director, Public Affairs Staff, Farm Service Agency, U.S. Department of Agriculture, Public Affairs Staff, STOP 0506, PO Box 2415, Washington, DC 20013–2415; telephone 202–720–5237.

SUPPLEMENTARY INFORMATION: This notice concerns the Privacy Act systems of records maintained by FSA. FSA is responsible for the administration of programs that affect agricultural producers and public warehousemen of agricultural commodities in the United States. In addition to its own programs, FSA representatives and personnel also administer certain programs on behalf of the Commodity Credit Corporation (CCC) which affect U.S. agricultural producers and public warehousemen. Most FSA and CCC programs administered through FSA are administered through a three-level system of authorities (county committees, State committees, and the National Office). In addition to these authorities, FSA also has computer and technical support facilities in Kansas City, Missouri, St. Louis, Missouri and Salt Lake City, Utah. At all of the above mentioned locations, FSA collects, retains, manipulates, and distributes information from Privacy Act systems of records. With the additional workload of Farm Credit Programs absorbed from the former FmHA, the FSA assumes and redesignates three USDA systems of records formerly maintained by FmHA.

Pursuant to the Privacy Act, 5 U.S.C 552a, USDA hereby takes the following action:

I. The twenty-eight ASCS systems of records previously published are being redesignated as FSA systems.

II. The following four systems of records maintained by FSA are hereby deleted because the records contained in the systems are no longer maintained by USDA.

(1) USDA/FSA–1 ''Advisory Committee Files.''

(2) USDA/FSA–4 ''Commodity Brokers.''

(3) USDA/FSA–16 ''Farmers' Name and Address Master File (Manual).''

(4) USDA/FSA–21 ''Producer Appeals.''

III. The system of records ''Biographical Background'' currently numbered 2 is being renumbered as 1; the system of records ''CCC Producer Loan Records'' currently numbered 3 is being consolidated with other systems and renumbered as system number 2, ''Farm Records File;'' the system of records ''Consultants File'' currently numbered 5 is being renumbered as system number 3; the system of records ''Cotton Loan Clerks'' currently numbered 6 is being numbered as system number 4; the system of records ''County Office Employees Administrative Expense File'' currently numbered 7 is being renumbered as system number 5; the system of records ''County Personnel Records'' currently numbered 8 is being renumbered as system number 6; the system of records ''Emergency Livestock Feed Program'' currently numbered 9 is being consolidated with other systems and redesignated as system number 2, ''Farm Records File''; the system of records ''Employee Resources Master File'' currently numbered 10 is being renumbered as system number 7; the system of records ''EEO Advisory Committee and Counselors'' currently numbered 11 is being renumbered as system number 8; the system of records ''Complaints and Discrimination Investigation'' currently numbered 12 is being renamed ''Complaints and Discrimination Investigation Handled by EEO'' and is being renumbered as system number 9; the system of records ''Farm Records File (Automated)'' currently numbered 13 is being consolidated with other systems and redesignated as system number 2, ''Farm Records File''; the system of records ''Farm Records File (Manual)'' currently numbered 14 is being consolidated with other systems and redesignated as system number 2, ''Farm Records File''; the system of records ''Farmer's Name and Address Master File (Automated)'' currently numbered 15 is being consolidated with other systems and redesignated as system number 2, ''Farm Records File''; the system of records ''Indemnity and Incentives Programs'' currently numbered 17 is being consolidated with other systems and redesignated as system number 2, ''Farm Records File''; the system of records ''Investigation and Audit Reports'' currently numbered 18 is being redesignated as number 10; the system of records ''Maximum Payment Limitations'' currently numbered 19 is being consolidated with other systems and redesignated as system number 2, ''Farm Records File''; the system of records ''Power of Attorney and Designated Agents'' currently numbered 20 is being consolidated with other systems redesignated as system number 2, ''Farm Records File''; the system of records ''Producer Payment Reporting File 365 and 368'' currently numbered 22 is being consolidated with other systems and redesignated as system number 2, ''Farm Records File''; the system of records ''Shorn and Unshorn Wool and Mohair'' currently numbered 23 is being consolidated with other systems and redesignated as system number 2, ''Farm Records File''; the system of records ''Subsidiary Personnel, Pay and Travel Records'' currently numbered 24 is being renumbered as system number 11; the system of records ''Tobacco (Flue Cured, Burley) Farm History Master File'' currently numbered 25 is being consolidated with other systems and redesignated as system number 2, ''Farm Records File''; the system of records ''Tort, Program, and Civilian Employee Claims'' currently numbered 26 is being renumbered as system number 12; the system of records ''Peanut Allotment and Quota File'' currently numbered 27 is being consolidated with other systems and redesignated as system number 2, ''Farm Records File''; the system of records ''Claims Data Base (Automated)'' currently numbered 28 is being renumbered as system number 13; the system of records ''Applicant/

Borrower'' was formerly maintained by the FmHA and is now being redesignated as system number 14 in the FSA system of records; the system of records '' Designated Attorney and Escrow Agent file was formerly maintained by the FmHA and is now being redesignated as system number 15 in the FSA system of records ; the system of records ''Graduation File'' was formerly maintained by the FmHA and is now being redesignated as system number 16 in the FSA system of records.

IV. In addition to the renumbering and redesignation previously mentioned and in addition to other minor editorial and clarification amendments, the remaining systems of records maintained by FSA are amended for the following reasons:

(1) USDA/FSA–1, ''Biographical Background.'' This system is being amended to indicate a change in the record system locations; to indicate a change in the purpose for the maintenance of this system of records; to indicate a change in the notification procedure; to indicate a change of designation for the system manager; to indicate a change in the record retention period and to make stylistic changes, including the clarification of the routine use regarding the disclosures of information for introductions at speaking engagements.

(2) USDA/FSA–2, ''Farm Records File.'' In addition to changes made to this system that resulted from its combination with other systems of records, this system is being amended to add additional system locations; to update the list of authorities for the maintenance of the system; to add a routine use allowing the release of information to approved cooperative marketing associations concerning their members' participation in the price support and production adjustments to assist FSA in the administration of these programs; to add a routine use permitting the release of data required by the Bureau of Reclamation to enable it to administer the Reclamation Act of 1982, as amended; to add a routine use permitting the release of names and addresses of producers who have commodity loans with CCC and are in the process of redeeming the loan to prevent buyers of such commodities from purchasing CCC loan collateral without obtaining CCC's permission; and to clarify procedures for notification, record access and contest the record; to clarify the record source categories; to clarify that information released in pursuant to discovery requests must be relevant to the subject of the proceeding.

(3) USDA/FSA–3, ''Consultants File.'' This system is being amended to indicate a change in record system location; to indicate a change in the notification procedure; to indicate a change of designation for the system manager; to indicate a clarification in the list of authorities for the maintenance of the system; to clarify that information released pursuant to discovery requests must be relevant to the subject of the proceeding; to add a purpose section to the notice; to clarify the authority for the system, to clarify procedures for notification, records access, contesting records and to clarify record sources categories.

(4) USDA/FSA–4, ''Cotton Loan Clerks.'' This system is being amended to indicate a change in the name of the system manager; to indicate a change in the notification procedure; to make stylistic changes and to indicate a change of designation for the system manager; to clarify the authority for maintaining the system; to indicate the purpose for maintaining the system; to update the manner in which the information is stored and secured in this system; to clarify procedures for notification, records access, and contesting records; to clarify records source categories.

(5) USDA/FSA–5, ''County Office Employees Administrative Expense File.'' This system is being amended to indicate a change in the record system location; to indicate the addition of ''Thrift Savings Plan'' account to the categories of records; to indicate the addition of intermittent employees to the individuals covered category; to indicate the purpose for the system; to update the locations where the system records are maintained; to indicate that records will be maintained electronically and can be electronically retrieved by name and social security number; to indicate an update in the list of authorities for the maintenance of the system; to indicate a change in the notification procedure; to make stylistic changes and to indicate a change of designation for the system manager; to add a routine use to provide information from this system to other Federal agencies from whom the individual is seeking employment or benefits; to update storage and safeguards of information retained in the system; to clarify procedures for record access, contesting records and to clarify record sources.

(6) USDA/FSA–6, ''County Personnel Records.'' This system is being amended to indicate a change in the record system location; to update the location of the records in this system; to indicate the purpose of the maintenance of the system of records; to indicate that records will be maintained electronically and can be electronically retrieved by name and social security number; to update the routine uses of the information in this system to make it consistent with the related system FSA–4; to indicate a change of designation for the system manager; to indicate a change in the notification procedure; to make stylistic changes and to clarify that information released pursuant to discovery requests must be relevant to the subject of the proceeding.

(7) USDA/FSA–7, ''Employee Resources Master File.'' This system is being amended to indicate a change of designation for the system manager; to update the authority for the maintenance of the system; to add a purpose for this system; to update the storage and safeguards for the information retained in the system; to update the procedures for notification, record access, and contesting records.

(8) USDA/FSA–8, ''EEO Advisory Committee and Counselors.'' This system is being amended to indicate a change in the record system location; to indicate a name change for the system; to update the authority for the maintenance of the system; to indicate the purpose for the maintenance of the system; to add routine uses that allow for the release of information in this system to agencies regarding potential violations of law; to update storage and safeguards for information in the system; to indicate a change in the notification procedure; to indicate a change of designation for the system manager; to update procedures for records access, contesting records, and to clarify records sources.

(9) USDA/FSA–9, ''Complaints and Discrimination Investigation Handled by EEO Staff.'' This system is being amended to indicate a change in the name of the system; to indicated a change in the record system location; to update the authority for the maintenance of this system; to indicate the purpose for this system; to update the storage and safeguards for information in this system; to indicate a name change for the system; to indicate a change in the record retention period; to indicate a change of designation for the system manager; to indicate a change in the notification procedure; clarify the procedures for records access, contesting records and to clarify record sources; to make stylistic changes and to clarify that information released pursuant to discovery requests must be relevant to the subject to the proceeding.

(10) USDA/FSA–10, ''Investigation and Audit Reports.'' This system is being amended to indicate a change in

the record system location; to update the authority for the maintenance of the system; to indicate the purpose for the system; to indicate a change in the record retention period; to update the storage and safeguards of the information in the system; to update procedures for notification, record access, contesting record, and to clarify the record sources; to make stylistic changes; to indicate a change of designation of the system manager and to clarify that information released pursuant to discovery requests must be relevant to the subject of the proceeding.

(11) USDA/FSA–11, ''Subsidiary Personnel, Pay and Travel Records.'' This system is being amended to update the authority for the maintenance of the system; to indicate a purpose for the system; to update the storage and safeguards for the information in the system; to indicate a change in the categories of individuals covered; to make stylistic changes; to indicate a change of designation for the system manager; and to update the procedures for notification, record access, contesting records, and expand the number of sources from which information is received.

(12) USDA/FSA–12, ''Tort, Program, and Civilian Employee Claims.'' This system is being amended to identify a change of designation for the system manager; to update the authority for the maintenance of the system; to indicate the purpose of the system; to indicate a change in the procedures for notification, record access, contesting records and to clarify that information released pursuant to discovery requests must be relevant to the subject proceeding.

V. A ''Report on New System'' for each system of records, required by 5 U.S.C. 552a(r), as implemented by the OMB circular A–130, was sent to the Chairman, Committee on Governmental Affairs, United States Senate; the Chairman, Committee on Government Operations, U.S. House of Representatives; and the Office of Management and Budget on January 30, 1997.

Signed at Washington, DC, on January 30, 1997.

Dan Glickman,

Secretary of Agriculture.

USDA/FSA–1

SYSTEM NAME:

Biographical Background, USDA/FSA–1.

SYSTEM LOCATION:

This system of records is under the control of the Deputy Administrator for Program Delivery and Field Operations FSA, USDA, Stop 0539, PO Box 2415, Washington, DC 20013. The data will be maintained at the Kansas City Management Office, 8930 Ward Parkway, PO Box 419205, Kansas City, Missouri 64141–0205; Kansas City Commodity Office, PO Box 419205, 9200 Ward Parkway, Kansas City, Missouri 64141–0205; and in the appropriate State FSA office at address listed in local telephone directory under the heading ''United States Government, Department of Agriculture, Farm Service Agency.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who hold key positions in FSA, guest speakers and recipients of FSA awards.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information in the system consists of brief resumes of individuals' personal history.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To enable quick access to relevant biographical information of individuals in key positions of FSA and certain individuals that work with FSA or who have received awards from FSA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records contained in this system may be disclosed:

(1) To individuals, both public and private, for the purpose of introduction of individual at speaking engagements; and

(2) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in file folders.

RETRIEVABILITY:

The records are indexed by individual name.

SAFEGUARDS:

The records are kept in a locked office.

RETENTION AND DISPOSAL:

The records are retained indefinitely on a currently updated basis.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Public Affairs Staff, USDA/FSA, Stop 0506, PO Box 2415, Washington, DC 20013–2415.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of record, or information as to whether this system contains records pertaining to such individual by contacting the System Manager listed above.

RECORD ACCESS PROCEDURES:

An individual may obtain information about a record in the system which pertains to such individual by submitting a written request to the above listed System Manager. The envelope and letter should be marked ''Privacy Act Request.'' A request for information pertaining to an individual should contain: Name, address, ZIP code, name of system of record, year of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the above listed System Manager, and should include the reason for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate. A request for contesting records pertaining to an individual should contain: Name, address, ZIP code, name of system of record, year of records in question, and any other pertinent information to help identify the file.

RECORD SOURCE CATEGORIES:

Directly from the individual.

USDA/FSA–2

SYSTEM NAME:

Farm Records File (Automated), USDA/FSA–2.

SYSTEM LOCATION:

This system of records is under the control of the Deputy Administrator, for Program Delivery and Field Operations, FSA, USDA, Stop 0539, PO Box 2415, Washington, DC 20013. The data will be maintained at the county FSA office which services the particular farm, the State FSA Office of the State where the particular county FSA office is located, the Kansas City Management Office, 8930 Ward Parkway, PO Box 419205, Kansas City, Missouri 64141–0205; the Kansas City Commodity Office, PO Box 419205, 9200 Ward Parkway, Kansas City, Missouri 64141–0205, and the FSA

National Office. The address of each county and State FSA office can be found in the local telephone directory under the heading ''United States Government, Department of Agriculture, Farm Service Agency.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Farm owners, operators, and other producers.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information in the system consists of documentation of participation in the active programs as well as discontinued programs. This includes names and addresses of producers and is not necessarily limited to farm allotments, quotas, bases, and history; compliance data; production and marketing data; lease and transfer of allotments and quotas; appeals; new grower applications; conservation program documents; program participation and payment documents; appraisals, leases, and data for farm reconstitution; and, for payment limitation purposes, financial statements, and other applicable farm information as well such documents as tax statements, wills, trusts, partnership agreements, and corporate charters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 135b, 450j, 450k, 405l, 1281–1393, 1421–1449, 1461–1469, 1471–1471i, 1781–1787; 15 U.S.C. 714–714p; 16 U.S.C. 590a–590q, 1301–1311, 1501–1510, 1606, 2101–2111, 2201–2205, 3501, 3801–3847, 4601, 5822; 26 U.S.C. 6109; 40 U.S.C. App. 1, 2, 203; 43 U.S.C. 1592; and 48 U.S.C. 1469.

PURPOSE(S):

To facilitate the Congressional mandate that FSA and CCC operate farm programs that control the price and supply of certain agricultural commodities, that protect the environment and enhance the marketing and distribution of certain agricultural commodities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records contained in this system may be disclosed:

(1) To a cooperative marketing associations approved to carry out CCC rice support loan and marketing programs only that data regarding member's and related individual's participation in such programs;

(2) To the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any records within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto;

(3) To a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery to the extent that records sought are relevant to the subject of the proceeding;

(4) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual;

(5) To the Internal Revenue Service to establish the tax liability of individuals as required by the Internal Revenue Code;

(6) To a State or local tax authorities having an agreement with CCC to withhold taxes or fees from loan proceeds;

(7) To the Bureau of Reclamation (BOR) only that data necessary for the BOR to administer the Reclamation Act of 1982 as amended;

(8) To boards or other entities authorized by state statute to collect commodity assessments;

(9) To the Federal State Inspection Service;

(10) To the Peanut Board with respect to producers of peanuts and their participation in the peanut price support, production control and quota programs;

(11) To the Bureau of Indian Affairs the name and address of producers to assist in the distribution of funds to Native American Indians;

(12) To candidates for FSA county and/or community committee positions the names and addresses of producers in the county for the purpose of county committee elections;

(13) To tobacco analysis laboratories the producers' names and addresses as well as crop-specific data regarding tobacco being analyzed prior to the marketing of such tobacco;

(14) To the public who may inspect farm allotment and quota data for marketing quota crops as required by the Agricultural Act of 1938, as amended;

(15) To State Foresters the names and addresses of producers and crop-specific data regarding their operations with respect to forestry conservation practices;

(16) To cotton buyers the names of cotton producers;

(17) To cotton ginners the names, addresses and cotton acreages;

(18) To members of Congress the names and addresses of producers; and

(19) To the public when they need to obtain the names and addresses of producers who have loans with FSA or CCC to prevent such individual from purchasing commodity that has been placed under a CCC loan.

(20) To State or local taxing authorities or their contracted appraisal companies the name of and address of producers for tax appraisal purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and Department computer systems at applicable location as set out above under the heading ''System Location''.

RETRIEVABILITY:

Records may be indexed by individual name, farm number, tax identity number, Social Security Number, or loan number.

SAFEGUARDS:

Records are kept in a locked Government office buildings. Access to these records are limited to authorized FSA personnel and representatives. Records stored in computer files are protected by passwords and other electronic security systems. Additionally, any negotiable documents, such as warehouse receipts are kept in a fireproof cabinet.

RETENTION AND DISPOSAL:

Program documents are destroyed within 6 years after end of participation, except for conservation program documents which are retained for periods sufficient to insure compliance equal to the life of the practice. Other documents, such as powers of attorney or leases, are destroyed after such document is no longer valid. Original loan notes are returned to producers after liquidation of loan.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Administrator for Program Delivery and Field Operations, FSA, USDA, Stop 0539, PO Box 2415, Washington, DC 20013.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records, or information as to whether the system contains records pertaining to the individual from the System Manager listed above.

RECORD ACCESS PROCEDURES:

An individual may obtain information about a record in the system which pertains to such individual by submitting a written request to the above listed System Manager. The envelope and letter should be marked ''Privacy Act Request.'' A request for information pertaining to an individual should contain: Name, address, ZIP code, name of system of record, year of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the above listed System Manager, and should include the reason for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate. A request for contesting records pertaining to an individual should contain: Name, address, ZIP code, name of system of record, year of records in question, and any other pertinent information to help identify the file.

RECORD SOURCE CATEGORIES:

Information in this system is submitted by county and State Committee and their representatives, the Office of Inspector General and other investigatory agencies, the Office of the General Counsel, the Kansas City Commodity Office, the Kansas City Management Office, the Natural Resources and Conservation Service and by third parties and by the individual who is the subject of the file.

USDA/FSA–3

SYSTEM NAME:

Consultants File, USDA/FSA–3.

SYSTEM LOCATION:

Information Technology Services Division, USDA/FSA, Stop 0580, PO Box 2415, Washington DC 20013–2415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: INDIVIDUALS WHO PERFORM CONSULTING SERVICES FOR FSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information in this system consists of a summary of negotiations, executed contracts, descriptions of work and of work performed, schedules and purchase orders.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

5 U.S.C 301; 15 U.S.C. 714–714p.

PURPOSE(S):

This system enables FSA to properly edit work performed by consultants for the agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records contained in this system may be disclosed:

(1) To the appropriate agency, whether Federal, State, local or foreign, charged with responsibility for investigating or prosecuting a violation of law, or enforcing or implementing a statute, or rule, regulation or order issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto;

(2) To a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or administrative proceeding; and

(3) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, ATTAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in files folders at office listed above.

RETRIEVABILITY:

The records may be indexed by name of the consultant or by FSA contract number.

SAFEGUARDS:

Records are kept in a locked Government office building. Access to these records are limited to authorized FSA personnel and representatives. Records stored in computer files are protected by passwords and other electronic security systems.

RETENTION AND DISPOSAL:

The records are retained for 6 years after the fiscal year contract is awarded.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Information Technology Services Division, USDA/FSA, Stop 0580, PO 2415, Washington, DC 20013–2415.

NOTIFCATION PROCEDURE:

An individual may request information regarding this system of records, or information as to whether this system contains records pertaining to such individual from the System Manager listed above.

RECORD ACCESS PROCEDURES:

An individual may obtain information about a record in the system which pertains to such individual by submitting a written request to the above listed System Manager. The envelope and letter should be marked ''Privacy Act Request.'' A request for information pertaining to an individual should contain: Name, address, ZIP code, name of system of record, year of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the above listed System Manager, and should include the reason for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate. A request for contesting records pertaining to an individual should contain: Name, address, ZIP code, name of system of record, year of records in question, and any other pertinent information to help identify the file.

RECORD SOURCE CATEGORIES:

Information in this system is provided by the individual consultants, FSA employees and representatives, third party observers, the Office of Inspector General, and other investigatory agencies.

USDA/FSA–4

SYSTEM NAME:

Cotton Loan Clerks, USDA/FSA–4.

SYSTEM LOCATION:

This system of records is under the control of the county FSA office where approved clerks will execute loan documents. The address of each county FSA office can be found in local telephone directory under heading ''United States Government, Department of Agriculture, Farm Service Agency.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request permission to process loan documents.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of agreements and other related information

concerning agreements between cotton clerks and CCC.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

15 U.S.C. 714–714p.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records contained in this system may be disclosed:

(1) To lending agencies that participate in the CCC Cotton Loan Program; and

(2) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual to whom the record pertains.

PURPOSE(S):

This system is maintained to enable FSA to track and administer its agreements with cotton loan clerks.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in the Departments computers and in file folders at the appropriate county FSA offices.

RETRIEVABILITY:

Records are indexed by name of individual.

SAFEGUARDS:

Records are kept in a locked Government office building. Access to these records are limited to authorized FSA personnel and representatives. Records stored in computer files are protected by passwords and other electronic security systems.

RETENTION AND DISPOSAL:

The records are retained six years after the agreement is canceled or suspended.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Price Support Division, USDA/FSA, Stop 0512, PO 2415, Washington, DC 20013–2415.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records, or information as to whether this system contains records pertaining to such individual from the System Manager listed above.

RECORD ACCESS PROCEDURES:

An individual may obtain information about a record in the system which pertains to such individual by submitting a written request to the above listed System Manager. The envelope and letter should be marked ''Privacy Act Request.'' A request for information should contain: Name, address, ZIP code, name of the system of records, year of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the above listed System Manager, and should include the reason for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate. A request for contesting records should contain: Name, address, ZIP code, name of the system of records, year of records in question, and any other pertinent information to help identify the file.

RECORD SOURCE CATEGORIES:

Information in this system is provided by the individual consultants, FSA employees and representatives, third party observers, the Office of Inspector General and other investigatory agencies.

USDA/FSA–5

SYSTEM NAME:

County Office Employees Administrative Expense File, USDA/FSA–5.

SYSTEM LOCATION:

County FSA office by which individual is employed, except that some records concerning county office employees are on file in State FSA offices and the Kansas City Management Office, 8930 Ward Parkway, PO Box 419205, Kansas City, Missouri 64141–0205. The address of each FSA State and county office can be found in the local telephone directory under the heading ''United States Government, Department of Agriculture, Farm Service Agency.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FSA county and community committee members and FSA representatives who are employed in county offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information in this system contains the names of all county FSA committee members and FSA employees and information such as: Identifying number (Social Security Number), race code, sex code, State code, county code, biweekly amount of payroll check including deduction amounts for FICA, Federal, State and local withholding, Thrift Savings Plan, FEHBA, FEGLI (Optional), NASCO dues, and bonds. Also records of the date of birth, CO Grade and step, service computation date, last WGI, health code, cumulative and current retirement deduction, date severance pay ceases.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

5 U.S.C. 8331, 8701, 8901; 16 U.S.C. 590h.

PURPOSE(S):

To facilitate the accounting of administrative expenses incurred by county FSA offices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records contained in this system may be disclosed:

(1) To the Internal Revenue Service as required by the Internal Revenue Code and other related statutes;

(2) A State Revenue Board and local tax authorities as required by law;

(3) The Office of Personnel Management for fringe benefits withholdings, 5 U.S.C. 8331, 8701, 8901;

(4) The Social Security Administration for FICA withholdings;

(5) The general public with respect to county committee members for the purpose of maintaining accountability of these committee members to their constituent producers;

(6) The Federal Civilian Personnel Records Center, St. Louis, Missouri, as a permanent record of service with FSA;

(7) The appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or enforcing or implementing a statute, or a rule, regulation or order issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto;

(8) The Department of Justice when (a) the agency, or any component thereof; or (b) any representative of the agency in his or her official capacity; or (c) any representative of the agency in his or her individual capacity where the Department of Justice has agreed to represent the individual: or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the

Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

(9) A court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; (b) any representative of the agency in his or her official capacity; (c) any representative of the agency in his or her individual capacity where the agency has agreed to represent the individual; or (d) the United States, where the agency determines that a litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determine that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

(10) A congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual to whom the record pertains;

(11) A collection or servicing contractor, or a local, State, or Federal agency, when FSA determines a referral is appropriate for servicing or collecting the debtor's account or as provided for in contracts with servicing or collection agencies;

(12) To the Internal Revenue Service to enable it to offset against Federal income tax refunds to satisfy past-due, legally enforceable debts owed to USDA;

(13) To ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act, as amended (31 U.S.C. 3701(a)(3));

(14) To local banks when savings bonds are purchased.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in file folders in the county office and stored in Department computer system at the Kansas City Computer Center, 8930 Ward Parkway, PO Box 419205, Kansas City, Missouri 64141–0205.

RETRIEVABILITY:

The records may be indexed by social security number or by the individual's name.

SAFEGUARDS:

The records are kept in secured Government buildings. Access is limited to authorized FSA representatives. Computer files are protected by authorization codes, passwords and other safeguard technology.

RETENTION AND DISPOSAL:

The records are retained indefinitely on a currently updated basis.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Kansas City Management Office, 8930 Ward Parkway, PO Box 419205, Kansas City, Missouri 64141–0205.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records, or information as to whether this system contains records pertaining to such individual from the System Manager listed above.

RECORD ACCESS PROCEDURES:

An individual may obtain information about a record in the system which pertains to such individual by submitting a written request to the above listed System Manager. The envelope and letter should be marked ''Privacy Act Request.'' A request for information should contain: Name, address, ZIP code, name of the system of records, year of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the above listed System Manager, and should include the reason for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate. A request for contesting records should contain: Name, address, ZIP code, name of the system of records, year of records in question, and any other pertinent information to help identify the file.

RECORD SOURCE CATEGORIES:

Information in this system is provided by the individual, FSA employees and representatives, third party observers, the Office of Inspector General and other investigatory agencies.

USDA/FSA–6

SYSTEM NAME:

County Personnel Records, USDA/FSA–6.

SYSTEM LOCATION:

County FSA office by which individual is employed, except that some records concerning county office employees are on file in State FSA offices and the FSA Human Resources Division, USDA/FSA, Stop 0590, PO Box 2415, Washington DC 20013–2415. The address of each FSA State and county office can be found in the local telephone directory under the heading ''United States Government, Department of Agriculture, Farm Service Agency.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FSA County and community committeemen and employees who are employed in county FSA offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system consists of personnel official records of county FSA employee including documents such as employment applications, oaths of office, personnel actions, job descriptions, performance data, life and health insurance forms, annual pay status records, retirement record cards, and any other documents, letters, or records regarding the individual's employment in the county office.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

5 U.S.C. 8331, 8701, 8901; 16 U.S.C. 590h.

PURPOSE:

This system of records is maintained to retain necessary personal records of FSA county office employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records contained in this system may be disclosed:

(1) To the Internal Revenue Service as required by the Internal Revenue Code and other related statutes;

(2) To a State Revenue Board and local tax authorities as required by law;

(3) To the Office of Personnel Management for fringe benefits withholdings,

5 U.S.C 8331, 8701, 8901;

(4) To the Social Security Administration for FICA withholdings;

(5) To the general public with respect to county committee members for the purpose of maintaining accountability of these committee members to the their constituent producers;

(6) To the Federal Civilian Personnel Records Center, St. Louis, Missouri, as a permanent record of service with FSA;

(7) To the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or enforcing or implementing a statute, or a rule, regulation or order issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto;

(8) To the Department of Justice when (a) the agency, or any component thereof; or (b) any representative of the agency in his or her official capacity; or (c) any representative of the agency in his or her individual capacity where the Department of Justice has agreed to represent the individual; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

(9) To a court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; (b) any representative of the agency in his or her official capacity; (c) any representative of the agency in his or her individual capacity where the agency has agreed to represent the individual; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determine that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

(10) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual to whom the record pertains;

(11) To a collection or servicing contractor, or a local, State, or Federal agency, when FSA determines a referral is appropriate for servicing or collecting the debtor's account or as provided for in contracts with servicing or collection agencies;

(12) To the Internal Revenue Service to enable it to offset and satisfy past-due, legally enforceable debts owed to USDA against Federal income tax refunds;

(13) To ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act, as amended (31 U.S.C. 3701(a)(3));

(14) To local banks when savings bonds are purchased; and

(15) To a Federal agency, in response to its request, in connection with hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license or other benefit be the requesting agency, to the extent that this information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in file folders in the county office and stored in Department computers and on magnetic tape at the applicable locations above.

RETRIEVABILITY:

The records may be indexed by individual's name or social security number.

SAFEGUARDS:

The records are kept in secured Government buildings. Access is limited to authorized FSA representatives. Computer files are protected by authorization codes, passwords and other safeguard technology.

RETENTION AND DISPOSAL:

The records are retained on site for duration of employment and are transferred to Civilian Personal Record Center, St. Louis, Missouri, after separation. The records in county offices are kept in locked fireproof file in a Government office building. Other records are stored in cabinets in a locked or secured Government offices.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Division, USDA/FSA, Stop 0590, PO 2415, Washington, DC 20013–2415.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records, or information as to whether this system contains records pertaining to such individual from the System Manager listed above.

RECORD ACCESS PROCEDURES:

An individual may obtain information about a record in the system which pertains to such individual by submitting a written request to the above listed System Manager. The envelope and letter should be marked ''Privacy Act Request.'' A request for information should contain: Name, address, ZIP code, name of the system of records, year of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the above listed System Manager, and should include the reason for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate. A request for contesting records should contain: Name, address, ZIP code, name of the system of records, year of records in question, and any other pertinent information to help identify the file.

RECORD SOURCE CATEGORIES:

Information in this system is provided by the individual, FSA employees and representatives, the Office of Inspector General and other investigatory agencies.

USDA/FSA–7

SYSTEM NAME:

Employee Resources Master File, USDA/FSA–7.

SYSTEM LOCATION:

Kansas City Management Office, 8930 Ward Parkway, PO Box 419205, Kansas City, Missouri 64141–0205.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal Employees (career, career conditional, temporary, general schedule, and wage board) who are presently employed in the Management Office.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains names of all individuals identified in the preceding paragraph and such information as social security number, date of birth service date (for retirement and annual leave) pay plan, grade, step, occupational series, and annual salary, daily salary rate, hourly salary rate, overtime hourly rate, training course number, course sponsor,

course title, hour credit, and completion date.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

This system of records is maintained to retain necessary personnel records of FSA employees at the Kansas City Management Office to facilitate the processing of personnel matters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGROEIS OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in the Department's computer system at the Kansas City Computer Center, 8930 Ward Parkway, PO 419205, Kansas City, Missouri 64141-0205.

RETRIEVABILITY:

The records are indexed by employee name.

SAFEGUARDS:

The records are kept in secured Government buildings. Access is limited to authorized FSA representatives. Computer files are protected by authorization codes, passwords and other safeguard technology.

RETENTION AND DISPOSAL:

The records are retained indefinitely on a currently updated basis.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Kansas City Management Office, 8930 Ward Parkway, PO Box 419205, Kansas City, Missouri 64141–0205.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records, or information as to whether this system contains records pertaining to such individual from the System Manager listed above.

RECORD ACCESS PROCEDURES:

An individual may obtain information about a record in the system which pertains to such individual by submitting a written request to the above listed System Manager. The envelope and letter should be marked ''Privacy Act Request.'' A request for information should contain: Name, address, ZIP code, name of the system of records, year of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the above listed System Manager, and should include the reason for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate. A request for contesting records should contain: Name, address, ZIP code, name of the system of records, year of records in question, and any other pertinent information to help identify the file.

RECORD SOURCE CATEGORIES:

Summary of data maintained in the Official Personnel Folder.

USDA/FSA–8

SYSTEM NAME:

EEO Advisory Committee and Counselors, USDA/FSA–8.

SYSTEM LOCATION:

Office of the Deputy Administrator, Management, USDA/FSA, Stop 0561, PO Box 2415, Washington DC 20013–2415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been selected or considered to serve on the EEO Committee or to be an EEO Counselor.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system consists of the individual's EEO qualifications.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

42 U.S.C. 2000d and 2000e.

PURPOSE(S):

To facilitate the tracking of individuals who have served on EEO Committees or as EEO Counselors as required.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records contained in this system may be disclosed:

(1) To the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or enforcing or implementing a statute, or a rule, regulation or order issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto;

(2) To the Department of Justice when (a) the agency, or any component thereof; or (b) any representative of the agency in his or her official capacity; or (c) any representative of the agency in his or her individual capacity where the Department of Justice has agreed to represent the individual; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected; and;

(3) To a court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; (b) any representative of the agency in his or her official capacity; (c) any representative of the agency in his or her individual capacity where the agency has agreed to represent the individual; or (d) the United States, where the agency determines that a litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determine that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in file folders and Department computer records at the office listed above.

RETRIEVABILITY:

The records may be indexed by individual name and by social security number.

SAFEGUARDS:

The records are kept in secured Government buildings. Access is limited to authorized FSA representatives. Computer files are protected by authorization codes, passwords and other safeguard technology.

RETENTION AND DISPOSAL:

The records are retained for 2 years after individual ceases to serve as a committee person or counselor.

SYSTEM MANAGER(S) AND ADDRESS:

EEO and Civil Rights Staff, USDA/FSA, Stop 0509, PO 2415, Washington, DC 20013–2415 telephone (202) 720–3901.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records, or information as to whether this system contains records pertaining to such individual from the System Manager listed above.

RECORD ACCESS PROCEDURES:

An individual may obtain information about a record in the system which pertains to such individual by submitting a written request to the above listed System Manager. The envelope and letter should be marked ''Privacy Act Request.'' A request for information should contain: Name, address, ZIP code, name of the system of records, year of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the above listed System Manager, and should include the reason for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate. A request for contesting records pertaining to an individual should contain: Name, address, ZIP code, name of system of record, year of records in question, and any other pertinent information to help identify the file.

RECORD SOURCE CATEGORIES:

Information is supplied to this system by the subject individual.

USDA/FSA–9

SYSTEM NAME:

Complaints and Discrimination Investigation Handled by the EEO Staff, USDA/FSA–9.

SYSTEM LOCATION:

Office of the Deputy Administrator, Management, USDA/FSA, Stop 0560, PO Box 2415, Washington, DC 20013–2415, and in offices of each EEO counselor at address posted on bulletin boards in Washington, DC. These addresses are readily obtainable by contacting the Civil Rights and Small Business Development Staff, Stop 509, PO Box 2415. Washington, DC 20013–2415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed formal allegations of discrimination.

CATEGORIES OF RECORDS IN THE SYSTEM:

Preliminary inquires, audit, investigation reports and supporting material.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

42 U.S.C. 2000d, 2000e, 42 U.S.C. 6101, *et seq.*

PURPOSE(S):

To facilitate the tracking of discrimination complaints and investigations as required.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records contained in this system may be disclosed:

(1) To the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or enforcing or implementing a statute, or a rule, regulation or order issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto;

(2) To the Department of Justice when (a) the agency, or any component thereof; or (b) any representative of the agency in his or her official capacity; or (c) any representative of the agency in his or her individual capacity where the Department of Justice has agreed to represent the individual: or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

(3) To a court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; (b) any representative of the agency in his or her official capacity; (c) any representative of the agency in his or her individual capacity where the agency has agreed to represent the individual; or (d) the United States, where the agency determines that a litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected; and

(4) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in file folders and Department computers at the offices listed above.

RETRIEVABILITY:

The records are indexed by individual name.

SAFEGUARDS:

The records are kept in secured Government buildings. Access is limited to authorized FSA representatives. Computer files are protected by authorization codes, passwords and other safeguard technology.

RETENTION AND DISPOSAL:

The records are retained for three years after case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Civil Rights and Small Business Development Staff, USDA/FSA, Stop 0509, PO 2415, Washington, DC 20013–2415.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records, or information as to whether this system contains records pertaining to such individual from the System Manager listed above.

RECORD ACCESS PROCEDURES:

An individual may obtain information about a record in the system which pertains to such individual by submitting a written request to the above listed System Manager. The envelope and letter should be marked ''Privacy Act Request.'' A request for information should contain: Name, address, ZIP code, name of the system of records, year of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their requests to the above listed System Manager, and should include the reason for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate. A request for contesting records should contain: Name, address, ZIP code, name of the system of records, year of records in question, and any other pertinent information to help identify the file.

RECORD SOURCE CATEGORIES:

Individual preliminary inquires, third party observers, audit and investigation reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system has been exempted pursuant to 5 U.S.C. 552a(k) from the requirements of 5 U.S.C. 552a(c)(3)(d), (e)(1), (e)(4)(G), (H), and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. Individual access to these files could impair investigations and alert subjects of investigations that the activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures, and of existence and identify confidential sources of information would hamper law enforcement activity.

USDA/FSA–10

SYSTEM NAME:

Investigation and Audit Reports, USDA/FSA–10.

SYSTEM LOCATION:

Executive Secretariat Staff, USDA/FSA, Stop 0504, PO Box 2415, Washington, DC 20013–2415, Kansas City Commodity Office, 9200 Ward Parkway, PO Box 419205, Kansas City, Missouri 64141–0205, Kansas City Management Office, 8930 Ward Parkway, PO Box 419205, Kansas City, Missouri 64141–0205. Each State FSA office at address listed in local telephone directory under the heading ''United States Government, Department of Agriculture, Farm Service Agency.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are subjects of a formal investigation of alleged program or administrative irregularities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system consists of files on investigations and individuals, including program documents, investigation reports, statements of observers, accident reports and agency reports.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To facilitate FSA's obligation to issue payments or benefits only to those who are eligible to receive such payments or benefits under law or agreement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records contained in this system may be disclosed:

(1) To the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or enforcing or implementing a statute, or a rule, regulation or order issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto;

(2) To a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, information which constitutes evidence in that proceeding, or which is sought in the course of discovery to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or administrative proceeding; and

(3) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in file folders and Department computers at the applicable addresses listed above.

RETRIEVABILITY:

The records may be indexed by name of individual being investigated or investigation case number.

SAFEGUARDS:

The records are kept in secured Government buildings. Access is limited to authorized FSA representatives. Computer files are protected by authorization codes, passwords and other safeguard technology.

RETENTION AND DISPOSAL:

Investigation records are retained for 10 years after case is closed. Audit records are destroyed eight years after case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Executive Secretariat Staff, USDA/FSA, Stop 0504, PO 2415, Washington, DC 20013–2415.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records, or information as to whether this system contains records pertaining to such individual from the System Manager listed above.

RECORD ACCESS PROCEDURES:

An individual may obtain information about a record in the system which pertains to such individual by submitting a written request to the above listed System Manager. The envelope and letter should be marked ''Privacy Act Request.'' A request for information should contain: Name, address, ZIP code, name of the system of records, year of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the above listed System Manager, and should include the reason for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate. A request for contesting records should contain: Name, address, ZIP code, name of the system of records, year of records in question, and any other pertinent information to help identify the file.

RECORD SOURCE CATEGORIES:

Information in this system is provided by the individual, FSA employees and representatives, third party observers, the Office of Inspector General and other investigatory agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a (c)(3),(d), (e)(1), (e)(4) (G), (H), and (I) and (f) because it consists of investigatory material compiled for law enforcement purposes. Individual access to these files could impair investigations and alert subjects of investigations that their

activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures, and of existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/FSA–11

SYSTEM NAME:

Subsidiary Personnel, Pay and Travel Records, USDA/FSA–11.

SYSTEM LOCATION:

Any FSA office where individual is employed at the address shown in the local telephone directory under the heading, ''United States Government, Department of Agriculture, Farm Service Agency.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals employed by FSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system consists of personnel actions, training records, performance ratings, earning statements, time and attendance reports, travel authorizations and vouchers, payroll deduction records, record of accountable documents charged to employee, appeal cases, and conflict of interest statements.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To facilitate FSA responsibility to follow Federal civil service and other applicable employment laws and regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records contained in this system may be disclosed:

(1) To prospective Government employers and other prospective employers when employee gives immediate supervisor or coworker as reference;

(2) To the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, or a rule, regulation or order issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto;

(3) To the Department of Justice when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

(4) In a proceeding before a court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that disclosure of the records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

(5) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual to whom the record pertains;

(6) To a collection or servicing contractor, or a local, State, or Federal agency, when FSA determines a referral is appropriate for servicing or collecting the debtor's account or as provided for in contracts with servicing or collection agencies;

(7) To the Internal Revenue Service to enable it to offset and satisfy past-due, legally enforceable debts owed to USDA against Federal income tax refunds; and

(8) To consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12) and as defined by the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in file folders and in Department computers at addresses referenced above.

RETRIEVABILITY:

The records may be indexed by name of individual employee or Social Security Number.

SAFEGUARDS:

The records are kept in secured Government buildings. Access is limited to authorized FSA representatives. Computer files are protected by authorization codes, passwords and other safeguard technology.

RETENTION AND DISPOSAL:

The records are retained in active status during the employee's tenure at the organizational entity. After transfer or separation, maintained in inactive status to be used to answer employment inquiries. Conflict of interest statement retained 2 years after employee is separated.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Division, USDA/FSA, Stop 0590, PO 2415, Washington, DC 20013–2415.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records, or information as to whether this system contains records pertaining to such individual from the System Manager listed above.

RECORD ACCESS PROCEDURE:

An individual may obtain information about a record in the system which pertains to such individual by submitting a written request to the above listed System Manager. The envelope and letter should be marked ''Privacy Act Request.'' A request for information should contain: name, address, ZIP code, name of the system of records, year of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the above listed System Manager, and should include the reason for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate. A request for contesting records should contain: name, address, ZIP code, name of the system of records,

year of records in question, and any other pertinent information to help identify the file.

RECORD SOURCE CATEGORIES:

Information in these records is obtained directly from the employee, the Office of Personnel Management, FSA employees and representatives, third party observers, the Office of Inspector General and other investigatory agencies.

USDA/FSA–12

SYSTEM NAME:

Tort, Program, And Civilian Employee Claims, USDA/FSA–12.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Any FSA office having jurisdiction over the claim at the location listed in the local telephone directory under the heading ''United States Government, Farm Service Agency.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual by whom or against whom claim involving FSA or CCC has been filed.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system includes files on individual claims, including claim forms, police records, investigation and accident reports, statements of observers, and agency reports.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

5 U.S.C. 8101–8150; 7 U.S.C. 135b, 450j, 450k, 405l, 1281–1393, 1421–1449, 1461–1469, 1471–1471i, 1781–1787; 15 U.S.C. 714–714p; 16 U.S.C. 590a-590q, 1301-1311, 1501–1510, 1606, 2101–2111, 2201–2205, 3501, 3801–3847, 4601, 5822; 26 U.S.C. 6109; 28 U.S.C. 2671–2680; 40 U.S.C. App. 1, 2, 203; 43 U.S.C. 1592; and 48 U.S.C. 1469.

PURPOSE(S):

To facilitate FSA responsibilities to investigate and resolve tort and civilian employee claims against FSA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records contained in this system may be disclosed:

(1) To the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or enforcing or implementing a statute, or a rule, regulation or order issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature and whether arising by general statute or particular program statute, or rule, regulation or order issued pursuant thereto;

(2) To a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or administrative proceeding;

(3) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual to whom the record pertains;

(4) To the Department of Labor for claims arising under the Federal Employees Compensation Act;

(5) To insurance companies where necessary for resolution of claim; and

(6) To cotton loan clerks, a list of producer names and addresses, for the purpose of offsetting claims.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are kept in folders and in Department computers at the locations indicated above.

RETRIEVABILITY:

The records may be indexed by name or by claimant number.

SAFEGUARD:

The records are kept in secured Government buildings. Access is limited to authorized FSA representatives. Computer files are protected by authorization codes, passwords and other safeguard technology.

RETENTION AND DISPOSAL:

The records are retained after settlement for 6 years if CCC and five years if appropriated funds are involved.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Management Division, USDA/FSA, Stop 1062, PO 2415, Washington, DC 20013–2415.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records, or information as to whether this system contains records pertaining to such individual from the System Manager listed above.

RECORD ACCESS PROCEDURES:

An individual may obtain information about a record in the system which pertains to such individual by submitting a written request to the above listed System Manager. The envelope and letter should be marked ''Privacy Act Request.'' A request for information should contain: Name, address, ZIP code, name of the system of records, year of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the above listed System Manager, and should include the reason for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate. A *request* for contesting records should contain: Name, address, ZIP code, name of the system of records, year of records in question, and any other pertinent information to help identify the file.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from claimants, observers, agency employees, and investigative personnel.

USDA/FSA–13

SYSTEM NAME:

Claims Data Base (Automated), USDA/FSA–13

SYSTEM LOCATION:

Kansas City Management Office, USDA/FSA, 8930 Ward Parkway, Kansas City, MO 64114.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Agricultural producers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information identifying the delinquent debtor, such as name, address, producer identification number (social security number or taxpayer identification number); information relating to claim identification, such as claim control number, which is comprised of a State and county code and an alpha-numeric control number; codes identifying the type of claim and the basis for establishing the claim; identification of programs under which the claim arose; date the claim arose; loan, farm or contract number; interest rate applied to claim; the date interest on the claim starts and the principal amount of the claim; information related to claims actions and status changes

which have occurred since the claim was initially established, such as transfers from originating FSA office to other FSA State or county offices and referrals to the Office of the General Counsel for legal action; termination of claims actions; changes in claim amount resulting from compromises, addition of collection or court costs and brief remarks which identify or clarify actions being taken by the FSA office submitting the claim information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1281–1393; 7 U.S.C. 1421–1449 and 15 U.S.C. 714–714p.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

USDA employees maintain and update the system with expanded claims data for assistance in preparation of the SF–220 report (Report on Status of Accounts and Loans Receivable from the Public) and the production of other debt management reports. Records contained in this system may be disclosed:

(1) To the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto;

(2) To the Department of Justice when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

(3) To a proceeding before a court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation; and the agency determines that use of such records is relevant and necessary to the litigation; provided, however, that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

(4) To a congressional office from the record of an individual in response to an inquiry from the congressional office at the request of the individual;

(5) To a commercial credit reporting agency for it to make the information publicly available. Only that information directly related to the identity of the debtor and history of the claim will be released. Debtor information will consist of the following: The debtor's name, address, taxpayer identification number, and other information necessary to establish the identity of the debtor; the amount, status, and history of the claim, and the program under which the claim arose;

(6) To a collection or servicing contractor, or a local, State, or Federal agency, when FSA determines a referral is appropriate for servicing or collecting the debtor's account or as provided for in contracts with servicing or collection agencies;

(7) To the Internal Revenue Service to enable it to offset and satisfy past-due, legally enforceable debts owed to USDA against Federal income tax refunds;

(8) To the Department of Defense, information regarding indebtedness, for the purpose of conducting computer matching programs to identify and locate individuals receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by FSA/CCC in order to collect debts under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365) by voluntary repayment, administrative or salary offset procedures, or by collection agencies;

(9) To the United States Postal Service, information regarding indebtedness, for the purpose of conducting computer matching programs to identify and locate individuals receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by FSA/CCC in order to collect debts under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365) by voluntary repayment, administrative or salary offset procedures, or by collection agencies.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Claims Data Base records are stored on disk files. The data base is duplicated on magnetic tape files.

RETRIEVABILITY:

Records can be accessed by producer identification number (if available), farm number or State, county and claim number.

SAFEGUARDS:

On-line access to data in the Claims Data Base (Automated) is controlled by password protection.

RETENTION AND DISPOSAL:

Claim records remain on the data base for 4 months after a claim has been zero-balanced, at which time the data is transferred from disk to tape files. The data is retained on tape files for 1 year. Data on magnetic tape files is then written over for disposal.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Kansas City Management Office, FSA, USDA, 8930 Ward Parkway, Kansas City, Missouri 64114.

NOTIFICATION PROCEDURE:

An individual may request information as to whether the system contains records pertaining to such individual from the Director, Kansas City Management Office, FSA, USDA, 8930 Ward Parkway, Kansas City, Missouri 64114. A request for information regarding an individual should include: Full name, address, ZIP code, producer identification number, (if available), farm number or claim number, and any other pertinent information to help identify the file. Before information about any record is

released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURES:

An individual may obtain information about a record in the system which pertains to such individual by submitting a written request to the above listed System Manager. The envelope and letter should be marked ''Privacy Act Request.'' A request for information should contain: Name, address, ZIP code, name of the system of records, year of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend the information maintained in the system should direct their request to the above listed System Manager, and should include the reason for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate. A request for contesting records should contain: Name, address, ZIP code, name of the system of records, year of records in question, and any other pertinent information to help identify the file.

RECORD SOURCE CATEGORIES:

Records in this system come primarily from documents submitted by the FSA county office maintaining farm records on the individual producer. Information in these records is obtained directly from the individuals in the system.

USDA/FSA–14

SYSTEM NAME:

Applicant/Borrower, USDA/FSA–14.

SYSTEM LOCATION:

Each Farm Service Agency (FSA) applicant's/borrower's records are located in the Agricultural Credit Team Office, County, District, or State Office through which the financial assistance is sought or was obtained, and electronic account records are in the Finance Office in St. Louis, Missouri. A State Office version of the Team Office, County or District office file may be located in or accessible by the State Office which is responsible for that Agricultural Credit Team, County or District Office. Correspondence regarding borrowers is located in the Agricultural Credit Team, County, District, State and National Office files. The addresses of Agricultural Credit Team, County, District and State Offices are listed in the telephone directory of the appropriate city or town under the heading ''United States Government, Department of Agriculture, Farm Service Agency.'' The Finance Office is located at 1520 Market Street, St. Louis, Missouri 63103.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former FSA applicants/borrowers and their respective household members including members of associations.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes files containing characteristics of applicants/borrowers and their respective household members, such as gross and net income, sources of income, capital, assets and liabilities, net worth, age, race, number of dependents, marital status, reference material, farm or ranch operating plans, and property appraisals.

The system also includes credit reports and personal references from credit agencies, lenders, businesses, and individuals. In addition, a running record of observation concerning the operations of the person being financed is included. A record of deposits to and withdrawals from an individual's supervised bank account is also contained in those files where appropriate. In some Agricultural Credit Team and County Offices, this record is maintained in a separate folder containing only information relating to activity within supervised bank accounts. Some items or information are extracted from the individual's file and placed in a card file for quick reference.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1921 et. seq., 42 U.S.C. 1471 et. seq., and 42 U.S.C. 2706.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records contained in this system may be disclosed:

(1) To the appropriate agency, whether Federal, State, local, tribal, foreign, or other public authority foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute or a rule, regulation or order issued pursuant thereto, or of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving agency;

(2) To business firms in a trade area that buy chattel or crops or sell them for commission. The disclosure may include the name, home address, social security numbers and financial information. This is being done so that FSA may benefit from the purchaser notification provisions of section 1324 of the Food Security Act of 1985 (7 U.S.C. 163(e)). The Act requires that potential purchasers of farm commodities must be advised ahead of time that a lien exists in order for the creditor to perfect its lien against such purchases;

(3) To the appropriate authority when a default involves a security interest in tribal allotted or trust land. The disclosure may include the name, home address, and information concerning default on loan repayment. Pursuant to the Cranston-Gonzales National Affordable Housing Act of 1990 (42 U.S.C. 12701 et. seq.), liquidation may be pursued only after offering to transfer the account to an eligible tribal member, the tribe, or the Indian housing authority serving the tribe(s);

(4) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the written request of that individual;

(5) To a collection or servicing contractor, financial institution, or a local, State, or Federal agency, when FSA determines such referral is appropriate for servicing or collecting the borrower's account or as provided in contracts with servicing or collection agencies. The disclosure may include name, home address, social security number, and financial information;

(6) In a proceeding before a court or adjudicative body, when: (a) the agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States is a party to litigation or has an interest in such litigation and, by careful review, the agency determines that the records are both relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the agency collected the records;

(7) To financial consultants, advisors, lending institutions, packagers, agents, and private or commercial credit sources when FSA determines such

referral is appropriate to encourage the borrowers to refinance their FSA indebtedness as required by Title V of the Housing Act of 1949, as amended (42 U.S.C. 1471). The disclosure may include name, home address, and financial information for selected borrowers;

(8) To the Department of the Treasury, Internal Revenue Service (IRS), any legally enforceable debt(s), to be offset against any tax refund that may become due the debtor for the tax year in which the referral is made, in accordance with the IRS regulations at 26 CFR 301.6402–6T, Offset of Past Due Legally Enforceable Debt Against Overpayment, and under the authority contained in 31 U.S.C. 3720A;

(9) To the Defense Manpower Data Center, Department of Defense, and the United States Postal Service any information regarding indebtedness, for the purpose of conducting computer matching programs to identify and locate individuals receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by the FSA in order to collect debts under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365) by voluntary repayment, administrative or salary offset procedures, or by collection agencies;

(10) To lending institutions any financial information when FSA determines the individual may be financially capable of qualifying for credit with or without a guarantee. The referral may contain name, home address, and financial information;

(11) To lending institutions that have a lien against the same property as FSA, for the purpose of the collection of the debt. These loans can be under the direct or guaranteed loan programs. Disclosure may include names, home addresses, social security numbers, and financial information;

(12) To private attorneys under contract with either FSA or with the Department of Justice for the purpose of foreclosure and possession actions and collection of past due accounts in connection with FSA loans;

(13) To the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necesssary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records;

(14) To the Department of Housing and Urban Development (HUD) as a record of location utilized by Federal agencies for an automatic credit prescreening system. The disclosure may include names, home addresses, social security numbers, and financial information;

(15) To the Department of Labor, State Wage Information Collection agencies, and other Federal, State, and local agencies, as well as those responsible for verifying information furnished to qualify for Federal benefits, to conduct wage and benefit matching through manual and/or automated means, for the purpose of determining compliance with Federal regulations and appropriate servicing actions against those not entitled to program benefits, including possible recovery of improper benefits. This may include names, home addresses, social security numbers, and financial information; and

(16) To financial consultants, advisors, or underwriters, when FSA determines such referral is appropriate for developing packaging and marketing strategies involving the sale of FSA loan assets. The referral may include names, home addresses, and financial information.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12): Disclosure may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically and in file folders at the Agricultural Credit Team, County, District, State, and National offices. A limited subset of personal, financial and characteristics data required for effective management of the programs and borrower repayment status is maintained on disk or magnetic tape at the Finance Office. This subset of data may be accessed by the authorized personnel from each office.

RETRIEVABILITY:

Records are indexed by name, identification number and type of loan. Data may be retrieved from paper records or the magnetic tapes. A limited subset is available through telecommunications capability, ranging from telephones to intelligent terminals. All FSA Agricultural Credit Team, State, National and some county offices have the telecommunications capability available to access this subset of data.

SAFEGUARDS:

Records are kept in locked offices at the Agricultural Credit Team, County, District, State and National Offices. A limited subset of data is also maintained in a tape and disk library and an on-line retrieval system at the Finance Office. Access is restricted to authorized FSA personnel. A system operator and terminal passwords and code numbers are used to restrict access to the online system. Passwords and code numbers are changed as necessary.

RETENTION AND DISPOSAL:

Records are maintained subject to the Federal Records Disposal Act of 1943 (44 U.S.C. 366–380) and in accordance with FSA's disposal schedules. The Agricultural Credit Team, District, County, State and National office dispose of records by shredding, burning, or other suitable disposal methods after established retention periods have been fulfilled. Finance Office records are disposed of by overprinting. (Destruction methods may never compromise the confidentiality of information contained in the records). Applications, including credit reports and personal references which are rejected, withdrawn, or otherwise terminated, are kept in the Agricultural Credit, County, District, or State office for 2 full fiscal years and 1 month after the end of the fiscal year in which the application was rejected, withdrawn, canceled, or expired. If final action was taken on the application, including an appeal, investigation, or litigation, the application is kept for 1 full fiscal year after the end of the fiscal year in which final action was taken. The records, including credit reports, of borrowers who have paid or otherwise satisfied their obligations are retained at the Agricultural Credit Team, County, District, or State Office for 1 full fiscal year after the fiscal year in which the loan was paid in full. Correspondence records at the National Office which concern borrowers and applicants are retained for 3 full fiscal years after the last year in which there was correspondence.

SYSTEM MANAGER(S) AND ADDRESS:

The Agricultural Credit Manager at the Agricultural Credit Team Office or at the County Office, District Director at

the District Office, and the State Executive Director at the State Office, the Assistant Administrator of the Finance Office for Finance Office in St. Louis, MO, and the FSA Administrator for the National Office at the following address: USDA/FSA Administrator, Stop 0501, PO 2415, Washington, DC 20250–2415.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records, or determine whether the system contains records pertaining to themselves from the appropriate Systems Manager. If specific location of the record is not known, the individual should address their request to: Administrator, FSA, Attention: Freedom of Information Officer, Stop 0506, PO Box 2415, Washington, DC 20013–2415. A request for information should include: Name, address, State and county where the loan was applied for or approved, and particulars involved (i.e. date of request/approval, type of loan, etc.).

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to a record in this system which pertains to themselves by submitting a written request to one of the Systems Managers. The envelope and letter should be marked ''Privacy Act Request.'' A request for information should contain: Name, address, ZIP code, name of the system of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the above listed System Manager, and should include the reason for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate. A request for contesting records should contain: Name, address, ZIP code, name of the system of records in question, and any other pertinent information to help identify the file.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from the borrower. Credit reports and personal references come primarily from credit agencies and creditors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

USDA/FSA–15

SYSTEM NAME:

Designated Attorney and Escrow Agent File, USDA/FSA–15.

SYSTEM LOCATION:

Each designated attorney or escrow agent file is located in the Agricultural Credit Team or County Office and State Office in the State in which they are designated. In addition, all designated attorneys and escrow agents are listed at the National Office. The addresses of State and County offices are listed in the telephone directory of the appropriate city or town under the heading ''United States Government, Department of Agriculture, Farm Service Agency''.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All FSA designated attorneys and escrow agents, including those whose designations have expired within the last year.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of a list of names of designated attorneys and escrow agents, and may include comments as to whether their performance has been satisfactory.

AUTHORITY FOR MAINTENANCE OF THIS SYSTEM:

7 U.S.C. 1921 et. seq., 42 U.S.C. 1471 et. seq., and 5 U.S.C. 301

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records contained in this system may be disclosed:

(1) To the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute or a rule, regulation or order issued pursuant thereto, or of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto;

(2) To FSA borrowers prior to loan closing and to other interested parties upon request; and

(3) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders at the appropriate location.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are kept in locked offices at all levels. Access at all levels is restricted to authorized FSA personnel.

RETENTION AND DISPOSAL:

Records are maintained subject to the Federal Records Disposal Act of 1943 (44 U.S.C. 366–380) and in accordance with FSA's disposal schedules. Records are destroyed 1 year after termination of the designation.

SYSTEM MANAGER(S) AND ADDRESS:

The Agricultural Credit Manager at the County level, District Director at the District level, the State Executive Director at the State level, and the Administrator, FSA, for the National Office file at the following address: USDA/FSA, Stop 0501, Washington, DC 20013–2415.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records, or information as to whether this system contains records pertaining to themselves from the appropriate systems manager. If the specific location of the record is not known, the individual should address the request to the Administrator (Attention: Freedom of Information Officer), USDA/FSA, Stop 0506, PO Box 2415, Washington, DC 20013–2415. A request for information pertaining to an individual should contain: Name, address and State and county in which the individual was a designated attorney or escrow agent.

RECORDS ACCESS PROCEDURES:

An individual may obtain information as to the procedures for gaining access to a record in the system which pertains to themselves by submitting a written request to one of the Systems Mangers referred to in the preceding paragraph. A request for information pertaining to an individual should contain: Name, address, ZIP code, name of system of record, year of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the

above System Manager, and should include the reason for contesting it and the proposed admenment to the information with supporting information to show how the record is inaccurate. A request for contesting records pertaining to an individual should contain: Name, address, ZIP code, name of system of record, year of records in question, and any other pertinent information to help identify the file.

RECORD SOURCE CATEGORIES:

Information comes primarily from the subject of the file.

USDA/FSA–16

SYSTEM NAME:

Graduation File, USDA/FSA–16.

SYSTEM LOCATION:

Each borrower's graduation file is located in the Agricultural Credit Team Office or County Office through which the borrower obtained the loan and, in some cases, at the State Office responsible for that Agricultural Credit Team Office or County office. The addresses of State and County Offices are listed in the telephone directory under the heading ''United States Government, Department of Agriculture, Farm Service Agency.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All FSA borrower's whose loans are eligible for review to determine the borrower should obtain credit from other sources. All borrowers who have been in debt for at least 3 years on an emergency loan, an operating loan, or a real estate loan are considered eligible for review.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of files containing names of borrowers eligible for review, type of loan, whether graduation is advisable, and any communications with the borrower concerning whether the loan has been paid off or if the borrower is unable to refinance, as well as comments of the county committee and the Agricultural Credit Manager.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1921 et. seq., 42 U.S.C. 1471 et. seq., and 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records contained in this system may be disclosed:

(1) To the appropriate agency, whether Federal, State, local, tribal, or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, or of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule regulation or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving agency;

(2) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the written request of that individual; and

(3) To financial consultants, advisors, lending institutions, packagers, agents, and private or commercial credit sources, when FSA determines such referral is appropriate to encourage contacting selected borrowers to facilitate the refinancing of their FSA indebtedness as required by Title V of the Housing Act of 1949, as amended.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are kept in locked offices, and access is restricted to authorized FSA personnel.

RETENTION AND DISPOSAL:

Records are retained for 3 years after the list of borrowers eligible for review was received by the Agricultural Credit Manager.

SYSTEM MANAGER(S) AND ADDRESS:

The Agricultural Credit Manager and the State Executive Director at the appropriate levels.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records, or determine whether the system contains records pertaining to themselves from the appropriate Systems Manager. If specific location of the record is not known, the individual should address their request to: Administrator, FSA, Attention: Freedom of Information Officer, Stop 0506, PO Box 2415, Washington, DC 20013–2415. A request for information should contain: Name, address, the FSA Office where loan or was applied for or approved and particulars involved (i.e., date of request/approval, type of loan, etc.).

RECORD ACCESS PROCEDURES:

Any individual may obtain information regarding the procedures for gaining access to a record in the system which pertains to themselves by submitting a written request to one of the Systems Managers referred to in the preceding paragraph. The envelope and letter should be marked ''Privacy Act Request.'' A request for information should contain: Name, address, ZIP code, name of the system of records, year of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the above listed System Manager and should include the reason for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate. A request for contesting records should contain: Name, address, ZIP code, name of the system of records, year of records in question, and any other pertinent information to help identify the file.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from the borrower.

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BILLING CODE 3410–05–P

Natural Resources Conservation Service

Marshland Watershed Project; Marshland Dike: Wallace to Yoshihara: Snohomish County, WA

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of availability of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Marshland Watershed Project; Marshland Dike, Wallace to Yoshihara. Snohomish County, Washington.

FOR FURTHER INFORMATION CONTACT:

Lynn A. Brown, State Conservationist, Natural Resources Conservation Service, West 316 Boone Avenue, Suite 450, Spokane, Washington 99201, telephone (509) 353–2337.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Lynn A. Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project was authorized for construction in 1962 under the authority of the Watershed Protection and Flood Prevention Act (PL 83–566) as amended and administered by the USDA, Natural Resources Conservation Service (NRCS).

The project (Wallace to Yoshihara) plans to remove the existing, uncompacted dike and the Lowell-Snohomish River Road and return the area to a natural river levee, associated riparian area, and pasture land. A new dike is planned for construction away from the river (off-set) and will be built with suitable compacted material. The extent of the dike construction is from a point near the Wallace property to the Yoshihara property amounting to 7,966 feet. The designed height of the dike will be in accordance with the *Levee and Dike System Coordination Agreement,* signed March 13, 1991, which is part of the *Snohomish River Comprehensive Flood Control Management Plan,* dated December 1991. The agreed to dike height is the 5-year flood frequency level plus one foot of freeboard. The dike is designed to withstand overtopping during high flows in the Snohomish River. The off-set dike will leave 12.5 acres exposed to low level flood waters. Currently, this area is divided into four parcels having four different owners. The four parcels contain six residences and associated out-buildings. The selected treatment alternative will require the removal of these homes and buildings. The Marshland Flood Control District, project sponsors, will provide land rights and/or easements.

The Notice of Availability of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI/Final Environmental Assessment are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Frank R. Easter, Watershed Planning Team Leader.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under NO. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: January 28, 1997.

Lynn A. Brown,

State Conservationist.

[FR Doc. 97–2957 Filed 2–5–97; 8:45 am]

BILLING CODE 3410–16–M

Task Force on Agricultural Air Quality; Notice of Meeting

AGENCY: Natural Resources Conservation Service, Agriculture.

ACTION: Notice of meeting.

SUMMARY: Consistent with Section 391 of the 1996 Federal Agriculture Improvement and Reform (FAIR) Act, the Secretary of Agriculture has established a task force to address agricultural air quality issues. The Task Force on Agricultural Air Quality will meet for the first time on the date and location below to establish operating procedures, outline objectives, and discuss other pertinent air quality issues. The meeting is open to the public.

DATES: The two day meeting will take place Wednesday and Thursday, March 5 and 6, 1997 from 9:00 a.m. to 5:00 p.m. Written material and requests to make oral presentations should reach the Natural Resources Conservation Service on or before February 28, 1997.

ADDRESSES: The meeting will be held in the Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, NW, Washington, DC. Written material and requests to make oral presentations should be sent to George Bluhm, University of California, Land, Air, Water Resources, 151 Hoagland Hall, Davis, CA 95616–6827.

FOR FURTHER INFORMATION CONTACT: George Bluhm, telephone (916) 752–1018, fax (916) 752–1552.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda for the March 5–6, 1997 Meeting

(1) Welcome by Task Force Chair Paul Johnson.

(2) Remarks by George Bluhm, Designated Agency Official.

(3) Introduction of members.

(4) Establish operating procedures and outline objectives.

(5) Discussion of pertinent issues brought up by the public or Task Force members.

(6) Set date and location for next meeting.

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may present oral presentations during the March 5–6, 1997 meeting. Persons wishing to make oral presentations at the March 5–6, 1997 meeting should notify George Bluhm, Designated Agency Official, no later than February 28, 1997. If a person submitting material would like a copy distributed to each member of the committee in advance of the meeting, that person should submit 25 copies to George Bluhm no later than February 28, 1997.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact George Bluhm as soon as possible.

Gary A. Margheim,

Acting Deputy Chief for Science and Technology, Natural Resources Conservation Service.

[FR Doc. 97–2981 Filed 2–5–97; 8:45 am]

BILLING CODE 3014–16–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act; Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, February 14, 1997, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of January 17, 1997 Meeting
III. Announcements
IV. Staff Report
V. Project Planning FY 1999
VI. Future Agenda Items

11:00 a.m. Briefing on Equal Educational Opportunity Project

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 97–3087 Filed 2–4–97; 12:20 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–812]

Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Antidumping Duty Administrative Review; Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits of preliminary results of review.

SUMMARY: The Department of Commerce (the Department) is extending the time limits of the preliminary results of the third antidumping duty administrative review of dynamic random access memory semiconductors (DRAMs) from the Republic of Korea. The review covers two manufacturers/exporters of the subject merchandise to the United States and the period May 1, 1995 through April 30, 1996.

EFFECTIVE DATE: February 6, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas F. Futtner, AD/CVD Enforcement Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–3814.

SUPPLEMENTARY INFORMATION: Both respondents in this proceeding have requested revocation of the antidumping duty order. At the request of parties to this proceeding, we have allowed parties to submit factual information on the record pertaining to the revocation issue and the likelihood of dumping in the future by the respondents. The petitioner and both respondents submitted such data on January 15, 1997, with rebuttal comments filed on January 27, 1997. In order to ensure ample time to fully analyze these factual submissions on a very complex issue, it is not practicable to issue the preliminary results within the original deadline mandated by Section 751(a)(3)(A) of the Trade and Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994. Accordingly, the Department is extending the time limits for completion of the preliminary results until no later than June 2, 1997.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: January 31, 1997.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 97–3007 Filed 2–5–97; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–351–605]

Frozen Concentrated Orange Juice From Brazil: Preliminary Results and Termination in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and termination in part of antidumping duty administrative review.

SUMMARY: In response to a request by Branco Peres Citrus, S.A. (Branco Peres) and CTM Citrus, S.A. (CTM) (which has since withdrawn its request, see below), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. This review covers Branco Peres' exports of the subject merchandise to the United States. The period of review (POR) is May 1, 1995 through April 30, 1996. This is the ninth period of review.

The review indicates that there is no dumping margin for the above producer/exporter during this POR.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding should also submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: February 6, 1997.

FOR FURTHER INFORMATION CONTACT: Fabian Rivelis, Office of AD/CVD Enforcement Group II, Import Administration—Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3853.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On March 17, 1987, the Department published in the Federal Register (52 FR 8324) the final affirmative antidumping duty determination on FCOJ from Brazil. We published an antidumping duty order on May 5, 1987 (52 FR 16426).

On May 8, 1996, the Department published the Notice of Opportunity to Request an Administrative Review of this order for the period May 1, 1995 through April 30, 1996 (61 FR 20791). We received timely requests for review from two producers/exporters of the subject merchandise to the United States: CTM and Branco Peres. In addition, we received a timely request from Branco Peres that the Department revoke the antidumping duty order with respect to Branco Peres. On June 25, 1996, the Department initiated the review (61 FR 32771).

The Department issued the antidumping duty questionnaire on June 23, 1996, and we received Branco Peres' response to Sections A, B, and C on August 7, 1996. Section A of the questionnaire requests general information concerning the company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of that merchandise in all markets. Sections B and C of the questionnaire request home market or third country sales listings and U.S. sales listings, respectively. Also on August 7, 1996, CTM withdrew its request for administrative review. Accordingly, in accordance with 19 CFR 353.22(a)(5), we are terminating this review with respect to CTM.

The Department issued a supplemental questionnaire to Branco Peres on September 19, 1996, and we received a response on October 10, 1996. In December 1996, the Department conducted a verification of Branco Peres' response for this POR. On December 16, 1996, Branco Peres

submitted revised sales listings based on verification findings.

The Department is conducting this review in accordance with section 751(a) of the Act.

Scope of the Review

Imports covered by this review are shipments of FCOJ from Brazil. This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2009.11.00. Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive. The POR is May 1, 1995 through April 30, 1996.

United States Price

We based United States Price on export price (EP) in accordance with section 772 of the Act because the subject merchandise was sold to the first unaffiliated purchaser prior to importation into the United States and constructed export price methodology was not otherwise warranted. We calculated EP based on f.o.b. prices to unaffiliated purchasers in the United States. Where appropriate, we made deductions from the starting price for inland freight expense, pre-sale warehousing expense, inland insurance expense, and brokerage and handling expense, in accordance with section 772(c)(2)(A) of the Act.

Normal Value

In order to determine whether there was a sufficient volume of sales of FCOJ in the home market to serve as a viable basis for calculating NV, we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the aggregate volume of home market sales of the foreign like product was less than five percent of the respective aggregate volume of U.S. sales for the subject merchandise, we determined that the home market does not provide a viable basis for calculating NV for Branco Peres. We selected the Netherlands as the appropriate third country market for Branco Peres in accordance with the criteria specified in 19 CFR 353.49(b).

We adjusted NV where appropriate to restate price and quantity on the same concentration basis as U.S. sales. We calculated NV based on f.o.b. prices to unaffiliated customers. We deducted, where appropriate, foreign inland freight expense, pre-sale warehousing expense, inland insurance, and brokerage and handling expenses, in accordance with section 773(a)(6)(B) of the Act. We made circumstance-of-sale adjustments for differences in commissions and credit expenses in accordance with section 773(a)(6)(C)(iii) of the Act.

Fair Value Comparisons

To determine whether sales of FCOJ by Branco Peres to the United States were made at less than fair value, we compared EP to NV, as described in the ''United States Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Preliminary Results of the Review

Pursuant to 19 CFR 353.25(a)(2)(i) and 19 CFR 353.25(c)(2)(iii), we find that Branco Peres has not demonstrated that it sold subject merchandise at not less than NV for three consecutive periods of review. We note, in this regard, that respondent withdrew its request for review for the previous review period, 60 FR 53163, (October 12, 1995). Therefore, we are not publishing a Notice of Intent to Revoke.

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists for the POR:

Manufacturer/ exporter	Period	Margin per-cent-age
Branco Peres ..	5/1/95–4/30/96	0.00

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and NV may vary from the percentage stated above. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of FCOJ from Brazil entered, or withdrawn from warehouse, for consumption on or after publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Branco Peres, because its weighted average margin was *de minimis*, will be zero percent; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original Less Than Fair Value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, a previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of the most recent review, or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 1.96 percent, the ''all-others'' rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Interested parties may request disclosure within five days of the date of publication of this notice, and may request a hearing within 10 days of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first business day thereafter.

Case briefs or other written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments, within 120 days after the date of publication of this notice.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26(b) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with section 751(a)(1) of the Act and 19 CFR 353.22.

Dated: January 31, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–3004 Filed 2–5–97; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

A–475–703

Granular Polytetrafluoroethylene Resin From Italy; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On October 1, 1996, the Department of Commerce (the Department) published the preliminary results of its 1994–95 administrative review of the antidumping duty order on granular polytetrafluoroethylene (PTFE) resin from Italy. The review covers one manufacturer/exporter, Ausimont S.p.A. (Ausimont), for the period August 1, 1994, through July 31, 1995. We gave interested parties an opportunity to comment on our preliminary results. We received comments from E. I. DuPont de Nemours & Company (DuPont), the petitioner in this proceeding, and we received a rebuttal from Ausimont. We have changed our preliminary results as explained below. The final margin for Ausimont is listed below in the section ''Final Results of Review.''

EFFECTIVE DATE: February 6, 1997.

FOR FURTHER INFORMATION CONTACT: Chip Hayes or Richard Rimlinger, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On October 1, 1996, the Department published in the Federal Register the preliminary results of its 1994–95 administrative review of the antidumping duty order on granular PTFE resin from Italy (61 FR 51266). We gave interested parties an opportunity to comment on the preliminary results. There was no request for a hearing. The Department has now conducted this review in accordance with section 751 of the Tariff Act.

Scope of the Review

The product covered by this review is granular PTFE resins, filled or unfilled. This order also covers PTFE wet raw polymer exported from Italy to the United States. See Granular Polytetrafluoroethylene Resin from Italy; Final Determination of Circumvention of Antidumping Duty Order, 58 FR 26100 (April 30, 1993). This order excludes PTFE dispersions in water and fine powders. During the period covered by this review, such merchandise was classified under item number 3904.61.00 of the Harmonized Tariff Schedule (HTS). We are providing this HTS number for convenience and Customs purposes only. The written description of the scope remains dispositive.

The review covers one Italian manufacturer/exporter of granular PTFE resin, Ausimont, and the period August 1, 1994 through July 31, 1995.

Use of Facts Available

In our initial questionnaire, we requested that Ausimont provide value-added data for all models which are further manufactured in the United States. Ausimont did not provide this information. In a supplemental questionnaire dated May 26, 1996, we again requested that Ausimont report the cost of further manufacturing performed in the United States. In responding, Ausimont still failed to provide this information for certain models.

Section 776(a) of the Tariff Act provides that, if necessary information is not available on the record, or an interested party or any other person fails to provide such information by the deadlines for submission of the information or in the form and manner requested, the Department shall use the facts otherwise available. In addition, section 776(b) of the Tariff Act provides that, if an interested party has failed to cooperate to the best of its ability, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.

Ausimont's failure to provide further-manufacturing data for certain models renders it necessary that we rely upon the facts otherwise available. Ausimont offered no explanation for this failure on its part, despite the Department's repeated requests for this information. On this basis, we determined in our preliminary results that Ausimont failed to cooperate to the best of its ability. Therefore, we determined it was appropriate to use an inference that is adverse to Ausimont's interests, pursuant to section 776(b) of the Tariff Act. Section 776(b) authorizes the Department to use as facts otherwise available information derived from the petition, the final determination, a previous administrative review, or any other information placed on the record. For our final results, we have determined that the number of models for which Ausimont failed to provide further-manufacturing data are relatively few in number. Moreover, the absence of this information has no impact upon the remainder of Ausimont's database. For these reasons, we are not resorting to total facts available under section 776(a). As facts available, we have selected Ausimont's highest reported cost of further manufacturing and have used it in our analysis of sales of those models for which Ausimont failed to report the cost of further manufacturing.

Analysis of Comments Received

We invited interested parties to comment on our preliminary results. We received comments from DuPont and rebuttal comments from Ausimont.

Comment 1: DuPont contends that the Department erred in using a negative profit amount in the calculation of constructed export price (CEP) for further-manufactured transactions. Petitioner points out that section 772(d)(3) of the statute directs the Department to make an adjustment to CEP for profit allocable to the selling, distribution, and further-manufacturing expenses incurred in the United States. However, petitioner asserts that the Statement of Administrative Action (SAA) to the new law states, at 825, that ''if there is no profit to be allocated (because the affiliated entity is operating at a loss in the United States * * *) Commerce will make no adjustment under section 772(d)(3).'' DuPont therefore contends that, under the new law, the Department cannot use a profit amount of less than zero in adjusting CEP on sales of further-manufactured products. DuPont argues further that the

Department should revise its calculations to limit any allocated profit figure to an amount that is no less than zero.

Ausimont responds that DuPont has misinterpreted the SAA, in that the SAA clearly intends that the Department use total profit for an affiliated entity in the United States and foreign markets to adjust CEP, rather than test the profitability of each U.S. transaction. Furthermore, respondent asserts that the affiliated U.S. entity, Ausimont U.S.A., did not operate at a loss during the period of review (POR) and that petitioner's argument does not fit the facts of the present case and should be rejected.

Department's Position: We agree with DuPont that the allocated profit which we deduct in calculating CEP should not be a negative amount. In our calculations for the preliminary results we made two deductions from CEP for allocated profit. This was an error. Section 772(d)(3) of the Act directs us to allocate profit to the expenses and further-manufacturing costs identified in sections 772(d) (1) and (2). This is a change from the pre-URAA statute, which directed us to make a deduction for ''any increased value'' (see 772(e)(3) (1994)), which we interpreted as requiring allocations of selling, general, and administrative (SG&A) expenses and profit associated with further-manufacturing activities in the United States. The language in section 772(d)(3) of the 1995 Act in effect for this review requires us to allocate profit to the expenses associated with selling the subject merchandise in the United States and the cost of any further manufacture. The additional transaction-specific allocation of profit to reflect ''any increased value'' is not appropriate. Therefore, for these final results, we have changed our calculations such that we have not made two deductions from CEP for profit on further-manufactured sales.

We do not agree, however, that, when calculating the CEP-profit deduction, we should set the profit on each transaction we use to calculate total actual profit to be no less than zero. The determination of the amount of profit to deduct from CEP transactions is essentially a two-step process. We first calculate the total actual profit for all sales of the subject merchandise and the foreign like product. We then allocate the total profit to individual CEP transactions based on the applicable percentage. In the first step, *i.e.*, determining total actual profit, we use all sales of the subject merchandise in the United States and the foreign like product in the foreign market, including sales made at a loss. ''Total actual profit'' means that losses in one market may offset profits in another. In the second step, *i.e.*, allocation, if there is no total actual profit to allocate (*i.e.*, the losses in both markets outweigh profits), we will make no CEP-profit deduction. DuPont relies incorrectly on the section of the SAA which identifies this latter situation (SAA at 825 (''(i)f there is no profit to be allocated (because the affiliated entity is operating at a loss in the United States and foreign markets) Commerce will make no adjustment under section 772(d)(3)''); *see also Proposed Regulations* (61 FR 7308, February 27, 1996) (comments on section 351.402) at 7331).

Comment 2: DuPont asserts that the Department incorrectly transcribed the profit ratio for calculating the CEP profit adjustment from its preliminary analysis memorandum to the program it used to calculate the dumping margins. Ausimont agrees that the Department transcribed the ratio incorrectly.

Department's Position: We agree with the parties. We have corrected the profit ratio for the final results.

Comment 3: DuPont contends that, in assigning a value of zero for variable costs of manufacturing as facts otherwise available to categories of U.S. merchandise for which Ausimont did not submit variable costs of manufacturing, the Department rewarded respondent for failing to provide data required to calculate a difference-in-merchandise adjustment. Petitioner claims that setting the value to zero distorts the difference-in-merchandise adjustment and eliminates potential margins. Petitioner contends that a more appropriate choice for facts available is the highest variable cost of manufacturing for any U.S. product code.

Ausimont rejoins that the inadvertent omission of variable cost of manufacturing was for only one U.S. product code and affected a negligible number of U.S. transactions. Therefore, Ausimont states that the use of facts available is unnecessary and unwarranted.

Department's Position: We agree with DuPont that designating a value of zero for variable costs of manufacturing that Ausimont did not submit is not appropriate. However, we disagree that using the highest variable cost of manufacturing is appropriate in this case. In light of the nature and the extent of the deficiency, we have determined to use the average of Ausimont's submitted variable costs of manufacture in our calculation of the difference-in-merchandise adjustment for these transactions.

Comment 4: DuPont claims that, in calculating further-manufacturing costs, the Department relied upon the amount in Ausimont's computer tape for determining the cost of further manufacturing and omitted a component for total general expense Ausimont reported in its February 21, 1996 questionnaire response. Petitioner believes the Department should add the reported amount to the further-manufacturing costs.

Ausimont answers that the amount it reported in an exhibit of its response is simply the sum of three expense items that it reported in the same exhibit and that it included these expense items in its submission of total costs of further manufacturing.

Department's Position: We disagree with petitioner that we omitted an element of further-manufacturing costs in our calculation of total costs. Including the amount DuPont cites would cause us to double-count Ausimont's reported expenses because that amount is a sum of specific expenses submitted by Ausimont. Therefore, we have not changed our calculation for the final results.

Comment 5: DuPont avers that the Department must review Ausimont's reported data to identify all instances where it omitted required data from the questionnaire and supplemental responses and to apply facts otherwise available where any such omission occurs.

Ausimont counters that, other than the omission mentioned in Comment 3, no required data were unreported and that the use of facts otherwise available is unwarranted.

Department's Position: We agree with petitioner that it is proper to apply facts otherwise available in any instance where Ausimont did not submit required data. In our analysis, we conduct various checks of the transaction-specific data to determine where data are missing. Other than the missing data discussed in the Fact Available section and in Comment 3 above, we found no indication that Ausimont neglected to report requested data.

Final Results of the Review

We determine the following weighted-average dumping margin exists:

Manufacturer/exporter	Period	Margin (percent)
Ausimont S.p.A.	08/01/94–07/31/95	17.73

The Department shall determine, and the Customs Service shall assess,

antidumping duties on all appropriate entries. Individual differences between U.S. price and normal value (NV) may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Ausimont will be 17.73 percent; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less than fair value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, a previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 46.46 percent, the ''all others'' rate established in the LTFV investigation (50 FR 26019, June 24, 1985).

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 (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations (19 CFR 353.22 (1996)).

Dated: January 27, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–2881 Filed 2–5–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–703]

Certain Internal-Combustion Industrial Forklift Trucks From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 2, 1996, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on certain internal-combustion industrial forklift trucks from Japan. The review covers three manufacturers/exporters. The period of review is June 1, 1994 through May 31, 1995.

Based on our analysis of the comments received, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculation for Toyota Motor Corporation. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''*Final Results of the Review*.''

EFFECTIVE DATE: Febraury 6, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow, Davina Hashmi or Kris Campbell, at Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On August 2, 1996, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on certain internal-combustion industrial forklift trucks from Japan (61 FR 40400)(Preliminary Results). The review covers three manufacturers/exporters. The period of review (the POR) is June 1, 1994, through May 31, 1995. We invited parties to comment on our Preliminary Results. We received briefs and rebuttal briefs on behalf of NACCO Materials Handling Group, Inc. (petitioners), and Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc. (Toyota). At the request of Toyota, a hearing was scheduled but was subsequently canceled at Toyota's request. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by this review are certain internal-combustion, industrial forklift trucks, with lifting capacity of 2,000 to 15,000 pounds. The products covered by this review are further described as follows: Assembled, not assembled, and less than complete, finished and not finished, operator-riding forklift trucks powered by gasoline, propane, or diesel fuel internal-combustion engines of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles. Less-than-complete forklift trucks are defined as imports which include a frame by itself or a frame assembled with one or more component parts. Component parts of the subject forklift trucks which are not assembled with a frame are not covered by this order.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8427.20.00, 8427.90.00, and 8431.20.00. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

This review covers the following firms: Toyota, Nissan Motor Company (Nissan), and Toyo Umpanki Company, Ltd. (Toyo).

Use of Facts Available

In accordance with section 776 of the Act, we have determined that the use of facts available is appropriate for certain portions of our analysis of Toyota's data. For a discussion of our application of facts available, see Comments 1 through 3, below.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain corrections that changed our results. We have corrected certain programming and clerical errors in our Preliminary Results, where applicable; they are discussed in the relevant comment sections below.

Analysis of Comments and Responses

Issues raised in the case and rebuttal briefs by parties to this administrative review are addressed below.

Toyota's Comments

Comment 1

Toyota provided the following general comments regarding the Department's use of the facts available in this review.[1] Toyota asserts that the Department's use of facts available for the Preliminary Results is punitive and is disproportionate to any perceived deficiencies at verification. Toyota suggests that the facts available are not corroborated—and in fact are contradicted—by available evidence, contrary to law and Department precedent.

Toyota asserts that the Department's use of facts available is governed by a two-step inquiry (citing *Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey*, 61 FR 35188, 35189 (1996), and *Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 30309, 30312) (*Pasta from Turkey*)). First, Toyota states that section 776(a)(2)(D) of the Act allows use of facts otherwise available if an interested party provided information but it cannot be verified and notes that the SAA directs that such facts available must be ''reasonable to use under the circumstances'' (citing the SAA at 869). Second, Toyota states that section 776(b) provides that, in selecting from facts available, adverse inferences may be drawn only if the ''interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information * * *.'' Toyota argues that perceived deficiencies in the verification of its reported information are not sufficient to allow the Department to resort to disproportionately punitive adverse inferences, given that Toyota's deficiencies are far from a general failure to cooperate with requests for information.

Toyota asserts that it responded fully and timely to questionnaires in this review, prepared a substantial amount of documentation for the verification, and made every effort to provide requested documents. Toyota asserts that the Department has no basis for concluding that Toyota failed to cooperate and the Department should not use adverse inferences and punitive facts available.

Toyota states that a comparison of the perceived deficiencies in Toyota's responses with past occasions in which the Department has been confronted with deficiencies, but did not draw adverse inferences, illustrates that the use of adverse facts available against Toyota was unwarranted (citing, among others, *Chrome-Plated Lug Nuts From Taiwan; Preliminary Results of Antidumping Duty Administrative Review and Termination in Part*, 61 FR 35724, 35725 (1996)).

Toyota further states that a comparison of the perceived deficiencies in its response with past occasions where the Department *has* drawn adverse inferences against interested parties also illustrates that adverse inferences against Toyota in this case were unwarranted. First, Toyota asserts that it did not fail to submit a questionnaire response (citing adverse inferences drawn as a result of failure to submit a response in, among others, *Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany*, 61 FR 38166, 38167 (1996) (*LNPP from Germany*)).

Second, Toyota notes that its response was not wholly unverifiable (citing adverse inferences drawn as a result of the complete failure of verification in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Preliminary Results of Antidumping Duty Administrative Reviews, Termination of Administrative Reviews, and Partial Termination of Administrative Reviews*, 61 FR 35713, 31716 (1996)).

Third, Toyota states that it has never refused to provide information to the Department (citing adverse inferences drawn due to a respondent's refusal to provide information in *Pasta from Turkey*, 61 FR 30309, 30312 (1996).

Toyota concludes that, given these facts and precedent, neither the statute nor the Department's practice permit the use of adverse inferences against Toyota; therefore, to the extent the Department uses facts available, the Department must select facts which are reasonable under the circumstances (citing *LNPP from Germany*, 61 FR at 38179, and the SAA at 869).

Petitioners respond that the record indicates clearly that the Department was unable to verify a substantial portion of Toyota's home market sales questionnaire response. Petitioners assert that, by the express terms of the statute, if the Department could not verify Toyota's data, the Department was not permitted by law to rely on the information to calculate Toyota's dumping margins (citing section 776 of the Act). Petitioners contend that the Department, therefore, must base its determination on the facts otherwise available.

Petitioners argue that the cases Toyota cites as instances where the Department applied adverse inferences do not support Toyota's claim that the Department was overly punitive in this case. Petitioners assert that, in those instances, the Department generally selected the highest rate from another respondent or prior review; conversely, in this case the Department did not completely reject Toyota's response even though it could not verify a substantial portion of it. Petitioners assert that, under these circumstances, the Department was not making an adverse inference but instead was simply following the requirements of the statute. Petitioners conclude that Toyota's claim that the Department made an unnecessarily punitive adverse inference when it relied on the facts otherwise available is not valid.

Department's Position

We disagree with Toyota with respect to its general comments regarding the use of the facts available in this review. Our determination in this regard is consistent with the statute and our practice. We determined, in accordance with section 776(a) of the Act, that the use of facts available for certain home market selling expenses and home market credit revenue is appropriate for Toyota because we were unable to verify the accuracy of the information Toyota submitted. As our discussions in response to Comments 2 and 3, below, make clear, despite our efforts at verification, we were unable to verify the information in question sufficiently to accept it for our analysis.

In addition, we have determined that, by not providing certain basic verification documents that were essential to the establishment of the accuracy of the data submitted (*e.g.*, expense ledgers for certain selling expenses and an affiliated company's (Toyota Finance Corporation, ''TFC'') financial statements), Toyota did not cooperate to the best of its ability to

[1] We address Toyota's specific comments regarding the use of facts available with regard to certain selling expenses and home market credit revenue in Comments 2 and 3, respectively.

comply with our requests for such information. Accordingly, our resort to an adverse inference with respect to these items is appropriate and fully in accord with law. *See* section 776(b) of the Act.

Contrary to Toyota's contention that this result is overly punitive, we have used in our analysis all data submitted by the company that we were able to verify. While we have determined that Toyota has not cooperated to the best of its ability with respect to the selling expense and credit revenue items, we find that the nature and extent of the deficiencies in Toyota's information do not undermine the credibility of other information that it submitted during this review. Accordingly, we have calculated Toyota's dumping rate using all data it submitted except for the specific information that we were unable to verify.

The cases Toyota cites do not demonstrate that we have departed from our practice in applying the facts available in this review. These cases illustrate that, consistent with the SAA, we resolve such matters on a case-by-case basis by examining the nature and extent of any deficiencies and the level of cooperation by respondent (*see* SAA at 868–870). After such an examination we determine whether to apply adverse inferences. Neither the statute nor our practice limits our use of adverse inferences to completely unresponsive firms. Rather, we may draw such inferences whenever a party fails to cooperate by not acting to the best of its ability to comply with a request for information. As discussed below, the information requests at issue were routine verification requests that in no way constituted an unreasonable burden on Toyota and, therefore, we determined that an adverse application of facts available is appropriate for these items.

Comment 2

Toyota asserts that the Department's use of the facts available with respect to the company's reported home market indirect selling expenses, home market direct advertising, and U.S. direct selling expenses incurred in Japan is inappropriately punitive. Toyota notes that, with regard to home market indirect selling expenses and direct advertising, Toyota prepared the necessary documentation in support of the expenses, and the Department verified the expenses with no discrepancies, but Toyota was simply unable to provide further details requested on site. With regard to direct U.S. selling expenses incurred in Japan, Toyota notes that it only had sufficient time to correct an error it detected in preparing for verification and did not have sufficient time to prepare the reconciliation between the actual expenses and its financial statements.

Toyota claims that it has gone through two successful verifications and states that it prepared for verification in this review in light of the information and level of documentation examined at previous verifications. Toyota contends that, when the Department requested additional documentation not anticipated by Toyota, the company was not always able to obtain the requested documents in the time permitted. Toyota argues that, where a company prepares a substantial amount of information for verification and acts to the best of its ability to obtain documents requested at verification, but is unable to obtain such in the limited time-frame of verification, it is not appropriate to penalize the company through use of punitive facts available.

Toyota claims that its home market expenses are significant and states that the Department's level-of-trade analysis confirms that the company performs extensive selling functions and incurs significant selling expenses in connection with sales in the home market. Toyota asserts that the Department's analysis for the Preliminary Results pretends these significant expenses do not exist only in those parts of the analysis when it is detrimental to Toyota, while assuming they do exist whenever such an assumption is detrimental to the company. Toyota states that this resulted in the following significant punitive and compounding adjustments: (1) By not adjusting normal value (NV) downward by the amount of these expenses, dumping duties were increased on each U.S. truck equivalent to these expenses; (2) by not including these expenses in the calculation of the company-wide profit used in the constructed export price (CEP) profit calculation, the resulting CEP profit was increased; (3) by including these expenses in the calculation of constructed value (CV) and then deducting from CV only the much smaller amount of direct and indirect selling expenses in deriving the adjusted CV for comparison to CEP, the CV was increased; and (4) by deducting these expenses from the home market prices used in the cost test, the number of sales found to be below cost increased. Toyota contends that these calculations demonstrate that, without regard to any reasonable determination about the accuracy of the expenses, at various steps in its calculations the Department applied whatever number was adverse to Toyota, effectively compounding the penalty several times through internally inconsistent applications of the adjustments. Toyota argues that this is an excessive and duplicative penalty out of proportion with perceived deficiencies, particularly since the Department reviewed substantial documents that supported the reported expenses at verification.

Petitioners contend that the Department's decision to reject a certain portion of Toyota's selling expenses was not punitive and notes that Toyota has proposed no reasonable alternatives. Petitioners note that the Department cannot accept Toyota's data simply because the company attempted to comply with requests for information and, given there were no other reasonable options to take, the Department correctly rejected the claimed expenses.

Petitioners argue that the Department's reliance on the reported expenses for purposes of conducting the cost test and calculating CV was proper and that Toyota cannot expect to benefit from its inability to pass verification. Furthermore, the alteration of Toyota's cost of production (COP) data in a way to benefit Toyota as a result of a failed verification would be grossly unfair and would contradict the fundamental purpose of the verification provisions of the statute.

Department's Position

We disagree with Toyota. In light of Toyota's inability to establish the accuracy of the data that it submitted regarding its home market direct advertising and home market indirect selling expenses, we were unable to include these reported expenses as adjustments to home market price in determining the NV. However, we included these expenses in our analysis for purposes of establishing the adjusted home market price for use in the cost test and in the calculation of CV, and we used Toyota's reported direct advertising expenses incurred on U.S. sales in our calculation of CEP, because by not doing so we would have rewarded Toyota for its failure to establish the accuracy of these expenses at verification.

This approach is consistent with the Department's practice in other cases. For instance, in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al: Final Results of Antidumping Duty Administrative Reviews,* 62 FR 2081, 2090–2092 (January 15, 1997) *(AFBs 6),* we stated, ''Where we have found that a company has not acted to the best of its ability in reporting the adjustment

* * *, we have made an adverse inference in using the facts available with respect to this adjustment, pursuant to section 776(b) of the Tariff Act * * *. The treatment of positive [home market] billing adjustments as direct adjustments is appropriate because disallowing such adjustments would provide an incentive to report positive billing adjustments on an unacceptably broad basis in order to reduce NV and margins.'' This approach is clearly sanctioned by the SAA at 870: ''Where a party has not cooperated, Commerce * * * may employ adverse inferences about the missing information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. In employing adverse inferences, one factor the agencies will consider is the extent to which a party may benefit from its own lack of cooperation.''

The same approach with respect to Toyota's selling expenses is appropriate, given Toyota's failure to provide basic source documentation at verification. The expenses at issue concern Toyota's reported home market indirect selling expenses, home market direct advertising and direct advertising expenses incurred in Japan attributable to U.S. sales. The verification report states clearly that, with regard to its claimed indirect selling expenses and direct advertising expenses, Toyota could not go below the level of a semi-annual detail report to support its claimed expenses *(Verification of Home Market and Certain U.S. Sales,* August 12, 1996, at 2 *(Report)*). With regard to its direct U.S. selling expenses incurred in Japan, the report states ''Toyota could not provide supporting documentation as a bridge between the * * * expenses * * * and its financial statements.'' *Report* at 2. It is standard Department practice to review source documentation at a level of detail greater than a semi-annual report and to require documentation that ties reported expenses to a company's financial statements. Accordingly, we were unable to verify the accuracy of these claimed expenses.

Our verification report reveals that, while Toyota succeeded in providing detailed support documentation for other expenses, it was unprepared to provide sufficient and necessary documentation to support the expenses at issue. Our verification report also discusses Toyota's lack of preparation which resulted in delays in completing certain segments, even though we extended our verification in an attempt to cover as many topics as possible. *Report* at 3.

Thus, as we made clear in the report, Toyota was unprepared to provide support for certain claimed expenses. This is true despite clear instructions in the Department's verification outline of the need to be prepared to provide such documentation. Accordingly, we do not find persuasive Toyota's statements that it prepared for verification based on the information and level of documentation examined at previous verifications and that the company was unfairly surprised by the Department's information requests. Each review is a separate, independent segment of the proceeding; what may or may not be required at a particular verification does not override the verification outline and does not govern what is expected of a respondent at a subsequent verification. The verification outline we provided to Toyota for this review made very clear that certain documents would be required *(see Sales Verification Outline, Toyota Motor Corporation, Toyota Motor Sales, USA, Inc.*, May 1, 1996).

As noted in response to Comment 1, because we could not verify the relevant information, the use of facts available for these expenses is an appropriate measure in this review. In addition, in light of Toyota's failure to provide basic source documentation regarding the expenses at issue, along with the fact that the company was given sufficient notice that such documentation would be required at verification, we have determined that Toyota has failed to cooperate by not acting to the best of its ability to comply with our requests for information. Therefore, we have resorted to adverse facts available with regard to these expenses. Because we have no other reasonable options under these circumstances, we have maintained our treatment of these expenses for purposes of the final results. Accordingly, we have denied the relevant expenses as adjustments to NV and have used the expenses as reported for purposes of establishing the adjusted home market price used in the cost test and for the calculation of CV. In addition, we have used the reported direct advertising expenses incurred in Japan attributable to U.S. sales in our calculation of CEP.

Finally, because Toyota provided this information in this administrative review and it is, therefore, not secondary information, we are not required to corroborate this information (*see* section 776(c) of the Act).

Comment 3

Toyota contends that the Department was wrong to impute to home market sales, as facts available, an amount for credit revenue because Toyota did not earn such revenue and because it cooperated to the best of its ability at verification in establishing the absence of such revenue. Toyota also contends that, even if the Department is justified in imputing credit revenue, the amount imputed is excessive. (In the Preliminary Results, the Department added, as facts available, the total credit revenue earned on relevant U.S. sales to NV.)

Toyota states that materials and oral information presented to the Department at verification support the fact that TFC, an affiliated company, did not provide financing for the sale of subject merchandise to Toyota's customers in Japan. Toyota claims that the verification report indicates that TFC officials were unable, not unwilling, to provide a copy of TFC's financial statements, which the Department requested in order to verify the absence of credit revenue earned by Toyota or its affiliates on home market sales. Toyota states that it was not given any advance notice that TFC's financial statements would have to be provided at verification but that these documents were simply requested at verification. Toyota asserts that TFC is a separate corporation, TFC has no involvement in the sales under consideration, and TFC was unable to obtain necessary clearances to release these confidential documents in the time available, but it was able to make its officials and certain other documents available on short notice. Consequently, the Department was wrong to penalize Toyota.

Toyota also argues that it is improper to impute any credit revenue to home market sales, particularly since under the new law any profit earned by Toyota Motor Sales U.S.A., Inc. (TMS) on its credit revenue is deducted from CEP and, given that the new law already neutralizes to a degree any impact of credit revenue earned in the United States, there is no need for the Department to make any adjustments to NV to accomplish this purpose.

Toyota suggests that, even if the Department insists on adjusting home market prices upward, the adjustment is punitive to a degree that is disproportionate to the inability to provide TFC's financial statements. Toyota points out that the adjustment goes beyond simply neutralizing the benefit of U.S. credit revenue because (i) the credit total revenue on relevant U.S. sales was offset to a significant degree by a credit expense, and (ii) because the Department calculated the profit to deduct from CEP without regard to the substantial credit expenses associated with the credit revenues, the

Department's approach resulted in additional duties.

Petitioners respond that there is no dispute that the Department requested TFC's financial statements and did not receive them. Petitioners cite the verification outline and their pre-verification comments to support their claim that Toyota should have been well aware that a document as basic as TFC's financial statements would be required at verification. Petitioners claim that Toyota's apparent inability to produce such a basic document cannot absolve it of facing the consequences of this omission.

Petitioners dispute Toyota's contention that the Department responded to Toyota's failure to produce the financial statements with an adverse inference by claiming that if the Department was drawing an adverse inference, it would have made an adjustment to NV based on the largest credit revenue reported on any U.S. sale, which it did not do. Petitioners also argue that the Department should not adjust the U.S. gross revenue applied to relevant home market sales with an offsetting adjustment for the associated U.S. credit expense because the Department already made an adjustment for credit expense in the home market in its analysis and such an adjustment would provide Toyota with a double deduction.

Department's Position

We disagree with Toyota. Toyota reported that it did not earn credit revenue on home market sales. Whether Toyota in fact earned such revenue was a legitimate inquiry for us to pursue at verification. As discussed further below, based on the verification outline, petitioners' pre-verification comments, and our specific requests at verification, Toyota should have been prepared to provide us with TFC's financial statements, a basic source document necessary to explore this issue. By not providing Department officials with the financial statements, Toyota did not provide the Department with the opportunity to ascertain for itself whether the financial statements contained information relevant to our inquiry.

Where an interested party fails to cooperate by withholding information that we have requested, we may resort to the use of the facts available, drawing inferences adverse to the party. *See* sections 776(a)(2)(A) and 776(b) of the Act. Because Toyota failed to provide us with TFC's financial statements, we have determined that Toyota failed to act to the best of its ability with respect to this issue by withholding information. Therefore, we have relied on an inference that is adverse to the interests of Toyota. Accordingly, as facts available, we applied the transaction-specific gross revenue earned by Toyota Motor Credit Corporation (TMCC) on relevant U.S. sales (revenue without the corresponding offsetting credit expense) to the weighted-average home market price of matched sales.

Based on the record of this review, Toyota cannot reasonably claim that it had no advance notice that we would not request an examination of TFC's financial statements. The verification outline clearly indicated that this type of document would be subject to review. Given that TFC is a consolidated subsidiary of TMC, Toyota should have made such a document available to Department officials for inspection. In addition, petitioners' pre-verification comments included a request that the Department review TFC's financial statements (*see* Petitioners' Comments, May 9, 1996 at 10). While such pre-verification comments do not direct the Department's inquiry at verification, the issue of TFC's involvement in home market transactions has been a recurring one in administrative reviews of this order, and petitioners' request provided Toyota with additional notice that the issue was subject to inquiry.

We note that the information Toyota provided at verification did not allow us to establish the accuracy of Toyota's claim that it did not earn credit revenue on home market sales. The written material it provided at verification, and to which Toyota refers in its comments, is limited to ''a brochure given to dealers which describes the activities provided by TFC to dealers.'' *Report* at 11. This brochure is the only written material Toyota provided at verification. The TFC officials we interviewed to discuss the relevant issue, as the verification report indicates, ''were unable to provide us with TFC's financial statements nor any other documentation to show the breakout of activities engaged in by TFC.'' *Report* at 11. Therefore, the interview was of limited value in establishing the accuracy of Toyota's claim that TFC is not involved in the financing of merchandise in the home market.

We further note that our purpose is not to neutralize the benefit Toyota obtained on financing certain U.S. sales, but rather is a response to Toyota's failure to comply with a specific request to produce a document that would permit us to ascertain whether TFC was involved in home market transactions. Toyota's arguments that the new law accounts for profits earned and that it was required to report revenue earned on U.S. sales are irrelevant, given our purpose for applying adverse facts available. Finally, we agree with petitioners that adjusting the U.S. gross revenue for the credit expense portion of the U.S. sale would provide Toyota with two adjustments for credit expense because we have a credit expense already in our calculation of NV.

Comment 4

Toyota contends that the Department applied the cost test on an overly narrow product basis by performing a separate 80–20 ''substantial quantities'' test for each individual forklift sold in the home market instead of performing it on the group or category of products that are under consideration for the determination of normal value. Toyota asserts that, as a result of this misapplication of the 80–20 test, if any single truck was found to be below cost, it was automatically excluded from the database because 100 percent of the home market sales of that truck were below cost. Toyota argues that applying the test to each individual truck makes no sense and effectively writes the ''substantial quantities'' provisions of section 773(b) out of the law.

Toyota claims that the law favors price-to-price comparisons over CV. Toyota asserts that the Department's current practice is to apply the test on a model-specific basis (citing the SAA at 832). Toyota further asserts that the Department has defined ''model'' as *the* such or similar merchandise as defined under section 771(16) of the Act, and claims that this indicates that the Department should not treat each truck as a unique model. Toyota notes that the Department applied the cost test on a broader category in prior reviews. Toyota concludes that the Department should apply the 80–20 test to all home market trucks within each of the load-capacity categories defined by the questionnaire because these are the categories from which similar merchandise is selected as a basis for NV.

Petitioners respond that, based on its practice for the past several years, the Department properly applied the 80–20 test not on the basis of broad such or similar categories but on the basis of the comparison products (*i.e.*, the products that would actually be used to calculate NV). Petitioners acknowledge that the Department applied the test to a broader category of products in the 1989–90 administrative review, but assert that it has since altered its approach and applies the test on the basis of the comparison products even when there are very few or even a single comparison model available (citing

Certain Cut-to-Length Steel Plate from Sweden; Final Results of Antidumping Review of Antidumping Duty Order, 61 FR 15772, 15775 (April 9, 1996)). Petitioners conclude that, based on established practice, the Department properly applied the 80–20 test to the comparison models and assert that this practice should be maintained for the final results.

Department's Position

We disagree with Toyota that we should apply the cost test to a broader category of product than to each unique model for this administrative review. While we recognize that, in the 1989–90 review, we applied the cost test on a broader basis, upon reconsideration we have determined that it is more appropriate to apply the cost test, as set forth in section 773(b) of the Act, to each unique model sold in the home market. This methodology is in accordance with our current practice and the SAA (at 832) and with our practice of applying the cost test to unique models regardless of the potential for a particular model to be grouped in a ''family'' for calculation of NV. *See generally AFBs.* The statute does not require that we employ a different methodology where, as here, each of the reported home market sales involved a unique product.

We note further that it would neither be appropriate to base the test on all selected comparison models (all models identified in the concordance) or each of the individual comparison groups selected in accordance with section 771(16) of the Act for each U.S. model, as both would encompass more than a single model. We disagree that we have defined a ''model'' as those products selected for comparison under section 771(16). In addition, basing the test on the individual comparison groups could result in testing one model two or more times. A given home market model could be an appropriate match to more than one U.S. sale, in which case it would be included in more than one home market comparison group on the concordance. In such cases administering the cost test on a ''comparison group'' basis could result in the home market model being excluded as below cost with respect to one U.S. sale (if more than 20 percent of the relevant comparison group sales are below cost) but included with respect to a different U.S. sale (if less than 20 percent of the comparison group sales are below cost). Therefore, in order to avoid such an anomolous result and in accordance with our practice, we have applied the cost test to each unique model sold in the home market.

Comment 5

Toyota asserts that, where the Department removed home market sales that failed the below-cost test from the concordance, so that the concordance contained no remaining matches to a given U.S. sale, the Department improperly resorted to CV instead of attempting to find other price-based matches within the contemporaneity period which Toyota reported on the home market sales database. Toyota claims that resorting to CV when acceptable above-cost sales exist in the home market sales database and are available as a basis for establishing NV, is contrary to the statute. Toyota argues that the concordance contained the best, but not the only, NV candidates based on the Department's matching method. Toyota concludes that the appropriate solution is to apply the cost test to each foreign like product group, as defined in the questionnaire, and to match to similar above-cost sales as listed in the home market database before resorting to CV.

Petitioners respond that the law does not require that, where 100 percent of the comparison-model sales are below cost, the Department must seek out less similar sales before resorting to CV. Rather, petitioners claim, the law simply requires the Department to use any above-cost sales that are most similar to the U.S. sale (citing Notice of Proposed Rulemaking and Request for Public Comments, 61 FR 7308, 7338, 7339) (Proposed Regulations)). Petitioners conclude that, under the old and new laws, when the Department rejects all of the most similar home market sales because they were below cost, it is required to rely on CV rather than seek a sale of a less similar model, a practice that has been upheld by the CIT and should be maintained.

Department's Position

We disagree with Toyota. In those situations where we disregarded all of the most similar matches, as identified on the concordance file, as below-cost sales, we properly resorted to CV without attempting to find other, less appropriate, matches remaining in the home market database.

Due to the nature of this product, which involves unique models, and the resulting complexity of determining appropriate home market and U.S. matches, we have developed a detailed set of instructions in our reviews of this order regarding the development of the concordance file. These instructions ensure the accurate reporting of information while minimizing, to the extent possible, the reporting burdens on the parties. We developed the product-matching criteria with input from parties, including Toyota, in prior segments of this proceeding. In our questionnaire in this review, we permitted Toyota to limit its concordance matches to the most similar home market sales made in the closest month in the contemporaneity window as that of each U.S. sale. We did not require Toyota to provide further matches in the contemporaneous period. Otherwise, the matching analysis that Toyota would have had to perform would constitute a significant burden on the company without substantially increasing the accuracy of our analysis since, relative to total U.S. sales, the number of U.S. sales for which we resorted to CV (because we had disregarded the selected model as below cost) was extremely small. Such an approach clearly assisted Toyota in preparing its response. Toyota in fact acknowledges in its comments in this review, that analyzing large databases can be costly and inefficient. For these reasons, we have maintained our approach for the final results.

Comment 6

Toyota contends that, because the Department improperly disregarded certain sales as below cost by applying the 20-percent ''substantial quantity'' threshold on an overly narrow product basis, the CV-profit calculation, which includes only sales that did not fail the cost test, is also flawed. Toyota claims that the Department should include in the CV-profit calculation sales that it improperly disregarded as below cost.

Petitioners respond that the Department properly applied the cost test and that the SAA specifically provides that CV profit should be based only on the amount incurred in connection with sales in the ordinary course of trade. Therefore, petitioners conclude, in keeping with the SAA the Department properly excluded all below-cost sales when calculating CV profit.

Department's Position

We disagree with Toyota. Our application of the 20-percent ''substantial quantities'' threshold portion of the cost test was in accordance with law and our practice. Based on our application of this test, we disregarded certain home market sales as below-cost sales, which the statute considers to be outside the ordinary course of trade. *See* section 771(15) of the Act. Therefore, because we must calculate CV profit using only sales made within the ordinary course of trade, in accordance with section

773(e)(2)(A) of the Act, we excluded sales that failed the cost test from our calculation of CV profit.

Comment 7

Toyota contends that the Department should base CV profit on sales of large trucks (over 7,000-pound load capacity) only and should exclude small trucks from its CV-profit analysis. Toyota asserts that profit and selling expenses calculated for CV should not be based on the entire universe of home market sales, *i.e.*, ''class or kind'', but on a subset of this universe—the class of products in the home market that is most similar to the U.S. sale, *i.e.*, ''foreign like product'' under the new law or ''such or similar'' of the pre-1995 law (citing section 773(e)(2)(A) of the Act). Toyota states that the Department did not follow this provision for the preliminary results when it calculated profit and selling expenses for CV using all home market merchandise regardless of whether the merchandise was ''like'' the merchandise sold in the United States.

Toyota asserts that it sold only large trucks in the United States and that, while it sold large trucks in the home market, it sold many more small trucks in that market. Therefore, Toyota argues, because the profit on small trucks differs from the profit on large trucks, the CV profit was unfairly inflated.

Petitioners respond that the Department has addressed the issue raised by Toyota in its proposed regulations (citing Proposed Regulations at 61 FR 7335). Petitioners assert that it is the Department's practice to use aggregate figures to calculate profit and SG&A, based on an average of the profits of foreign like products sold in the ordinary course of trade. Therefore, petitioners contend, the Department properly calculated profit based on the profits of all like products sold in the ordinary course of trade in the home market and should maintain this methodology for purposes of the final results.

Department's Position

We disagree with Toyota. The foreign like product in this case consists of all potential matches to U.S. sales. That is, for purposes of calculating profit (and SG&A) for CV, we generally use, as we have here, aggregate data that encompasses all foreign like products under consideration for determining NV. During the POR, Toyota sold both small and large trucks in the United States. While only a small quantity of small trucks were sold in the United States, home market sales of trucks in this category are nonetheless potential matches. Accordingly, both small and large trucks are a foreign like product. Therefore, we have included the small capacity trucks in the calculation of CV profit for the final results.

Comment 8

Toyota contends that, contrary to the directives of the statute, the Department calculated a CEP profit amount that is disproportionately based on profit on home market, not U.S., sales. Toyota acknowledges that the Department applied the CEP-profit formula in section 772(f) of the Act literally, but argues that, where the application of the formula to a particular set of facts leads to an absurd result directly at odds with the stated goal of the statute, the Department should exercise its discretion by limiting the CEP profit to the actual profit for U.S. sales.

Toyota argues in the alternative that, in the event that the Department continues to calculate profit as it did in the preliminary results, it should exercise its well-established authority under section 773(6)(iii) of the Act to make adjustments to NV for other differences in circumstances of sale. Toyota states that the difference in circumstance of sale would be the profit differential between the United States and home market. Toyota notes that, under the pre-URAA law, the Department used its discretionary authority to avoid unfair results in the context of the creation and application of the exporter's sales price (ESP) offset and asserts that a similar adjustment should be made in this review (citing *Brother Industries, Ltd.* v. *United States,* 3 CIT 125, 540 F.Supp. 1341 (1982), aff'd 713 F.2d 1568 (Fed.Cir. 1983), cert. denied, 465 U.S. 1022 (1984) (*Brother*)).

Petitioners respond that Toyota admits the plain language of the statute requires the Department to base CEP profit on total actual profit, which includes the profit on both home market and U.S. sales. Therefore, petitioners argue, the Department does not have the discretion Toyota proposes and the Department applied the explicit requirements of the statute properly when calculating CEP profit.

Petitioners further assert that Toyota is incorrect in suggesting in the alternative that, based on *Brother,* the Department should make a circumstances of sale (COS) adjustment to NV to account for differences between U.S. and home market profit. Petitioners contend that, in so doing, the Department would first be calculating CEP profit using the methodology required by the statute, then nullifying the explicit statutory requirement by making an offsetting adjustment to NV. Petitioners assert that the Department cannot implement a procedure that would lead to a result in conflict with the requirements of the statute. Petitioners add that Toyota's analogy to the ESP offset is incorrect because, unlike Toyota's recommendations regarding CEP profit, the ESP offset was designed to correct a perceived omission in the statute.

Department's Position

We agree with petitioners. Section 772(d)(3) of the Act directs us to deduct an amount of allocated profit in deriving the CEP. Section 772(f) describes in detail the methodology for calculating the profit, which Toyota acknowledges we followed. In particular, the statute explicitly directs us to calculate a ''total actual profit'' amount, where possible, based on both sales of the foreign like product in the comparison market and on U.S. sales. *See* sections 772(f)(2) (C) and (D). The statute then directs us to allocate a portion of this total actual profit to CEP sales based on the level of U.S. selling and further-processing expenses. Toyota's proposal to calculate profit in a different manner would be in clear conflict with this provision of the statute.

We also decline to make a COS adjustment in the manner suggested by Toyota to account for the allegedly disproportionate influence of home market profits on the total actual profit calculation. As noted above, the CEP-profit provision in the statute provides a detailed methodology for the calculation of total actual profit. Given the detailed nature of this provision, it is not appropriate to impute a ''disproportionate home market profit'' standard on the calculation of total actual profit, such that we must make an adjustment to account for such alleged disproportionality. Moreover, differences in profits are not differences in the circumstances of sale. Profit differentials, if any, are what remain after different circumstances of sale have been accounted for. Therefore, we have not changed our CEP-profit calculation for the final results.

Comment 9

Toyota argues that the Department should calculate CEP profit based on the prices and expenses of large trucks (over 7,000-pound load capacity) only, not large and small trucks, because large trucks were the only merchandise Toyota sold in the United States during the POR. Toyota contends that section 772(d) of the Act requires that total actual profit be calculated based on sales of subject merchandise sold in the United States and the foreign like

product sold in the exporting country. Toyota cites to the statutory definition of foreign like product in section 771(16) of the statute in arguing that ''foreign like product'' corresponds to the ''such or similar'' category of the pre-URAA law and not to the broader ''class or kind'' of merchandise category. Toyota argues that the foreign like product in this case is limited to large trucks because, with the exception of a *de minimis* number of small trucks, it sold only large trucks to the United States. (Toyota states that its request in this Comment pertains only to the profit calculation for U.S. sales of large trucks and does not pertain to the profit calculated on the *de minimis* U.S. sales of small trucks.) Toyota argues that, because the profit on smaller trucks is greater than the profit on large trucks and because many more small trucks than large trucks were sold in the home market, significant distortions in the calculation are created by including the smaller trucks.

Toyota argues that, while the Department recently denied a respondent's request to calculate profit derived from ''different rates for different pools of products within the foreign like product'' (citing *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan*, 61 FR 38139, 38146 (1996) (*LNPP from Japan*)), in this case it is proper to calculate profit based upon the foreign like product as defined by load capacity because: (1) The Department has conducted its entire review on the premise that foreign like product was defined by several load capacity ranges, and (2) Toyota has not asked the Department to change its determination of foreign like product, as respondent did in *LNPP from Japan*.

Petitioners respond that, in keeping with the explicit requirements of the statute, the Department properly based CEP profit on the total actual profit realized on all of Toyota's sales of the subject merchandise, which includes large and small trucks.

Department's Position

We disagree with Toyota. In accordance with our practice as described in the Proposed Regulations (at 7382), we have used the aggregate of expenses and profit for all subject merchandise sold in the United States and all foreign like products sold in the exporting country. During the POR, Toyota sold both small and large trucks in the United States. While only a small quantity of small trucks were sold in the United States, home market sales of trucks of these categories are nonetheless potential matches. Accordingly, the foreign like product in this review encompasses both small and large trucks. Therefore, we have included the small capacity trucks in the calculation of CEP profit for the final results.

The statute does not require separate CEP-profit calculation based on the narrow interpretation of the term ''foreign like product'' advanced by Toyota. As we noted in *AFBs 6*, ''[n]either the statute nor the SAA require us to calculate CEP profit on a basis more specific than the subject merchandise as a whole. Indeed, while we cannot at this time rule out the possibility that the facts of a particular case may require division of CEP profit, the statute and SAA, by referring to 'the' profit, 'total actual profit' and 'total expenses,' imply that we should prefer calculating a single profit figure.'' *AFBs 6* at 2125–2126. Further, such a subdivision as Toyota proposes would be more susceptible to manipulation of the profit rate, a particular concern noted by Congress. *See Id.* and S. Rep. 103–412, 103d Cong., 2d Sess. at 66–67.

Comment 10

Toyota asserts that, notwithstanding the methodological CEP-profit calculation issues it has already addressed, the Department incorrectly calculated the CEP-profit amount by: (1) Including all home market sales revenue while excluding certain home market selling expenses, and (2) calculating the total actual profit without regard to imputed expenses while allocating a portion of this amount to CEP sales using a U.S. selling expense pool that includes imputed expenses.

With respect to the first issue, Toyota claims that the home market values for the CEP-profit calculation incorrectly excludes the home market selling expenses the Department disallowed as an adjustment to NV because of perceived difficulties at verification. Toyota states that this results in a higher home market profit, which becomes part of the total actual profit, a portion of which, in turn, is allocated as CEP profit and deducted from the starting price used to derive the CEP. With respect to the second issue, Toyota asserts that it is mathematically incorrect to apply an ''actual cost'' profit ratio to a U.S. selling expense pool that includes actual plus imputed costs because this methodology allocates substantially more profit to U.S. sales than exists, particularly with respect to transactions with significant imputed credit and inventory carrying costs.

Petitioners respond that the Department correctly included imputed credit and inventory carrying costs in the U.S. selling expense pool used to calculate CEP profit for individual U.S. sales. Petitioners note that the Department calculated total profit for Toyota's sales based on the difference between the total revenues and total expenses and that the Department omitted imputed credit and inventory carrying costs from the total profit amount because the expense amounts the Department used in the total actual profit calculation include an amount for actual interest expenses. Petitioners assert that, if the Department included imputed expenses in the total actual profit calculation, the result would double-count Toyota's interest costs. Petitioners further note that CEP selling expenses do not include an amount for actual interest expense and, thus, if the Department does not include imputed credit and inventory carrying costs in the formula it uses to calculate CEP profit for Toyota's individual U.S. sales, the CEP-profit figure would not account for the profit attributable to the expenses Toyota incurred to carry forklifts in inventory in the United States or to extend credit to its U.S. customers. Therefore, petitioners argue, the Department should continue to include imputed credit and inventory carrying expenses in the CEP selling expenses used to calculate CEP profit for Toyota's U.S. sales.

Department's Position

We disagree with Toyota. With respect to Toyota's argument that the home market values for the CEP-profit calculation improperly exclude selling expenses we disallowed due to problems encountered at verification, as we stated in its response to Comment 2, we properly employed an adverse inference regarding information with respect to which Toyota failed to act to the best of its ability to provide. This ensures that Toyota does not obtain a more favorable result by failing to cooperate fully. *See* SAA at 870.

Regarding Toyota's claim that we treated imputed expenses inconsistently in calculating CEP profit, we addressed this issue in detail in *AFBs 6* at 2126–2127 as follows:

> Sections 772(f)(1) and 772(f)(2)(D) of the Act state that the per-unit profit amount shall be an amount determined by multiplying the actual profit by the applicable percentage (ratio of total U.S. expenses to total expenses) and that the total actual profit means the total profit earned by the foreign producer, exporter, and affiliated parties. In accordance with the statute, we base the calculation of the total actual profit used in calculating the

per-unit profit amount for CEP sales on actual revenues and expenses recognized by the company. In calculating the per-unit cost of the U.S. sales, we have included net interest expense. Therefore, we do not need to include imputed interest expenses in the ''total actual profit'' calculation since we have already accounted for actual interest in computing this amount under 772(f)(1). When we allocated a portion of the actual profit to each CEP sale, we have included imputed credit and inventory carrying costs as part of the total U.S. expense allocation factor. This methodology is consistent with section 772(f)(1) of the statute which defines ''total United States Expense'' as the total expenses described under section 772(d)(1) and (2). Such expenses include both imputed credit and inventory carrying costs. *See Certain Stainless Wire Rods from France,* 61 FR 47874, 47882 (September 11, 1996).

As this statement of our practice makes clear, our calculation of CEP profit is in accordance with the statute and the SAA. Therefore, we have maintained our treatment for the final results.

Comment 11

Toyota argues that the Department should exclude certain ''used'' forklifts sold in the United States from its analysis or, in the alternative, the Department should adjust its calculations to avoid the distortions created by the comparison of these used trucks with new trucks sold in the home market. Toyota asserts that there were a small number of U.S. sales of used merchandise, sold out of the ordinary course of trade at significant discounts and under ''fire sale'' conditions due to their use as demonstration units. Toyota asserts that all of the trucks were imported new but were in ''used'' condition when sold to the first unaffiliated purchaser in the United States. Toyota asserts that, in the less-than-fair-value (LTFV) investigation, petitioners explicitly excluded imports of used trucks from the investigation and argues that the principle that a used truck is excluded should not change because the truck was used not in Japan, but in the United States, before being sold.

Toyota argues in the alternative that the Department should adjust the margin calculation to avoid the distortions created by the comparison of the used trucks with new trucks sold in the home market. Toyota asserts that, otherwise, the comparison is unreasonable and amounts to an undeserved adverse inference against Toyota (citing, among others, *Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review,* 58 FR 43327, 43328 (1993) (*Cookware*)). Toyota asserts that, because there are no sales of similarly used trucks in the home market, the Department should look to facts otherwise available in making an adjustment that will allow for reasonable comparisons and proposes several ways to make such an adjustment.

Petitioners respond that Toyota's claim should be rejected for a variety of reasons. First, Toyota has admitted the trucks were new when imported and the scope of the order excludes only trucks that were used at the time of entry. Petitioners add that the exact nature and disposition of the trucks is unclear from Toyota's questionnaire responses. Petitioners note that, in Toyota's initial questionnaire response, it reported that some of the trucks were used, others were damaged, and others were mistakenly ordered with unsalable specifications, while in its brief Toyota only discusses used trucks. Therefore, petitioners assert, even if the Department decided to exclude ''used'' trucks as opposed to other ''off-spec'' trucks, the Department would be unable to do so because Toyota failed to distinguish between used trucks and off-spec trucks in its sales listing.

Second, petitioners assert that the Department has made clear that it will not exclude any U.S. sales that involve a transfer of ownership even if the sales are aberrational and states that the age or condition of a truck is not relevant to whether the product has been dumped (citing *Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Final Results of Antidumping Duty Administrative Review,* 60 FR 42835 (Aug. 17, 1995), comment 29).

With respect to Toyota's alternative argument that the Department should make an adjustment to the margin calculation if it includes such ''used'' trucks in the dumping analysis, petitioners assert that the cases Toyota cited to support such an adjustment are factually distinct from the situation in this case because, unlike those cases, the merchandise at issue is not scrap, seconds or substandard. Petitioners add that in the cited cases the Department did not make an adjustment to account for differences in quality but instead sought to match U.S. sales of inferior quality to merchandise of similar quality in the home market (citing *Cookware* at 43328). Petitioners argue that, if merchandise with similar specifications had been sold in the home market, the model-match methodology would have resulted in a match of similar off-spec trucks. Furthermore, petitioners assert, Toyota never specifically identified whether any home market sales were similarly off-spec and could have been matched and conclude that any deficiency in matching is solely Toyota's fault.

Department's Position

We agree with petitioners. The scope of the order only excludes trucks that were ''used'' at the time of entry. The order does not exclude trucks that are damaged, ''off-spec,'' or used after importation. We noted in our Preliminary Results analysis memorandum that ''trucks imported new and used by the importer prior to sale'' are not excluded from the scope of the order. *Memo,* July 26, 1996, at 6. In the LTFV investigation we determined that a forklift could be considered ''used'' and excluded from the order if, at the time of entry into the United States, the importer can demonstrate to the satisfaction of the U.S. Customs Service that the forklift was manufactured in a calendar year at least three years prior to the year of entry into the United States. *Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion Industrial Forklift Trucks From Japan,* 53 FR 12552 (April 15, 1988). Toyota admits the relevant trucks were imported new. Therefore, they are properly subject to review and we cannot exclude them from our analysis based on this exclusion.

Moreover, Toyota has not established the trucks were used to an extent that an adjustment is warranted nor provided information that would permit us to quantify and make such an adjustment. Therefore, our treatment of these trucks remains unchanged from the preliminary results.

Comment 12

Toyota claims that the Department incorrectly classified the reported indirect selling expenses that Toyota's U.S. affiliate, TMCC, incurred in financing sales of subject merchandise as direct expenses. Toyota asserts that the selling expenses are indirect because they are fixed and are incurred regardless of whether a particular sale is made.

Petitioners respond that, while they do not believe the Department should make any adjustment for credit revenue TMCC earned, if the Department decides credit revenue is related directly to the sale, it must also recognize that expenses TMCC incurred may also be related directly to the sale. Petitioners assert that Toyota did not meet its burden of proof that these expenses are not directly related to the sales (citing 19 CFR 353.54). Petitioners suggest that, although Toyota now alleges that these expenses are fixed and are incurred by TMCC regardless of

whether a sale is made, there is nothing in Toyota's questionnaire response to support such a claim. Petitioners conclude that Toyota's description of these expenses is not sufficiently detailed to allow the Department to determine the exact nature of the expenses and, accordingly, the Department should treat these expenses as direct selling expenses for the final results.

Department's Position

We agree with Toyota and have treated these expenses as indirect expenses for the final results. In reporting sales where payment was made through TMCC, Toyota reported a sale-specific credit revenue and a sale-specific credit expense. Toyota also allocated a portion of TMCC's overhead to the sales as indirect selling expenses. With respect to direct U.S. selling expenses that TMCC incurred, Toyota stated that TMCC ''does not pay commissions to its employees related to financing, and does not incur variable expenses for credit investigations or for preparing and processing documents.'' Supplemental Sales Questionnaire at 58–60. In addition, Toyota disclosed that TMCC incurred a filing fee for a number of transactions which the Department treated as direct in the Preliminary Results. Because the record reveals that the relevant expenses are fixed expenses (not variable) and because it is clear that Toyota reported those expenses that were variable and associated with sales of subject merchandise, we have treated TMCC's reported expenses as indirect expenses for the final results.

Comment 13

Toyota asserts that the Department's proposed method for assessing duties will result in the calculation and assessment of duties on lease transactions, despite the Department's determination that Toyota's operating leases are not subject to review. Toyota notes that the Preliminary Results indicate that the Department calculated an importer-specific *ad valorem* duty assessment rate, based on the ratio of the total amount of duties calculated for the examined sales during the POR to the total customs value of the sales used to calculate the duties, which the Customs Service will assess uniformly on all entries during the POR. Toyota asserts that the Department should calculate an assessment rate with respect to all merchandise reported by taking the total antidumping duties for sold and leased trucks (which will be zero for the latter) divided by the total customs value of the sold and leased trucks, which Customs should then apply to all forklift trucks entered during the POR.

Petitioners assert that Toyota misconstrues the purpose of the proposed assessment method, which is to eliminate the problems caused by assessing duties on individual entries through the creation of a ''master list.'' Petitioners assert that lowering overall duties on subject trucks would defeat the purpose of the antidumping law to assess duties to offset the unfair trade practice with respect to sales subject to the order, which would not be accomplished if the Department decreased the assessment on products covered while imposing duties on merchandise not covered by the order. Petitioners contend that lowering the assessment duty rate would allow a respondent to manipulate the prices of entries that would never be subject to analysis so as to lead to a total lower assessment of antidumping duties.

Petitioners assert that the solution to any perceived problem is to ensure that the Department only assesses duties on trucks subject to review and Toyota is aware of which trucks were sold and which were leased. Petitioners contend that the Department could eliminate the total entered value of leased trucks from the total entered value of all trucks to arrive at the total entered value for trucks subject to the order in its calculation of the appraisement rate, which Customs can then apply to the total entered value for trucks subject to the order. Petitioners further assert that, regardless of the method the Department uses to accomplish the task, it should make no change in its calculation of the cash deposit rate.

Department's Position

We agree with petitioners that, by using an assessment-rate methodology, we are able to eliminate the problems caused by assessing duties on individual entries through the creation of master lists. However, we agree with Toyota that, short of creating a master list, its proposal is reasonable and in accordance with our practice. In *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding* (61 FR 57629 (November 7, 1996) (*TRBs*)), we were confronted with the issue of establishing an assessment rate for bearings where some bearings were not subject to assessment under the principles formulated in *Roller Chain Other Than Bicycle From Japan*, 48 FR 51804 (November 14, 1983). Given that leased trucks are potentially subject to assessment of antidumping duties upon entry, a similar treatment is appropriate here. In *TRBs* we determined that the assessment rate should take into account the value of ''Roller Chain'' merchandise. Accordingly, we included the value of the ''Roller Chain'' merchandise in the denominator when we calculated an assessment rate. Likewise, in this case, we have included the customs value of the leased trucks in the denominator. While this will have the effect of reducing the percentage assessment relative to the rate that we would calculate by excluding these values, this lower assessment rate, when applied against all POR entries, will allow Customs to collect the appropriate amount of antidumping duties due and will effectively exclude the lease trucks from assessment. Finally, we agree with petitioners that a change in the calculation of the cash deposit rate is not appropriate.

Petitioners' Comments

Comment 1

Petitioners assert that the Department is required by statute to verify all of the information it relies on in reaching its final results and, therefore, the Department should have verified Toyota's cost data, difference-in-merchandise data (difmer), U.S. sales data, and U.S. value-added data. Petitioners assert that, while the Department may not be required to verify every item of data submitted, it cannot simply eliminate whole sections of a questionnaire response when conducting verification.

Petitioners add that, beyond the statutory requirement for a complete verification, the following two reasons make verification of the above items essential: (1) The Department found major problems with Toyota's home market sales data, and (2) the record reveals glaring deficiencies with Toyota's cost data, which have never been verified, and its U.S. sales data.

With regard to Toyota's cost data, petitioners allege the following problems with Toyota's data which warrant complete verification: In reporting difmer data, Toyota used different costs for its home market than for its U.S. merchandise; there are differences between Toyota's difmer data and its COP data; Toyota failed to demonstrate adequately that its transactions with affiliated suppliers were at arm's length; and Toyota gave

only a cursory explanation of its method for accruing costs.

Toyota responds that the Department fulfilled its obligation under section 782(i) of the Act to verify respondent's factual information. Toyota argues that petitioners'' position that the Department is required to verify every single piece of information submitted, and not just the factual information it deems relevant and sufficient, is untenable and would place the Department in an impossible situation. Toyota concludes such a construction of the law is unrealistic and unworkable.

Citing §§ 353.36(a)(2) and 353.36(c), Toyota asserts that the Department's regulations are clear that, it is not necessary for the Department to verify every piece of data. Toyota concludes that the law required verification of Toyota's response and the Department fulfilled this requirement, using its judgment as to the adequate level of examination.

Toyota further asserts that petitioners'' claim that there is ''contradictory and incomplete information'' in Toyota's cost and U.S. sales data are untrue. Toyota notes that its costs were verified thoroughly in the first administrative review. Toyota asserts that, as it explained in a prior submission to the Department, its material costs will differ for forklifts in Japan and the United States because: (1) They are built to different specifications (*e.g.*, the parts used may conform to different specifications, such as a UL-Listing), and (2) the criteria used by the Department for its 21-point comparison do not define all aspects and features of all forklifts.

Toyota asserts that petitioners'' comments concerning the accuracy of Toyota's data, particularly Toyota's difmer and cost data, are unfounded and, as the Department conducted the required verification, there is no basis for asserting the verification was legally inadequate.

Department's Position

We disagree with petitioners. We have fulfilled the statutory requirement of a verification of Toyota's data in this review. Because we had not verified Toyota's data during the two immediately preceding reviews, we were required to conduct a verification of Toyota in this administrative review. *See* section 782(i) of the Act. Our verification concerned Toyota's home market sales response and portions of its U.S. sales response. Such a verification fulfills the statutory requirement regarding verification and, as noted below, is in conformity with our regulations and past practice. This practice reflects the reality that it is administratively impossible for the Department to verify at every site and on every topic.

The Department's regulations provide for significant flexibility in conducting verifications by permitting the verification of a sample of respondents in a review and providing for the review of documents and personnel the Department considers relevant to factual information submitted. 19 CFR 353.36(a)(2) and (c). In addition, the CIT has long recognized the Department's discretion regarding the topics to be selected for verification. *See, e.g., Monsanto Co.* v. *United States,* 12 CIT 937, 698 F.Supp. 275, 280 (citing *Hercules, Inc.* v. *United States,* 11 CIT 710, 673 F.Supp. 454,469 (1987)) (''Verification is a spot check and is not intended to be an exhaustive examination of the respondent's business. ITA has considerable latitude in picking and choosing which items it will examine in detail.''); *Bomont Industries,* v. *United States,* 14 CIT 208, 209, 733 F. Supp. 1507 (1990) (''Of course, verification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness. Normally, an audit entails selective examination rather than testing of an entire universe.'').

Contrary to petitioners' assertions, the problems we encountered at the home market verification with regard to certain portions of Toyota's response do not establish the necessity for a verification of additional portions of the response. Toyota did not fail its verification in this review; rather, it was unable to demonstrate the reliability of certain selling expenses and was unable to establish that it did not gain credit revenue on its home market sales. As a result, pursuant to our established practice regarding our verification findings, we have disallowed the adjustments in question and have calculated a home market credit revenue amount using the facts available. This is an appropriately tailored response to the problems we encountered at verification. Because we found that, other than the items cited above, the data submitted by Toyota was accurate, we have no reason to disregard the other portions of its response (*e.g.*, Toyota's data regarding its material costs or its product liability expenses).

Comment 2

Petitioners assert that Toyota's variable cost of manufacture (VCOM) difmer data, as reported on the U.S. and home market sales listings, are not acceptable because: (1) They are not consistent with Toyota's COP/CV data, and (2) they are based on costs for certain components and on price or market value for other components. Therefore, petitioners argue, the Department should reject Toyota's difmer data and use the VCOM amounts reported in the COP and CV data to make difmer adjustments for the final results.

Petitioners claim that case precedent indicates that VCOM amounts reported for the difmer adjustment and for COP/CV should not differ (citing *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Spain,* 59 FR 66,931, 66938 (December 28, 1994)). Petitioners further assert that the antidumping questionnaire and the SAA (at 828) indicate that any claimed difference-in-merchandise adjustment should be limited to differences in variable costs, without regard to prices. Petitioners note that Toyota acknowledges the data are inconsistent.

Petitioners state that allowing a respondent to report different VCOM amounts for purposes of the difmer adjustment and for COP/CV allows for the possibility of manipulation of the dumping analysis. For instance, if a respondent reports a higher home market VCOM for the difmer adjustment than for its COP reporting, adjustments to foreign market value will generally be downward, thereby providing respondent with a favorable adjustment when comparing home market sales to U.S. sales. Therefore, petitioners argue the Department should reject Toyota's difmer data and use the variable cost of manufacture data in Toyota's COP and CV database to determine the difmer adjustment.

Toyota responds that petitioners' arguments are groundless. Toyota asserts that the Department specifically approved of Toyota's method of reporting difmer data in the original investigation and in the first and second administrative reviews. Toyota states that it reported difmer data consistent with its reporting in prior segments of the proceedings.

Toyota states that the record is clear that, given its accounting system, it could submit the data in a form slightly different from that which the Department requested by including the invoice prices of certain options and attachments instead of their variable costs of production. Toyota asserts that 19 CFR 353.57 supports its approach as it states the Department ''normally will consider differences in the cost of production but, where appropriate, may also consider differences in the market value.'' Toyota indicates that, because the prices of the attachments are based

on uniform price lists, the differences in such prices represent differences in market value. Toyota disputes petitioners' assertion that such an approach is subject to manipulation and points out that the prices are published in Toyota's price list.

Finally, Toyota notes that it used its difmer data to generate the concordance on which the Department relied for product matching and suggests that to change the values now would require Toyota to rematch its sales and revise the concordance. Toyota argues that, given that the difmer values are appropriate and accurate and reflect a methodology acceptable in prior reviews in selecting similar home market sales and adjusting those sales, there is no compelling reason to change these data now.

Department's Position

We agree with petitioners, in part, and have utilized Toyota's reported cost information (COP and CV) to calculate the difmer adjustment for the final results. However, we do not agree with petitioners that it was inappropriate for Toyota to submit its difmer data, based in part on invoice prices, at the time of its original questionnaire submission, and we have used this data for matching purposes.

When we issued the questionnaire, we had not yet initiated a cost investigation of Toyota. Therefore, based on prior experience with Toyota in the investigation and administrative reviews, in which we recognized the difficulties in collecting variable cost information for small attachments, we determined that it was acceptable for Toyota to derive and present its difmer data as it had presented the information in prior segments of this proceeding. However, unlike prior segments of this proceeding, in this review we initiated a cost investigation of Toyota's sales and obtained complete cost information, including costs for the attachments for which Toyota was previously only able to give prices.

The VCOM data from the sales listing, which Toyota used to develop the concordance according to our instructions, is sufficiently precise to allow us to determine which U.S. and comparison-market merchandise ''may reasonably be compared.'' *See* section 771(16)(C)(iii) of the Act. Further, Toyota calculated the VCOMs that we compared in making this determination using the same methodology for both markets, *i.e.*, VCOMs that are generally cost-based with the exception of certain attachments that Toyota valued using invoice prices to its customers. Therefore, we have used the concordance Toyota submitted for sales-matching purposes and do not find it necessary to revise the concordance in order to take into account the COP/CV information.

However, as a result of our cost investigation, we have more precise VCOM data, because Toyota provided cost-based values for its attachments. Accordingly, we have used the COP/CV data to make the difmer adjustment in our calculations. The difmer adjustment to NV is mandated by the statute to account for differences between the U.S. and home market products under comparison. *See* section 773(a)(6)(C) of the Act. Given that the more precise, cost-based information is on the record of this review, it is more appropriate to use the COP/CV data for the actual adjustment where sales of non-identical merchandise are compared. Therefore, in the final results we have used Toyota's reported VCOM data as reported in the COP and CV databases to adjust for physical differences in the merchandise.

Comment 3

Petitioners claim that, in providing its cost data, Toyota failed to supply complete information that would demonstrate that its transactions with affiliated suppliers are at arm's length. Rather, petitioners claim, Toyota submitted costs for a single ''representative'' model. Petitioners contend this is insufficient to demonstrate that Toyota's transactions with these affiliated suppliers are all at arm's length and cite to *Hyster Co.* v. *United States*, 848 F.Supp. 178, 187 (CIT 1994) (*Hyster*).

Petitioners assert that Toyota's claim that its transactions with affiliated suppliers are always at arm's length and that Toyota cannot obtain access to its supplier's cost data is directly contradicted by information the Department gathered in the investigation of New Minivans from Japan (*Initiation of Antidumping Duty Investigation: New Minivans from Japan*, 56 FR 29221 (June 26, 1991) (*Minivans*)). Citing the record in *Minivans*, petitioners state that Keiretsu have group members known to exchange information and to price transfers at below-market levels to maximize profit. Thus, petitioners contend, Toyota's unsupported claims are in conflict with information the Department already possesses. Petitioner argues that, other than rejecting Toyota's questionnaire response, the Department must request supplemental information concerning its transfer prices and then verify the data.

Toyota maintains that the information it submitted demonstrates that transactions between Toyoda Automatic Loom Works Ltd. (TAL) and its affiliated suppliers are at arm's length and that TAL engages in competitive bidding and negotiation processes with its suppliers. Toyota asserts that the statute does not mandate that evidence of an arm's-length transaction be derived exclusively from a respondent's suppliers' cost data and argues that Toyota has met its burden of demonstrating that TAL's transactions with its affiliated suppliers are at arm's length by providing detailed information on its competitive bidding and negotiation processes. Toyota contends that it properly based its COP calculations on prices TAL paid instead of on TAL's suppliers' COP. Toyota claims that TAL did not generally purchase identical parts during the same period from different suppliers and, because it engages in arm's-length negotiations with suppliers, it does not have access to information on sales or prices of identical parts by its suppliers to other parties or the suppliers' COP. Toyota describes the bidding process TAL used to source parts and provides examples of situations where it decided to source such components from unaffiliated suppliers instead of established affiliated suppliers after engaging in such competitive bidding.

Toyota states that, despite its detailed explanation of why it cannot obtain its suppliers' cost data, petitioners continue to rely on a memorandum in the record of the *Minivans* investigation which, contrary to petitioners' assertions, does not contradict Toyota's statements that it cannot obtain access to its suppliers' cost data. Toyota further states that the memorandum is largely irrelevant to this administrative review of forklift trucks. Toyota concludes that, while TAL may be able to persuade these suppliers in which it holds majority ownership to provide cost information in a limited fashion for limited uses, TAL is not able to force its other related suppliers to provide such costs for any purpose.

Department's Position

We do not agree with petitioners that Toyota failed to establish that TAL's transactions with its affiliated suppliers were at arm's-length prices. With respect to major inputs, Toyota provided the transfer prices and cost information for each such input it used in the production of the trucks sold in the United States and home market. The information Toyota provided with regard to TAL's suppliers of major inputs is sufficient to determine that the

amount represented as the value of such input is not less than the cost of production of such input, as required by section 773(f)(3) of the Act. In addition, because these are unique inputs, there were no comparable purchases from unaffiliated suppliers. Accordingly, we have relied on Toyota's reported cost information based on transfer prices for the major inputs in our cost calculations.

We have also determined that Toyota has established the arm's-length nature of other (non-major) inputs supplied by TAL's affiliated suppliers. Section 773(f)(2) of the Act states that ''[a] transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration.'' For its affiliated suppliers of minor inputs, Toyota responded that it could not provide market-value sales prices between affiliated suppliers and third parties, or between TAL and unaffiliated parties of the same inputs because the information was not obtainable or such transactions did not exist. Toyota did, however, supply cost information for a number of minor inputs supplied by affiliated parties. It is the Department's practice to permit limited reporting in appropriate circumstances, such as a case like this where there are scores of parts used in the production of a forklift truck, there are no third-party transactions on which to rely, and the respondent is unable to obtain cost information or prices to other purchasers from its suppliers. We disagree with petitioner that *Hyster* requires the Department to obtain more complete cost information. Unlike *Hyster,* there is no information on the record that prompts the Department to make further inquiry. The court in *Hyster* did not appear to rule out completely our reliance on a representative sample of information. *Id*. at 187. In addition, to support its position that TAL deals with its suppliers at arm's length and, therefore, that the amount for the relevant input ''fairly reflect[s] the amount[s] usually reflected in sales of merchandise under consideration in the market under consideration,'' TAL provided internal documents that evidence competitive bidding practices on the part of its affiliated and unaffiliated suppliers. The documents establish that Toyota selects its suppliers using a competitive bidding process and that Toyota is not averse to switching from an affiliated supplier to an unaffiliated supplier based on price. This is further evidence that Toyota deals with suppliers, both affiliated and unaffiliated, at arm's length. We are satisfied that the information on inputs Toyota provided supports its claim that it deals with affiliated suppliers on an arm's-length basis.

Finally, we agree with Toyota that the *Minivans* memorandum petitioners cite is not relevant to this proceeding. That dealt with a different case with a different record. The record in this review does not suggest that we draw any conclusions based on such observations.

Comment 4

Petitioners allege that Toyota improperly reported its affiliated parties for purposes of the CV and COP calculations. Petitioners state that, as section 773(f)(2) of the Act makes clear, indirect affiliations as well as direct relationships may cause the Department to disregard transactions that are not at arm's length. Petitioners assert that, in identifying its affiliated suppliers, Toyota only identified the manufacturer's (TAL) affiliated suppliers and did not identify its indirect affiliation with suppliers through TMC. Petitioners argue that the interrelationship between TMC and TAL cannot be questioned and that any suppliers under the control of or affiliated with TMC should be considered affiliated with TAL.

Toyota responds that it has complied with section 771(33) of the Act and Department practice with respect to providing information on suppliers who meet one of the statutory affiliation criteria with respect to TAL.

Department's Position

We disagree with petitioners. Section 773(f)(2) states that, in calculating COP or CV, the Department may disregard ''a transaction directly or indirectly between affiliated persons.'' Thus, contrary to petitioners' argument, the direct/indirect language refers to the nature of the transaction, not the affiliation. Toyota has stated in this review that it applied the affiliated-party definition contained at section 771(33) of the Act, as requested in our questionnaire. During the home market verification, we examined Toyota's corporate structure and did not find any deficiencies in its reporting. Further, petitioners have not provided any information regarding other, unreported, affiliated parties. Accordingly, we have accepted Toyota's reporting of its affiliated parties for the final results.

Comment 5

Petitioners claim that the Department should not include the interest income Toyota Motor Credit Corporation (TMCC), a separately incorporated U.S. affiliate of TMS, received for loans it made to dealers that purchased Toyota forklift trucks as an offset to the credit expense TMS incurred in selling trucks in the United States. Petitioners argue that the loan a customer obtained constitutes a separate transaction from the negotiation process related to the sale of a forklift truck and, therefore, under the express terms of the statute and the Department's longstanding practice, income earned or expenses incurred that are not related to the sales negotiation process cannot be taken into consideration in the dumping analysis.

Petitioners provide a number of examples in Toyota's questionnaire response to support their position that payment terms are separate and have no impact on the sales negotiation process between TMS and the dealer. Petitioners also refer to certain business proprietary passages from TMS's financial statements which, they argue, conflict with Toyota's position that TMCC simply operates as an arm of TMS. Petitioners assert that the notes to the financial statements raise serious questions as to the accuracy of Toyota's calculation of the expense, given the possibility of prepayments and credit losses which may not have been factored into its calculations. For all the above stated reasons, therefore, the Department should reject Toyota's claim for an adjustment for interest income TMCC received.

Toyota argues, first, that it is the Department's longstanding practice to include credit revenues and to deduct credit expenses in its calculation of CEP. Second, Toyota argues that it is nonsensical and irrelevant to claim that financing does not affect the selling price of a truck because the customer pays a price that includes credit revenue which TMCC earns. Toyota points to the record evidence that, in the relevant transactions, TMCC receives the payment from the first unrelated customer, which is a price that includes credit revenue, and TMS receives only an intra-party transfer from TMCC, a payment that can not serve as the basis for CEP under section 772(b) of the Act. Toyota states that the ''separate nature'' of the financing transaction is belied by the facts in Toyota's questionnaire response.

Toyota maintains that it is irrelevant that TMCC is separately incorporated and uses its income for various purposes and, therefore, the

Department's determination to treat TMCC and TMS as a single entity was correct. Toyota further maintains that petitioners' argument that TMS and TMCC are ''separate legal entities'' is contradicted by the reality of the relationship, given that they are 100-percent affiliated entities, share a common address, and share certain operational structures. Toyota also claims its method of applying assets and income has no relevance at all to whether credit revenue Toyota received is properly part of CEP. Toyota adds, in conclusion, that petitioners' speculation that Toyota's credit revenue might not be accurate, based on broad statements in TMCC's financial statements, is unfounded.

Department's Position

We disagree with petitioners that we should reject Toyota's claimed adjustment for credit revenue. We have addressed this issue in prior reviews and in our October 9, 1996, *Final Results of Redetermination Pursuant To Court Remand, NACCO Materials Handling Group, Inc.,* v. *United States,* Slip Op. 96–99 (June 18, 1996) (*NACCO*), which we have put on the record of this review.

In *NACCO,* we explained that, in our antidumping analysis, ''we examine thoroughly the corporate structure of respondents in order to capture all expenses and revenues incurred by related companies that pertain to sales of subject merchandise. In (*NACCO*), Toyota's revenue and expense pertain directly to the particular sales in question, whether deemed part of the same transaction or not, and must be included in our dumping analysis.'' *Id.* at 23–24. We further stated that ''[t]he inclusion of TMCC's credit expense and credit revenue in the dumping analysis is not dependent on whether or not ostensibly separate transactions are combined. Such inclusion is required because, otherwise, the Department would be unable to fulfill its statutory mandate to capture all U.S. selling expenses in its analysis, as required by section 772(d) of the Act.'' *Id.* at 26. The essential mechanics of the relevant transactions in this review do not differ materially from those in *NACCO.* Petitioners' arguments concerning the separateness of the transactions and the corporate separateness of the entities are irrelevant, given that ''the expenses and revenues that derive from the financing arrangement are related to the sales in question and are relevant, therefore, to the calculation'' of CEP. *Id.* at 31.

References by petitioners to Toyota's description of the process (*i.e.,* where a dealer may decide separately how it will pay, is not obligated to use payment terms offered by TMCC, etc.) do not alter the conclusion that, for purposes of section 772 of the Act, the revenues and expenses pertain directly to the particular sales in question and are appropriately part of our dumping analysis. As we concluded in *NACCO,* ''TMC, TMS, and TMCC together constitute the exporter and have provided financing services in selling the subject merchandise * * *, it is necessary to focus on the expenses that relate to sales of subject merchandise, regardless of which related entity incurs the expenses, in the interest of accuracy and in order to prevent the manipulation of the dumping analysis through shifting expenses to subsidiaries.'' *Id.* at 29. Although the statutory definition of ''exporter'' applied in that remand has been repealed, TMC, TMS and TMCC are ''affiliated persons'' within the meaning of the new definition at section 771(33) of the Act. Therefore, we consider our analysis and conclusions in *NACCO* to be directly relevant to the facts of this review and petitioners have not advanced any argument that would alter this conclusion.

Petitioners' arguments based on portions of TMS' financial statements are also not persuasive. As explained above, arguments concerning the corporate separateness based on certain descriptions of ostensibly independent activities in which the entities engage are not relevant and, therefore, whether TMCC simply operates as an arm of Toyota does not alter our analysis.

Furthermore, petitioners' suggestion that, based on Toyota's financial statements, Toyota's reported credit revenue might not be accurate, because of the possibility of prepayment of leases and because Toyota might not have accounted for credit losses, constitutes unfounded speculation. Moreover, this speculation is irrelevant to petitioners' position that credit revenue should not be recognized because the transactions are separate. Nonetheless, with regard to whether it factored credit losses into its calculations, Toyota refers to a prior submission wherein it stated ''TMCC has an account for bad debts on its financing, which, if included in the indirect expenses of TMCC, increases these expenses slightly.'' February 29, 1996, submission at 8. Toyota later included this item in its calculations. In addition, nothing in the record contradicts Toyota's statement that prepayments are not relevant to forklift financing. In a February 8, 1996, submission in the 1993–94 administrative review of this order, Toyota stated (at 4) that ''the referenced comment in Toyota's financial statements applies primarily to automobile installment contracts and leases, and not to forklift leases, which are rarely paid off early.'' This explanation supports our conclusion to accept Toyota's claimed adjustment for credit revenue.

Comment 6

Petitioners claim that the payment terms for loans and leases can range from one to five years and thus constitute long-term, not short-term, financing. Therefore, petitioners contend, the Department should consider the credit expense Toyota incurred as long-term debt and should not base the calculation on the short-term borrowing rate Toyota reported. Petitioners argue that, in the absence of information from Toyota on long-term interest rates, the Department should rely on facts otherwise available.

Toyota argues that the Department has a well-established practice of using short-term interest rates to calculate credit expense and believes that the Department should adhere to this practice.

Department's Position

We agree with Toyota. Maintaining our approach is reasonable and we have not altered our practice of using a company's short-term borrowing rate to calculate imputed credit expense. The Department's position is buttressed by the fact that ''TMCC's issuance of short-term commercial paper contributes to the pool of funds used to finance all transactions, regardless of credit term'' and that ''there are only ten occasions in which reported credit terms exceed one year'' (*see* Toyota's Submission, February 29, 1996, at 9). Therefore, we have not adjusted Toyota's reported credit expenses by using a long-term interest rate as petitioners propose.

Comment 7

Petitioners maintain that it is the Department's consistent practice to use the date of the final results as the date of payment for U.S. sales where there is no reported date of payment (citing *Certain Stainless Steel Wire Rods from France; Final Results of Antidumping Duty Administrative Review* (September 3, 1996)). Petitioners suggest that, whenever Toyota has reported a payment date of March 31, 1996, the Department should instead use the date of the final results to calculate Toyota's credit expense.

Toyota explains that, for certain U.S. sales for which it had not yet received payment by the time it was preparing its

supplemental questionnaire for filing on May 3, 1996, it reported a payment date of March 31, 1996, the closing date for the data in the supplemental response. Toyota asserts that the relevant transactions consist of sales with extended payment terms that include credit revenue. Toyota argues that, if the Department changes the reported date of payment to the date of the final results to recalculate the credit expense, the Department would likewise have to revise the calculation of credit revenue. Toyota contends that, because credit revenue is not calculated but is based on actual payments received, Toyota would have to submit these amounts to the Department. Toyota states that, although it has no objection in principle to revising both credit expense and revenue (given that Toyota would gain more in credit revenue than it loses in credit expense), due to the complications of resubmitting new information at this late stage of review, the company requests that the Department maintain the current ''default'' payment date.

Department's Position

We disagree with petitioners. Use of the date of the final results to calculate credit expense and credit revenue for those sales for which payment has not yet been received is not appropriate because there is no evidence to suggest that this date will provide greater accuracy in the calculation of either credit expense or credit revenue. Due to the nature of the credit expense and credit revenue at issue, it is not possible to derive exact expense and revenue amounts for certain transactions within the time permitted for responding to our information requests. In addition, because Toyota calculated its credit expense and credit revenue using the same period, any adjustment to one will require a corresponding adjustment to the other. Accordingly, we have not adopted petitioners' proposal for the final results.

Comment 8

Petitioners state that Toyota never stated for the record that all of its U.S. technical services were actually indirect expenses. Petitioners claim that Toyota reported the expenses as indirect expenses because Toyota was unable to segregate them from other expenses, and petitioners argue that Toyota cannot be allowed to benefit from its alleged inability to isolate these expenses. Petitioners assert that Toyota bears the burden of demonstrating that these expenses are indirect pursuant to 19 CFR 353.54 and argue that the Department should treat the expenses as direct selling expenses.

Toyota disputes petitioners' assertion that it classified technical service expenses as ''indirect'' because the expenses could not be separately quantified. Toyota asserts that the record is clear that these expenses are all fixed and do not relate to specific sales.

Department's Position

We disagree with petitioners. In Toyota's initial questionnaire response, the company reported that its ''[t]echnical services in the United States were allocated and included in selling expenses.'' Toyota also explained that ''[t]hese are not recorded separately in TMS's records, and, therefore, cannot be isolated.'' October 16, 1995 Questionnaire Response at C–51. In response to our request that Toyota state whether any of the technical services it performed could be tied to specific sales and to report variable technical service expenses separately from fixed expenses, Toyota stated that its technical service expenses are all fixed expenses and do not relate to specific sales. Questionnaire Response at C–65–66. Based on the record of this review, we find no reason to dispute Toyota's characterization of its reported technical service expenses as indirect. The fact that Toyota is unable to break out a particular expense does not suggest that this characterization is inaccurate. Accordingly, we have maintained our treatment of these expenses as indirect selling expenses in the final results.

Comment 9

Petitioners maintain that the Department's treatment of Toyota's U.S. servicing commissions as indirect selling expenses is not consistent with the statute or with the Department's practice in the 1987–89 administrative review. Petitioners contend that these expenses are in fact value-added expenses. Petitioners state that section 772 of the Act provides that the Department will derive CEP by reducing the starting price by the cost of any further manufacture or assembly, but section 772 does not provide that U.S. value-added expenses be included in the pool of U.S. indirect selling expenses which, in turn, establishes the limit of the CEP offset. Petitioners claim further that, in the 1987–89 review, the Department included Toyota's servicing commission payments in U.S. value-added costs. Petitioners note that, in that review, the Department determined that Toyota's servicing ''commissions'' are payments to a third party, the dealer, and considered them as a cost of further manufacturing because the expenses involved preparing, servicing, and delivering a forklift truck to the customer, all of which are operations that add value to the forklift.

Toyota responds that these commissions are different from a direct payment to subcontracted value-added activities. Toyota asserts that the law and regulations describe how commissions are to be treated and that commissions are always paid to third parties to compensate for some service or activity. Toyota argues that the fact that some of these activities may involve certain servicing obligations does not render them value-added expenses.

Department's Position

We agree with Toyota. Based on the record of this review, we do not consider these payments to be for specific further-manufacturing activity. Based on Toyota's description of the purpose of these payments, while they may potentially involve such activity or obligations, they are more akin to payments that we treat as commissions. In its sales questionnaire response Toyota stated that ''these commissions are paid to unaffiliated forklift dealers for National Account transactions in their territories . * * *'' October 16, 1995 Questionnaire Response at C–40. In a January 30, 1996, submission to the Department, Toyota stated (at 11) that ''these commissions may or may not be related to modifying the truck—in fact, most are not— and in any case do not relate to any activities performed by Toyota.'' Toyota's description of these payments indicates that they are generally not for further-manufacturing activities, but rather are primarily intended to compensate dealers for servicing obligations they may be called upon to provide.

We have previously considered similar payments to be commissions. In *TRBs* (at 57638), respondent ''explained in its response that, as a means of compensating (its U.S. affiliate) for expenses it incurred with respect to services it provided for certain of (respondent's) purchase price sales, (respondent) made ''commission'' payments to (its U.S. affiliate).'' While the ''commission'' concerned payments to a related party on purchase price sales and were ultimately decided to not have been at arm's length, the case stands for the proposition that the Department will consider such payments to be commissions.

There is nothing on the record to support petitioners'' position that these commissions were related directly to specific further-manufacturing

activities. Therefore, for purposes of the final results, we have maintained our treatment of Toyota's servicing commissions as ''commissions.''

Comment 10

Petitioners note that, at verification, Toyota informed the Department that it miscalculated inland freight and proposed an alternate methodology to calculate the freight cost on the basis of units shipped rather than on the basis of weight. Petitioners assert that such a methodology is improper because it understates the amount of inland freight expense for larger trucks while allocating a disproportionately greater expense to smaller trucks. Petitioners propose an alternate methodology using the total weight of individual trucks and the freight factor Toyota provided in its May 3, 1996 supplemental response.

Toyota responds that petitioners misunderstand the issue because Toyota's yen/kg inland freight factor itself is incorrect. Toyota states that, contrary to its initial belief, there is no way to calculate a yen/kg inland freight factor because its records only permit the calculation of a per-unit amount for inland freight based on the total units shipped and the total payments made. Toyota asserts that this is an accurate way of allocating the expense because Toyota is charged by the truckload regardless of the number of trucks shipped.

Department's Position

We agree with Toyota. Petitioners'' proposed methodology would be based on a freight factor that Toyota determined, in preparing for verification, was flawed. We verified that the original methodology was flawed. Toyota apprised the Department of this error prior to verification and calculated a per-unit expense by taking the total expense for the POR and allocating it over the total units it shipped. We verified the bases of Toyota's proposed methodology.

This methodology is the most feasible manner in which Toyota can report this expense based on its records, which only permit the calculation of per-unit amounts using the total units shipped and total payments made. Further, we consider this to be an accurate and reasonable method of allocating the expense, given that Toyota is charged by the truckload, not by the weight. Accordingly, we have accepted Toyota's methodology for the final results.

Comment 11

Petitioners assert that Toyota failed to provide verification documents to support its home market warranty payments, yet the Department inadvertently allowed Toyota an adjustment for home market warranty expense in the Preliminary Results. Petitioners argue that there is no basis to allow Toyota an adjustment for home market warranty expense given that Toyota failed to demonstrate that it made the warranty payments and, therefore, failed verification of this expense. Petitioners conclude that the Department should disallow an adjustment for Toyota's home market warranty expense for the final results.

Toyota responds that petitioners are incorrect in recommending that the Department deny Toyota's home market warranty expense. Toyota notes that the Department's verification report and verification exhibits related to Toyota's claimed warranty expense show clearly that the verification of this expense, including traces to numerous documents supporting the fact that Toyota incurred and paid the reported warranties. Toyota claims that the only document it could not provide was one showing that it made a specific warranty payment to a dealer, a document that Toyota's accounting system does not produce. Toyota asserts that all of the documentation that Toyota does have, and which the Department examined, supports the fact that it made these payments. Therefore, Toyota contends, the Department was justified in determining the expenses were real. Toyota argues that any decision to deny this expense would be an inappropriate use of adverse facts available.

Department's Position

We disagree with petitioners. We do not accept petitioners' assertions that we could not verify Toyota's reported home market warranty expense and that we inadvertently overlooked Toyota's failure to verify this expense in the Preliminary Results.

While it is true that Toyota was unable to demonstrate that it made these warranty payments through the use of specific documents, *e.g.*, a bank-funds transfer statement, the verification of this expense included the review of numerous other documents that supported the expense. See *Report* at 17–18. Unlike Toyota's failure to respond to the Department's requests with regard to the verification of certain selling expenses, Toyota was able to provide numerous interrelated documents to support the reported warranty expense. Therefore, we have allowed Toyota's home market warranty claim for the final results.

Comment 12

Petitioners state that the Department has provided no justification for a departure from its standard practice for determining whether transactions with affiliated parties are at arm's length based on its 99.5 percent test. Petitioners claim that they performed an affiliated-party test and, given that the evidence of record indicates that Toyota's prices to its affiliated dealers are not at arm's length, the Department must require Toyota to submit complete home market sales data.

Petitioners note that the Department confirmed at verification that TMC's price list makes no distinction between prices charged to affiliated and unaffiliated dealers, but argues that price lists alone cannot determine whether sales are at arm's length because certain affiliated dealers might receive higher rebates, better payment terms, or any other number of benefits that result in a lower net price than that which unaffiliated dealers pay.

Toyota responds that the Department should not require Toyota to submit sales information on sales by affiliated dealers to unrelated end-users because all of its sales are at arm's length. Toyota adds that petitioners' own analysis demonstrates that sales to affiliated dealers are at arm's length, since this analysis reveals that affiliated dealers paid prices slightly above and slightly below the average price to unaffiliated dealers. Toyota states that this very narrow range of deviation from the average does not suggest that prices to affiliated dealers are not at arm's length and adds that the small deviation is created solely by a deficiency in petitioners' method of analysis, whereby petitioners adjusted the prices by the costs of the attachments and options. Toyota provides three examples indicating that differences in prices are attributable to differences in the number of options/attachments, credits for removal of certain equipment, and differences in the types of attachments. Toyota states that petitioners wrongly tried to compensate for the different attachments through cost adjustments; petitioners should have used the prices for the attachments which the Department verified were identical to affiliated and unaffiliated dealers. Toyota states that the Department has recognized in each of its prior reviews that Toyota's sales are all at arm's length and neither Toyota's business practices nor the law have changed and, therefore, there is no basis for the Department to alter its analysis for this review.

Department's Position

We disagree with petitioners. As we stated in our verification report, Toyota's sales prices to affiliated and unaffiliated dealers in the home market, for the basic truck and parts, were based on published price lists. *See Report* at 11. At verification, we noted no deviation from the price lists for sales to affiliated or unaffiliated dealers for either the basic truck or parts.

In addition, while petitioners claim that the arm's-length test they conducted appears to indicate that Toyota's sales to affiliated dealers fail our 99.5% arms-length-test, we note that, due the unique nature of this product, where differences between products beyond the basic truck (options, attachments, etc.) can be significant and where these differences are not always individually distinguished in the submitted data, an arm's-length test is not always feasible. Petitioners'' methodology in their arm's-length test for calculating average variances for options does not adequately account for all such differences. Therefore, based on the verified fact that both affiliated and unaffiliated dealers purchased trucks and parts based on the same price lists, we have determined that Toyota's sales to affiliated dealers in the home market form a proper basis for consideration and the calculation of NV.

Comment 13

Petitioners argue that the Department's level-of-trade analysis is incorrect. Petitioners claim that, rather than examining the actual level of trade at which Toyota's sales to unaffiliated purchasers in the United States occurred, the Department began its level-of-trade analysis with a price reduced of expenses which Toyota's U.S. affiliate incurred. Petitioners assert that, by excluding these expenses, the Department failed to recognize that the CEP sales were at a more advanced level than Toyota's home market sales and, therefore, that an upward adjustment to NV was warranted.

Petitioners assert that there is no legal justification for adjusting CEP prior to determining the level of trade of the U.S. sale. Petitioners claim that the statute requires the Department to make a comparison of CEP with NV at the same level of trade. Petitioners assert that nothing in the statute nor the SAA requires the Department to compare the level of trade of a CEP with an unadjusted home market price and that, in doing so, the Department has misinterpreted the law. Petitioners point to the Department's longstanding practice of comparing sales in the relevant markets at a common point in the chain of commerce (citing, among others, *Cookware* at 43330).

Petitioners claim that the flaw in the Department's analysis is indicated by the results it reached in this case. Petitioners assert that the U.S. sales are accompanied by similar and more extensive selling activities than those in the home market, yet the Department created distinct and commercially unrealistic levels of trade in the two markets with its adjustments to CEP. Petitioners refer to other cases where the Department's analysis yielded anomalous results and artificial differences in levels of trade between markets (citing *Stainless Steel Wire Rod from France,* 61 FR 8915, 8916 (1996), and *LNPP from Japan,* at 38142).

Petitioners conclude that the Department should begin its level-of-trade analysis with an unadjusted CEP starting price. Once the Department does that it becomes apparent that Toyota's U.S. sales are at a more advanced level of trade than its home market sales and that an upward adjustment to NV for the difference in levels of trade is warranted.

Toyota responds that petitioners'' argument that the Department should compare unadjusted prices is incorrect, contradicted by the statute, and premised upon a fundamental misperception of CEP. Toyota asserts that there is no such thing as an unadjusted CEP; CEP is by definition an adjusted price, while ''normal value'' is an unadjusted price. Toyota further asserts that the level-of-trade provision refers only to a comparison of NV with a CEP. Toyota concludes that use of an unadjusted CEP in determining the level of trade of the U.S. sale is contradicted by the definition of CEP at section 772(b), the definition of normal value at section 773(a)(1), and the level-of-trade provision at section 773(a)(7)(A) of the Act.

Toyota notes that its U.S. sales are indisputably CEP sales. Toyota claims that the U.S. level of trade is a single, very-little-advanced level, from an exclusive distributor (TMC) to an affiliated purchaser in the United States (TMS). In contrast, all of its sales in Japan are at a more remote level, that of a distributor (TMC) to dealers. Consequently, there is no level of trade in Japan comparable to that of the U.S. sales and no information available in Japan on which to make the price-based level-of-trade adjustment anticipated by section 773(a)(7)(A) of the Act. Therefore, the Department correctly made a CEP-offset adjustment as permitted by section 773(a)(7)(B) of the Act. Toyota adds that, since its home market level of trade is more remote, there is no justification for adjusting home market prices upwards. Toyota notes, in conclusion, that the Department refuted arguments identical to petitioners'' suggestions in its proposed regulations (at 7347).

Department's Position

We disagree with petitioners that our level-of-trade analysis must begin with the unadjusted price of the U.S. sales. We base the level of trade of CEP sales on the CEP, *i.e.*, the price in the United States, net of the deductions required by the statute. It is that price, not the starting price, that is compared to the normal value. Petitioners' position is contrary to the SAA, the statute, and our practice under the URAA.

We agree with Toyota that the statute is clear that the CEP by definition is an adjusted price while normal value in a level-of-trade analysis is based on an unadjusted price. Section 772(b) of the Act states that ''constructed export price'' means the price at which the subject merchandise is first sold * * *, *as adjusted* under subsections (c) and (d)'' (emphasis added). Normal value is defined as ''the price at which the foreign like product is first sold * * * for consumption in the exporting country * * * at the same level of trade as the * * * constructed export price.'' Section 773(a)(1)(B)(i) of the Act. The SAA similarly specifies that normal value will be calculated, to the extent practicable, at the same level of trade as the CEP. SAA at 827. Section 773(7)(A) of the Act further indicates that ''[t]he price described in paragraph (1)(B) shall be increased or decreased to make due allowance for any difference (or lack thereof) between the * * * constructed export price and the price described in paragraph (1)(B) * * * that is shown to be wholly or partly due to a difference in level of trade between the * * * constructed export price and normal value * * *'' It is clear that the statute speaks of an adjusted price for CEP and an unadjusted price for NV.

Our practice, in examining level of trade, has been to use an adjusted starting price (*i.e.*, the CEP) in accordance with the statute. In *LNPP from Japan*, we stated ''[i]n those cases where [a level-of-trade] comparison is warranted and possible, then for CEP sales the level of trade will be evaluated based on the price after adjustments are made under section 772(d) of the Act. As stated in Aramid Fiber ''the level of trade of the U.S. sales is determined by the *adjusted CEP* rather than the starting price.'' *LNPP from Japan* at 38143 (emphasis added).

More recently, in *AFBs 6*, we stated:

> [t]he statutory definition of 'constructed export price' contained in section 772(d) of the Tariff Act indicates clearly that we are to base CEP on the U.S. resale price as adjusted for U.S. selling expenses and profit. As such, the CEP reflects a price exclusive of all selling expenses and profit associated with economic activities occurring in the United States. *See* SAA at 823. These adjustments are necessary in order to arrive at, as the term CEP makes clear, a 'constructed' export price. The adjustments we make to the starting price, specifically those made pursuant to section 772(d) of the Tariff Act (''Additional Adjustments for Constructed Export Price''), normally change the level of trade. Accordingly, we must determine the level of trade of CEP sales exclusive of the expenses (and concomitant selling functions) that we deduct pursuant to this subsection.

AFBs 6 at 2107.

Because the statute, the SAA, and our practice support our use of an adjusted CEP to determine level of trade, petitioners' comparisons between the activities provided for Toyota's home market sales and those provided for its U.S. sales to unaffiliated customers are not relevant. We consider the appropriate comparison of selling functions, selling expenses, and class of customer between markets to be sales determined by the adjusted starting price (constructed export price) for U.S. sales and the unadjusted starting price for home market sales (normal value) *i.e.*, Toyota's sales to its U.S. affiliate and its home market sales to affiliated and unaffiliated dealers.

Comment 14

Petitioners assert that, even if the Department begins the level-of-trade analysis with an adjusted CEP, the evidence of record does not establish that different levels of trade exist in the home and U.S. markets. Petitioners claim that the selling functions provided on U.S. sales by TMC and TAL (exclusive of those provided by TMS) are sufficiently similar to the verified selling functions incurred on home market sales by TMC and TAL to consider the sales at the same level of trade.

Petitioners note that the home market expenses the Department examined at verification included inland freight and insurance, rebates, discounts, warranties, direct advertising, credit, product liability, TAL home market indirect expenses (quality assurance) and TMC home market indirect expenses (incentives, indirect selling, indirect advertising, wage and salary and G&A and inventory carrying costs). Petitioners argue that rebates, discounts and incentives do not reflect selling activities and cannot serve as the basis for distinguishing levels of trade. Petitioners claim that the Department was unable to verify either home market direct or indirect advertising, part of the indirect selling expense claims, and Toyota's warranty claims and argue that, given this inability, the Department should neither adjust for, nor consider, these to be distinct functions in its level-of-trade analysis.

Petitioners assert that other expenses applying to home market sales appear to be applicable to U.S. sales. In particular, petitioners claim that Toyota has focused only on selling functions TMC provided with respect to U.S. sales and has ignored those TAL provided (citing as examples TAL's quality assurance, engineering services and technical advice). Petitioners note that Toyota admits TAL incurs expenses related to the selling functions provided with respect to U.S. sales. Petitioners assert that the statute does not limit the selling functions to be examined to those provided by the exporter and notes that, while the degree of the particular service may vary on a given group of sales, the statute merely looks to whether the function provided is the same. Petitioners conclude that there are no verified *bona fide* selling expenses that were incurred in the home market that were not also incurred with respect to U.S. sales and, therefore, there is no rational basis for differentiating between levels of trade in this case.

Toyota responds that petitioners ignore evidence of record establishing different levels of trade and maintains that the Department's disallowance of certain expenses was unwarranted. Toyota argues that, even if the Department's disallowance of these expenses was lawful, it does not follow that the selling functions which gave rise to the expenses should be eliminated from the level-of-trade analysis because the Department was able to verify the selling functions, if not the precise expense amounts. Toyota notes that the Department stated unequivocally in the preliminary results that it verified the presence of home market selling functions and that the home market level of trade constituted a more advanced stage of distribution than the level of the CEP.

Toyota further asserts that petitioners' implication that TAL's provision of selling functions requires a finding that there are no differences in selling functions is not valid since: (1) The differences in TMC's selling functions in the two markets is sufficient to satisfy the Department's level-of-trade analysis, (2) the record states in several places that, while there was some overlap in the functions TAL performed in the two markets, there were nevertheless quantitative and qualitative differences in the functions performed, and (3) the Proposed Rules state that ''overlap between functions is not necessarily determinative of whether two levels of trade are distinct.'' Notice of Proposed Rulemaking and Request for Public Comments, 61 FR 7308, 7347 (February 27, 1996), *citing* SAA at 830. Toyota argues that the substantial differences in the degree of the performance of a similar function in the two markets constitute ''the performance of different selling activities'' pursuant to section 773(a)(7)(A)(i) of the Act.

Department's Position

We disagree with petitioners. In the course of this review, we obtained information concerning the selling functions Toyota performed for its respective markets. In addition, in the process of verifying this information, we interviewed company officials concerning the functions performed for the various markets. Based on our analysis of this information, we determined that TMC's and TAL's selling activities directed at the home market level of trade were more extensive. *See* Preliminary Results Analysis Memo, July 26, 1996, at 2–5; *see also Report* at 9–10. Our determination for the final results remains unchanged.

We disagree with petitioners that rebates, discounts and incentives do not reflect selling activities and do not serve as a basis for distinguishing levels of trade. Contrary to petitioners' assertion, these expenses may involve selling functions that are appropriate for us to consider in our level-of-trade analysis and contribute to our level-of-trade determination. We further disagree with petitioners that we were unable to verify Toyota's claimed home market warranty expense (see comment 11).

We also disagree with petitioners that Toyota failed to provide information on selling functions TAL performed with respect to sales to the respective markets. As we stated in our Preliminary Results Analysis Memo at 3–4, ''[i]n addition, the functions performed on behalf of U.S. sales by TAL, while similar in some instances to those provided in the home market, are much less extensive and limited to quality assurance, engineering services and technical advice.''

Finally, we disagree with petitioners that our inability to substantiate certain selling expenses, by tracing reported amounts to the level of detail required for a successful verification of a topic, precludes us from recognizing that Toyota provided the functions for sales

to the particular markets. We obtained confirmation that these functions were performed in other ways, *e.g.*, through interviews with company officials and review of organizational charts. *See, e.g., Report* at 9–10.

Comment 15

Petitioners argue that Toyota should be denied a CEP-offset adjustment to NV because it failed to provide information on a level-of-trade adjustment (citing *LNPP from Japan* at 38142). Petitioners assert that Toyota has made no effort to quantify a level-of-trade adjustment but has assumed it is entitled automatically to a CEP offset. Petitioners assert that the SAA (at 830) provides that, where information on different levels of trade by the same company and same product is unavailable for the POR, the level-of-trade adjustment may be based on (i) sales of other products by the same company, (ii) the experience of other producers, or (iii) sales of the same product by the same company in different time periods. Petitioners claim that Toyota has not attempted to provide such information, given its assumption a CEP offset is automatic. Petitioners further assert that the Department found the information Toyota provided to quantify the CEP offset to be deficient and not verifiable.

Toyota responds that, in the preliminary results, the Department properly determined that Toyota's sales in the home market were at a different, more advanced level of trade than its sales in the United States. Toyota claims that the wide range of selling activities to the home market level has an obvious and substantial effect on price comparability with the U.S. level of trade. Toyota asserts that, because it sells at only one level in the home market, it cannot demonstrate a ''consistent pattern of differences between levels of trade'' (citing *Certain Stainless Steel Wire Rods From France; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 8915, 8916 (March 6, 1996)). Toyota claims that it provided all of the information necessary for the Department to calculate the CEP offset, and states that, in the preliminary results of review, the Department properly adjusted Toyota's home market prices due to differences in levels of trade through a CEP offset. Toyota asserts that the Department properly resorted to the CEP offset after analyzing other statutorily directed alternatives to account for the necessary adjustment for differences in levels of trade. Toyota states that petitioners' citation to *LNPP from Japan* is misleading because, in that case, the Department denied a CEP offset because a respondent provided no level-of-trade information.

Department's Position

We disagree with petitioners. We agree that a respondent must establish entitlement to a level-of-trade adjustment. However, where the data necessary to calculate an adjustment is unavailable, the CEP offset is warranted. With respect to the quantification necessary for a level-of-trade adjustment, in this case the respondent sells to only one level in the home market and this level is at a more advanced stage of distribution than the level of the CEP. Therefore, neither we nor Toyota can quantify such an adjustment and there is no further requirement to establish entitlement to a CEP-offset adjustment.

Comment 16

Petitioners claim that the Department's failure to deduct from CEP Toyota's indirect selling expenses incurred in the country of manufacture to sell the product to the United States, and Toyota's inventory carrying costs incurred from the time of production in the foreign country through the time of entry into the United States, was a direct violation of the statute and should be corrected in the final results.

Petitioners contend that the plain meaning of section 772(d) of the Act indicates that the Department cannot limit adjustments to CEP based on the geographical area in which such expenses are incurred and that, when Congress amended the statute in the URAA, it did not change the operative language of section 772(e) by limiting the selling expenses the Department is to deduct. Petitioners further contend that, under prior law, the Department was required to deduct selling expenses from Exporter's Sales Price (ESP) regardless of where incurred geographically and, citing *Silver Reed America, Inc. v. United States*, 683 F. Supp. 1393 (CIT 1988) (*Silver Reed*), state that the relevant question is whether the selling expenses relate to U.S. sales. Petitioners further state that the court recognized the loophole that would be created if expenses incurred abroad for U.S. sales were not deducted from ESP (the predecessor to CEP).

Petitioners maintain that the Department should deduct these expenses from CEP because the record establishes that they relate explicitly to the U.S. economic activity. Petitioners cite in support of their position *LNPP from Germany* (at 38173–74), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30352 (June 14, 1996) (*Pasta from Italy*).

Toyota answers that the petitioners would have the Department calculate a distorted CEP that is not the equivalent of what the export price would have been if the affiliated foreign seller and U.S. reseller were unaffiliated. Moreover, petitioners claim that the Department limited CEP deductions based on where they occurred is factually in error as the Department deducted from CEP direct advertising TMC incurred in Japan. Citing the *Notice of Proposed Rulemaking and Request for Public Comments*, 61 FR 7308, 7331 (February 27, 1996), Toyota maintains the Department properly limited deductions by whether such expenses were selling expenses associated with economic activities in the United States, as required by the statute. Regarding the indirect selling expenses referred to by petitioners, these were not deducted because they are general in nature, do not relate specifically to U.S. commercial activity, and are incurred, if at all, with respect to the sale by an affiliated purchaser. To support its position, Toyota cites *Calcium Aluminate Flux From France; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 40396, 40397 (August 2, 1996) (*Calcium Aluminate Flux*), and argues that the relevant expenses relate to commercial activity in Japan, not U.S. commercial activity and, therefore, the Department properly did not deduct them in calculating CEP.

Department's Position

We disagree with petitioners. In accordance with the SAA, we deducted from CEP only those expenses associated with economic activities in the United States. The SAA indicates that ''constructed export price is now calculated to be, as closely as possible, a price corresponding to an export price between non-affiliated exporters and importers.'' SAA at 823. Therefore, we did not deduct either of the expenses referred to by petitioners from CEP. We have only deducted expenses associated with commercial activities in the United States in our calculation of CEP. Our proposed regulations reflect this logic at 351.402(b): ''(t)he Secretary will make adjustments to constructed export price under 772(d) for expenses associated with commercial activities in the United States, no matter where incurred.'' *Id.* at 179.

With regard to the TMC and TAL export selling expenses Toyota allocated to U.S. sales, we consider these expenses not to be specifically related to economic activities in the United States.

As these figures cover salaries and fixed expenses, which expenses are general in nature and are not related specifically to commercial activity in the United States, they are not properly part of the calculation of CEP. In *Calcium Aluminate Flux,* at 40397, we declined to deduct indirect selling expenses (*i.e.,* administrative expenses, inventory carrying costs, personnel costs for technicians) incurred in the country of manufacture because we deemed such expenses not to be specifically related to commercial activity in the United States. While these expenses arguably may be similar to those we deducted in *LNPP from Germany,* we have determined subsequently, as indicated by our position in *Calcium Aluminate Flux,* that such expenses are not specifically associated with commercial activities in the United States.

Regarding petitioners' assertion that we should deduct Toyota's inventory carrying costs incurred in the country of manufacture, such inventory carrying costs are not associated with economic activities in the United States. *See AFBs 6* at 2125. Therefore, we have not deducted either of these expenses for purposes of the final results because neither of the expenses is specifically associated with economic activities in the United States and, therefore, is not an appropriate deduction in calculating CEP.

Comment 17

Petitioners argue that the Department's verification report and Toyota's supplemental questionnaire response indicate that Toyota misreported the date of sale for both its U.S. and home market sales. Petitioners note that Toyota explained in its supplemental questionnaire response that a dealer may modify an order by changing the configuration of the truck between 10–15 percent of the time, but that the Department determined at verification the frequency instead ranged from 4.3 to 7.5 percent. Petitioners assert that the low frequency of changes fails to justify Toyota's decision to base date of sale on date of shipment when the majority of sales are established on the order date; further, the changes to certain attachments do not alter the essential terms of sale between Toyota and its customer. Petitioners state that it is likely there would be a set price for the particular attachments or changes in configuration of the truck and, although a purchaser may request different attachments, the basic truck and negotiated price would not be altered after the order is placed.

Toyota responds that the date the basic terms of the contract are agreed to is the date of shipment, which is generally on or about the date of invoice. Toyota notes that, under the Department's proposed regulations, the invoice date is considered the date of sale. Toyota contends that customers can request modifications in payment terms, configuration, and price up to the date of shipment. Toyota states, further, that the date of order is not a date of sale in Toyota's records, is not significant enough to record on a systematic basis and, even where recorded, the order may or may not describe the merchandise actually shipped. Toyota notes that this is not a case in which the date of sale is substantively significant to the final results, given that Toyota's sales are relatively even over the period and there are no factors such as hyperinflation that would cause the date of sale to affect the analysis. Consequently a different date of sale would shift the universe of reported sales slightly and not change the outcome particularly since the Department plans to assess duties on all trucks entered during the POR.

Department's Position

We agree with Toyota. The date of shipment is the appropriate date of sale for home market sales in this case for the following reasons. First, the reported date of sale, which is based on shipment date, closely corresponds to invoice date in this case and is in accord with our current practice and with the date-of-sale methodology in our proposed regulations, where invoice date is considered the appropriate date of sale. Second, we verified that certain basic sales terms (such as configuration and price) can change up to the date of shipment. While Toyota initially reported that orders were changed 10–15 percent of the time and we determined at verification that the frequency of changes instead ranged from 4.3 to 7.5 percent, the potential for configurations and prices to change for the reported sales supports a sale date based on the shipment date. Third, Toyota records the date of shipment as the date of sale for financial reporting and internal purposes, and it records the sales transaction as complete upon shipment (*e.g.,* payment is due from a dealers based on this date—*see Report* at 11–12, Sale Date, and 19, Credit Expense).

Comment 18

Petitioners contend that the Department failed to deduct Toyota's U.S. inventory carrying costs (calculated from the date of entry to the date of shipment from the distribution facility in the United States) from CEP. Petitioners assert that these expenses are related to commercial activities in the United States and therefore, should be deducted.

Toyota argues that the Department properly considered inventory carrying costs incurred in connection with Japanese exports to the United States to be general export expenses broadly attributable to the sale to the unaffiliated purchaser, which should not be deducted from CEP. Toyota notes, however, that to the extent the Department deducts any inventory carrying expenses from CEP, the expenses should also be included in U.S. indirect selling expenses and the Department should deduct corresponding home market inventory carrying costs from NV.

Department's Position

We agree with petitioners. The inventory carrying costs Toyota incurred in the United States are an indirect expense related to commercial activity in the United States and, therefore, are appropriately deducted from the CEP starting price. Therefore, we have deducted the reported expense from the starting price and included it in U.S. indirect selling expenses for purposes of the final results.

Comment 19

Petitioners note that, in the preliminary results, the Department treated Toyota's repacking costs as a circumstance-of-sale (COS) adjustment and added the sum of packing and repacking to NV in dollars. Petitioners argue that the statute directs the Department to adjust NV for costs and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States and, therefore, the Department should not include repacking costs in the adjustment for differences in packing, but rather should subtract them from Toyota's starting price as an adjustment to CEP (citing section 772(d) and *Federal-Mogul Corporation* v. *United States,* Slip Op. 96–68 at 25 (April 19, 1996)).

Toyota asserts that section 772(c)(1)(A) provides that the Department should increase CEP by an amount for ''packing,'' and notes that this provision does not limit this term to home market packing. Toyota maintains, therefore, that the Department's approach was reasonable.

Department's Position

We agree with petitioners. As noted in our response to comment 16, we deduct expenses related to economic activities in the United States in calculating CEP.

Because U.S. repacking costs are clearly related to such activities, we have deducted these expenses from the starting price to calculate CEP for the final results.

Comment 20

Petitioners claim that the Department uniformly reduced Toyota's home market sales prices by reported inland freight expenses, which is inappropriate because Toyota's reported home market prices were exclusive of inland freight for certain sales. Petitioners assert that deducting these amounts resulted in an understatement of NV for those sales for which the price did not include delivery.

Toyota responds that it reported, and the Department verified, inland freight amounts only where the prices were inclusive of inland freight. Toyota asserts that the Department's Preliminary Results accomplish exactly what petitioners claim is proper.

Department's Position

We agree with petitioners. Toyota reported that its reported home market gross unit price ''includes inland freight only where the sales term is c.&f.'' (October 16, 1995 response at B–22) and indicated that for a particular sale ''the sales term is FOB, that is, it does not include charges for inland freight'' (May 3, 1996 supplemental response at Supp. 29). We have ensured that our calculations reflect the information Toyota provided in its response concerning this expense.

Final Results of Review

We determine that the following weighted-average margins exist for the period June 1, 1994, through May 31, 1995:

Manufacturer/exporter	Margin (percent)
Toyota	50.34
Nissan	[1] 7.36
Toyo	[1] 4.48

[1] No shipments or sales subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments/sales.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an exporter/importer-specific assessment rate for Toyota. For Toyota's CEP sales we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales and the entered value of leased trucks not subject to review (see our response to Toyota comment 10). We will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of Toyota's entries during the review period. While the Department is aware that the entered value of sales during the POR is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of forklift trucks entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the ''All Others'' rate of 39.45 percent made effective by the final results of review in *Certain Internal-Combustion Industrial Forklift Trucks From Japan; Final Results of Antidumping Duty Administrative Review*, 59 FR 1374,1384 (January 10, 1994).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also 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 Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 29, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–2877 Filed 2–5–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–201–817]

Oil Country Tubular Goods From Mexico: Notice of Panel Decision, Amended Order and Final Determination of Antidumping Duty Investigation in Accordance With Decision Upon Remand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of panel decision and amendment to final determination of antidumping duty investigation in accordance with decision upon remand.

SUMMARY: As a result of a remand from a Binational Panel (the Panel), convened pursuant to the North American Free Trade Agreement (NAFTA), the Department of Commerce (the Department) is amending its final determination in the antidumping duty investigation of Oil Country Tubular Goods from Mexico. The Department has determined, in accordance with the instruction of the Panel, the dumping margin for entries of Oil Country Tubular Goods from Mexico to be 21.70 percent.

EFFECTIVE DATE: February 6, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Stagner, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1673.

SUPPLEMENTARY INFORMATION:

Background

On June 28, 1995, the Department published in the Federal Register (60 FR 33567) the final determination of sales at less than fair value for Oil Country Tubular Goods from Mexico (OCTG from Mexico). On August 11, 1995, the Department published the antidumping duty order on OCTG from Mexico. 60 FR 41056.

Subsequent to the antidumping duty order, Tubos de Acero de Mexico, S.A. (TAMSA), the sole respondent, challenged the Department's findings and requested that the Panel review the final determination. Thereafter, the Panel remanded the Department's final determination with respect to two issues. Specifically, the Panel directed the Department to (1) substitute a weighted-average factor for the adverse factor used in the calculation of nonstandard costs for certain products and (2) provide a complete explanation of its reasoning for its use of 1994 data in calculating general and administrative (G&A) expense. In the Matter of: Oil Country Tubular Goods from Mexico; Final Determination of Sales at Less Than Fair Value, USA–95–1904–04 (July 31, 1996).

The Department recalculated the nonstandard costs using a weighted-average factor and provided an explanation of our use of 1994 data in calculating G&A expenses.[1] The Department submitted its remand determination on October 25, 1996.

On December 2, 1996, the Panel affirmed the remand determination of the Department. In the Matter of: Oil Country Tubular Goods from Mexico; Final Determination of Sales at Less Than Fair Value, USA–95–1904–04 (July 31, 1996) (Final Panel Order). As a result, the margin for TAMSA and all other producers/exporters was reduced from 23.79 percent to 21.70 percent.

Suspension of Liquidation

The Department will instruct the Customs Service to collect cash deposits of 21.70 percent on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of this amended final determination.

This notice is published pursuant to 19 U.S.C. 1516a(g)(5)(B) (1996), section 735(d) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(d) (1996)), and 19 CFR 353.20(a)(4) (1996).

Dated: January 31, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–3006 Filed 2–5–97; 8:45 am]

BILLING CODE 3510–DS–P

[1] For a complete discussion of the Department's reasoning for using 1994 data in calculating G&A expenses, see Redetermination on Remand; Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Mexico (October 25, 1996).

[A–357–804]

Notice of Final Results of the 1992/93 Antidumping Duty Administrative Review: Silicon Metal From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to timely requests from the respondents, Electrometalurgica Andina S.A.I.C. (Andina) and Silarsa S.A. (Silarsa), and the petitioners,[1] the Department of Commerce has conducted an administrative review of the antidumping duty order on silicon metal from Argentina. The review covers merchandise exported to the United States by these two respondents during the review period of September 1, 1992 through August 31, 1993.

EFFECTIVE DATE: February 6, 1997.

FOR FURTHER INFORMATION CONTACT: Michelle Frederick, Magd Zalok, or Howard Smith, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–0186, (202) 482–4162, or (202) 482–3530, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On July 25, 1996, the Department of Commerce (the Department) published in the Federal Register the preliminary results of this administrative review. *See Notice of Preliminary Results of the 1992/93 Antidumping Duty Administrative Review: Silicon Metal from Argentina*, 61 FR 38711 (July 25, 1996) (*Preliminary Results*). On August 26, 1996, the Department received briefs from Andina and the petitioners. On September 3, 1996, the Department received rebuttal briefs from Andina, the petitioners, and Hunter Douglas, an importer of the subject merchandise. On September 10, 1996, the petitioners withdrew their request for a hearing. The Department held ex-parte meetings with the petitioners' counsel and counsel for Hunter Douglas on September 11 and 13, 1996, respectively (*see* Ex-Parte Memoranda From the Team to the File dated September 11 and 13, 1996). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

[1] American Alloys Inc., American Silicon Technologies, ELKEM Metals Company, Globe Metallurgical Inc., and SKW Metals & Alloys Inc.

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.

Scope of Review

The product covered by this review is silicon metal. During the less-than-fair-value (LTFV) investigation, silicon metal was described as containing at least 96.00 percent, but less than 99.99 percent, silicon by weight. In response to a request by the petitioners for clarification of the scope of the antidumping duty order on silicon metal from the People's Republic of China (PRC), the Department determined that material with a higher aluminum content containing between 89 and 96 percent silicon by weight is the same class or kind of merchandise as silicon metal described in the LTFV investigation (*see Final Scope Rulings—Antidumping Duty Orders on Silicon Metal From the People's Republic of China, Brazil, and Argentina* (February 3, 1993)). Therefore, such material is within the scope of the orders on silicon metal from the PRC, Brazil, and Argentina. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) and is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this review. The HTS subheadings are provided for convenience and U.S. Customs purposes only. Our written description of the scope of the proceeding is dispositive.

Best Information Available

As explained in the preliminary results, Silarsa failed to respond to the Department's questionnaire in this review. Therefore, we have determined that the use of best information available (BIA) is appropriate for Silarsa in accordance with section 776(c) of the Act. For discussion of the Department's rationale for assigning a non-cooperative respondent a dumping margin based on BIA, *see Preliminary Results.* In this review, we have assigned Silarsa, as BIA, a margin of 24.62 percent, the rate assigned to Silarsa in the *Amendment to Final Results of Antidumping Administrative Review (1991/92): Silicon Metal from Argentina*, 59 FR 1617 (April 6, 1994), which is the highest rate for any company from any prior segment of the proceeding.

Fair Value Comparisons

To determine whether Andina's sales of silicon metal from Argentina to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the ''United States Price'' and ''Foreign Market Value'' sections of this notice.

United States Price

We calculated the USP based on the same methodology described in our preliminary results.

Foreign Market Value

Except as noted below, the methodology and calculations we used to arrive at the FMV for the final results are the same as those used in the preliminary results of this review. Because all home market sales were made at prices below their cost of production, we continued to use Andina's constructed value (CV) as the basis for the FMV as defined in section 773(e) of the Act. For a discussion of the Department's sales below cost test, and calculation of the cost of production (COP) and CV, *see Preliminary Results.*

For purposes of the final results of this review, we revised the COP and CV calculated for Andina in the preliminary results as follows:

1. For COP and CV, we included the depreciation expense related to idle furnaces. *See* Comment 1 in the ''*Interested Party Comments*'' section below.

2. We used the cost incurred by Andina's subsidiary to produce woodchips for purposes of COP. *See* Comment 6 in the ''*Interested Party Comments*'' section below.

3. For home market credit expense, we used the highest short-term interest rate for peso-denominated short-term loans reported by Andina in its May 24, 1994 submission. *See* Comment 11 in the ''*Interested Party Comments*'' section below.

Interested Party Comments

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioners, Andina, and Hunter Douglas.

Comment 1: Depreciation of Idle Equipment

The petitioners argue that the Department should reject Andina's reported depreciation expense for idle furnace IV because the expense was allocated over the wrong product base, *i.e.*, all products. Specifically, the petitioners contend that the depreciation expense for this furnace should have been attributed in total to silicon metal production because that is how the expense was treated in the first administrative review of this order. They further contend that not only does Andina's normal accounting methodology treat the depreciation expense of the idle furnace as a cost of producing silicon metal (and, therefore, conclude it should be likewise for the POR), but that the furnace has never been used to produce any other product. According to the petitioners, the Department will not depart from a respondent's normal accounting practice unless it is distortive. *See, Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand*, 60 FR 29503, 29559 (June 5, 1995) (*Pineapple from Thailand*) and *Final Determination of Sales At Less Than Fair Value: Certain Iron Construction Castings From Brazil*, 51 FR 9477, 9481 (March 19, 1994) (*Iron Castings from Brazil*). To further support their argument, the petitioners point to ferroalloy industry directories which identify Andina's furnace IV as a silicon metal furnace.

Alternatively, the petitioners assert that, if the depreciation expense is not allocated in total to silicon metal production, then it should be allocated only to silicon metal and ferrosilicon, the two products capable of being produced in furnace IV, as reported in the Department's verification report of the first administrative review. Finally, the petitioners argue that if the Department does allocate this expense to all products Andina is capable of producing, then it should do so only for the period of time when the furnace was disassembled and incapable of producing any product.

Andina disagrees with the petitioners views, as does Hunter Douglas. Andina argues that the furnace was disassembled and had not yet been re-tooled to produce a particular product. According to Andina, depreciation expense incurred while the furnace was disassembled should be allocated over all products; it should be allocated to a specific product only when the furnace is reactivated, and producing a specific product. It acknowledges that it had previously allocated the full expense of this furnace to silicon metal, but asserts that was because the furnace was producing silicon metal at that time. Andina maintains that the Department should not charge all of the depreciation expense on idle furnace IV to the subject merchandise because Andina was uncertain as to how the furnace would be used in the future.

Hunter Douglas further argues that the petitioners have misapplied the facts of *Iron Castings from Brazil*. First, it contends that it is irrelevant how depreciation expense was treated in the first administrative review—the only relevant issue is the status of the furnace during this POR. Hunter Douglas asserts that the depreciation expense for idle furnace IV should be treated as a general cost to Andina because, during the period covered by this review, it was disassembled and incapable of producing any product. Hunter Douglas cites to the *Final Determination of Sales at Less Than Fair Value: Shop Towels from Bangladesh*, 57 FR 3996, 3999 (February 3, 1992) (*Shop Towels from Bangladesh*). Finally, it states that there is nothing on the record to indicate that Andina allocated depreciation of furnace IV entirely to silicon metal during the POR.

With respect to idle furnace III, Andina argues that the Department should not have allocated the depreciation expense to all products, but instead to calcium silicon, a product furnace III was being modified to produce.

DOC Position

For purposes of this final determination, we have allocated the depreciation expense for furnance IV to the production of silicon metal. Although Andina asserts that furnace IV was disassembled and incapable of producing any product during the entire POR (August 1992–September 1993) and, therefore, should be allocated across all products, an on-site verification conducted by the Department in July 1993 found that furnace IV was in fact being used to produce silicon metal. (*See*, public File Memorandum from Maureen McPhillips, et al, August 3, 1993, documenting the July 1993 verification of the 1991–92 administrative review period.) Accordingly, we have determined that the depreciation related to furnance IV should be allocated to the production of silicon metal. The comments raised by the petitioners, with respect to Andina's normal accounting methodology for allocating depreciation expenses related to furnace IV, and Hunter Douglas, with respect to the analogy of idle furnace allocation in *Shop Towels from Bangladesh* with Andina's allocation methodology in this review, are moot because of the Department's verification findings.

Finally, we agree with Andina regarding furnace III. The record indicates that furnace III was being modified to produce calcium silicon while it was idle during 1993 and it began producing calcium silicon in June 1993. Thus, we have determined that

the depreciation expense for furnace III should be charged to the production of calcium silicon. We have amended our calculations for the final results by not attributing any portion of depreciation expense associated with furnace III to the cost of producing silicon metal.

Comment 2: Treatment of VAT on Inputs for CV

The petitioners argue that VAT paid on inputs used to produce silicon metal should be included in CV in the Department's final results. The petitioners assert that a home market tax directly applicable to materials used in the manufacture of merchandise exported to the United States is a cost of producing the exported merchandise unless the tax is remitted or refunded upon exportation. They contend that it is incumbent upon Andina to provide evidence that VAT paid on inputs used in the production of silicon metal for exportation was refunded, citing *Timken Co.* v. *United States*, 673 F. Supp. 495, 513 (CIT 1987). According to the petitioners, although the record shows Andina requested reimbursement for VAT paid on inputs used to produce exported silicon metal, a significant amount of the reimbursement Andina requested was not received.

Andina claims that it can receive refunds for VAT paid on inputs in three ways: (1) through an offset to the tax generated on domestic sales; (2) through a credit used to pay other taxes; or (3) through a cash refund upon exportation of the merchandise. Andina contends that it did receive VAT refunds from the Argentine Government on its exports as seen by the decrease from 1992 to 1993 in the balance of the ''government receivables on exportations'' account on its balance sheet.

Hunter Douglas agrees with Andina and claims that Andina's method of reporting VAT in its questionnaire response is consistent with the way the company records the tax in its audited financial statements, (*i.e.*,VAT is recorded as a receivable, not as an expense). Hunter Douglas notes that in the preliminary results the Department confirmed Andina's statements regarding the Argentine VAT system through independent third-party sources.

DOC Position

We disagree with the petitioners that VAT paid on inputs used to produce silicon metal should be included in CV. First, we corroborated Andina's statements regarding the operation of the Argentine VAT system through an independent source. *Doing Business in Argentina* (Price Waterhouse, 1993 at 119–121). Exporters are entitled to a tax credit for the full amount of VAT paid on inputs, if the final product is exported. The credit may either be offset against other taxes (*e.g.*, VAT on domestic sales), transferred to third parties, or reimbursed by the Direccion General Impostiva (*i.e.*, the Argentine tax authority). Second, we confirmed Andina's statement that during the POR it requested reimbursement of VAT paid on inputs used to produce exported merchandise by examining its audited financial statements. Andina recorded VAT payments on inputs for exported merchandise as a receivable, not an expense. Third, we noted the decrease in Andina's ''government receivables on exportations'' account balance between 1992 and 1993 and agree that this supports Andina's claim that it receives VAT refunds on exported merchandise. Based on the foregoing, we have concluded that Andina is receiving credits for VAT associated with the purchase of inputs used in the production of the subject merchandise. Consequently, we excluded VAT from CV in the final results.

Comment 3: Import Duties on Electrodes

The petitioners claim that there is no evidence to support Andina's claim that it included import duties on electrodes in the reported COP and CV. Originally, Andina had reported that the cost of electrodes consumed in the production of silicon metal by furnace V included import duties. However, in its supplemental response, Andina reduced the cost of the electrodes by the amount of the import duties and reported the duties as an indirect material cost of furnace V. The petitioners contend that the indirect material cost for furnace V reported in the supplemental response is less than the indirect material cost for furnace V reported in the original Section D response. They argue that if Andina had changed its reporting methodology as stated in its narrative, the indirect material costs should have been greater in the supplemental response, not less. Therefore, the petitioners contend that Andina failed to include duties on electrodes in the indirect material cost of furnace V.

Additionally, the petitioners note that if duties on electrodes were reported as an indirect material cost, then duties on electrodes consumed during 1993, which were drawn from the 1993 beginning inventory, have not been included in the reported costs. The petitioners argue that the duties on those electrodes would have been reported as an indirect material cost in 1992, when the electrodes were purchased. The petitioners argue that the Department should either determine whether Andina's reported costs include duties on imported electrodes or include a proper amount for such duties in Andina's reported costs.

Andina argues that import duties on electrodes are included as an indirect material cost of furnace V. It states that it had first included import duties on electrodes used to manufacture silicon metal in the cost of electrodes because it had used this methodology in the original investigation and the first review. However, it reported import duties on electrodes in indirect materials costs of furnace V in its supplemental responses so that the reported cost could be reconciled with its audited financial statements. Andina contends that the Department should not penalize it for changing its accounting methodology when it explained how it reported the duties on electrodes.

Regarding the methodology it used to account for import duties on electrodes drawn from beginning inventory, Andina agrees that it inadvertently failed to report import duties on electrodes drawn from beginning inventory and requests the Department to make the adjustment requested by the petitioners.

DOC Position

We agree with Andina and the petitioners that import duties on electrodes in beginning inventory were not included in the reported costs and have corrected these final results for that omission.

The petitioners' conclusion that import duties were not included in the indirect material costs for furnace V is wrong because they did not compare correct costs and failed to include all indirect material costs reported in Andina's supplemental response in their comparison. Specifically, the petitioners incorrectly compared the operating supplies expense and other costs for furnace V reported in Andina's Section D response to the indirect materials expense for furnace V reported in Andina's supplemental response. In addition, the indirect materials expense from the supplemental should have included an amount for the indirect materials and other costs from other cost centers which were allocated to furnace V.

We found that the reported electrode cost (exclusive of import duties) and the indirect materials cost for furnace V reconciled to Andina's accounting records as submitted. Thus, we have accepted Andina's statement that the import duties on electrodes is included

in indirect material costs for these final results.

Comment 4: Allocation of Laboratory Costs

The petitioners contend that the Department should not accept the methodology Andina used to allocate laboratory costs because it is not based on Andina's normal accounting system. They assert that Andina failed to show that its reported methodology is more reasonable than its normal methodology. Therefore, they argue, the Department should either require Andina to report information that would allow the Department to allocate laboratory costs using Andina's normal accounting methodology, or allocate, as best information available (BIA), laboratory costs over the direct labor hours of Andina's cost centers.

Andina asserts that its reported methodology is fair and logical. It disagrees with the methodology proposed by the petitioners, arguing that using labor hours as an allocation basis results in significant distortions.

Hunter Douglas also asserts that the petitioners fail to acknowledge the distortions created by using an allocation methodology based on Andina's accounting system; it over-allocates laboratory costs to intermediate products used to produce both subject and non-subject merchandise. Instead, it contends, Andina's revised methodology more reasonably reflects its actual costs. In addition, Hunter Douglas asserts that the petitioners offer no evidence that the ''labor hours'' methodology yields a more reasonable allocation.

DOC Position

We agree with Andina and Hunter Douglas. Andina appears to have mischaracterized its normal allocation of laboratory costs by stating that in its accounting system it assigns laboratory costs to the product that is being analyzed. However, based on the records submitted by Andina, we concluded that its normal accounting methodology is to allocate costs on the basis of furnace capacity.

For purposes of this review, Andina submitted an alternative allocation methodology based on allocating laboratory costs to its raw materials, intermediate products, and final products according to the volume of materials and products entering and leaving intermediate and final product cost centers, *i.e.*, an ''input/output'' basis.

Even though Andina's response is confusing regarding its normal accounting methodology, we disagree with the petitioners that Andina failed to provide adequate information about its normal accounting methodology. We were able to conclude that Andina's normal methodology is based on furnace capacity, (See Exhibit D–1 of March 15, 1996, supplemental response) and to reconcile the inventory values in these worksheets with Andina's 1993 audited financial statements, thus validating Andina's normal allocation basis. However, we determined that this allocation methodology does not reasonably allocate laboratory costs because furnace capacity is not the determinant of the amount of testing performed. Therefore, we have accepted Andina's alternative allocation methodology because it is based on a reasonable premise that the amount of laboratory testing will vary directly with the actual quantity of material processed.

Comment 5: Deduction of Income From Sales of Woodchips

The petitioners argue that the Department should not reduce Andina's reported COP and CV by the income from El Tambolar (a wholly-owned subsidiary) because not all of El Tambolar's income was derived from the sale of woodchips. They assert that El Tambolar's income includes an extraordinary gain from the recovery of a tax credit previously written-off and rental income, both of which bear no relation to the sale of woodchips or the production of silicon metal.

Andina argues that this income should be deducted from COP and CV because it is directly related to the production of silicon (*i.e.*, it uses woodchips to produce silicon metal).

DOC Position

We agree with the petitioners regarding El Tambolar's miscellaneous income. It is the Department's practice to reduce production costs only by revenue considered to be a recovery of costs (*e.g.*, revenue from sales of scrap) rather than revenue generated from sales in the normal course of business. (*See Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Argentina,* 60 FR 33539, 33550 (June 28, 1995) (*OCTG from Argentina*).) The income El Tambolar earned from its sales of woodchips is revenue earned from sales in the normal course of business.

In addition, we have not offset production costs by El Tambolar's extraordinary gain or rental income because this income is not related to silicon metal production costs incurred during the POR.

Comment 6: Use of Subsidiary's Costs for Woodchips

Andina argues that the cost of woodchips included in COP for silicon metal should be based on El Tambolar's actual costs to produce the woodchips, rather than the price El Tambolar charges Andina (*i.e.*, the transfer price).

The petitioners agree with Andina that El Tambolar's actual cost should be used to value the woodchips purchased from the related party. However, the petitioners urge the Department to base the cost of woodchips on the costs reported in El Tambolar's fiscal 1993 (*i.e.*, July 1, 1992–June 30, 1993) financial statements rather than the costs reported in El Tambolar's 1993 calendar year financial statement which was prepared for this review. The petitioners contend that the cost of woodchips reported in the calendar 1993 statement is inconsistent with other cost information on the record, namely the fiscal 1993 financial statement. The petitioners argue that Andina failed to reconcile the reported woodchip production costs contained in the calendar year 1993 financial statement with El Tambolar's fiscal 1993 financial statement. Moreover, the petitioners claim that they were unable to reconcile the costs figures reported in each statement. Thus, because the calendar year woodchip costs could not be substantiated, the Department should rely on the fiscal woodchip costs.

Additionally, the petitioners claim that costs on the fiscal financial statement should be increased to include amortization of the eucalyptus plantations from which wood is drawn to produce woodchips because this amortization appears to be missing from that statement. (*See Final Determination of Sales at Less Than Fair Value; Ferrosilicon from Brazil,* 59 FR 732 737–738 (January 6, 1994).)

DOC Position

We agree with both parties that, for our COP analysis, the related party purchases should be valued based on El Tambolar's actual cost of woodchips rather than the transfer price. We based the cost of woodchips on costs incurred by El Tambolar in calendar year 1993. (And, thus, no adjustment was necessary for amortization of eucalyptus plantations.)

With respect to petitioner's argument that Andina did not reconcile the calendar year statement with the fiscal year statement, we were able to reconcile the reported woodchip costs to El Tambolar's portion of the consolidated Andina income statement for 1993. (See Calculation

Memorandum, January 10, 1997.) Therefore, we believe the reported woodchip costs reasonably reflect their cost of production.

We note, however, that for CV we have followed our normal practice and used the transfer price which was greater than cost. The Department compared the transfer price to the prices from third-party sources in Argentina (submitted by the petitioners in their sales below cost allegation). We found the transfer prices to be consistent with the petitioners'' evidence of market prices and concluded that the transfer prices reflect arm's length prices. Therefore, we have used the higher transfer price to value woodchips in our calculation of CV.

Comment 7: Interest Expense

Andina argues that the Department should not calculate interest expenses based on the financial expense reported in its consolidated financial statement. Andina asserts that its auditors erred in preparing its consolidated income statement because they posted an adjusting journal entry, eliminating Andina's share of El Tambolar's net income, to the ''Financial Cost'' account instead of posting the entry to the ''Other Income and Expenses'' account. According to Andina, it is clear that this adjusting entry, which increased Andina's financial expenses, should have been posted to the ''Other Income and Expenses'' account. It argues that information exists on the record showing that this entry meant to eliminate income recorded in the ''Other Income and Expenses'' account.

The petitioners contend that the Department's established practice is to determine the interest expenses included in COP and CV based on a respondent's audited consolidated financial statements. (*See, e.g., Final Determination of Sales at Less Than Fair Value: New Minivans from Japan,* 50 FR 21065, 21069 (May 26, 1992), and *Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand,* 57 FR 21065, 21069 (May 18, 1992).) According to the petitioners, Andina failed to adequately support its claim because the information on the record that Andina cites to support its position is unaudited and prepared solely for this antidumping proceeding. Thus, the petitioners argue that Andina failed to demonstrate that the Department should not rely on the financial expenses reported on Andina's audited consolidated financial statement (*see* Timken Co., 673 F. Supp. at 513).

DOC Position

We agree with the petitioners. Andina has not provided sufficient evidence to support its claim that its audited consolidated 1993 financial statements are inaccurate. It is the Department's longstanding practice to base interest expense on the audited consolidated financial statements. (*See e.g., Notice of Final Determination of Sales at LTFV: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line, and Pressure Pipe from Italy,* 60 FR 31981,31990 (June 19, 1995).) We have used the financial expenses reported in Andina's audited, consolidated financial statements for the final results.

Comment 8: Reducing COP and CV by Reimbursed Taxes

Andina argues that the Department should not include reembolso taxes (taxes reimbursed under the reembolso program) in CV when making comparisons to USP for the final results because reembolso taxes were rebated upon exportation of the subject merchandise. Andina argues that the bills of lading for export sales prove conclusively that tax rebates were received on exports to the United States and, thus, the Department must reduce CV by the amount of these indirect taxes proven to be rebated on U.S. exports. Otherwise, claims Andina, the addition of these taxes to CV creates an unfair comparison because it compares a tax-inclusive CV to a tax-exclusive USP. (*See OCTG from Argentina.*)

The petitioners disagree with Andina. They contend that indirect taxes must be included in CV based on section 773(e)(1)(A) of the Act, which provides that the constructed value of imported merchandise shall ''be the sum of * * * the cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) * * *.'' The fact that (a) indirect tax refunds under the reembolso program are based on a percentage of sales value and that percentage is not directly related to the indirect tax payments; (b) Andina paid a series of indirect taxes that were not directly related to materials; and (c) Andina calculated the amount of the requested percentage reduction to CV based on the reported reembolso amounts received on export sales of silicon metal to all countries, contend the petitioners, is further evidence that Andina cannot establish a link.

The petitioners assert that Andina failed to answer the Department's supplemental question requiring Andina to demonstrate that reembolso taxes were tied directly to the exported merchandise. The petitioners cite *Timken Co.* v. *United States,* 673 F. Supp. 496, 513 (CIT 1987) arguing that the burden of establishing the right for an adjustment lies with Andina and assert that Andina failed to sufficiently support its claim.

Finally, the petitioners contend that *OCTG from Argentina* does not support Andina's position because that case did not address the proper treatment of reembolso in the context of calculating CV, but involved a circumstance-of-sale adjustment to account for differences in reembolso received on U.S. sales and third-country sales used for FMV.

DOC Position

We agree with the petitioners that Andina failed to substantiate its claimed adjustment. Although we have in past reviews granted this adjustment for Andina, in accordance with *OCTG from Argentina,* in this review we specifically requested Andina to link the reembolso tax to material inputs that are physically incorporated into the subject merchandise. *See* sections 773(e)(1)(A) and 772(d)(1)(C) of the Act. Because Andina failed to provide the information specifically requested by the Department with respect to this issue, we disallowed the claimed tax adjustments.

Comment 9: Short-term Interest Offset From Interest Expense

Andina claims that it should be allowed to reduce the interest expense included in COP and CV by interest income earned on certain bond investments because they are short-term investments. It supports this claim by noting that the bond investments are classified as current assets in the company's audited financial statement.

The petitioners disagree with Andina arguing that it provided documentation from the Argentine Central Bank identifying the term of the bonds as four years. The petitioners note that it is the Department's practice to reduce interest expense by interest income earned on investments with a maturity of one year or less, citing the *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Colombia,* 60 FR 6980, 7011 (February 6, 1996). Therefore, the petitioners contend, the interest income from these bonds should not be used to reduce interest expense because the investments do not qualify as short-term.

DOC Position

We agree with the petitioners. It is the Department's practice to allow a respondent to reduce its interest expense by interest income earned from short-term investments of working capital. The Department generally considers an investment with a maturity of one year or less to be a short-term investment. *See e.g., Pasta from Italy,* 61 FR 30326, 30359 (June 14, 1996). Andina reported the term of the bonds at issue as four years. Thus, because these bonds are properly classified as long-term investments, the interest income earned from these bonds was not used to offset interest expense for the final results.

Comment 10: Allocation of Plant General Services

Andina claims that allocating plant general services (PGS) costs to cost centers based on labor hours incurred in each center is not a reasonable measure of PGS provided to each cost center. Instead, Andina contends, it would be more appropriate to allocate these costs on bases which are related to the costs being allocated, such as (i) tonnage of inputs; (ii) tonnage of outputs; and (iii) salaries of each productive cost center.

The petitioners disagree with Andina and state that the Department properly rejected Andina's allocation methodology in the preliminary results because Andina failed to use its normal allocation methodology or demonstrate that its normal methodology, based on direct labor hours, is distortive (*see e.g., Pineapple from Thailand*). Furthermore, the petitioners contend that Andina's proposed methodology allocates relatively large amounts of PGS costs to simple operations and smaller amounts to more significant operations. The petitioners argue that this result is contrary to the Department's practice to allocate general facilities expenses and other indirect costs according to the level of activity within direct cost centers. *See Elemental Sulphur,* p. 8245.

DOC Position

We disagree with Andina. We have determined that Andina's arbitrary allocation of PGS costs into three portions did not reasonably reflect the cost of producing the merchandise under investigation. Andina did not demonstrate that the three different allocation bases it used are each related to a portion of total PGS costs. Moreover, Andina's normal allocation methodology for PGS costs, which is based on furnace capacity, is unreasonable because the record does not indicate that PGS costs are related to furnace capacity. Therefore, as in the preliminary results, we have allocated PGS costs to Andina's cost centers based on direct labor hours worked in each cost center because the nature of PGS costs indicates that labor hours is a reasonable measure of the degree to which a cost center benefits from plant general services.

Comment 11: BIA for Interest Rate

The petitioners argue that the Department improperly used as BIA an 11.8 percent interest rate from the International Monetary Fund, rather than using the higher short-term, peso-denominated borrowing rate reported on the bank statement submitted by Andina in its questionnaire response. According to the petitioners, the short-term rate noted on Andina's bank statement is the only evidence on the record regarding Andina's short-term borrowing at a peso-denominated rate.

Andina argues that using the highest short-term interest rate reported for one of its short-term loans is unjust since the interest rate on that loan applies to an overdraft accounting for a small portion of its borrowings.

DOC Position

We agree with the petitioners that, because Andina failed to provide a complete list of its short-term borrowings for the POR, we should use BIA. Andina was given ample time and opportunity to provide a complete response to this request. However, it chose to provide the Department with information related to only a portion of its short-term borrowings. As BIA, we are using the higher (*i.e.,* more adverse) short-term, peso-denominated interest rate on the record to calculate the home market imputed credit expense for purposes of calculating CV for the final results.

Comment 12: Currency Conversion

The petitioners state that the Department improperly multiplied the peso-denominated CV and direct selling expenses by the peso per U.S. dollar exchange rates. The petitioner argues that the Department should have multiplied the peso-denominated amounts by one divided by the exchange rates used.

Andina argues that the Argentine Convertibility Law (law 23928) makes currency conversion irrelevant since it is designed to equate the U.S. dollar with the Argentine peso.

DOC Position

We agree with the petitioners that we improperly converted CV and direct selling expenses in the preliminary results. The manner in which the FMV was converted to U.S. dollars in the preliminary results reflects a clerical error in that the FMV (CV less direct selling expenses) was multiplied directly by the exchange rate rather than the U.S. dollar amount based on the exchange rate (*i.e.,* US$1.00 divided by the exchange rate). This clerical error was corrected in the margin calculation of these final results.

In addition, contrary to Andina's claim, currency conversion is relevant to the Department's antidumping duty analysis. We have followed the currency conversion requirements as set out in the Department's regulations for these final results. *See* 19 CFR 353.60(a).

Currency Conversion

We made currency conversions for expenses denominated in Argentine pesos based on the official monthly exchange rates in effect on the dates of the U.S. sales as published by the International Monetary Fund, in accordance with 19 CFR 353.60(a), because certified exchange rates for Argentina were unavailable from the Federal Reserve.

Final Results of Review

As a result of our review, we determine that the following margin exists for the period September 1, 1992 through August 31, 1993:

Manufacturer/exporter	Review period	Margin (percent)
Andina	9/01/92–8/31/93	13.80
Silarsa	9/01/92–8/31/93	24.62

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of silicon metal from Argentina entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for Silarsa and Andina will be the rates indicated above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original

LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 17.87 percent, the ''all other'' rate established in the final Results of Redetermination Pursuant to Court Remand, American Alloys, Inc. v. United States, Ct. No. 91–10–00782, p. 4 (April 7, 1995).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 30, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration

[FR Doc. 97–3005 Filed 2–5–97; 8:45 am]

BILLING CODE 3510–DS–P

University of Iowa Hospitals, et al.; Notice of Decision on Applications for Duty-free Entry of Scientific Instruments

This is a decision 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 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following dockets.

Docket Number: 96–017. *Applicant:* University of Iowa Hospitals and Clinics, Iowa City, IA 52242. *Instrument:* [^{18}F] Synthesis Module. *Manufacturer:* Nuclear Interface GmbH, Germany. *Date of Denial without Prejudice to Resubmission:* August 21, 1996.

Docket Number: 95–109. *Applicant:* University of California, Berkeley, Berkeley, CA 94722. *Instrument:* Energy Dispersive Spectrometer. *Manufacturer:* Oxford Instruments, United Kingdom.

Date of Denial without Prejudice to Resubmission: April 2, 1996.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–2879 Filed 2–5–97; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

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), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–136. *Applicant:* Washington University, Department of Earth and Planetary Sciences, Campus Box 1169, One Brookings Drive, St. Louis, MO 63130–4899. *Instrument:* Mass Spectrometer, Model MAT 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument is intended to be used for investigations focusing on: (1) Understanding the temporal variations in rivers and springs, (2) the behavior of fossil hydrothermal systems, (3) the origin of granitic batholiths, evaporation processes in lakes and other natural water bodies, (4) isotopic tracing of subsurface fluids, climatic change and (5) isotopic variations in calcareous organisms. In addition, the instrument will be used for educational purposes in earth and planetary science courses. *Application accepted by Commissioner of Customs:* December 11, 1996.

Docket Number: 96–139. *Applicant:* U. S. Department of Agriculture, Agricultural Research Service, U. S. Water Conservation Laboratory, 4331 E. Broadway Road, Phoenix, AZ 85040–8832. *Instrument:* Mass Spectrometer, Model Isochrom. *Manufacturer:* Micromass, Inc., United Kingdom. *Intended Use:* The instrument will be used to analyze soil and plant materials which contain stable isotopes of carbon and nitrogen used as tracers to follow biological processes. *Application accepted by Commissioner of Customs:* December 19, 1996.

Docket Number: 96–140. *Applicant:* Associated Universities, Inc., Brookhaven National Laboratory, Building 480, Upton, NY 11973. *Instrument:* Electron Microscope with Accessories, Model JEM–3000F. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used to study high temperature superconductors, high field permanent magnets and interfaces between metals and coatings. The preliminary research plans include studies of: (a) Charge and charge transfer, (b) microcomposition, atomic structure and charge distribution at grain boundaries and interfaces and (c) local structural disorder by electron diffuse scattering, imaging and computer simulation. *Application accepted by Commissioner of Customs:* December 19, 1996.

Docket Number: 96–141. *Applicant:* Oregon Graduate Institute of Science and Technology, P.O. Box 91000, Portland, OR 97291–1000. *Instrument:* Stopped-Flow Spectrometer, Model SX.18MV. *Manufacturer:* Applied Photophysics, Ltd., United Kingdom. *Intended Use:* The instrument will be used to study the kinetic mechanism of wild-type and mutant lignin-degrading peroxidases and other redox enzymes from wood-degrading fungi. *Application accepted by Commissioner of Customs:* December 19, 1996.

Docket Number: 96–142. *Applicant:* The University of Tennessee, Knoxville, Department of Physics and Astronomy, 401 Nielsen Physics Building, Knoxville, TN 37996–1200. *Instrument:* Energy Analyzer and Power Supply, Model SES–200. *Manufacturer:* Scienta Instrument AB, Sweden. *Intended Use:* The instrument will be used to uncover new physical and chemical phenomena

at the surface or in thin films, such as the existence of charge density wave distortions at the surface, Fermi surface instabilities and metal-to-nonmetal transitions in thin films. The low electron energy capabilities of the instrument will be used to investigate the development of collective excitations in thin films and to probe the bulk properties of correlated electron systems containing metals or rare earth elements. *Application accepted by Commissioner of Customs:* December 19, 1996.

Docket Number: 96–143. *Applicant:* University of Alabama, Center for Materials for Information Technology, P.O. Box 870209, Tuscaloosa, AL 35487–0209. *Instrument:* Auger XPS Spectrometer. *Manufacturer:* Kratos Analytical, Inc. *Intended Use:* The instrument will be used to conduct materials research of soft FeXN films, magnetic nanostructures, giant magnetoresistance, exchange coupling, high coercivity films, wear characteristics, corrosion, magnetic particles and composites. In addition, the instrument will be used for educational purposes in metallurgical and materials engineering courses. *Application accepted by Commissioner of Customs:* December 23, 1996.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–2880 Filed 2–5–97; 8:45 am]

BILLING CODE 3510–DS–P

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews; Completion of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of completion of the panel review.

SUMMARY: On January 21, 1997 the Binational Panel completed its review of the Final Determination in the antidumping duty administrative review made by the International Trade Administration (ITA) respecting Oil Country Tubular Goods From Mexico, Secretariat File No. USA–95–1904–04.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On July 31, 1996 the Binational Panel issued its decision affirming in part and remanding in part the Final Determination in this matter. The Determination on Remand was filed by the ITA on October 28, 1996. No challenges were filed by the participants within the time provided in the *NAFTA Article 1904 Panel Rules.* On December 2, 1996, the Panel issued an order under Rule 73(5) affirming the Determination on Remand and instructed the Secretariat to issue a Notice of Final Panel Action Under Rule 77. The Notice of Final Panel Action was issued on December 18, 1996. No Request for an Extraordinary Challenge was filed within 30 days of the issuance of the Notice of Final Panel Action. Therefore, on the basis of the Panel decision and Rule 80 of the *NAFTA Article 1904 Panel Rules*, the Panel Review was completed and the panelists were discharged from their duties effective January 21, 1997.

Dated: January 22, 1997.

James R. Holbein,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 97–2898 Filed 2–5–97; 8:45 am]

BILLING CODE 3510–GT–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Hearing for the Draft Environmental Impact Statement (DEIS) for the Disposal and Reuse of the Department of Defense Housing Facility, Novato, CA

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (DEIS) for the disposal and reuse of the Department of Defense Housing Facility (DoDHF) Novato property and structures in Novato, California. The DEIS is being prepared in compliance with the 1993 Base Realignment and Closure (BRAC) directive from Congress to close DoDHF Novato. DoDHF Novato closed on September 30, 1996.

The DEIS assesses the potential impacts to the environment that may result from Navy disposal of the DoDHF Novato property and subsequent community reuse. Surplus properties will be disposed of in accordance with the provisions of the Defense Base Closure and Realignment Act (Pub. L. 101–510) of 1990 as amended and applicable federal property disposal regulations. The ''Spanish Housing'' parcel will be transferred to the U.S. Coast Guard and therefore will not be included in this documentation.

The Hamilton Reuse Planning Authority (HRPA) developed a Final Reuse Plan (Hamilton Army Airfield Reuse Plan) for the DoDHF Novato property that was adopted by the City of Novato in October 1995. The Reuse Plan was subsequently revised in February 1996, and again in November 1996. The Revised Reuse Plan stresses adaptive reuse of existing facilities. It includes housing, open space, community facilities, and small amounts of neighborhood commercial development. This ''Revised Reuse Plan'' was presented in the DEIS as the preferred alternative.

Another alternative analyzed in the DEIS is an ''Open Space'' option that would be similar to the preferred alternative Plan but would have 500 fewer housing units, more open space, and more community facilities. A ''No Action'' alternative that would result in the DoDHF Novato property remaining in federal government ownership in a caretaker status was also analyzed.

The DEIS is available for review at the following public libraries in the vicinity of DoDHF Novato: (1) Novato Public Library, 1720 Novato Blvd., Novato, CA; (2) Marin County Library, Marin Civic Center, San Rafael, CA; (3) Petaluma Regional Library, 100 Fairgrounds Drive, Petaluma, CA; and (4) Sonoma County Central Library, 3rd and E Streets, Santa Rosa, CA.

ADDRESSES: The Navy will conduct a public hearing on Thursday, February 27, 1997, at 7:00 p.m., at the San Marin High School Student Center, 15 San Marin Drive, Novato, California to inform the public of the DEIS findings and to solicit comments. Federal, state and local agencies, and interested individuals are invited to be present or represented at the hearing. Oral comments will be heard and transcribed by a stenographer. To assure accuracy of the record, all comments should be submitted in writing. All comments, both oral and written, will become part of the public record in the study. In the interest of available time, each speaker will be asked to limit oral comments to five minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed below.

FOR FURTHER INFORMATION CONTACT: All written comments must be submitted no later than March 17, 1997 to Mr. Gary J. Munekawa (Code 1852GM), Engineering Field Activity West, Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno,

California 94066–5006, telephone (415) 244–3022, fax (415) 244–3737. For information concerning the community reuse planning process, please contact Mr. Ken Bell at telephone (510) 906–1460, or fax (714) 472–8122.

Dated: February 3, 1997.

D.E. Koenig,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–3008 Filed 2–5–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States of America and the European Atomic Energy Community (EURATOM) and the Agreement for Cooperation between the Government of the United States of America and the Government of Norway concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/EU(NO)–44, for the transfer from the Halden reactor in Norway of five irradiated fuel rods containing 1,184 grams of uranium, including 3.0 grams of the isotope U–235 (0.25% enrichment) and 12.0 grams of plutonium, to Studsvik AB in Sweden for the purpose of re-irradiation and post irradiation examination.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner that fifteen days after the date of publication of this notice.

Dated: January 28, 1997.

For the Department of Energy.

Cherie Fitzgerald,

Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 97–2937 Filed 2–5–97; 8:45 am]

BILLING CODE 6450–01–P

Office of Environment, Safety and Health; Environment, Safety and Health: Extension of Opportunity To Provide Written Comments on Gathering Scientific Data, Information and Views Relevant to a Department of Energy (DOE) Beryllium Standard

AGENCY: Office of Environment, Safety and Health, DOE.

ACTION: Extension of public written comment period.

SUMMARY: The Department of Energy (DOE) published a notice on December 30, 1996, (61 FR 68725) announcing that DOE would hold two public forums to gather scientific data, information and views relevant to a DOE beryllium standard. That notice also provided the public with the opportunity to provide written comments on this issue with a comment period to end on February 7, 1997. Today's notice extends this written comment period to March 14, 1997.

DATES: Written comments and data (5 copies) must be received by the Department on or before March 14, 1997.

ADDRESSES: Written comments and data (5 copies) should be addressed to Jacqueline D. Rogers, U.S. Department of Energy, Office of Environment, Safety and Health, EH–51, 270CC, 19901 Germantown Road, Germantown, MD 20874–1290, (301) 903–5684.

FOR FURTHER INFORMATION CONTACT: Jacqueline D. Rogers, U.S. Department of Energy, Office of Environment, Safety and Health, EH–51, 270CC, 19901 Germantown Road, Germantown, MD 20874–1290, (301) 903–5684.

David Weitzman, U.S. Department of Energy, Office of Environment, Safety and Health, EH–51, 270CC, 19901 Germantown Road, Germantown, MD 20874–1290, (301) 903–5401.

Paul Wambach, U.S. Department of Energy, Office of Environment, Safety and Health, EH–61, 270CC, 19901 Germantown Road, Germantown, MD 20874–1290, (301) 903–7373.

Issued in Washington, DC on February 3, 1997.

Peter N. Brush,

Principal Deputy Assistant Secretary for Environment, Safety and Health.

[FR Doc. 97–2934 Filed 2–5–97; 8:45 am]

BILLING CODE 6450–01–P

[PRDA No. DE–RA02–97EE50443]

Program Research and Development Announcement (PRDA) for Integrated Fuel Cell Systems and Components for Transportation and Buildings

AGENCY: DOE, Chicago Operations Office.

ACTION: Notice inviting financial assistance applications.

SUMMARY: The DOE invites applications for federal assistance for research on fuel cell technology directed toward transportation and buildings applications. The Program Research and Development Announcement is for research and development (R&D) of: (1) Integrated Power System for Transportation; (2) Critical Components for Transportation; and (3) Development of fuel cells for buildings.

DATES: Applications are to be received no later than March 14, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Cass, Acquisition and Assistance Group, Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439; Telephone No. (630) 252–2338, FAX No. (630) 252–5045, Internet—Brian.Cass@CH.DOE.GOV.

SUPPLEMENTARY INFORMATION: The Program Research and Development Announcement (PRDA) may be downloaded using web site address, http://www.ch.doe.gov/division/acq/prda/ee50443.htm.

Issued in Chicago, Illinois on January 24, 1997.

John D. Greenwood,

Acquisition and Assistance, Group Manager, Contracting Officer.

[FR Doc. 97–2936 Filed 2–5–97; 8:45 am]

BILLING CODE 6450–01–P

Idaho Operations Office; Solicitation for Financial Assistance Number DE–PS07–97ID13510: Evaluation of Financing Sources and Funding Mechanisms for Steel Industry Research, Development, and Demonstration Projects

SUMMARY: The U.S. Department of Energy (DOE) Idaho Operations Office (ID) is seeking applications for cost-shared research in support of the Office of Industrial Technologies and DOE's Steel Industry Team. The objective is to promote competitiveness and efficiency of the U.S. steel industry by identifying and evaluating methods of financing industrial research, development, and demonstration (RD&D) projects. The goal of this action is to define the realm of potential RD&D funding sources so that OIT and ultimately the steel

industry can promote commercial sector technological growth and industry competitiveness. It will secondarily put into perspective the role of the Office of Industrial Technologies (OIT). OIT financing should be compared and contrasted with non-public RD&D financing options available to a company or institution participating in RD&D, such as bank financing, retained earnings, private placement of equity, public offering of equity, private placement of debt, debt financing by public bond issues, and venture capital. As a result of this solicitation, DOE anticipates awarding one Cooperative Agreement in accordance with DOE Financial Assistance regulations appearing at Title 10 of the Code of Federal Regulations, Chapter II Subchapter H, Part 600. The period of performance for the agreement is 9 months and available DOE funds are $40,000. The federal funding contribution will not exceed 70 percent of the total cost of the research project. Eligibility for this solicitation is limited to institutions of higher learning offering graduate level business programs.

DATES: The deadline for receipt of applications is 3:00 p.m. MST, March 13, 1997. Late applications that cannot be forwarded for scheduled merit review will not be considered.

ADDRESSES: Applications shall be submitted to: Carol Bruns, Contract Specialist; Procurement Services Division; U. S. Department of Energy; Idaho Operations Office; 850 Energy Drive, MS 1221; Solicitation Number DE–PS07–97ID13510; Idaho Falls, Idaho 83401–1563. Requests for application packages in response to this solicitation will only be accepted in writing to the address above or via FAX to (208) 526–5548.

FOR FURTHER INFORMATION CONTACT: Carol Bruns, Contract Specialist; Procurement Services Division; U. S. Department of Energy; Idaho Operations Office, (208) 526–1534.

SUPPLEMENTARY INFORMATION: The statutory authority for this solicitation is the Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988. A copy of the solicitation may be accessed on DOE–ID's home page using Universal Resource Locator address: http://www.inel.gov/doeid/solicit.html.

Issued in Idaho Falls, Idaho, on January 30, 1997.

B. G. Bauer,

Acting Director, Procurement Services Division.

[FR Doc. 97–2935 Filed 2–5–97; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia)

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia).

DATES: Wednesday, February 19, 1997: 6:50 pm—9:30 pm (Mountain Standard Time).

ADDRESSES: Indian Pueblo Cultural Center, 2401 12th Street NW., Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:50 p.m. Public Comment Period
7:00 p.m. Approval of Agenda
7:05 p.m. Approval of 11/20/96 Minutes
7:10 p.m. Chair's Report—DOE/SNL 10-Year Plan Report
7:15 p.m. Issues Committee Report
7:25 p.m. Future Land Use Management Areas 3–6
7:45 p.m. DOE—Present and Long-range Planning for the Board
8:00 p.m. Break
8:10 p.m. Update on Corrective Action Management Unit Design
8:35 p.m. Budget Discussion/Approval
8:55 p.m. DOE FY 1997 Environmental Management Budget
9:15 p.m. Agenda Items for Next Meeting
9:20 p.m. Public Comment
9:25 p.m. Announcement of Next Meeting/Adjourn

A final agenda will be available at the meeting Wednesday, February 19, 1997.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185, or by calling (505)845–4094.

Issued at Washington, DC on February 3, 1997.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97–2938 Filed 2–5–97; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation.

DATES: Saturday, February 15, 1997, 9:00 a.m.–12:00 p.m.

ADDRESSES: Robertsville Middle School, 245 Robertsville Road, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Sandy Perkins, Site-Specific Advisory Board Coordinator, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–1590.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Meeting Topics

Formulate recommendations to DOE concerning K–25 site worker health issues.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Sandy Perkins at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 a.m. and 5:00 p.m. on Monday, Wednesday, and Friday; 8:30 a.m. and 7:00 p.m. on Tuesday and Thursday; and 9:00 a.m. and 1:00 p.m. on Saturday, or by writing to Sandy Perkins, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–1590.

Issued at Washington, DC on February 3, 1997.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97–2939 Filed 2–5–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 1417; Project No. 1835]

Central Nebraska Public Power and Irrigation District Nebraska Public Power District; Notice Extending Deadline To Submit Final Biological Opinion

January 31, 1997.

On December 4, 1996, the U.S. Department of the Interior, Fish and Wildlife Service (FWS), issued its draft biological opinion on threatened and endangered species for the relicensing of the Kingsley Dam Project No. 1417 and the North Platte/Keystone Diversion Dam Project No. 1835. The two hydropower projects are located on the North Platte, South Platte, and Platte Rivers in Nebraska. On December 17, 1996, Commission staff participated in a meeting with FWS to discuss the draft biological opinion. Formal consultation on the draft opinion was completed at the conclusion of the December 17 meeting.[1] FWS is required to deliver its final biological opinion to the Commission within 45 days after formal consultation is consulted, *i.e.,* no later than January 31, 1997.[2]

FWS has not submitted the final biological opinion as required. By letter January 14, 1997, FWS informed the Commission that it would not complete the final biological opinion until May 2, 1997, and asked the Commission to adopt its revised schedule.[3] Given FWS's failure to meet the January 31, 1997 deadline and its January 14 letter setting out a revised schedule, an extension of the deadline for submitting the final biological opinion is warranted. The new deadline for the final biological opinion is May 2, 1997, as requested.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2930 Filed 2–5–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–238–000]

Mojave Pipeline Company; Notice of Compliance Filing

January 31, 1997.

Take notice on January 29, 1997, Mojave Pipeline Company (Mojave), pursuant to the Federal Energy Regulatory Commisson's (Commission) orders at Docket No. RM95–3–000 and 001, tendered for filing and acceptance the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to become effective December 31, 1996:

Title Page
Second Revised Sheet No. 2
Ninth Revised Sheet No. 11
First Revised Sheet No. 111
First Revised Sheet No. 122
First Revised Sheet No. 123
First Revised Sheet No. 127
First Revised Sheet No. 247

Mojave states that the tendered tariff sheets revise Mojave's FERC Gas Tariff, Volume No. 1, to conform to the Commission's updated Regulations set forth in the Final Rule pertaining to the form and composition of an interstate pipeline company's tariff. Further, Mojave respectfully requests waiver of the requirement set forth in ordering paragraph (B) of Order No. 582–A which directed compliance with the revised Regulations by December 31, 1996.

Any person desiring to be heard or to protests said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and the available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2914 Filed 2–5–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–239–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 31, 1997.

Take notice that on January 29, 1997, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective March 1, 1997:

3rd Rev Third Revised Sheet No. 200
Second Revised Sheet No. 253
First Revised Sheet No. 254

[1] *See* the December 11, 1996 notice of public meeting (unpublished) issued in this proceeding.

[2] 50 CFR 402.14(e)(3).

[3] The applicants agree an extension is appropriate.

Alternate First Revised Sheet No. 254
Second Revised Sheet No. 255
Alternate Second Revised Sheet No. 255
Second Revised Sheet No. 256
First Revised Sheet No. 311
Alternate First Revised Sheet No. 311
First Revised Sheet No. 322
Alternate First Revised Sheet No. 322
First Revised Sheet No. 357
Alternate First Revised Sheet No. 357

Northwest states that the filing is submitted to revise the Facilities Reimbursement provision in Section 21 of the General Terms and Conditions of Northwest's Tariff. The preferred tariff sheets propose (1) to require customer reimbursement for requested receipt or delivery facilities, (2) to provide customers with greater flexibility in selecting methods of payment for such facilities and (3) to make other related changes as described in more detail in the filing. The alternate tariff sheets propose (1) to require customer reimbursement for requested receipt or delivery facilities in a lump sum and (2) to make other related changes as described in more detail in the filing.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2915 Filed 2–5–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–240–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 31, 1997.

Take notice that on January 29, 1997, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with an effective date of March 1, 1997:

Thirteenth Revised Sheet No. 11A
Fifth Revised Sheet No. 11B
Twenty-Second Revised Sheet No. 12

Texas Gas states that the revised tariff sheets are being filed in compliance with Section 17.3 (n) and (0) of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1 and reflect the removal of the Cash-Out Revenue Adjustment negative surcharge which expires February 28, 1997. The impact of this removal is to increase commodity rates by $.0026 applicable to FT and IT Rate Schedules effective March 1, 1997.

Texas Gas states that copies of this filing have been served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2916 Filed 2–5–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–3–18–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 31, 1997.

Take notice that on January 29, 1997, Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, First Revised volume No. 1 and Original Volume No. 2, the revised tariff contained in Appendix A.

Texas Gas states that the proposed tariff sheets reflect changes to its Base Tariff Rates pursuant to the Transportation Cost Adjustment provisions included as a part of the Stipulation and Agreement in Docket No. RP94–423, and contained in Section 39 of the Federal Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1, as filed on February 23, 1996. The net rate change proposed by this filing is an increase of $0.0133 in the FT and NNS daily demand rates, $0.0054 in the FT and NNS commodity rates, $0.0320 in the SGT rates for Zones 1–4, and $0.0259 for SGT–SL. Interruptible transportation and overrun rates are also generally increased by $0.0187. Texas Gas respectfully requests that the revised tariff sheets reflecting a net increase in its rates become effective March 1, 1997.

Texas Gas states that copies of the filing have been served upon Texas Gas's jurisdictional customers and interested state commissions.

Lois D. Cashell,

Secretary.

FERC Gas Tariff

First Revised Volume No. 1

Twentieth Revised Sheet No. 10
Fourth Revised Sheet No. 10A
Seventeenth Revised Sheet No. 11
Twelfth Revised Sheet No. 11A
Fourth Revised Sheet No. 11B
Twenty-first Revised Sheet No. 12
Fifth Revised Sheet No. 12A

FPC Gas Tariff

Original Volume No. 2

Twenty-second Revised Sheet No. 82
Twenty-third Revised Sheet No. 547
Twenty-fifth Revised Sheet No. 1005
Seventeenth Revised Sheet No. 1085

[FR Doc. 97–2917 Filed 2–5–97; 8:45 am]

BILLING CODE 6717–01–M7

[Docket No. RP97–237–000]

TransColorado Gas Transmission Company; Notice of Compliance Filing

January 3, 1997.

Take notice that on January 29, 1997, TransColorado Gas Transmission Company (TransColorado0 tendered for filing and acceptance the following tariff sheets to its Pro Forma FERC Gas Tariff, Original Volume No. 1, to become effective April 1, 1997:

First Revised Sheet Nos. 202–204
First Revised Sheet Nos. 212–217
First Revised Sheet No. 222
Original Sheet No. 222A
First Revised Sheet Nos. 225 and 226
First Revised Sheet Nos. 230 and 231
Original Sheet No. 231A
First Revised Sheet Nos. 232 and 233
First Revised Sheet Nos. 248 and 249

TransColorado asserts that the purpose of this filing is to comply with the Commission's Order No. 587, Final Rule and Order Establishing Compliance Schedule, issued July 17, 1996 at Docket No. RM96–1–000.

TransColorado states that the tendered pro forma tariff sheets revise its Tariff to conform to the Commission's amended Regulations which standardize business practices and procedures governing transactions between interstate gas pipelines, their customers, and others doing business with the pipelines.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 19, 1997. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2913 Filed 2–5–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM95–4–000]

Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies; Revised Electronic Filing Specifications for Rate Filings Submitted Pursuant to Section 4 of the Natural Gas Act

January 31, 1997.

On September 28, 1995, the Federal Energy Regulatory Commission (Commission) issued Order No. 582, reorganizing, rewriting, and updating its regulations governing the form, composition and filing of rates and charges for the transportation of natural gas in interstate commerce.[1] The changes made by the rule include modifications to the Commission's electronic filing requirements.

Although Order No. 582 revised the electronic filing requirements for all statements filed pursuant to Subpart D of Part 154, and all workpapers in spreadsheet format, it did not include the final electronic filing specifications. The Commission suspended the electronic filing instructions in effect at the time Order No. 582 was issued until such time as new instructions are placed into effect.

On April 2, 1996,[2] the Commission authorized the Commission staff to issue further electronic and paper filing specifications related to the forms that were modified by Order Nos. 581 and 582.[3] In compliance with the Commission's directive, staff is issuing the instruction manual for filing rate cases electronically.

As has been the case with the electronic filing requirement established by Order No. 581, staff worked with industry representatives to complete the electronic rate case filing instructions. The specifications were discussed at working group meetings held on December 12, 1995, February 8, March 21, and October 10, 1996. As a result of those discussions, staff has finalized the electronic filing specifications. The Instruction Manual for Electronic Filing of the Rate Filings is attached at Attachment A.[4] To afford the pipelines adequate time to adapt to these filing instructions, the instructions will become effective with filings submitted on or after May 31, 1997, If a pipeline's initial case is submitted prior to May 31, 1997, and, therefore, is not submitted in electronic format, subsequent filings in that docket need not be filed electronically.[5]

Lois D. Cashell,

Secretary.

[FR Doc. 97–2918 Filed 2–5–97; 8:45 am]

BILLING CODE 6717–01–M

[1] Filing and Reporting Requirements for Interstate Natural Gas Companies Rate Schedules and Tariffs, Order No. 582, 60 FR 52960 (October 11, 1995), II FERC Stats. & Regs. ¶ 19,100–19,183 (1995) (regulatory Text), III FERC Stats. & Regs. ¶ 31,025 (1995) (preamble).

[2] Order on Electronic and Paper Filing Specifications for Form No. 11, 75 FERC ¶ 61,009 (1996).

[3] Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies, Order No. 581, 60 Fed. Reg. 53,019 (October 11, 1995), 72 FERC ¶ 61,301 (1995), *order on reh'g,* Order No. 581, 74 FERC ¶ 61,223 (1996).

[4] The Attachment is not being published in the Federal Register. The filing formats can be obtained by writing to the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, Division of Information Services, Washington, DC 20426, or in person in Room 2A, 888 First Street, NE., Washington, DC. The instructions are also available on the Commission's bulletin board system. For information about connecting to the bulletin board system, call (202) 208–2474.

[5] The tariff sheets and the form of notice which are not affected by the moratorium must be filed in electronic format, however.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5681–6]

Privacy Act of 1974; Medical and Research Study Records of Human Volunteers System of Records

AGENCY: Environmental Protection Agency.

ACTION: Proposed new Privacy Act system of records.

SUMMARY: The Environmental Protection Agency (EPA) is publishing a notice for public comment on a system of records subject to the Privacy Act of 1974, 5 U.S.C. 552a. This system is entitled ''Medical and Research Study Records of Human Volunteers.'' Additional information on this system is described in the Supplementary Information section of this notice.

EFFECTIVE DATE: This notice shall become effective, without further notice on March 18, 1997, unless comments are received which dictate a contrary determination.

ADDRESSES: Comments should be addressed to the Director, Human Studies Division, Office of Research and Development, U.S. EPA Human Studies Facility, 104 Mason Farm Road, Chapel Hill, N.C. 27599–7315.

FOR FURTHER INFORMATION CONTACT: Dr. Hillel S. Koren, Director, Human Studies Division, U.S. EPA Human Studies Facility, 104 Mason Farm Road, Chapel Hill, N.C. 27599–7315. Tel. (919) 966–6200.

SUPPLEMENTARY INFORMATION: The EPA human research program examines the effects of exposure to environmental pollutants on human subjects. The studies will provide information needed to improve assessments of exposure, biologically relevant doses, and adverse health effects. Thus, the studies are used primarily to support EPA's regulatory process by providing scientific information on the health effects of environmental pollutants. The records will be used to screen volunteers to protect them from unnecessary health risks, to document their medical condition, and to document the specific research activities in which the subjects participated.

All EPA human studies research protocols are subject to an extensive review and approval process before any research is begun. This includes review and approval by the investigators' peers and supervisors, by an independent Institutional Review Board, and by the EPA Office of Research and Development. Protocols are also reviewed by the Agency Approving

Official to assure that all Federal rules and regulations regarding safety and ethical requirements are met.

Individuals who volunteer for human subject research are required to be fully informed of the nature of the research and the risks involved. EPA will also provide each participant with the Privacy Act notice required by subsection 552a(e)(3) of that Act, 5 U.S.C. 552a(e)(3).

Dated: November 12, 1996.

Alvin M. Pesachowitz,

Acting Assistant Administrator for Administration and Resources Management.

EPA–34

SYSTEM NAME:

Medical and Research Study Records of Human Volunteers—EPA/ORD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

U.S. EPA Human Studies Facility, 104 Mason Farm Road, Chapel Hill, N.C. Storage space limitations at this location may result in some records being maintained at the Federal Records Facility in Atlanta, GA. Some records, particularly back-up data, are stored off site in a secure facility maintained by a contractor to the EPA Human Studies Division.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who volunteer for participation in EPA-sponsored, human studies research, whether or not they are accepted for participation, and individuals who participate in the research.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, telephone numbers of individual volunteers; individual vital statistics; medical histories; psychological profiles; results of laboratory tests; results of participation in specific research studies; and related records pertinent to the human subject research program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Resource Conservation and Recovery Act (42 U.S.C. 6981); Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9660); Clean Air Act (42 U.S.C. 7403); Safe Drinking Water Act (42 U.S.C. 300j-1); Federal Water Pollution Control Act (33 U.S.C. 1254); Toxic Substances Control Act (15 U.S.C. 2609); Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136r).

PURPOSE(S):

The primary purpose of this system of records is to support the EPA regulatory process by providing scientific information on the health effects of environmental pollutants. The records will be used to screen volunteers to protect them from unnecessary health risks, to document their medical condition, and to document the specific research activities in which the subjects participated.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Routine use disclosures of records in this system may be made as follows:

1. To EPA contractors, grantees, and persons working under cooperative agreements who have been engaged to assist EPA in the performance of an activity related to this system of records and who need to access the records in order to perform the activity. This includes, but is not limited to, disclosures to members of the Public Health Service Commissioned Corps and to scientists working under cooperative agreements with EPA to perform research for the Agency.

2. To a Member of Congress or a congressional office in response to any inquiry from that Member or office made at the request of the individual to whom the record pertains.

3. To the Department of Justice to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to actual or anticipated litigation in which one of the following is a party or has an interest: (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency.

4. In a proceeding before a court, or other adjudicative body or grand jury or in an administrative or regulatory proceeding, to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to the proceeding in which one of the following is a party or has an interest: (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency.

5. To scientists at governmental or private institutions, research centers, and businesses to further EPA's mission in connection with human studies research.

6. To public health authorities in conformity with Federal, state, and local laws when necessary to protect the public health.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, index cards, and magnetic media.

RETRIEVABILITY:

Records are indexed and retrieved by the names of individual subjects and by identifying numbers.

SAFEGUARDS:

Access is limited to EPA, Public Health Service, and EPA contractor personnel on a strict need to know basis. Contractors will be required to maintain the records in accordance with the requirements of the Privacy Act. All records are maintained in locked file cabinets, in locked rooms at all times in buildings with controlled access. Computer files are further protected by passwords.

RETENTION AND DISPOSAL:

The records are maintained for seventy-five (75) years.

SYSTEM MANAGER(S) AND ADDRESS

Director, Human Studies Division, U.S. EPA Human Studies Facility, 104 Mason Farm Road, Chapel Hill, NC. 27599–7315.

NOTIFICATION PROCEDURES:

Write to the System Manager at the above address. The requester must provide a written statement that he or she is the person he or she claims to be and understands that knowingly and willfully requesting or obtaining a record under false pretenses is a criminal offense subject to a fine of up to $5,000. The System Manager may require additional information to verify the identities of requesters.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Additionally, requesters should specify the particular records sought.

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Additionally, requesters should specify the information contested, state the corrective action sought, and provide support for the action requested.

RECORD SOURCE CATEGORIES:

Individual subjects and research staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 97–2996 Filed 2–5–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5685–6]

Notice of Proposed Assessment of Clean Water Act Class I Administrative Penalty to Black Mesa Pipeline, Inc. and Opportunity To Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Pursuant to 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(a).

Class I proceedings under section 309(g) are conducted in accordance with the proposed ''Consolidated Rules of Practice Governing the Administrative Assessment of Class I Civil Penalties Under the Clean Water Act'' (''Part 28''), published at 56 FR 29,996 (July 1, 1991). The procedures through which the public may submit written comment on a proposed Class I order or participate in a Class I proceeding, and the procedures by which a Respondent may request a hearing, are set forth in the proposed Consolidated Rules. The deadline for submitting public comment on a proposed Class I order is thirty days after publication of this notice.

On the date identified below, EPA commenced the following Class I proceeding for the assessment of penalties:

In the Matter of Black Mesa Pipeline, Inc., Tulsa, OK, Docket No. CWA–309–IX–FY96–16; filed on January 24, 1996 with Mr. Steven Armsey, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1389; proposed penalty of $11,600, for discharges of pollutants from the Black Mesa Coal Slurry Pipeline to waters of the U.S. in Mohave County, Arizona without authorization of a valid NPDES permit. EPA and Black Mesa Pipeline, Inc. have agreed to a proposed Consent Agreement in which Black Mesa Pipeline, Inc. shall pay the civil penalty of $11,600.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's proposed Consolidated Rules, review the complaint or other documents filed in this proceeding, comment upon the proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty (30) days after the date of publication of this notice.

Dated: January 28, 1997.

Karen Schwinn,

Acting Director, Water Division.

[FR Doc. 97–2997 Filed 2–5–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability and Interoperability Council Meeting

January 31, 1997.

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of a meeting of the Network Reliability and Interoperability Council (''Council'') to be held at the Federal Communications Commission in Washington, D.C.

DATES: Tuesday, February 25, 1997 at 1:30 p.m.

ADDRESSES: Federal Communications Commission, Room 856, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Jim Keegan, Federal Officer, at (202) 418–2323.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the telecommunications industry and telecommunications experts from consumer and other organizations to explore and recommend measures that will assure optimal reliability and interoperability of, and accessibility and interconnectivity to, the public telecommunications networks.

The agenda for the meeting is as follows: the Council will hear reports of focus groups 1 and 2 on their progress to date in addressing the issues assigned to them by the Council at the Council's last meeting. The Council also will hear a report on network reliability from the Network Reliability Steering Committee, and will hear the status of implementation of the Network Reliability Council's recommendations for interoperability testing. The Council may discuss other matters brought to its attention.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. Members of the public may submit written comments to the Council's designated Federal Officer before the meeting.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 97–2921 Filed 2–5–97; 8:45 am]

BILLING CODE 6712–01–M

[CS Docket No. 96–133, FCC 96–496]

Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice; Third annual report to Congress.

SUMMARY: Section 628(g) of the Communications Act of 1934, as amended, 47 U.S.C. 548(g), requires the Commission to report annually to Congress on the status of competition in markets for the delivery of video programming. On January 2, 1997, the Commission released its third such annual report (''*1996 Report*''). The *1996 Report* contains data and information that summarize the status of competition in markets for the delivery of video programming and updates the Commission's two prior reports. The *1996 Report* is based on publicly available data, filings in various Commission rulemaking proceedings, and information submitted by commenters in response to a *Notice of Inquiry* in this docket, summarized at 61 FR 34409 (July 2, 1996).

FOR FURTHER INFORMATION CONTACT: Marcia A. Glauberman, Cable Services Bureau (202) 416–1184 or Rebecca Dorch, Office of General Counsel (202) 418–1868.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *1996 Report* in CS Docket No. 96–133, FCC 96–496, adopted December 26, 1996, and released January 2, 1997. The complete text of the *1996 Report* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service (''ITS, Inc.''), (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. In addition, the complete text of the *1996 Report* is available on the Internet at http://www.fcc.gov/Bureaus/Cable/WWW/csb.html or at thttp://www.fcc.gov/ogc/articles.html

Synopsis of the 1996 Report

1. In the *1996 Report* the Commission reviews provisions of the Telecommunications Act of 1996 (''1996 Act'') that affect competition in markets for the delivery of video programming. The Commission reports on information about cable industry performance and the status of competitive entry by other multichannel video programming distributors (''MVPDs''). The Commission also provides information about structural issues affecting competition, such as horizontal concentration, vertical integration and technological advances. It further examines potential obstacles to the emergence of competition and reports on competitive responses by industry players that are beginning to face competition from other MVPDs.

2. In the *1996 Report* the Commission notes that the 1996 Act embodies Congress' intent to promote a ''pro-competitive national policy framework'' and eventual deregulation of markets for the delivery of video programming. Several of the 1996 Act's provisions are intended to remove barriers to competitive entry in video programming markets and establish market conditions that promote the process of competitive rivalry. Many provisions of the 1996 Act, and the Commission's actions to implement them, have the potential for fostering increased competition in markets for the delivery of video programming.

3. At present, however, incumbent franchised cable systems are still the primary distributors of multichannel video programming. Although other MVPDs continue to increase their share of subscribers in many local markets for the delivery of video programming, these markets generally remain highly concentrated, and structural conditions are still in place that could permit the exercise of market power by incumbent cable systems. Nationwide, non-cable MVPDs now serve 11% of total MVPD subscribers, with cable operators retaining a share of 89%, down from 91% last year. Notwithstanding this decrease in cable systems' share of total MVPD subscribers, the actual number of cable subscribers continues to increase.

4. *Key Findings:*

- *Status of competition.* It remains difficult to predict the extent to which competition from MVPDs using non-cable delivery technologies will constrain cable systems' ability to exercise market power in the future. In a growing but still very limited number of instances, incumbent cable system operators face competition from wired MVPDs offering similar services. In addition there has been a substantial increase in subscribership to direct broadcast satellite (DBS) providers offering differentiated services. However, it remains difficult to determine the extent to which markets for the delivery of video programming will be characterized by vigorous rivalry among many MVPDs offering closely substitutable services, or instead will be dominated by a few providers facing less vigorous rivalry from other MVPDs offering highly-differentiated or niche programming services.
- *Industry growth.* The cable industry has continued to grow in terms of the number of subscribers, penetration, average system channel capacity, the number of programming services available, revenues, audience ratings and expenditures on programming since the Commission's previous report in 1995.
- *Horizontal concentration.* Nationally, horizontal concentration among the top cable multiple system operators (MSOs) has continued to increase, but still remains within the moderately concentrated range according to standard measures of industry concentration. If all MVPDs are included for consideration, national concentration falls just above the threshold of the moderately concentrated range. In addition, cable MSOs, through acquisitions and trades, continue to increase regional clustering, which now accounts for service to approximately 50% of all cable subscribers.
- *Promotion of entry and competition.* Several of the 1996 Act's provisions are intended to remove barriers to entry and to promote competition in markets for the delivery of video programming. The Commission has adopted rules implementing the provision creating open video systems and the provision preempting certain local restrictions on reception devices, including antennas and dishes for reception of over-the-air broadcast, wireless cable and DBS signals.
- *Vertical integration.* Vertical integration of national programming services between cable operators and programmers declined from last year's total of 51% to just 44% this year, due largely to the sale of Viacom's cable system assets. In addition, of the 16 programming services that were launched since the Commission's previous report, 10 are not vertically integrated. Access to programming remains one of the critical factors for successful development of competitive MVPDs.
- *Technological advances.* Technological advances are occurring that will permit MVPDs to increase both quantity of service (i.e., an increased number of channels using the same amount of bandwidth or spectrum space) and types of offerings (e.g., interactive services). MVPDs continue to pursue new system architectures, upgraded facilities, use of increased bandwidth and deployment of digital technology.

Ordering Clauses

5. This *1996 Report* is issued pursuant to authority contained in Sections 4(i), 4(j), 403 and 628(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 403 and 548(g).

It is Ordered that the Secretary shall send copies of this *1996 Report* to the appropriate committees and subcommittees of the United States House of Representatives and the United States Senate.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–2907 Filed 2–5–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

* * * * *

FEDERAL REGISTER NUMBER: 97–02490.

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, February 6, 1997, 10:00 a.m., meeting open to the public.

This Meeting Will Not Convene Until 12:00 Noon

* * * * *

DATE & TIME: Tuesday, February 11, 1997 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.
Federal Election Commission.
Sunshine Act Notices for Meetings of February 11 and 13, 1997.

DATE & TIME: Thursday, February 13, 1997 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Final Rules Implementing the Debt Collection Improvement Act of 1996.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Mary W. Dove,

Administrative Assistant.

[FR Doc. 97–3057 Filed 2–4–97; 10:30 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[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 24, 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:

The counties of Alameda and San Francisco for Individual Assistance, 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. 97–2972 Filed 2–5–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1154–DR]

Idaho; 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 Idaho (FEMA–1154–DR), dated January 4, 1997, and related determinations.

EFFECTIVE DATE: January 22, 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 Idaho is hereby amended to include the following area 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:

Owyhee County for Hazard Mitigation assistance and Public Assistance (Categories A through G). Federal assistance to replace trees is not eligible.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–2973 Filed 2–5–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1154–DR]

Idaho; 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 Idaho, (FEMA–1154–DR), dated January 4, 1997, and related determinations.

EFFECTIVE DATE: January 22, 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 Idaho, 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:

The counties of Kootenai and Benewah for Individual Assistance and debris removal and emergency protective measures (Categories A and B) 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. 97–2974 Filed 2–5–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1154–DR]

Idaho; 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 Idaho, (FEMA–1154–DR), dated January 4, 1997, and related determinations.

EFFECTIVE DATE: January 22, 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 Idaho, 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:

The Counties of Adams, Bonner, Boundary, Clearwater, Elmore, Latah, Nez Perce, Payette, Shoshone, Valley, and Washington for Hazard Mitigation Assistance and Categories C, D, E, F, and G under the Public Assistance program. Federal assistance to replace trees is not eligible. (These counties have already been designated for Individual Assistance and Categories A and B 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. 97–2975 Filed 2–18–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1154–DR]

Idaho; 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 Idaho, (FEMA–1154–DR), dated January 4, 1997, and related determinations.

EFFECTIVE DATE: January 27, 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 Idaho, 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:

The counties of Boise, Gem and Idaho for Hazard Mitigation and Categories C, D, E, F, and G under the Public Assistance program. Federal assistance to replace trees is not eligible. (These counties have already been designated for Individual Assistance and Categories A and B 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. 97–2976 Filed 2–5–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1160–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–1160–DR), dated January 23, 1997, and related determinations.

EFFECTIVE DATE: January 23, 1997.

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 January 23, 1997, 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 severe winter storms, land and mudslides, and flooding on December 25, 1996, through and including January 6, 1997, 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 Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas as you deem appropriate in your discretion. 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 Sherryl Zahn 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:

Jackson, Josephine, and Klamath Counties for Individual Assistance.

Jackson, Josephine, and Lake Counties for Public Assistance.

Jackson, Josephine, Klamath, and Lake Counties for Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 97–2970 Filed 2–5–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1160–DR]

Oregon; 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 Oregon, (FEMA–1160–DR), dated January 23, 1997, and related determinations.

EFFECTIVE DATE: January 27, 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 Oregon, 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 23, 1997.

The county of Wallowa for Individual Assistance, Public Assistance and Hazard Mitigation.

The counties of Baker, Gilliam, Grant, Morrow, and Wheeler 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. 97–2971 Filed 2–5–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1159–DR]

Washington; 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 Washington (FEMA–1159–DR), dated January 17, 1997, and related determinations.

EFFECTIVE DATE: January 17, 1997.

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 January 17, 1997, 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 Washington, resulting from winter storms, land and mud slides, and flooding beginning December 26, 1996, and continuing, 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 Washington.

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 Nellie Ann Mills 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 Washington to have been affected adversely by this declared major disaster: King and Snohomish Counties for Individual Assistance, Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 97–2967 Filed 2–5–97; 8:45 am]

BILLING CODE 6718–02–P′

[FEMA–1159–DR]

Washington; 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 Washington, (FEMA–1159–DR), dated January 17, 1997, and related determinations.

EFFECTIVE DATE: January 27, 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 Washington, 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 17, 1997:

The counties of Clallam, Grays Harbor, Island, Kitsap, Kittitas, Mason, Pierce, Skagit, Skamania, Spokane, Thurston, and Yakima for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–2968 Filed 2–5–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1159–DR]

Washington; 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 Washington, (FEMA–1159–DR), dated January 17, 1997, and related determinations.

EFFECTIVE DATE: January 27, 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 Washington, 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 17, 1997:

The counties of Adams, Asotin, Benton, Chelan, Clark, Columbia, Cowlitz, Ferry, Garfield, Grant, Jefferson, Klickitat, Lewis, Lincoln, Okanogan, Pacific, Pend Orielle, San Juan, Stevens, Walla Walla, Whatcom, and Whitman for Public Assistance and Hazard Mitigation.

The counties of Clallam, Grays Harbor, Island, Kitsap, Kittitas, Mason, Pierce, Skagit, Skamania, Spokane, Thurston, and Yakima for Public Assistance and Hazard Mitigation. (Already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–2969 Filed 2–5–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the Federal Register.

Agreement No.: 202–011375–030.

Title: Trans-Atlantic Conference Agreement.

Parties:

Atlantic Container Line AB
Cho Yang Shipping Co. Ltd.
Sea-Land Service, Inc.
A.P. Moller-Maersk Line
P&O Nedlloyd B.V.
Hapag-Lloyd Container Linie GmbH
Mediterranean Shipping Co., S.A.
DSR-Senator Lines
POL-Atlantic
Orient Overseas Container Line (UK) Ltd.
Transportacion Maritime Mexicana, S.A. de C.V.
Neptune Orient Lines Ltd.
Hyundai Merchant Marine Co., Ltd.
P&O Nedlloyd Limited
Nippon Yusen Kaisha
Tecomar S.A. de C.V.
Hanjin Shipping Co., Ltd.

Synposis: The proposed modification provides for service contract term authority of three or more years, subject to a majority vote of all the parties, and removes term limits applicable to contracts covering seasonal and non-containerized cargo and contracts with shippers not having such arrangements in any previous calendar year.

Agreement No.: 224–201016.

Title: Port Everglades/Arawak Terminal Agreement.

Parties:

Broward County, Florida (''Port'')
Arawak Line Services (USA), Inc. (''Arawak'')

Synopsis: The Agreement would permit the port to lease five acres of land to Arawak at Port Everglades in Broward County, Florida, for a period of one year.

By Order of the Federal Maritime Commission.

Dated: February 3, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–2941 Filed 2–5–97; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Projects

Title: Child Support Enforcement Program: State Plan Approval and Grant Procedures, State Plan Requirements, Standards for Program Operations, Federal Financial Participation, and Computerized Support Enforcement Systems.

OMB No.: 0970–0017.

Description: The State plan preprint and amendments serve as a contract with OCSE in outlining the activities the States will perform as required by law in order for States to receive federal funds to meet the costs of these activities. The affected public is comprised of States receiving funds. Federal regulations require the States to amend their State plans only when necessary to reflect new or revised Federal statutes or regulations or material change in any State law, organization, policy or IV–D agency operations. OMB approved the Form OCSE–100, the IV–D State Plan. As a result of the Child Support Enforcement Amendments of 1988 (P.L. 98–378), the Omnibus Budget Reconciliation Act of 1987 (P.L. 100–203), the Family Support Act of 1988 (P.L. 100–485), the Omnibus Budget Reconciliation Act of 1993 (P.L. 103–66), the Social Security Act Amendments of 1994 and related regulations, OCSE also received OMB approval for new and revised State plan pages. We are now requesting approval of 34 revised and new State plan preprint pages to reflect changes due to enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104–193, and the previous mentioned statutes. The information collected on the State plan pages is necessary to enable OCSE to monitor compliance with the requirements in Title IV–D of the Social Security Act and implementing regulations.

Respondents: States, Guam, Virgin Islands, Puerto Rico and District of Columbia.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Plan	54	1836	.717	1,316

Estimated Total Annual Burden Hours: 1,316.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 31, 1997.

Douglas J. Godesky,

Reports Clearance Officer.

[FR Doc. 97–2929 Filed 2–5–97; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

Advisory Committee; Science Board to the Food and Drug Administration; Formation of a Subcommittee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the formation of a subcommittee of the Science Board to the Food and Drug Administration (Science Board). This subcommittee has been established to address issues related to toxicology testing methods. The subcommittee's recommendations will be presented to the Science Board for full public discussion at a future Science Board meeting.

FOR FURTHER INFORMATION CONTACT: Anita M. O'Connor, Office of Science (HF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3312.

SUPPLEMENTARY INFORMATION: FDA is announcing the formation of a subcommittee to the Science Board. This subcommittee has been established to address issues related to toxicology testing methods. The subcommittee will meet several times over the next year to develop recommendations for the Science Board on the development and validation of new toxicology test methods. The subcommittee's recommendations will be presented to the Science Board for full public discussion at a future Science Board meeting. Opportunities for public comment will be announced in the Federal Register at least 15 days prior to the Science Board meeting. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 (5 U.S.C. app. 2)).

Dated: January 30, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–2924 Filed 2–5–97; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[Doc. Identifier: HCFA–R–203]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and

Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. HCFA–R–203 *Type of Information Collection Request*: New Collection; *Title of Information Collection*: Data Collection Forms for a Project to Develop a Case-Mix Adjustment System for a National Home Health Prospective Payment Program; *Form No.:* HCFA 203; *Use:*. The data collection from this form will support analysis of home health utilization patterns and develop predictive models of home health resource use. That will serve as the basis for a system to adjust payments for Medicare home health services for differences/changes in patient service needs; *Frequency*: On Occasion; *Affected Public*: Not-for-profit, Business or other for-profit; *Number of Respondents*: 893,629; *Total Annual Responses*: 893,629; *Total Annual Hours*: 52,156.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources Management Analysis and Planning Staff, Attention: John Rudolph Room C2–25–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 30, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources.

[FR Doc. 97–2899 Filed 2–5–97; 8:45 am]

BILLING CODE 4120–3–P

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 35, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

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

Proposed Project

Review and Synthesis of Consumer/Client-level Evaluation and Tracking Activities—NEW—A mail survey will be conducted of two groups: a sample of projects/grantees that are currently funded under the Ryan White CARE Act (RWCA); and a sample of organizations that provide services to people with HIV/AIDS but are not currently funded, or have never been funded, under the RWCA. This second group of participants will be randomly selected by state from the CDC National AIDS Clearinghouse Database and from the National Association of People With AIDS Database.

The survey will collect information about the evaluation/tracking activities that were implemented from 1991 to 1996 to assess consumer/client satisfaction with services. The purpose of this study is to find out what types of evaluation/tracking activities have been implemented, and to identify gaps within these activities. The study will also identify ''model'' evaluation/tracking activities that have assessed consumer/client satisfaction and implemented findings to improve HIV/AIDS-related services, and consequently, have improved consumer/client satisfaction.

The study's final report will include a description of evaluation/tracking activities among organizations that provide services to people with HIV/AIDS and in depth case studies of three model evaluations/tracking activities that can be easily replicated and used by other projects. The report will be disseminated to program-level and project-level officers as a guide on how to develop and implement effective evaluation/tracking activities on consumer/client satisfaction.

Estimates of respondent burden for the survey are as follows:

Type of respondent	Number of respondents	Responses per respondent	Average burden per response* (hour)	Total burden hours
RWCA-funded projects/grantees	500	1	1	500
Organizations serving people with HIV/AIDS not funded under RWCA	500	1	.17	85
Total	1,000	1	.6	585

* The extent of evaluation/tracking activities is expected to vary significantly between the two sample groups, which results in different estimates of average burden per response.

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 31, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–2923 Filed 2–5–97; 8:45 am]

BILLING CODE 4160–15–P

Maternal and Child Health Services; Federal Set-Aside Program; Research and Training Grants

AGENCY: Health Resources and Services Administration (HRSA).

ACTION: Notice of availability of funds.

SUMMARY: The HRSA announces that approximately $47.9 million in fiscal year (FY) 1997 funds will be available for Maternal and Child Health (MCH) Special Projects of Regional and National Significance (SPRANS) research and training grants. All awards are made under the program authority of section 502(a) of the Social Security Act, the MCH Federal Set-Aside Program. MCH research and training grants improve the health status of mothers and children through: development and dissemination of new knowledge; demonstration of new or improved ways of delivering care or otherwise enhancing Title V program capacity to provide or assure provision of appropriate services; and preparation of personnel in MCH-relevant specialties. Grants for SPRANS genetic services and special MCH improvement projects (MCHIP), which contribute to the health of mothers, children, and children with special health care needs (CSHCN), are being announced in a separate notice. No new SPRANS hemophilia program grants will be funded in FY 1997.

Of the approximately $47.9 million available for SPRANS research and training activities in FY 1997, about $8.1 million will be available to support approximately 56 new and competing renewal MCH research and training projects. About $39.8 million will be used to support continuation of existing MCH research and training activities. The actual amounts available for awards and their allocation may vary depending on unanticipated program requirements and the volume and quality of applications. Awards are made for grant periods which generally run from 1 up to 5 years in duration. Funds for research and training grants under the MCH Federal Set-Aside Program are appropriated by Public Law 104–208.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The MCH Block Grant Federal Set-Aside Program addresses issues related to the Healthy People 2000 objectives of improving maternal, infant, child and adolescent health and developing service systems for children with special health care needs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office Washington, DC 20402–9325 (telephone: 202–512–1800).

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

ADDRESSES: Federal Register notices and application guidance for MCHB programs are available on the World Wide Web via the Internet at address: http://www.os.dhhs.gov/hrsa/mchb. Click on the file name you want to download to your computer. It will be saved as a self-extracting (Macintosh or) WordPerfect 5.1 file. To decompress the file once it is downloaded, type in the file name followed by a <return>. The file will expand to a WordPerfect 5.1 file.

For applicants for SPRANS research and training grants who are unable to access application materials electronically, a hard copy may be obtained from the HRSA Grants Application Center. Applicants for research projects will use Form PHS 398, approved by the Office of Management and Budget (OMB) under control number 0925–0001. Applicants for training projects will use Form PHS 6025–1, approved by OMB under control number 0915–0060. Requests should specify the category or categories of activities for which an application is requested so that the appropriate forms, information and materials may be provided. The Center may be contacted by: Telephone Number: 1–888–300–HRSA, FAX Number: 301–309–0579, E-mail Address: HRSA.GAC@ix.netcom.com. Completed applications should be returned to: Grants Management Officer, HRSA Grants Application Center, 40 West Gude Drive, Suite 100, Rockville, Maryland 20850. Please indicate the CFDA # [93.110(TA)–(RS)] representing the category or subcategory for which the application is being submitted (See TABLE below).

DATES: Deadlines for receipt of applications differ for the several categories of grants. These deadlines are as follows:

MCH Federal Set-Aside Competitive Research and Training Grants Anticipated Deadline, Award, Funding, and Project Period Information, by Category FY 1997

CFDA No.	Funding source/category	Application deadline	Est. number of awards	Est. amounts available	Project period
	Category 1: MCH Long Term Training				
93.110(TA)	Adolescent Health	Mar. 21, 1997	Up to 6	$2.2 million	Up to 5 years.
93.110(TB)	Behavioral Pediatrics	Mar. 21, 1997	Up to 8	1 million	Up to 5 years.
93.110(TC)	Communication Disorders	Mar. 14, 1997	Up to 3	400,000	Up to 5 years.
93.110(TG)	Pediatric Dentistry	Mar. 14, 1997	Up to 3	400,000	Up to 5 years.
93.110(TH)	Pediatric Occupational Therapy	Mar. 14, 1997	Up to 3	400,000	Up to 5 years.
93.110(TI)	Pediatric Physical Therapy	Mar. 14, 1997	Up to 3	400,000	Up to 5 years.
93.110(TL)	Public Health Social Work	Mar. 14, 1997	Up to 3	400,000	Up to 5 years.
	Category 2: MCH Short Term Training				
93.110(TO)	Continuing Education and Development.	July 1, 1997	Up to 15	1 million	Up to 3 years.
	Category 3: MCH Research				

MCH FEDERAL SET-ASIDE COMPETITIVE RESEARCH AND TRAINING GRANTS ANTICIPATED DEADLINE, AWARD, FUNDING, AND PROJECT PERIOD INFORMATION, BY CATEGORY FY 1997—Continued

CFDA No.	Funding source/category	Application deadline	Est. number of awards	Est. amounts available	Project period
93.110(RS)	MCH Research Cycle	Mar. 1, and Aug. 1, 1997 ...	Up to 12	1.9 million	Up to 5 years.

Applications will be considered to have met the deadline if they are either: (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants should request a legibly dated receipt from a commercial carrier or the U.S. Postal Service, or obtain a legibly dated U.S. Postal Service postmark. Private metered postmarks will not be accepted as proof of timely mailing. Late applications will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to the contact persons identified below for each category covered by this notice. Requests for information concerning business management issues should be directed to: Sandra Perry, Grants Management Officer (GMO), Maternal and Child Health Bureau, 5600 Fishers Lane, Room 18–12, Rockville, Maryland 20857, telephone: 301–443–1440.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

Section 502 of the Social Security Act, as amended by the Omnibus Budget Reconciliation Act (OBRA) of 1989, requires that 12.75 percent of amounts appropriated for the Maternal and Child Health Services Block Grant in excess of $600 million are set aside by the Secretary of Health and Human Services (HHS) for special Community Integrated Service Systems (CISS) projects authorized under Section 501(a)(3) of the Act. Of the remainder of the total appropriation, Section 502(a) of the Act requires that 15 percent of the funds be retained by the Secretary to support (through grants, contracts, or otherwise) special projects of regional and national significance, research, and training with respect to maternal and child health and children with special health care needs (including early intervention training and services development); for genetic disease testing, counseling, and information development and dissemination programs; for grants (including funding for comprehensive hemophilia diagnostic treatment centers) relating to hemophilia without regard to age; and for the screening of newborns for sickle cell anemia, and other genetic disorders and follow-up services. The MCH SPRANS set-aside was established in 1981. Support for projects covered by this announcement will come from the SPRANS set-aside.

Availability of FY 1997 funds for MCH research and training grants is being announced separately from other SPRANS grants this year in order to help potential applicants distinguish among large numbers of SPRANS categories and subcategories.

The research and training grants covered in this notice are intended to improve the health status of mothers and children. Research programs focus on the development of new knowledge for application in health care promotion and prevention efforts directed at pregnant women, women of childbearing age, infants, children, adolescents, and children with special health care needs and their families. Findings are expected to have potential for application in health care delivery programs for mothers and children.

Training programs focus on development of professionals for leadership roles, in combination with advanced professional preparation. Training is intended to accomplish the dual objectives of developing high levels of clinical competence and developing leadership attributes which extend beyond clinical acumen and skills. To achieve the latter objective, emphasis is placed on those curriculum and practicum areas which relate to: populations rather than individuals; systems of care rather than specific services; community-based services rather than institution-based; program administration in addition to clinical expertise; public policy in addition to practice policy; and research in addition to putting new knowledge into practice. With an understanding of and appreciation for these broader issues and aspects of health care, professionals are more adequately prepared to deliver care and to provide leadership in advancing the field to better serve mothers and children.

''Continuing Education and Development'', or ''CED'', includes: (1) Conduct of short-term, non-degree related courses, workshops, conferences, symposia, institutes, and distance learning strategies; and/or (2) development of curricula, guidelines, standards of practice and educational tools/strategies intended to assure quality health care for the MCH population. Continuing Education and Development focuses on increasing leadership skills of MCH health professionals; facilitating timely transfer and application of new information, research findings, and technology related to MCH; and updating and improving the knowledge and skills of health and related professionals in programs serving mothers and children, including children with special health care needs (CSHCN). As a result of CED, professionals in MCH and related services have enhanced leadership capabilities and practices to provide for comprehensive services and to improve the systems that deliver services for mothers and children.

Eligible Applicants

MCH training grants may be made only to public or nonprofit private institutions of higher learning. Research grants may be made only to public or nonprofit private institutions of higher learning and public or nonprofit private agencies and organizations engaged in research in maternal and child health or programs for CSHCN. As noted in the FUNDING CATEGORIES section below, based on the subject matter of particular categories or subcategories, applications may be encouraged from applicants with a specified area of expertise.

Funding Categories

Three categories of SPRANS research and training grants are open for competition in FY 1997: MCH Long Term Training, MCH Short Term Training (Continuing Education and Development), and MCH Research.

Category 1: MCH Long Term Training

- Subcategory 1.1: Adolescent Health (CFDA #93.110TA)
- Narrative Description of this Competition: The purpose of this competition is to provide interdisciplinary leadership training for several professional disciplines at the graduate and postgraduate levels to prepare them for leadership roles in training for, research on, and development of organized systems for delivery of services in programs providing adolescent health care.

• Estimated Amount of this Competition: $2.2 million.
• Number of Expected Awards: up to 6.
• Funding Priorities and/or Preferences: Applications are encouraged from Departments of Pediatrics and Internal Medicine of accredited U.S. Medical Schools, or certain pediatric teaching hospitals having formal affiliations with schools of medicine.
• Evaluation Criteria: See CRITERIA FOR REVIEW. Application guidance materials specify final criteria.
• Application Deadline: March 21, 1997.
• Contact Person: Elizabeth Brannon, M.S., R.D., telephone: 301–443–2190.
• Subcategory 1.2: Behavioral Pediatrics (CFDA #93.110TB)
• Narrative Description of this Competition: The purpose of this competition is to enhance behavioral, psychosocial and developmental aspects of general pediatric care through support for fellows in behavioral pediatrics preparing for leadership roles as teachers, investigators, and clinicians advancing the field of behavioral pediatrics and through providing pediatric practitioners, residents, and medical students with essential biopsychosocial knowledge and clinical expertise.
• Estimated Amount of this Competition: $ 1 million.
• Number of Expected Awards: up to 8.
• Funding Priorities and/or Preferences: Applications are encouraged from departments of pediatrics with an identifiable behavioral pediatrics unit/program within accredited medical schools in the United States.
• Evaluation Criteria: See CRITERIA FOR REVIEW. Application guidance materials specify final criteria.
• Application Deadline: March 21, 1997.
• Contact Person: Elizabeth Brannon, M.S., R.D., telephone: 301–443–2190.
• Subcategory 1.3: Communication Disorders (CFDA #93.110TC)
• Narrative Description of this Competition: The purpose of this competition is to provide leadership in communication disorders education through support of: (1) Graduate training of speech/language pathologists and/or audiologists to assume leadership roles in programs providing health and related services for populations of children, particularly those with special health care needs; (2) development and dissemination of curriculum resources to enhance pediatric content in communication disorders training programs; and (3) consultation, technical assistance and continuing education in communication disorders geared to the needs of the MCH community.
• Estimated Amount of this Competition: $400,000.
• Number of Expected Awards: up to 3.
• Funding Priorities and/or Preferences: Applications are encouraged from departments or programs of audiology, communication disorders or speech and language pathology in institutions of higher learning that offer a graduate degree and are accredited for graduate education by the American Speech-Language-Hearing Association (ASHA) Council on Academic Accreditation.
• Evaluation Criteria: See CRITERIA FOR REVIEW.

Application guidance materials specify final criteria.
• Application Deadline: March 14, 1997.
• Contact Person: Elizabeth Brannon, M.S., R.D., telephone: 301–443–2190.
• Subcategory 1.4: Pediatric Dentistry (CFDA #93.110TG)
• Narrative Description of this Competition: The purpose of this competition is to provide leadership in pediatric dentistry education through support of: (1) postdoctoral training of dentists in the primary care specialty of pediatric dentistry to assume leadership roles related to oral health programs for populations of children, particularly those with special health care needs; (2) development and dissemination of curriculum resources to enhance pediatric content in dentistry training programs; and (3) consultation, technical assistance and continuing education in pediatric dentistry geared to the needs of the MCH community.
• Estimated Amount of this Competition: $400,000.
• Number of Expected Awards: up to 3.
• Funding Priorities and/or Preferences:

Applications are encouraged from advanced education programs in pediatric dentistry accredited by the Commission on Dental Accreditation (CODA) at institutions which offer graduate degrees at the Master's level and above.
• Evaluation Criteria: See CRITERIA FOR REVIEW. Application guidance materials specify final criteria.
• Application Deadline: March 14, 1997.
• Contact Person: Elizabeth Brannon, M.S., R.D., telephone: 301–443–2190.
• Subcategory 1.5: Pediatric Occupational Therapy (CFDA #93.110TH)
• Narrative Description of this Competition: The purpose of this competition is to provide leadership in pediatric occupational therapy training through support of: (1) post-professional graduate training of occupational therapists for leadership roles in programs providing health and related services for populations of mothers and children, particularly those with special health care needs; (2) development and dissemination of curriculum resources to enhance pediatric content in occupational therapy training programs; and (3) consultation, technical assistance and continuing education in occupational therapy geared to the needs of the MCH community.
• Estimated Amount of this Competition: $400,000.
• Number of Expected Awards: up to 3.
• Funding Priorities and/or Preferences:

Applications are encouraged from schools or departments of occupational therapy accredited by the Accreditation Council for Occupational Therapy Education (ACOTE). Preference will be given to schools/departments with an established doctoral program with a pediatric focus or which are developing such a doctoral program.
• Evaluation Criteria: See CRITERIA FOR REVIEW. Application guidance materials specify final criteria.
• Application Deadline: March 14, 1997.
• Contact Person: Elizabeth Brannon, M.S., R.D., telephone: 301–443–2190.
• Subcategory 1.6: Pediatric Physical Therapy (CFDA ι93.110TI)
• Narrative Description of this Competition: The purpose of this competition is to provide leadership in pediatric physical therapy education through support of: (1) post-professional graduate training of physical therapists for leadership roles in programs providing health and related services for populations of mothers and children, particularly those with special health care needs; (2) development and dissemination of curriculum resources to enhance pediatric content in physical therapy training programs; and (3) consultation, technical assistance and continuing education in pediatric physical therapy geared to the needs of the MCH community.
• Estimated Amount of this Competition: $400,000.
• Number of Expected Awards: up to 3.
• Funding Priorities and/or Preferences: Applications are encouraged from post-professional-level graduate degree programs for physical therapists. Preference will be given to

established doctoral programs with a pediatric focus or to advanced masters programs with a pediatric focus which are developing such a doctoral program.

- Evaluation Criteria: See CRITERIA FOR REVIEW. Application guidance materials specify final criteria.
- Application Deadline: March 14, 1997.
- Contact Person: Elizabeth Brannon, M.S., R.D., telephone: 301–443–2190.
- Subcategory 1.7: Public Health Social Work (CFDA ı93.110TL)
- Narrative Description of this Competition: The purpose of this competition is to provide leadership in public health social work education through support of:

(1) graduate training of social workers for leadership roles in programs providing health and related services for populations of mothers and children, including those with special health care needs; (2) development and dissemination of curriculum resources to enhance MCH content in social work training programs; and (3) consultation, technical assistance and continuing education in public health social work geared to the needs of the MCH community. Category A programs provide a master's degree in social work, while category B programs provide a Master's degree in public health following the MSW or combined with a doctoral degree in social work.

- Estimated Amount of this Competition: $400,000.
- Number of Expected Awards: up to 2 in Category A; 1 in Category B.
- Funding Priorities and/or Preferences: For Category A grants, applications are encouraged from graduate programs of social work with a Master's Degree program which is fully accredited by the Council on Social Work Education (CSWE), and which have a concentration in health. For Category B grants, applications are encouraged from graduate schools of pubic health accredited by the Council on Education in Public Health (CEPH), or schools of social work (accredited by CSWE) offering a university-approved post-MSW program in public health social work leading to the MPH or combined MPH and PhD/DSW. The two programs must have a formal affiliation.
- Evaluation Criteria: See CRITERIA FOR REVIEW. Application guidance materials specify final criteria.
- Application Deadline: March 14, 1997.
- Contact Person: Elizabeth Brannon, M.S., R.D., telephone: 301–443–2190.

Category 2: MCH Short Term Training

- Continuing Education and Development (CFDA ı93.110.TO)
- Narrative Description of this Competition: The purpose of this competition is to facilitate timely transfer and application of new information, research findings, and technology related to MCH through: (1) conduct of short-term, non-degree related courses, workshops, conferences, symposia, institutes, and distance learning strategies and/or; (2) development of curricula, guidelines, standards of practice or educational tools/strategies intended to assure quality health care for the MCH population. The goal is to improve the health status of the MCH population through enhancing the leadership capabilities and practices of professionals in MCH and related services and through modifying the systems that deliver services.
- Eligible Organizations: Applicants may be public or nonprofit private institutions of higher learning.
- Estimated Amount of this Competition: $1 million.
- Number of Expected Awards: Up to 15.
- Evaluation Criteria: See CRITERIA FOR REVIEW. Application guidance materials specify final criteria.
- Application Deadline: July 1, 1997.
- Contact Person: Elizabeth Brannon, M.S., R.D., telephone: 301–443–2190.

Category 3: MCH Research

- Narrative Description of this Competition: This category encourages research in maternal and child health which has the potential for ready transfer of findings to health care delivery programs. Of special interest are projects that address factors and processes that lead to disparities in health status and the use of services among minority and other disadvantaged groups as well as health promoting behaviors, quality outcome measures, and system/integration reform. Effective for the August 1, 1997, competition, a comprehensive research agenda or plan is available to guide prospective research applicants. The agenda is composed of a list of research issues or questions identified by a national advisory group in 1994 to be of critical importance for the mission of the MCHB as it enters the year 2000 and beyond. A copy of the agenda is included with the application kit for research projects.
- Estimated Amount of this Competition: $1.9 million.
- Number of Expected Awards: Up to 12.
- Funding Priorities and/or Preferences: Within the issues/questions comprising the research agenda, preference for funding will be given to projects which: (1) Seek to develop measures of racism and/or study its consequences for the health of mothers and children; (2) investigate the role that fathers play in caring for and nurturing the health, growth, and development of children; and (3) address the factors and processes that enhance the quality, safety, access, and effectiveness of health care services provided to mothers and newborns, especially in light of the impact of managed care.
- Evaluation Criteria: See CRITERIA FOR REVIEW. Application guidance materials specify final criteria.
- Application Deadlines: March 1 and August 1, 1997.
- Contact Person: Gontran Lamberty, Dr. P.H., telephone: 301–553–2190.

Special Concerns

In keeping with the goals of advancing the development of human potential, strengthening the Nation's capacity to provide high quality education by broadening participation in MCHB programs of institutions that may have perspectives uniquely reflecting the Nation's cultural and linguistic diversity, and increasing opportunities for all Americans to participate in and benefit from Federal public health programs, HRSA will place a funding priority on projects from Historically Black Colleges and Universities (HBCU) or Hispanic Serving Institutions (HSI) in all categories in this notice for which applications from academic institutions are encouraged. This is in conformity with the Federal Government's policies in support of White House Initiatives on Historically Black Colleges and Universities (Executive Order 12876) and Educational Excellence for Hispanic Americans (Executive Order 12900). An approved proposal from a HBCU or HSI will receive a 0.5 point favorable adjustment of the priority score in a 4 point range before funding decisions are made.

Evaluation Protocol

Maternal and child health discretionary grant projects, including all projects awarded as part of the MCH Research and Training program, are expected to incorporate a carefully designed and well planned evaluation protocol capable of demonstrating and documenting measurable progress toward achieving the project's stated goals. The protocol should be based on a clear rationale relating the grant activities, the project goals, and the evaluation measures. Wherever possible, the measurements of progress toward goals should focus on health

outcome indicators, rather than on intermediate measures such as process or outputs. A project lacking a complete and well-conceived evaluation protocol as part of the planned activities may not be funded.

Project Review and Funding

Within the limit of funds determined by the Secretary to be available for the activities described in this announcement, the Secretary will review applications for funds under the specific project categories in the FUNDING CATEGORIES section above as competing applications and may award Federal funding for projects which will, in her judgment, best promote the purpose of title V of the Social Security Act; best address achievement of Healthy Children 2000 objectives related to maternal, infant, child and adolescent health and service systems for children at risk of chronic and disabling conditions; and otherwise best promote improvements in maternal and child health.

Criteria for Review

The criteria which follow are used, as pertinent, to review and evaluate applications for awards under all SPRANS grants and cooperative agreement project categories announced in this notice. Further guidance regarding review criteria is supplied in application materials, which specify final criteria.

—The quality of the project plan or methodology.
—The need for the research or training.
—The extent to which the project will contribute to the advancement of maternal and child health and/or improvement of the health of children with special health care needs;
—The extent to which the project is responsive to policy concerns applicable to MCH grants and to program objectives, requirements, priorities and/or review criteria for specific project categories, as published in program announcements or guidance materials.
—The extent to which the estimated cost to the Government of the project is reasonable, considering the anticipated results.
—The extent to which the project personnel are well qualified by training and/or experience for their roles in the project and the applicant organization has adequate facilities and personnel.
—The extent to which, insofar as practicable, the proposed activities, if well executed, are capable of attaining project objectives.
—The adherence of the project's evaluation plans to the requirements in the EVALUATION PROTOCOL.
—The extent to which the project will be integrated with the administration of the Maternal and Child Health Services block grants, State primary care plans, public health, and prevention programs, and other related programs in the respective State(s).
—The extent to which the application is responsive to the special concerns and program priorities specified in this notice.

Funding of Approved Applications

Final funding decisions for SPRANS research and training grants are the responsibility of the Director, MCHB. In considering scores for the ranking of approved applications for funding, preferences may be exercised for groups of applications, e.g., competing continuations may be funded ahead of new projects. Within any category of approved projects, the score of an individual project may be favorably adjusted if the project addresses specific priorities identified in this notice. In addition, special consideration in assigning scores may be given by reviewers to individual applications that address areas identified in this notice as special concerns.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937–0195). Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions. Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

(a) A copy of the face page of the application (SF 525).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State and local health agencies.

Executive Order 12372

The MCH Federal set-aside program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

The OMB Catalog of Federal Domestic Assistance number is 93.110.

Dated: January 31, 1997.

Ciro V. Sumaya,

Administrator.

[FR Doc. 97–3013 Filed 2–5–97; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Submission for OMB Review; Comment Request; ''Infant Sleep Position and Sudden Infant Death Syndrome (SIDS) Risk'' Study

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information was previously published in the Federal Register on January 29, 1996, page 2836 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The NIH may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: ''Infant Sleep Position and Sudden Infant Death Syndrome (SIDS) Risk'' Study. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* This study is a population-based case-control study of infant sleeping position in relation to the risk of SIDS to be conducted in 11 counties of California. The primary objectives of the study are to 1) determine the risk of SIDS associated with sleeping in the prone or side positions relative to the supine position; 2) identify any factors that exacerbate the association of sleeping position with the risk of SIDS; and 3) to establish baseline information on the prevalence

of each sleeping position among infants in the defined Northern and Southern California regions. *Frequency of Response:* Once. *Affected Public:* Individuals. *Type of Respondents:* Parents. The annual reporting burden is as follows: *Estimated Number of Respondents:* 1,350; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* 1 and *Estimated Total Annual Burden Hours Requested:* 1,350. The annualized cost for respondents is estimated at: $13,500. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Marian Willinger, Pregnancy and Perinatology Branch, Center for Research for Mothers and Children, NICHD, NIH, Building 6100, Room 4B11H, 6100 Executive Boulevard, Bethesda, MD 20852, or call non-toll-free number (301) 496–5575.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before March 10, 1997.

Dated: January 29, 1997.

Benjamin E. Fulton,

Executive Officer, NICHD.

[FR Doc. 97–2883 Filed 2–5–97; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Small Grants Program—Cancer Epidemiology.

Date: February 18, 1997.

Time: 1:00 p.m.

Place: Teleconference, Executive Plaza North, Room 635B, 6130 Executive Boulevard, Bethesda, MD 20892.

Contact Person: John W. Abrell, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 635B, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–9767.

Purpose/Agenda: To evaluate and review grant applications.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such a patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: January 30, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–2884 Filed 2–5–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; 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 Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual contract proposal.

Name of SEP: Production of cDNA From Temporal and Spatial Embryonic Tissues (Telephone Conference Call).

Date: February 28, 1997.

Time: 12:00 p.m.–1:00 p.m.

Place: 6100 Executive Boulevard, 6100 Building, Room 5E01F, Rockville, Maryland 20582.

Contact Person: Hameed Khan, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building, Room 5E01, Rockville, Maryland 20582, Telephone: 301–496–1485.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of this proposal could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposal, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health)

Dated: January 31, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–2885 Filed 2–5–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological Disorders and Stroke, Division of Extramural Activities; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel (Telephone Conference Call).

Date: February 19, 1997.

Time: 1:00 p.m.

Place: National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, Maryland 20892.

Contact Person: Dr. Howard Weinstein/Mr. Phillip Wiethorn, Scientific Review Administrator, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

Purpose/Agenda: To review and evaluate two SBIR Phase I Topic 025 Contract Proposals.

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. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: January 31, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–2887 Filed 2–5–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: February 6, 1997.

Time: 1 p.m.

Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Angela L. Redlingshafer, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 10857, Telephone: 301, 443–1367.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 11, 1997.

Time: 11 a.m.

Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 10857.

Contact Person: W. Gregory Zimmerman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 10857, Telephone: 301, 433–4868.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 522b(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 application and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: January 31, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–2888 Filed 2–5–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; 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 Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review and evaluate an individual grant application.

Name of SEP: University of Texas Population Research Center.

Date: February 5–7, 1997.

Time: February 5—6:00 p.m.–10:00 p.m.; February 6—8:00 a.m.–5:00 p.m.; February 7—8:00 a.m.–adjournment.

Place: Hawthorn Suites, 4020 IH–35 South, Austin, Texas 78704.

Contact Person: A.T. Gregoire, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building, Room 5E01, Rockville, Maryland 20852, Telephone: 301–496–1485.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health)

Dated: January 31, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–2889 Filed 2–5–97; 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: Unsolicited AIDS.

Date: February 20–21, 1997.

Time: 8:30 a.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 06815, (301) 656–1500.

Contact Person: Paula Strickland, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C02, Bethesda, MD 20892, (301) 402–0643.

Purpose/Agenda: To evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: January 31, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–2892 Filed 2–5–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Arthritis and Musculoskeletal and Skin 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 meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee of the National Institute of Arthritis and Musculoskeletal and Skin Diseases.

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Dates of Meeting: February 6, 1997.

Time: 8:00 a.m.–adjournment.

Place of Meeting: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: Theresa Lo, Ph.D., Scientific Review Administrator, Natcher Building, 45 Center Drive, Rm. 5AS–37B, Bethesda, Maryland 20892–6500, Telephone: 301–594–4952.

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.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.846, Project Grants in Arthritis, Musculoskeletal and Skin Diseases Research; National Institutes of Health, HHS)

Dated: February 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–3076 Filed 2–4–97; 3:43 pm]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Clinical Sciences.
Date: February 4, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 4210, Telephone Conference.
Contact Person: Dr. Bruce Maurer, Scientific Review Administrator, 6701 Rockledge Drive, Room 4210, Bethesda, Maryland 20892, (301) 435–1225.

Name of SEP: Clinical Sciences.
Date: February 5, 1997.
Time: 3:00 p.m.
Place: Westin Hotel, Washington, DC.
Contact Person: Dr. Larry Pinkus, Scientific Review Administrator, 6701 Rockledge Drive, Room 4140, Bethesda, Maryland 20892, (301) 435–1214.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Clinical Sciences.
Date: February 26–28, 1997.
Time: 8:00 a.m.
Place: Holiday Inn, Chevy Chase, Maryland.
Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20892, (301) 435–1783.

Name of SEP: Biological and Physiological Sciences.
Date: March 4–5, 1997.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, Maryland.
Contact Person: Dr. Betty Hayden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4206, Bethesda, Maryland 20892, (301) 435–1223.

Name of SEP: Chemistry and Related Sciences.
Date: March 18–19, 1997.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, Maryland.
Contact Person: Dr. John Beisler, Scientific Review Administrator, 6701 Rockledge Drive, Room 4172, Bethesda, Maryland 20892, (301) 435–1727.

Name of SEP: Biological and Physiological Sciences.
Date: March 30–April 1, 1997.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, Maryland.
Contact Person: Dr. Syed Quadri, Scientific Review Administrator, 6701 Rockledge Drive, Room 4132, Bethesda, Maryland 20892, (301) 435–1211.

Name of SEP: Chemistry and Related Sciences.
Date: April 8–9, 1997.
Time: 7:30 p.m.
Place: Georgetown Holiday Inn, Washington, DC.
Contact Person: Dr. Donald Schneider, Scientific Review Administrator, 6701 Rockledge Drive, Room 5104, Bethesda, Maryland 20892, (301) 435–1165.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 31, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–2886 Filed 2–5–97; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Multidisciplinary Sciences.
Date: February 24–26, 1997.
Time: 8:00 a.m.
Place: Doubletree Hotel, Rockville, Maryland.
Contact Person: Dr. Dharam Dhindsa, Scientific Review Administrator, 6701 Rockledge Drive, Room 5206, Bethesda, Maryland 20892, (301) 435–1174.

Name of SEP: Biological and Physiological Sciences.
Date: February 26, 1997.
Time: 6:00 p.m.
Place: Doubletree Hotel, Rockville, Maryland.
Contact Person: Dr. Krish Krishnan, Scientific Review Administrator, 6701 Rockledge Drive, Room 4122, Bethesda, Maryland 20892, (301) 435–1779.

Name of SEP: Behavioral and Neurosciences.
Date: March 10–12, 1997.
Time: 8:00 a.m.
Place: The Ritz-Carlton, Washington, DC.
Contact Person: Dr. David Simpson, Scientific Review Administrator, 6701 Rockledge Drive, Room 5192, Bethesda, Maryland 20892, (301) 435–1278.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 12, 1997.
Time: 8:30 a.m.
Place: American Inn, Bethesda, Maryland.
Contact Person: Dr. Marcel Pons, Scientific Review Administrator, 6701 Rockledge Drive, Room 4196, Bethesda, Maryland 20892, (301) 435–1217.

Name of SEP: Biological and Physiological Sciences.
Date: March 14, 1997.
Time: 8:30 a.m..
Place: Ramada Inn, Rockville, Maryland.
Contact Person: Dr. Abubakar Shaikh, Scientific Review Administrator, 6701 Rockledge Drive, Room 6166, Bethesda, Maryland 20892, (301) 435–1042.

Name of SEP: Clinical Sciences.
Date: March 18, 1997.
Time: 8:00 a.m.
Place: Holiday Inn, Gaithersburg, Maryland.
Contact Person: Dr. Shirley Hilden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4218, Bethesda, Maryland 20892, (301) 435–1198.

Name of SEP: Chemistry and Related Sciences.
Date: March 27–28, 1997.
Time: 8:00 a.m.
Place: Conference Room J, Natcher Bldg., NIH, Bethesda, Maryland.
Contact Person: Dr. Richard Panniers, Scientific Review Administrator, 6701 Rockledge Drive, Room 5106, Bethesda, Maryland 20892, (301) 435–1166

Name of SEP: Biological and Physiological Sciences.
Date: March 31, 1997.
Time: 8:00 a.m.
Place: Doubletree Hotel, Rockville, Maryland.
Contact Person: Dr. Harish Chopra, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, Maryland 20892, (301) 435–1169.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 31, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–2891 Filed 2–5–97; 8:45 am]

BILLING CODE 4140–01–M

Warren Grant Magnuson Clinical Center; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center and its Executive Committee, February 9–10, 1997, which was published in the Federal Register on January 21, 1997 (62 FR 3051).

The Executive Committee will meet on February 9 at the Bethesda Hyatt, One Metro Center, Bethesda, Maryland, but will begin at 7:30 p.m. instead of the previously stated 6:00 p.m. The Board meeting remains at the same time and place, 1:00 p.m., Medical Board Room, Building 10, National Institutes of Health, Bethesda, Maryland.

As previously advertised, these meetings will be open to the public. However, in accordance with the provisions set forth in sec. 552b(c)9(B) of Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, both meetings may close to the public for discussion of patient-related issues, the premature disclosure of which would frustrate implementation of proposed agency actions.

Dated: January 31, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–2890 Filed 2–5–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–824555

Applicant: University of California, San Diego, CA.

The applicant requests a permit to import hair samples taken from captive-born Goeldi's marmoset (*Callimico goeldii*) from Switzerland for DNA analysis to enhance the propagation and survival of the species.

PRT–785649

Applicant: Wildlife Conservation Society, Bronx, NY.

The applicant requests a renewal permit to import blood samples from chimpanzee (Pan troglodytes) and Pygmy chimpanzee (Pan paniscus), gorilla (Gorilla gorilla), Northern white rhinoceros (Ceratotherium simum cottoni), and African elephant (Loxodonta africana) for the purpose of scientific research and enhancement of survival of the species.

PRT–824669

Applicant: Richard Curt Rowland, Fairfield, CA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (Damaliscus pygargus dorcas) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–822461

Applicant: Virgil W. Binkley, Townsend, MT.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) from Namibia for the purpose of enhancement of the survival of the species.

PRT–824722

Applicant: Wildlife Conservation Society, Bronx, NY.

The applicant requests a permit to import blood samples taken from wild American crocodile (*Crocodylus acutus*) and Morelet's crocodile (*Crocodylus moreletii*) for the purpose of scientific research and enhancement of survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: January 31, 1997.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–2878 Filed 2–5–97; 8:45 am]

BILLING CODE 4310–55–P

Geological Survey

Application Notice Describing the Areas of Interest and Establishing the Closing Date for Receipt of Applications Under the National Earthquake Hazards Reduction Program (NEHRP) for Fiscal Year (FY) 1998

AGENCY: Department of the Interior, U.S. Geological Survey.

ACTION: Notice.

SUMMARY: Applications are invited for research projects under the NEHRP.

The purpose of this program is to support research in earthquake hazards prediction; to provide earth-science data and information essential to determine seismic hazards present in the United States; and information essential to mitigate earthquake damage.

Applications may be submitted by educational institutions, private firms, private foundations, individuals, and agencies of state and local governments.

The NEHRP supports research related to the following general areas of interest:

I. Evaluating National and Regional Hazard and Risk. National and regional hazard and risk maps are critical to effective risk reduction strategies.

II. Evaluating Urban Hazard and Risk. The strong ground shaking and resulting catastrophic losses in the 1994 Northridge earthquake reinforced the need for the U.S. Geological Survey to concentrate its efforts where the risks are highest, that is, in the nation's urban areas.

III. Understanding Earthquake Processes. The effectiveness of risk-mitigation strategies and disaster response are limited by our meager understanding of the tectonic processes that cause earthquakes and generate the strong shaking and ground failure that devastates the build environment.

IV. Providing Real-time Hazard Assessment. Effective earthquake hazard evaluation and response to damaging events depend on timely, accurate information. Short, intermediate, and long-term earthquake forecasts in regions of high earthquake potential can all lead to mitigation activities that reduce the losses in subsequent earthquakes.

V. Providing Geologic Hazards Information Services. Computer

technology has evolved rapidly in recent years to the point that new powerful tools are accessible both to the providers and the users of geologic hazards information.

ADDRESSES: The program announcement is expected to be available on or about February 7, 1997. You may obtain a copy of Announcement No. 00042 from the USGS Contracts and Grants Information Site at http://www.usgs.gov/contracts/ or the External Research Program Internet Site at http://erp-web.er.usgs.gov or by writing Brian Heath, U.S. Geological Survey, Office of Acquisition and Federal Assistance—Mail Stop 205A, 12201 Sunrise Valley Drive, Reston, Virginia 20192, or by fax (703–648–7901).

DATES: The closing date for receipt of applicants will be on or about March 28, 1997. The actual closing date will be specified in Announcement No. 00042.

FOR FURTHER INFORMATION CONTACT: John Sims, Earthquake Hazards Reduction Program—U.S. Geological Survey, Mail Stop 905, 12201 Sunrise Valley Drive, Reston Virginia 20192. Telephone: (703) 648–6722.

SUPPLEMENTARY INFORMATION: Authority for this program is contained in the Earthquake Hazards Reduction Act of 1977, Public Law 95–124 (42 U.S.C. 7701, et. seq.). The Office of Management and Budget Catalog of Federal Domestic Assistance number is 15.807.

Dated: January 31, 1997.

Gloria J. Stiltner,

Acting Associate Chief for Operations.

[FR Doc. 97–2882 Filed 2–5–97; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[AZ–050–07–1220–00; 8322]

California: Temporary Closure of Senator Wash Reservoir to All Types of Boating, Imperial County, California

AGENCY: Bureau of the Land Management, Interior.

ACTION: Notice of Temporary Closure of Senator Wash Reservoir to all types of boating: April 25, 1997, through April 27, 1997, and June 13, 1997, through June 15, 1997.

SUMMARY: Notice is hereby given that all types of boating are temporarily prohibited on the water surface of Senator Wash Reservoir. The closure area is within sections 31 and 32, T. 14 S., R. 24 E. and sections 5 and 6, T. 15 S., R. 24 E. San Bernardino Meridian, California. The area affected by the closure contains 353 acres more or less at the high water mark of Senator Wash Reservoir.

SUPPLEMENTARY INFORMATION: The temporary closure of Senator Wash Reservoir to all non-event watercraft is being implemented for health and safety concerns during a water ski tournament sponsored by International Novice Tournaments (INT) to be held April 25 through April 27, 1997, and June 13 through June 15, 1997. The surface area of the water is not expected to allow dispersal of waves created by traditional boating use during the water ski tournament. Wave action during this type of event greatly increases the potential for serious accident or injury to participants. This closure shall apply to all persons and watercraft except those permitted by a Bureau of Land Management Officer and shall remain in effect until 6:00 p.m. on the event completion dates. Authority for this action is contained in 43 CFR 8364.1. Violation of this regulation is punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months. A map of the boating access closure area is available at the Yuma Field Office, 2555 Gila Ridge Road, Yuma, Arizona 85365.

EFFECTIVE DATES: April 25, 1997, through April 27, 1997, and June 13, 1997, through June 15, 1997.

FOR FURTHER INFORMATION CONTACT: John Reid, Yuma Field Office, 2555 Gila Ridge Road, Yuma, Arizona 85365 (520) 317–3274.

Dated: January 28, 1997.

Merv Boyd,

Assistant Field Manager.

[FR Doc. 97–2900 Filed 2–5–97; 8:45 am]

BILLING CODE 4310–32–M

[MT–922–07–1310–00–241A–P; NDM 82566]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of P.L. 97–451, a petition for reinstatement of oil and gas lease NDM 82566, Mckenzie County, North Dakota, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as contained in Sec. 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: January 23, 1997.

Karen L. Johnson,

Chief, Fluids Adjudication Section.

[FR Doc. 97–2954 Filed 2–5–97; 8:45 am]

BILLING CODE 4310–DN–P

[NV–930–1430–00; Nev–059798, Nev–051745]

Public Land Order No. 7242; Partial Revocation of Secretarial Order Dated January 3, 1929, and Public Land Order No. 3512; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a public land order and a Secretarial order insofar as they affect 247.16 acres of public lands withdrawn for use by the Bureau of Reclamation for the Colorado River Storage Project and the Robert B. Griffith Water Project. The lands are no longer needed for the purposes for which they were withdrawn and the revocation is needed to permit disposal of the lands through exchange. This action will open the lands to surface entry and mining subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

EFFECTIVE DATE: March 10, 1997.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–785–6532.

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 Secretarial Order dated January 3, 1929, and Public Land Order No. 3512, which withdrew public lands for the Bureau of Reclamation's Colorado River Storage Project and the Robert B. Griffith Project, respectively, are hereby revoked insofar as they affect the following described lands:

Mount Diablo Meridian

T. 23 S., R. 63 E.,
Sec. 2, lots 13, 23, 27, and S½SW;
Sec. 11, lots 2, 9, 10, 11, and 14;
Sec. 14, lot 9 to 12, inclusive.

The areas described aggregate 247.16 acres in Clark County.

2. At 9 a.m. on March 10, 1997, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on March 10, 1997, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on March 10, 1997, the lands will 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 any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: January 23, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–2956 Filed 2–5–97; 8:45 am]

BILLING CODE 4310–HC–P

[OR–958–0777–54; GP6–0159; OR–19601 (WA), OR–19633 (WA)]

Public Land Order No. 7241; Revocation of Secretarial Orders Dated May 8, 1914, and March 12, 1924; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes in their entirety two Secretarial orders which withdrew 1,218.78 acres of public lands for the Bureau of Land Management's Powersite Reserve No. 424 and Powersite Classification No. 61. The lands are no longer needed for the purpose for which they were withdrawn. The lands are within the Spokane Indian Reservation and this action will open the lands to such forms of disposition as may by law be made of Indian Reservation lands.

EFFECTIVE DATE: March 10, 1997.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6155.

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 Secretarial Order dated May 8, 1914, which established Powersite Reserve No. 424, is hereby revoked in its entirety:

Willamette Meridian

T. 28 N., R. 36 E.,
Sec. 9, SE¼SE¼SE¼;
Sec. 11, S½NE¼NE¼;
Sec. 12, S½NW¼NW;¼;
Sec. 30, lots 7 and 10, and SE¼NW¼NE¼.
T. 28 N., R. 37 E.,
Sec. 7, lot 17.
T. 27 N., R. 38 E.,
Sec. 30, S½NW¼SE¼SW¼ and SW¼SE¼SW¼.

All that portion of the Spokane Indian Reservation lying between the meander line of the north or right bank of the Spokane River and the south boundary of said reservation, in T. 28 N., R. 36 E., Tps. 27 and 28 N., R. 37 E., and T. 27 N., Rs. 38 and 39 E.

The areas described aggregate approximately 1,200 acres in Lincoln and Stevens Counties.

2. The Secretarial Order dated March 12, 1924, which established Powersite Classification No. 61, is hereby revoked in its entirety:

Willamette Meridian

T. 28 N., R. 36 E.,
Sec. 11, lots 20, 22, and that portion of lot 18 within the N½N½NE¼.

The area described contains 18.78 acres in Stevens County.

3. At 8:30 a.m., on March 10, 1997, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law, the lands will be open to such forms of disposition as may by law be made of Indian Reservation lands.

Dated: January 23, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–2955 Filed 2–5–97; 8:45 am]

BILLING CODE 4310–33–P

National Park Service

Public Notice

AGENCY: National Park Service, Interior.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing food service, lodging and conference center facilities and services for the public at Fort Wadsworth within the Staten Island Unit of Gateway National Recreation Area for a period of ten (10) years from date of contract execution.

EFFECTIVE DATE: April 7, 1997.

ADDRESSES: Interested parties should contact Gateway National Recreation Area, Concession Division, Floyd Bennett Field, Building 69, Brooklyn, New York 11234, telephone (718) 338–4603, to obtain a copy of the prospectus describing the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

There is no existing concessioner. The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal must be received by the National Park Service, New England System Support Office, Concession Management Division, 15 State Street, Boston, Massachusetts 02109–3572, not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: December 17, 1996.

Chrysandra L. Walter,

Acting Field Director, Northeast Field Area.

[FR Doc. 97–3011 Filed 2–5–97; 8:45 am]

BILLING CODE 4310–70–M

Delaware Water Gap National Recreation Area Citizens Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces two upcoming meetings of the Delaware Water Gap National Recreation Area Citizens Advisory Commission. Notice of these meetings is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Thursday, March 27, 1997 at 7:00 pm.

Address: Bushkill School, Bushkill PA 18324.

Meeting Date and Time: Thursday, June 5, 1997 at 7:00 pm.

Address: Walpack Church, Walpack Center, NJ 07881.

The agenda for the meeting consists of reports from Citizen Advisory Commission committees including; By-Laws, Natural Resources, Recreation, Cultural and Historical Resources, Inter-

governmental and Public Affairs, Construction and Capital Project Implementation, as well as Special Committee Reports. Superintendent Roger K. Rector will give a report on various park issues.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizens Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the Recreation Area and its surrounding communities.

The meeting will be open to the public. Any member of the public may file a written statement concerning agenda items with the Commission. The statement should be addressed to The Delaware Water Gap National Recreation Area Citizens Advisory Commission, P. O. Box 284, Bushkill, PA 18324. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Delaware Water Gap National Recreation Area located on River Road 1 mile east of U.S. Route 209, Bushkill, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 717–588–2418.

Bob Kirby,

Acting Superintendent.

Congressional Listing for Delaware Water Gap NRA

Honorable Frank Lautenberg, U.S. Senate, SH–506 Hart Senate Office Building, Washington, D.C. 20510–3002

Honorable Robert G. Torricelli, U.S. Senate, Washington, D.C. 20510–3001

Honorable Richard Santorum, U.S. Senate, SR 120 Senate Russell Office Bldg., Washington, D.C. 20510

Honorable Arlen Specter, U.S. Senate, SH–530 Hart Senate Office Bldg., Washington, D.C. 20510–3802

Honorable Paul McHale, U.S. House of Representatives, 511 Cannon House Office Bldg., Washington, D.C. 20515–3815

Honorable Joseph McDade, U.S. House of Representatives, 2370 Rayburn House Office Bldg., Washington, D.C. 20515–3810

Honorable Margaret Roukema, U.S. House of Representatives, 2244 Rayburn House Office Bldg., Washington, D.C. 20515–3005

Honorable Tom Ridge, State Capitol, Harrisburg, PA 17120

Honorable Christine Whitman, State House, Trenton, NJ 08625

[FR Doc. 97–3012 Filed 2–5–97; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Notice of Publication and Request for Comments

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Notice of Publication and Request for Comments.

SUMMARY: The Overseas Private Investment Corporation (OPIC) has published an ''Environmental Handbook'' which represents the current environmental policies and procedures in use at the Agency. Section 231(n) of the Foreign Assistance Act of 1961 (Title 22 U.S.C. 2191 (k)(2)), as amended, requires OPIC to: ''Refuse to insure, reinsure, guarantee, or finance any investment in connection with a project which the Corporation determines will pose an unreasonable or major environmental, health, or safety hazard, or will result in the significant degradation of national parks or similar protected areas.''

The Handbook was published to consolidate a number of sources of information into a single, easy-to-review and easily accessible document. This Handbook is also available on OPIC's Internet web site at www.OPIC.gov. Comments on the Handbook and its content are being invited for Agency consideration. OPIC intends to consider revising the Handbook based upon the comments received. OPIC encourages all interested parties to respond within 120 calendar days of publication of this Notice. The entire text of the Handbook appears below.

DATES: Comments must be received on or before June 6, 1997.

ADDRESSES: Comments should be submitted to Mr. Harvey Himberg, Environmental Affairs, Overseas Private Investment Corporation, 1100 New York Ave., NW., Washington, DC 20527 USA.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Himberg by phone at 202/336–8414, by fax at 202/218–0177 or via Internet e-mail at /S=himberg/G=harvey@mhs-opic.attmail.com.

TEXT OF HANDBOOK:

OPIC ENVIRONMENTAL HANDBOOK

December 1996

INTRODUCTION: STATEMENT OF PURPOSE AND OBJECTIVES

This Handbook is intended to provide guidance to OPIC's clients, as well as the interested public, with respect to the environmental standards, assessment and monitoring procedures that OPIC applies to prospective and ongoing investment projects. The standards and procedures described in this Handbook generally reflect existing practice at OPIC as it has evolved since the enactment in 1985 of statutory environmental provisions applicable to OPIC. (The environmental provisions contained in OPIC's statute are reprinted in Appendix A.) (OPIC is also subject to Executive Order 12114, ''Environmental Effects Abroad of Major Federal Actions.'' Environmental Assessment Procedures for EO 12114 are included in Appendix A.)

Since 1985, OPIC has been required by statute to assess the environmental impacts of projects under consideration for political risk insurance and financing. OPIC's authorizing statute was amended at that time with the congressional intent of ensuring that ''great care * * * be paid to assuring the environmental soundness of U.S. Government supported foreign assistance projects.'' This is particularly important given OPIC's self-sustaining mandate. OPIC strongly supports these principles on their own merits.

In addition, it is increasingly evident that responsible and proactive environmental assessment and management enhance the competitiveness of U.S. investors, as well as project developers, suppliers and contractors associated with overseas investment projects.

Whereas public policy considerations have spurred multilateral and bilateral financial institutions such as OPIC to take the lead in addressing environmental issues in project finance and political risk insurance, private financial institutions both in the U.S. and overseas also have recently begun to integrate environmental concerns into their lending and insurance criteria.

Corporations themselves, through such initiatives as the ISO 14000 process, have undertaken to standardize environmental management, auditing and labeling on an international basis. (ISO is the International Standards Organization, a voluntary membership body composed of private sector companies.)

Over the years OPIC has worked with counterpart organizations providing similar services to investors in the U.S., overseas and on a multilateral basis as environmental procedures were developed. Many of the OPIC standards and procedures described in this Handbook are also applied by organizations such as the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), both affiliates of the World Bank; the European Bank for Reconstruction and Development (EBRD); and the U.S. Export-Import Bank (US Exim). In OPIC's experience, the application of standards and procedures similar to those used by these organizations has facilitated co-financing and co-insurance arrangements and made it simpler for clients to address environmental requirements.

The Handbook is not designed to be a static document but rather an evolving process. OPIC welcomes comments from business and public interest organizations seeking to enhance OPIC's environmental assessment and management process.

Environmental Assessment (EA)

By statute, OPIC is precluded from assisting any project that it determines will pose an ''unreasonable or major environmental health or safety hazard.'' (See Appendix A.)

Environmental assessment (EA) is the tool used by OPIC to make this determination. The state-of-art of EA is steadily evolving through experience with actual projects over time. EA is a continuing activity through the life of a project, not a one-time exercise. Effectively applied, it is integrated into the design and operations of a project, rather than undertaken as an ''add-on'' to satisfy a requirement external to the project. EA consists of several stages of analysis—descriptive, prospective and retrospective.

By statute, OPIC is required to provide some degree of EA to every project considered for insurance or finance in determining whether to provide support for the project. This requirement extends to subprojects undertaken by OPIC-supported investment funds and on-lending facilities. (See the discussion of financial intermediaries, below.) OPIC cannot provide a final commitment to a project (i.e., issue an insurance contract, disburse a loan, or approve a transaction by a financial intermediary) until its environmental assessment is complete and a determination is made by OPIC that the environmental, health and safety impacts of the project are acceptable.

Different types of EAs are conducted by the applicant depending on the nature of the project. The actual work may be conducted by the applicant/sponsor or by a third party, such as an environmental consultant. On the basis of its considerable experience in reviewing such materials, OPIC can advise applicants regarding many aspects of EA preparation.

EAs and other environmental reports should be provided to OPIC as early as possible in the application process. This enables OPIC to identify environmental issues that may require additional attention before the EA can be considered to be complete. Collaboration between OPIC and other official and private lenders and insurers in reviewing environmental information is in the interest of the applicant as it expedites the review process and avoids delays and needless duplication with the requirements of other lenders and insurers.

Once the EA is complete, OPIC will make every effort to review the material within a two to four week time frame. In circumstances where OPIC confronts a particularly full project pipeline, OPIC may contract for outside expertise to enable it to complete the review process in a timely manner.

In all cases, the cost of preparing the original EA is borne by the applicant, sponsor or foreign enterprise. When OPIC engages independent consultants to review all or part of the EA materials submitted by the investor, to undertake an original assessment of the project and/or to undertake a site visit as part of the environmental review process, it requires the applicant to reimburse the associated costs.

OPIC may require one or more of the following documents to satisfy a project's EA requirements:

Environmental Impact Statement (EIS). By statute and Executive Order (EO) 12114 (See Appendix A), OPIC is required to prepare, and to take fully into account, an EIS for any project ''significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica).'' Given the discrete nature of projects assisted by OPIC, it is considered unlikely that any single project assisted by OPIC would have a sufficiently large impact on the global commons to warrant an EIS. However, the cumulative impacts of several large projects could conceivably have an impact on extraterritorial waters or the atmosphere sufficient to trigger the requirement.

As prescribed by EO 12114, such an EIS should be concise and no longer than necessary to permit an informed consideration of the environmental effects of the proposed project and the reasonable alternatives. It should include the following sections: (1) Purpose and need for the proposed project; (2) a sufficient description of the environment of the global commons affected by the proposed action; (3) an analysis, in comparative form, of the environmental consequences on the global commons of the proposed action; and (4) reasonable alternative means of structuring the project.

In lieu of preparing a new EIS, the Executive Order permits OPIC to rely on one of the following: A pre-existing EIS for the same project; a project involving similar environmental issues; a generic EIS covering a number of similar projects; or an EIS obtained by other agencies.

Environmental Impact Assessment (EIA). An EIA is a comprehensive assessment of the diverse impacts of a project on the natural and human environment. It includes a detailed description of pre-existing conditions (''baseline assessment''), all project activities having a potential environmental impact (from pre-construction through decommissioning and site reclamation), and the net impacts of the project, taking into account alternative mitigative measures. It also considers the relationship of the project to the natural and human environment in the affected area and the cumulative impacts of those activities. The content and format for an EIA will vary depending on industry sector, the site and other project-specific factors. (A generic format for an EIA is provided in Appendix B.)

Environmental Management and Monitoring Plan (EMMP). An EMMP is designed to specify in detail the actions—both technical and managerial—that the applicant or sponsor will undertake in order to mitigate anticipated adverse impacts of the project on the environment, health and safety. It also describes the technology and methodology used to monitor the actual impacts of the project on the environment and the standards and procedures to be used for adjusting mitigative measures as necessary to maintain impacts within an acceptable range. (A generic format for an EMMP is suggested in Appendix C.) While ISO 14000 Environmental Management Systems implementation is not a substitute for a project-specific EMMP, a project sponsor's adherence to the ISO criteria can facilitate the process of developing an acceptable EMMP.

Major Hazard Assessment (MHA). An MHA is a specialized form of EA designed to identify and assess the risks of catastrophic events resulting from the operation of an industrial facility. For projects requiring an MHA, OPIC requires completion of the MHA, preferably as part of the EIA process, but no later than the commencement of project operations. The categories of facilities subject to an MHA as well as the content and format of an MHA are outlined in the ''World Bank Guidelines for the Identification, Analysis and Control of Major Hazard Installations in Developing Countries,'' a copy of which is available from OPIC.

Environmental Audit (EAU). If the investment involves the acquisition of a pre-existing facility or a site on which industrial activity previously occurred, the project may also be subject to an EAU. An EAU is designed to identify pre-existing adverse environmental, health or safety conditions that could affect future impacts from the facility or site. (A generic format for an EAU is suggested in Appendix D.) ISO Environmental Auditing criteria are a useful adjunct to, although not a substitute for, performance-based auditing that is required to meet OPIC EAU requirements.

Environmental Remediation Plan (ENR). The project may involve the remediation of environmentally adverse conditions at a site. In this case the applicant will be required to provide OPIC with an ENR, similar in format to an EMMP, and designed to address the issues raised in the audit.

An EMMP, EAU or ENR may be included as part of an EIA. Other documents prepared to satisfy the requirements of other lenders may be submitted to OPIC so long as the documentation addresses the substantive issues needed for OPIC to complete its review of the project.

Screening

The type of EA required for a particular project, including the timing and the level of effort involved, depends upon the nature of the project. Therefore, the first step in OPIC's EA is screening, in which OPIC's Environmental Unit assigns each project to one of the following categories:

Category A: Projects in this category can be expected to have potentially significant, diverse and irreversible environmental impacts. Such projects can be readily identified on the basis of industry sector or site sensitivity. They require a full-scale EIA, as well as an EMMP. A fairly comprehensive

list of industries and sites within this category is provided in Appendix E. Category B: Projects in this category may result in specific environmental impacts and require adherence to certain predetermined performance standards, guidelines, or design criteria to avoid or mitigate impacts. Due to their nature, size or location, such projects can be readily assessed in terms of their environmental impacts and mitigation measures can be readily identified. Projects not included in Categories A, C, or D (as defined above and below) can be expected to belong to Category B. Examples of such project categories include: Agriculture, electrical distribution, electronics, food processing, light manufacturing, telecommunications, textiles and tourism. Information required from the applicant typically includes the following: Site description; processes involved; materials used and stored on site; air, liquid, and solid wastes generated in relation to applicable standards; and occupational health and safety measures.

Category C: This category includes projects that are normally exempt from all environmental assessment, analysis or review because they do not normally result in any environmental impact. Examples of such projects include branch banking and computer software development.

Category D: This category includes financial intermediaries (FIs) that make investments in or provide financing (loans, leases, etc.) to multiple projects or enterprises (''subprojects'') engaged in activities within categories A and B. OPIC screens these subprojects to determine the type of environmental review required. Also taken into account is the nature and size of the FI's involvement in the subproject. Expedited reviews are conducted for Category B subprojects involving less than $5.0 million in investment, subject to further review if the FI proceeds with additional investments in the same subproject.

Environmental Standards

All projects must comply with host country environmental regulations. In addition, for most categories of activities, OPIC requires that projects meet World Bank environmental, health and safety guidelines. Therefore, whenever possible, applicants should provide OPIC with summaries or copies of applicable host country regulations as part of their EIA (for Category A projects) or as information provided in support of their application (for Category B projects). Government permits and certifications of compliance are necessary in this regard, although not always sufficient to establish compliance.

World Bank guidelines were most recently officially issued in 1988 and many of the guidelines themselves date from the early 1980s. For that reason, OPIC has opted to use the draft guidelines prepared by the World Bank in May 1994 for the majority of industrial categories. (Use of the 1994 draft guidelines is consistent with the current practice of the International Finance Corporation pending the issuance of revised World Bank guidelines.) (For certain industries not included in the 1994 draft, OPIC may consider compliance with the 1988 guidelines acceptable.) As the Bank continues to update its guidelines, OPIC will substitute more current versions of particular guidelines on a case-by-case basis by industry. (A comprehensive list of official and draft World Bank and U.S. Exim guidelines for industry sectors as well as ecologically sensitive sites is contained in Appendix F. All are available from OPIC on request).

For certain environmentally sensitive industries or circumstances, OPIC may require a project to meet a more restrictive standard than the World Bank guidelines, including, in some cases, emissions, effluent, ambient air and water quality limitations set by the U.S. Environmental Protection Agency, the World Health Organization or a similar authority.

OPIC does not attempt to prescribe to its potential clients the choice of technologies or processes they must use to meet the applicable guidelines. However, standards of best practice developed by governments, industry and non-governmental organizations can be useful in providing guidance to OPIC and its clients in assessing alternatives and their feasibility. For this purpose OPIC is developing, in consultation with experts, international best practice guidelines for three sectors of particular importance to OPIC's mandate with respect to environmental impact: power generation; metals mining; and forestry (both tropical and temperate/boreal). Copies of these best practice guidelines will be available from OPIC on request.

Eligibility Determinations

The primary purpose of OPIC's environmental review is to determine the eligibility of the project based on OPIC's statutory obligation to decline support for projects posing ''unreasonable or major environmental, health or safety hazards''. OPIC interprets ''health or safety'' to apply both to project employees and to the affected public living or working in the vicinity of the project.

In addition, OPIC is also required by statute to operate its programs in a manner consistent with sections 117, 118 and 119 of the Foreign Assistance Act (FAA). These provisions pertain to environmental assessment, and the protection of tropical forests and endangered species, respectively.

Grounds for Declining Assistance to Projects. There are several circumstances under which OPIC will decline support for a project on environmental grounds:

- The applicant fails to provide OPIC with an EIA for a Category A project or with adequate information about a Category B project to conduct a review sufficient to determine project eligibility on environmental grounds.
- The project will, in OPIC's determination, result in

—Significant degradation of a national park, similar protected area or tropical rainforest;
—The destruction of or significant degradation in the habitat of an endangered species; and/or
—Other ''unreasonable or major environmental, health or safety hazards.''

OPIC provides applicants with the opportunity to demonstrate that the proposed project does not pose an ''unreasonable or major environmental or safety hazard'' and is otherwise consistent with the letter and intent of the FAA provisions. However, at one time or another, OPIC has declined to support projects on one or more of the above grounds.

Conditionality. In many cases, determinations of eligibility rely on critical representations made by the client with respect to baseline environmental conditions, mitigative measures and net impacts of proposed projects. In addition to the EMMP or ENR submitted by the applicant, OPIC may require the application of additional mitigative measures in order to ensure that a project will not pose an unreasonable or major environmental, health or safety hazard. These critical representations and those undertakings agreed to by the applicant or sponsor may be included in project documentation as preconditions to contract execution, conditions of disbursement and/or ongoing covenants, depending on the type of agreement entered into between OPIC and the applicant. Where OPIC insures an institutional lender, contract conditions are incorporated into the loan documentation.

Environmental conditions and covenants are developed in close consultation with the client to minimize the cost to the project and to ensure that they are consistent with the host country's legal framework, objectively measurable and verifiable, and allow for sufficient flexibility to address issues if circumstances change.

Monitoring and Compliance

OPIC's environmental assessment process is an ongoing one and continues through the full term of OPIC's relationship with the project sponsor.

Monitoring. OPIC reserves the right to monitor projects' compliance with environmental representations and undertakings throughout the term of its insurance or financing. Monitoring may take the form of self-reporting by the investor of summaries and, in specified cases, raw data obtained from monitoring a project's environmental performance (emissions, effluents or other waste discharges) as well as its environmental impacts (e.g., on ambient conditions and biological resources). Monitoring may also take the form of third party evaluation, including compliance information developed by host government authorities, co-lenders/co-insurers and independent auditors.

OPIC routinely conducts on-site monitoring of projects, using OPIC staff and/or consultants, for environmental as well as U.S. economic and host country development effects. OPIC endeavors to monitor all Category A projects on-site at least once during the first three years of project commitment, and more frequently depending on the environmental sensitivity of the project. Category B and D projects are also subject to monitoring on a random and selective basis.

Non-compliance, Remediation and Termination. Material non-compliance with environmental representations and

undertakings may constitute an event of default under the terms of OPIC insurance contracts and loan agreements. Depending on the severity and reversibility of the environmental impact and the investor's responsibility and due diligence in attempting to prevent the default and in curing the problem, OPIC may treat the default as curable or incurable. In the case of a curable default, OPIC works cooperatively with the investor to develop a feasible timetable for remediation. In the case of an incurable default, OPIC may require contract termination in the case of insurance, or acceleration of repayment or other available lenders' remedies, in the case of a loan. If an equity investment on the part of an FI is involved, divestiture by the FI may be required. In all cases, OPIC seeks to work cooperatively with investors and lenders to arrive at an equitable resolution of the situation, subject, of course, to the requirements of other lenders and insurers.

Public Consultation and Disclosure

The environmental assessment process has become an increasingly public and transparent process among environmental regulatory agencies in the United States and in some, although not all, foreign countries. Likewise, multilateral development agencies that provide assistance to governments and other public sector clients have also made their activities more transparent to the public in both donor and host countries.

OPIC recognizes the added value that interested and well-informed members of the public can bring to the environmental assessment process undertaken by its clients as well as by OPIC itself. Grass roots as well as international non-governmental organizations (NGOs) often have access to information and perceptions about potential environmental impacts and resulting social, economic and cultural impacts that need to be carefully considered as early as possible in the assessment process.

At the same time, the plans and proposals of private sector investors are often business confidential, and, in such cases, must be strictly protected from disclosure. While OPIC is subject to the disclosure requirements of the Freedom of Information Act, those requirements contain an exemption for business confidential information that is protected from disclosure under the Trade Secrets Act.

In submitting project-specific information to OPIC, including Environmental Impact Assessments, audits, management and remediation plans as well as monitoring reports, applicants must specify which information has been or will be made public in any format, including in the host country. Because OPIC's goal is to provide the public with a level of comfort about its environmental process, applicants are strongly encouraged to submit environmental information in a form that can be shared with the public without compromising business confidentiality. Any information that is identified as a public document will be treated as such by OPIC in a response to a specific request for such information. Business confidential information will be accorded confidential treatment to the full extent permitted by law.

When OPIC receives an application for insurance or financing for an environmentally sensitive project or subproject (coinciding with all projects within Category A, as defined above) OPIC will list the nature of the project and its location on OPIC's Home Page on the World Wide Web (http://www.opic.gov). No business confidential information will be disclosed. This list will be updated monthly, and any comments received will be considered in OPIC's processing of the application. Additional information about projects may be provided to OPIC at any time throughout the term of the project.

Questions about this Environmental Handbook should be addressed to the Director, Environmental Affairs, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527; Phone (202) 336–8614; Fax (202) 218–0177.

Appendix A—OPIC Statute (Environmental Provisions)

All references are to the Foreign Assistance Act of 1961 (FAA), as amended, most recently by the Jobs Through Exports Act of 1992.

Section 231 * * *. The Corporation, in determining whether to provide insurance, financing or reinsurance for a project, shall especially—

(3) ensure that the project is consistent with the provisions of section 117, (as so redesignated by the Special Foreign Assistance Act of 1986), section 118, and section 119 of this Act relating to the environment and natural resources of, and tropical forests and endangered species in, developing countries, and consistent with the intent of regulations issued pursuant to sections 118 and 119 of this Act.

In carrying out its purpose, the Corporation, utilizing broad criteria, shall undertake—

(n) to refuse to ensure, reinsure, guarantee or finance any investment in connection with a project which the Corporation determines will pose a major or unreasonable environmental, health or safety hazard, or will result in the significant degradation of national parks or similar protected areas.

Section 237. General Provisions Relating to Insurance, Guaranty and Financing Programs

(m)(1) Before finally issuing insurance, reinsurance, guarantees, or financing under this title for any environmentally sensitive investment in connection with a project in a country, the Corporation shall notify appropriate government officials of that country of—

(A) All guidelines and other standards adopted by the International Bank for Reconstruction and Development and any other international organization relating to the public health and safety or the environment which are applicable to the project; and

(B) To the maximum extent practicable, any restriction under any law of the United States relating to public health or safety or the environment that would apply to the project if the project were undertaken in the United States.

The notification under the preceding sentence shall include a summary of the guidelines, standards and restrictions referred to in subparagraphs (A) and (B), and may include any environmental impact statement, assessment, review or study prepared with respect to the investment pursuant to section 239(g).

Section 239. General Provisions and Powers

(g) The requirements of section 117(c) of this Act relating to environmental impact statements and environmental assessments shall apply to any investment which the Corporation insures, reinsures, guarantees, or finances under this title in connection with a project in a country.

Environmental Assessment Procedures for Executive Order 12114

On January 4, 1979 the President issued Executive Order 12114 (44 FR 1957) entitled ''Environmental Effects Abroad of Major Federal Actions''. The Executive Order requires federal agencies taking action encompassed by the Order, and not exempted from it, to effectuate procedures to implement the Order. The Overseas Private Investment Corporation (OPIC) is implementing the Executive Order by the adoption of the following procedures to take effect on September 4, 1979.

Section 1. Purpose

As required by Executive Order 12114, issued January 4, 1979, which is incorporated herein by reference, the following procedures shall be used by OPIC to ensure that all significant environmental effects of its actions outside the United States are considered by OPIC in its review of proposed insurance and finance projects. These procedures shall supplement OPIC's existing environmental procedures and guidelines required by the Foreign Assistance Act as amended (the ''Act''), as set forth in OPIC Board of Directors Resolution (74) 16 * * * and the ''OPIC Environmental Handbook''.

Section 2. Definition

A. *Application.* The term ''application'' means a formal request to OPIC in the manner specified by OPIC for assistance under an OPIC program from an eligible private party interested in investing in a project in a foreign nation.

B. *Environment.* The term ''environment'' means the natural and physical environment and excludes social, economic, and other environments.

C. *Global Commons.* The term ''global commons'' means areas outside the exercise of any national jurisdiction.

D. *Host Country.* The term ''host country'' means the foreign country in which a project for which OPIC assistance is sought is or will be located.

E. *Major Action.* The term ''major action'' means a contractual commitment by OPIC to provide assistance under an OPIC program involving at least $1 million of insured investment, loan guaranties or direct loans, if the applicant therefor has or will have sufficient control over the design and/or operation of the project to mitigate environmental concerns raised by OPIC.

F. *OPIC Programs.* The term ''OPIC programs'' includes OPIC's insurance, direct loan and loan guaranty programs as authorized by the Act.

G. Significant Effects. With respect to effects on the environment outside the United States, a proposed action has a significant effect on the environment if it does significant harm to the environment even though on balance the action is believed to result in beneficial effects on the environment.

Section 3. Applicability of Procedures

A. Scope. Except as provided in Subsections B, C, and D below, these procedures shall apply with respect to OPIC's review of each new application for assistance under an OPIC program, whether for new projects or expansions of existing projects, if a favorable decision on such application will result in a major action by OPIC.

B. Exemptions. If upon the initial review of an application the OPIC insurance or finance officer making such review determines that the project for which OPIC assistance is sought has no significant effects upon the environment outside the United States, these procedures shall not apply. If upon further review of the application, and prior to taking action, it is determined that the project may have a significant effect upon the environment, this exemption shall no longer apply. Also exempt from these procedures are actions falling within the categories listed in Section 2–5(ii) through (vii) of the Executive Order, as limited by Section 2–5(d). A concise administrative record will be prepared to document these determinations.

C. Categorical Exclusions. These procedures shall not apply to the review of an application for any project falling within the scope of any category of projects which are determined to involve no significant effects on the environment. OPIC's Investment Committee shall have the authority to establish such categorical exclusions.

D. Special Exemptions. These procedures shall not apply to the review of any application for which the General Counsel determines that an exemption is necessary as a result of emergency circumstances, situations involving exceptional foreign policy or national security sensitivity or other special circumstances (except as limited by Section 2–5(d) of the Executive Order). In utilizing any such special exemption, OPIC, through its designated Environmental Officer, shall consult as soon as feasible with the Department of State and the Council on Environmental Quality.

Section 4. Initial Determinations

A. With respect to any application for OPIC assistance falling within the scope of Section 3(A) above, the OPIC officer reviewing such application shall make the following determinations which shall be documented by a concise administrative record:

1. Whether the proposed project is likely to have a significant effect on the environment of the global commons;

2. Whether the proposed project is likely to have a significant effect on the environment of a foreign country other than the host country; and

3. Whether the proposed project is likely to have a significant effect on the environment of a foreign country because it would provide to that country.

(a) A product, or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk, such as asbestos, vinyl chloride, acrylonitrile, isocyanates, polychlorinated biphenyls, mercury, beryllium, arsenic, cadmium, and benzene; or

(b) A physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

4. Whether the proposed project is likely to have a significant effect on natural or ecological resources of global importance hereafter designated for protection by the President or, in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State.

B. The determination required in Subsection A above shall be based upon the information contained in the application, information reasonably available to OPIC and such additional information from the applicant as deemed necessary by the reviewing officer.

C. In the event that the reviewing officer makes a positive determination with respect to any of the categories specified in Subsection A above (i.e. that a significant effect is likely to result), and such determination is not reversed upon review by a supervisory officer or by the Investment Committee, the finance or insurance department, as the case may be, in consultation with OPIC's Environmental Officer, shall take the following actions, as appropriate, prior to acting on the application:

1. If the harmful effect is of the type described in Subsection A(1) above, an environmental impact statement shall be obtained in the manner specified in Section 5 below. Such an environmental impact statement shall consider only the effects described in Subsection A(1), regardless of whether the project would result in other kinds of environmental effects.

2. If the harmful effect is of the type described in Subsection A(2), A(3) or A(4) above, an environmental study or an environmental review shall be prepared in the manner specified in Section 6 below.

Section 5. Environmental Impact Statement

A. If a department within OPIC is required by Section 4(C)(1) to cause the preparation of an environmental impact statement for a particular project, it shall do so in accordance with Subsection B below. If an environmental impact statement for the proposed project, a project involving similar environmental issues or a generic statement covering a host of similar projects already exists, no new environmental impact statement shall be required. When one or more other agencies are also involved in a particular project requiring an environmental impact statement OPIC may rely upon an environmental impact statement obtained by one or more of the other agencies.

B. Environmental impact statements shall be concise and no longer than necessary to permit an informed consideration of the environmental effects of the proposed project and the reasonable alternatives. The statement shall include a section on the consideration of the purpose of and need for the proposed project; a section that provides a succinct description of the environment of the global commons affected by the proposed action; and a section that analyzes, in comparative form, the environmental consequences on the global commons of the proposed action and of reasonable alternative means of structuring the project.

Section 6. Environmental Studies and Reviews

A. If a department is required under Section 4(C)(2) to produce an environmental study or review, it shall, in consultation with the Environmental Officer, determine whether an environmental study as described in Subsection B below which deals with the environmental aspects of the proposed project is available or will be undertaken elsewhere. If no relevant environmental study is or will be available, the OPIC department, in consultation with the Environmental Officer, shall undertake the preparation of an environmental review as described in Subsection C below with, as appropriate, the assistance of the applicant and of other federal agencies having jurisdiction by law or special expertise. If an environmental review for the proposed project or a project involving similar environmental issues or a generic review covering a class of similar projects already exists, no new environmental review shall be required hereunder. When one or more agencies are involved with OPIC on a particular project, a lead agency may be designated to prepare the environmental review.

B. An environmental study shall consist of a bilateral or multilateral study by the United States and one or more foreign nations or by an international body or organization in which the United States is a member or participant.

C. An environmental review shall consist of a concise analysis of important environmental issues relating to a proposed project, including identification of such issues and of the significant effects to the environment. The department involved in the preparation of an environmental review shall consider the following factors in deciding the scope, substance, and timing of review and the availability of the review to other agencies:

1. The need to avoid infringement or the appearance of infringement on the sovereign responsibilities and internal affairs of another government;

2. The availability of meaningful information on the environment of a foreign nation;

3. The need to protect confidential business information and trade secrets of the applicant;

4. The desirability of acting promptly upon applications under OPIC programs;

5. The desirability of the project in terms of its export promotion and developmental effects;

6. OPIC's ability to influence the design and/or implementation of the proposed project; and

7. The need to protect sensitive foreign affairs information and information received from another government with the understanding that it will be protected from disclosure.

Section 7. Decision

The required environmental documents developed in accordance with these Procedures shall accompany the application through the review process to enable officers responsible for approving an application and, if necessary, the Board of Directors, to be informed and to take account of the environmental considerations covered by such documents.

Section 8. Availability

Subject to the consideration of Section 6(C), environmental documents developed under these procedures shall be available to the Department of State, Council on Environmental Quality and other federal agencies and shall be included in the public information files for the pertinent applications. Foreign governments affected thereby may also be informed of such documents after coordinating with the Department of State regarding such communication with the foreign government.

Effective Date. These procedures become effective on September 4, 1979.

Dated: August 27, 1979, J. Bryce Llewellyn, President.

Appendix B—Recommended Content and Format for Environmental Impact Assessment (Category A Projects)

I. Executive Summary
- A. Concise project description
- B. Identification of project sponsors, operators and contractors
- C. Baseline environmental conditions
- D. Applicable environmental standards
- E. Proposed mitigation measures
- F. Net environmental impacts

II. Policy, Legal and Administrative Framework
- A. Applicable host country environmental and occupational safety and health laws and regulations
- B. Relevant international agreements
- C. Requirements of potential investors, lenders and insurers

III. Baseline Conditions in Area Potentially Affected by Project (''Project Area'')
- A. Designation of project area perimeters
- B. Physical geography (climate, geology, topography)
- C. Natural events history (earthquakes, floods, fires, storms, volcanic eruptions, etc.)
- D. Biological environment
- 1. Proximity to national parks and other protected areas
- 2. Identification of unique or sensitive natural habitats of internationally or locally recognized rare, threatened or endangered species
- 3. Renewable and non-renewable natural resources
- E. Human environment
- 1. Distribution of residential and occupational population in project area
- 2. Description of previous, current and planned land use activities in or near project area
- 3. Habitation or use of project area by indigenous peoples
- F. Environmental quality of project area
- 1. Ambient air conditions (including seasonal variations)
- (a) Sulfur dioxide
- (b) Particulates
- (c) Nitrogen oxides
- (d) Carbon monoxides
- (e) Airborne toxics
- 2. Water supply, quality and end use (human consumption, agriculture, plant and animal habitat)
- (a) Marine waters, including estuaries
- (b) Surface waters (rivers, streams, lakes)
- (c) Groundwater
- 3. Noise levels
- 4. Soil conditions, including contamination from previous or current activities
- G. Archeological, historical or cultural resources

IV. Potential (Unmitigated) Environmental, Health and Safety Impacts
- A. Sources and volumes of untreated airborne, liquid, and solid waste and potential impacts of unmitigated discharge on the environment
- B. Potential impacts on natural and biological resources
- C. Potential human impacts:
- 1. Positive: Employment, services, economic opportunities
- 2. Negative: Resettlement and economic displacement
- D. Potential occupational health and safety hazards
- E. Potential for major safety and health hazards beyond the workplace

V. Proposed Environmental Prevention and Mitigation Measures (including a thorough discussion of alternatives and justifications for measures selected)
- A. Waste minimization measures
- B. Waste treatment and disposal measures
- C. Natural resource management (e.g. sustainable management of biological resources and protection of endangered species and their habitats)
- D. Mitigation of human impacts: compensation, training, etc.
- E. Occupational safety and health measures
- F. Major hazard prevention and emergency response

VI. Projected Net Environmental Impacts (post-mitigation)
- A. Physical impacts (e.g., topography, ground and surface water supply, soil conservation)
- B. Biological impacts (flora, fauna and related habitat with particular attention to threatened and endangered species; natural resources, e.g. primary forests, coral reefs, mangroves, etc.)
- C. Net discharges of airborne, liquid and solid wastes and resulting ambient impacts as compared to applicable host country, World Bank and other relevant regulatory standards and guidelines
- D. Net exposures by workers to safety and health hazards
- E. Net potential for major hazards
- F. Consistency with applicable international agreements

VII. Appendices
- A. Permits issued and pending from environmental authorities
- B. Author information
- 1. Names, affiliations and qualifications of project team
- 2. Relationship of authors to project sponsors
- C. Record of meetings held as part of EIA, including public hearings and consultations with government and non-governmental organizations
- D. Reference bibliography
- E. Technical data not included in text

Appendix C—Recommended Content and Format for Environmental Management and Monitoring Plan

I. Applicable Regulatory Standards and Guidelines
- A. Host country laws and regulations
- B. Sponsor, investor, lender and insurance requirements
- C. International agreements

II. Environmental Management Measures
- A. Potential impacts and corresponding preventive and mitigative measures
- B. Equipment specifications for preventive and mitigative measures
- C. Operational and maintenance procedures

III. Organizational Responsibilities and Management Issues
- A. Operations
- B. Supervision
- C. Internal enforcement
- D. Monitoring
- E. Remedial actions

IV. Training Requirements

V. Monitoring and Reporting Procedures
- A. Parameters to be monitored
- 1. airborne emissions and corresponding ambient air impacts
- 2. liquid effluents and corresponding ambient impacts on receiving waters
- 3. Physical impacts
- 4. Natural resource and biological impacts
- 5. Human impacts
- 6. Workplace conditions
- (a) Accident frequency and severity
- (b) Worker exposures to hazardous substances
- 7. Impacts of dedicated offsite infrastructure and facilities
- B. Frequency of monitoring
- C. Monitoring techniques and procedures
- 1. Equipment and instrumentation
- 2. Quality assurance/quality control (QA/QC) procedures
- 3. Personnel and training requirements
- D. Reporting procedures
- 1. Internal
- 2. External (e.g. to local authorities)

Appendix D—Recommended Content and Format For Environmental Audit

I. Executive Summary
- A. Environmental, safety and health areas of concern
- B. Recommended mitigation measures/enhancement opportunities: priorities
- C. Implementation schedule

II. Project Description
- A. Location

B. Past operations history
C. Current operations
III. Applicable Regulations and Guidelines
IV. Audit Procedure (protocol)
A. Historical research
B. Records review
C. Interviews
D. Site inspections
E. Sampling and analysis (quality assurance and control) procedures
V. Review of Environmental Management
A. Environmental management structure
B. Emergency, security and safety plans
C. Company-community interaction program
D. Handling of complaints and media coverage
VI. Environmental Impacts
A. Air emissions
B. Liquid effluents
C. Solid (non-hazardous) waste treatment
D. Hazardous materials and management
E. Noise and vibration
F. Groundwater and soil contamination
VII. Occupational Safety and Health
A. Summary of accident reporting, recording and investigation
B. Health and safety management
C. Site safety procedures
D. Medical monitoring program
E. Air quality
F. Noise level exposure
G. Chemical/material handling
H. Temperature exposure
I. Personal protective equipment
J. Emergency response capability
K. Fire protection
L. Training programs
VIII. Conclusions
IX. Mitigation Recommendations
A. Identify appropriate measures
B. Priorities
C. Implementation schedule
X. Environmental Enhancement Opportunities
A. Energy and energy conservation
B. Waste minimization
C. Cleaner technology initiatives
D. Training programs
XI. Annexes
A. Names of those responsible for preparing audit
B. Written material references used
C. Records of consultations
D. Other data

Audit checklists for specific industry sectors are available from OPIC.

Appendix E— Category A: Projects Requiring Environmental Impact Assessment

I. Industrial Categories
A. Large-scale industrial plants
B. Industrial estates
C. Crude oil refineries
D. Large thermal power projects (200 megawatts or more)
E. Major installations for initial smelting of cast iron and steel and production of non-ferrous metals
F. Chemicals
1. Manufacture and transportation of pesticides
2. Manufacture and transportation of hazardous or toxic chemicals or other materials
G. All projects which pose potential serious occupational or health risks
H. Transportation infrastructure
1. Roadways
2. Railroads
3. Airports (runway length of 2,100 meters or more)
4. Large port and harbor developments
5. Inland waterways and ports that permit passage of vessels of over 1,350 tons
I. Major oil and gas developments
J. Oil and gas pipelines
K. Disposal of toxic or dangerous wastes
1. Incineration
2. Chemical treatment
L. Landfills
M. Large dams and reservoirs
N. Pulp and paper manufacturing
O. Mining
P. Offshore hydrocarbon production
Q. Major storage of petroleum, petrochemical and chemical products
R. Forestry/large-scale logging
S. Large-scale wastewater treatment
T. Domestic solid waste processing facilities
U. Large-scale tourism development
V. Large-scale power transmission
W. Large-scale reclamation
X. Large-scale agriculture involving the intensification or development of previously undisturbed land
Y. All projects with potentially major impacts on people or serious socioeconomic concerns
II. Projects in, or Sufficiently Near Sensitive Locations of National or Regional Importance, to Have Perceptible Environmental Effects on:
A. National parks
B. Wetlands
C. Areas of archeological significance
D. Areas prone to erosion and/or desertification
E. Areas of importance to ethnic groups/ indigenous peoples
F. Natural forests
G. Protected wildlands
H. Nationally designated refuges
I. Coral reefs
J. Mangrove swamps
K. Nationally designated seashore areas
L. Endangered species habitat
M. Properties on the World Heritage List

Appendix F—Index of World Bank and U.S. Export-Import Bank Environmental, Health and Safety Guidelines

I. Guidelines: Impacts
A. Air quality (Exim, WB 94, WB pending)
1. Sulfur dioxide
(a) Ambient levels (WB 88)
(b) Emissions standards (WB 88)
(c) Sampling and analysis (WB 88)
(d) Sulfur oxides (WB 95)
2. Airborne particulates (WB 95)
(a) Dust emissions (WB 88)
(b) Electrostatic precipitators (WB 88)
3. Nitrogen oxides (WB 95)
(a) Emissions (WB 88)
(b) Sampling and analysis (WB 88)
4. Transboundary pollution (WB 91)
(a) Acid rain (WB pending)
5. Airshed modeling (WB pending)
6. Emissions monitoring (WB pending)
7. Elimination of ozone-depleting substances (WB 3/96)
B. Water use and quality (Exim)
1. Irrigation and drainage (WB 88*, 91)
2. Water supply (WB 91)
C. Wastewater treatment (WB pending)
1. Effluents, disposal of industrial wastes (WB 88)
2. Wastewater collection, treatment, reuse and disposal (WB 91)
(a) Reuse (WB 94)
3. Liquid effluents: land disposal and treatment (WB 88)
4. Sludge treatment (WB pending)
D. Solid waste collection and disposal
E. Management of hazardous and toxic materials and waste (Exim, WB pending)
F. Occupational health
1. General guidelines (WB 88)
2. Safety (WB 88)
G. Sludge treatment (WB pending)
H. Site planning and management (WB 91, WB pending)
I. Hazardous materials management (WB 91)
1. In small and medium scale industries (WB 85)
2. Polychlorinated biphenyls (PCBs) (WB 94)
3. Asbestos
(a) Sampling and analysis of airborne asbestos (WB 88)
(a) Use in manufacturing industries (WB 88)
J. Natural hazards (Exim, WB 91)
1. Earthquake protection (WB 88, 93)
K. Major industrial hazards (WB 85, 91)
L. Socioeconomic and sociocultural effects (Exim)
1. Core issues (WB 91)
2. Induced development (WB 91)
3. Ecologically sensitive areas (WB 91)
4. Indigenous peoples (WB 91)
5. Cultural property (WB 91)
6. Cultural heritage in environmental assessment (WB 9/94)
M. Resettlement (WB 91, 94)
N. Wildland management (WB 91, 94)
O. Wetlands (WB 91)
P. Tropical forests (WB 91)
Q. Arid and semi-arid lands (WB 91)
R. Coastal zone management (WB 91)
S. Land and water resource management (WB 91)
T. Noise (Exim, WB 88)
U. International treaties and agreements (WB 91)
V. International waterways (WB 91)
W. Biological diversity (WB 91)
X. Secondary environmental effects (WB 88)
Y. Privatization (WB 4/94)
II. Guidelines: Industries
A. General industry and energy (Exim, WB 94)
1. Small and medium scale industries (WB 91)
B. Heavy machinery (WB pending)
C. Cleaner production (WB pending)
D. Rehabilitation of old plants (WB pending)
E. Aluminum (WB 88, 88, WB pending)
F. Iron and steel (Exim, WB 88, 91, 94, 95)
1. General considerations (WB 88)
2. Blast furnaces (WB 88)
3. Coke ovens (WB 88, 88)
4. Ore preparation, sintering and pelletizing (WB 88)

5. Rolling and finishing operations (WB 88)
6. Steel making process (WB 88, 88)
7. Foundries (WB pending)
(a) Iron and steel (WB 88)
(b) Non-ferrous (WB 88)
(c) Mini-steel mills (WB 95)
G. Mining and milling (Exim, WB 91)
1. Strip/surface: sediment and erosion control, land reclamation (WB 88)
2. Open pit (WB 88, 94)
3. Underground (WB 88, 94)
4. Base metal and iron ore (WB 95)
5. Non-ferrous (WB 88, 91)
6. Coal mining (WB 88, 88, 95)
7. Asbestos mining and milling (WB 88)
H. Mineral processing
1. Copper and nickel (WB 88, 94, WB pending)
2. Lead and zinc (WB 88, 88 (lead))
3. Silver, tungsten, columbium and tantalum (WB 88)
4. Metal fabrication (WB pending)
5. Sulfuric acid plants (WB 88)
I. Oil and gas development (Exim, WB pending)
1. Onshore (WB 94)
2. Offshore (WB 88)
J. Pipelines: Oil and gas (WB 91)
1. Oil pipelines (WB 88)
2. Oil and gas pipelines onshore (WB 91)
3. Oil and gas pipelines offshore(WB 91)
K. Geothermal energy (WB 88, WB pending)
L. Hydroelectric projects (WB 91)
M. Power plants: General (Exim)
1. Thermoelectric projects: general (WB 88, 91)
2. Rehabilitation (WB pending)
3. Emissions: General (WB 94)
4. Thermal (WB 94, 95)
5. Gas turbine (Exim 94)
6. Engine driven (WB 94)
7. Small scale boilers (WB pending)
N. Electric power transmission and distribution (WB 91, 94)
O. Battery manufacturing (WB 88)
P. Forestry
1. Natural forest management (WB 91)
2. Logging (Exim, WB 94)
Q. Plantations/reforestation (WB 91, 94)
R. Palm oil industry (WB 88)
S. Sawmills (WB 88, 94)
T. Wood products industries (WB 94)
1. Plywood (WB 88, 88) and furniture (WB pending)
2. Wood preserving (WB pending)
U. Pulp and paper (Exim, WB 88, 88, 91, 94, WB pending)
V. Petroleum refineries (Exim, WB 88, 91, 94, 95)
W. Rubber (WB 88) and plastics (WB pending)
X. Chemicals and petrochemicals (WB 91)
1. Organic chemicals (WB pending)
2. Inorganic chemicals (WB pending)
3. Nitric acid plants (WB 88)
4. Petrochemical facilities (Exim, WB pending)
5. Polyvinyl chloride processing (WB 88)
Y. Ethanol production (WB 88)
Z. Printing (WB pending)
AA. Pharmaceuticals (WB pending)
BB. Cement (WB 88, 88, 91, 94, 95)
CC. Chlor-alkali (WB 88, 95)
DD. Coke manufacturing (WB 95)
EE. Fertilizer (WB 91, 94)
1. Fertilizer manufacturing wastes (WB 88)
2. Mixed fertilizer (WB 95)
3. Nitrogenous fertilizer (WB 95)
4. Phosphate fertilizer (WB 95)
FF. Pesticides
1. Pesticides manufacturing (WB 88, WB pending)
2. Pesticides formulation (WB pending)
3. Packaging and labeling (WB 88)
4. Transportation and distribution (WB 88)
5. Handling and application (WB 88, 88, 91, 94)
6. Rodenticides (WB 88, 88)
GG. Fishing and shipbuilding (WB 88, 91)
HH. Watershed development (WB 91)
II. Dams and reservoirs (WB 91)
JJ. Flood protection (WB 91)
KK. Agriculture
1. Production management (WB 91)
2. Integrated pest management (WB 91)
LL. Livestock and rangeland management (WB 91)
MM. Food and beverage processing (WB 91, 94)
1. Agroindustry (WB 91)
2. Dairy (WB 88, 88, 94, 95)
3. Fruit and vegetable processing (WB 88, 88, 95)
4. Vegetable oils (WB pending)
5. Tea and coffee (WB 88, WB pending)
(a) Coffee (WB 88)
(b) Tea (WB 88)
6. Breweries (WB pending)
7. Poultry processing (WB 88)
8. Fish processing (WB 88, 88, 94, WB pending)
9. Meat processing (WB 88, 88, 94, 95)
(a) Slaughterhouses: industrial waste disposal (WB 88)
(b) Slaughterhouses: design (WB 88)
(c) Slaughterhouses: occupational safety (WB 88)
10. Cane sugar (WB 88, WB pending)
(a) Agricultural operations (WB 88)
(b) Mill and refinery operations (WB 88)
11. Grain handling and storage (WB 88)
NN. Gas terminals (WB 94)
OO. Glass manufacturing (WB 88, WB pending)
1. Flat glass manufacturing (WB 94)
PP. Electronics (WB pending)
QQ. Instruments (WB pending)
RR. Plating and electroplating (WB 88, 88, 95)
SS. Dye manufacturing (WB pending)
TT. Coatings manufacturing (WB pending)
UU. Hospitals (WB 94)
VV. Tourism and hospitality (WB pending)
1. Hotels and resorts (WB 94)
WW. Rail transit systems (WB 94)
XX. Roads and highways (WB 91)
1. Rural roads (WB 91)
YY. Ports and harbor facilities (WB 91)
ZZ. Inland navigation (WB 91)
AAA. Large-scale housing projects (WB 91)
BBB. Telecommunications (WB 94)
CCC. Textiles (WB 88, 88, 94, 95)
1. Wool scouring (WB 88)
2. Cotton ginning (WB 88)
DDD. Tanning (WB 88, 88, 95)

References. (Appendix F)

WB 88—The World Bank, Environmental Guidelines, September 1988
WB 88—The World Bank, Occupational Health and Safety Guidelines, September 1988
WB 91—The World Bank, Environmental Assessment Sourcebook, (3 volumes) 1991
WB 94—''World Bank Environment, Health and Safety Guidelines,'' Draft 1994
WB 95—The World Bank, Industrial Pollution Prevention and Abatement Handbook, Preliminary Version (June 1995)
WB pending—World Bank guidelines under development
Exim—Export-Import Bank of the United States, ''Environmental Procedures and Guidelines,'' April 2, 1996

Appendix G—Format for Host Government Notification Letter

[date]

Minister of State for Environment

Republic of _____

Dear Mr./Madam Minister: The Overseas Private Investment Corporation (OPIC) is proposing to issue financing/insurance for an investment in [name of host country] by a U.S. company. OPIC is an agency of the United States Government, with the mandate of facilitating economically productive and environmentally sound U.S. private investments in developing countries and emerging economies.

OPIC is required by U.S. law to notify appropriate host government authorities of investments under consideration for OPIC assistance, which have the potential to pose significant consequences for the environment. The project that is the subject of this notification involves an investment by [name of applicant] in the construction and operation of [concise description of project].

The potential environmental hazards associated with [industry sector] includes [air, water, solid/hazardous waste, etc.].

Based on information provided to us by the investor, the project does not appear to pose significant hazards to the environment, public health, or safety resulting from the diverse impacts of [industry sector].

OPIC is also required to provide your government with information about standards and guidelines applicable to such investments that have been developed by international organizations or by federal environmental regulatory authorities of the United States. The relevant World Bank and U.S. Environmental Protection Agency guidelines are attached for your information.

We understand, of course, that the project will be subject to the laws of [name of host country] with respect to the protection of the environment as well as occupational health and safety.

If you have any questions about OPIC's environmental assessment of this project, you may contact OPIC's Director of Environmental Affairs at the above address or [phone/fax].

Sincerely yours,

[Name] _____

President and Chief Executive Officer

Enclosures

Appendix H—Glossary

Environmental Assessment (EA)—analytical tool used to anticipate potential impacts of particular activities on the natural

environment and on humans dependent on that environment.

Environmental Audit (EAU)—assessment of environmental and related human impacts of pre-existing or ongoing activities.

Environmental Impact Assessment (EIA)—comprehensive analytical effort designed to anticipate environmental impacts of major projects having the potential to have significant, diverse and irreversible impacts on the natural environment and on humans dependent on that environment.

Environmental Impact Statement (EIS)—comprehensive analytical effort designed to anticipate environmental impacts of major federal actions affecting the global commons outside of the jurisdiction of any nation.

Environmental Management and Monitoring Plan (EMMP)—systematic program designed to prevent, mitigate and monitor anticipated environmental and related human impacts of prospective and ongoing activities.

Environmental Remediation Plan (ENR)—systematic program designed to reverse adverse environmental impacts of previous activities at a site.

European Bank for Reconstruction and Development (EBRD)—multilateral development bank established in 1990 to assist in the economic, social and political development of Central and Eastern Europe and the New Independent States of the former Soviet Union. Other members include the European Community and the United States.

Export-Import Bank of the United States (Exim)—independent U.S. government agency that helps finance the overseas sales of U.S. goods and services.

Financial Intermediary (FI)—investment fund, bank, or other financial institution that lends directly to projects or investment funds guaranteed or insured by OPIC that invest in projects (''subprojects'') subject to OPIC approval on policy grounds.

Foreign Assistance Act (FAA)—Foreign Assistance Act of the United States International Finance Corporation (IFC)—affiliate of the World Bank group that makes loans to and investments in private sector projects in developing countries and emerging markets.

ISO 14000—basic elements of an effective environmental management system as developed by the Technical Committee of the International Standards Organization to provide organizations worldwide with a common approach to environmental management.

Major Hazard Assessment (MHA)—analytical tool used for identifying, analyzing and controlling potential major hazards to human health and safety resulting from storage and processing of toxic and hazardous substances.

World Bank (WB)—International Bank for Reconstruction and Development.

Dated: March 31, 1997.

James Offutt,

Assistant General Counsel, Administrative Affairs.

[FR Doc. 97–2874 Filed 2–5–97; 8:45 am]

BILLING CODE 3210–01–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. *Atlas Foundry Company, Inc., et al.,* Civil Action No. 1:97 CV 0015, was lodged on January 16, 1997, with the United States District Court for the Northern District of Indiana. The consent decree settles an action brought under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.,* (''CERCLA'') for the recovery of past costs incurred by the United States in responding to a release or threat of release of hazardous substances at the Marion/Bragg Landfill Superfund Site in Grant County, Indiana (the ''Site''). Under the terms of the proposed decree, the settling defendants will pay the United States $750,000 in settlement of the United States' past costs claims against them.

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. *Atlas Foundry Company, Inc., et al.,* DOJ Ref. #90–11–3–251A.

The proposed consent decree may be examined at the Office of the United States Attorney for the Northern District of Indiana, Fort Wayne Division, 1300 South Harrison Street, Room 3128, Fort Wayne, Indiana, 46802; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604; 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 enclose a check in the amount of $6.75 (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. 97–2904 Filed 2–5–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree and Settlement Agreement Pursuant to the Clean Air Act

In accordance with the Clean Air Act, 42 U.S.C. § 7413(g) and Departmental Policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed Consent Decree and proposed Settlement Agreement in *Concerned Citizens for Nuclear Safety, Inc. & Patrick Jerome Chavez* v. *United States Department of Energy & Siegfried S. Hecker,* Civil No. 94–1039 M (D.N.M.), were lodged with the United States District Court for the District of New Mexico on January 14, 1997. Final approval and entry of the proposed Consent Decree and final approval of the Settlement Agreement are subject to the requirements of section 113(g) of the Clean Air Act, 42 U.S.C. § 7413(g), and the provisions of 28 C.F.R. § 50.7.

The Consent Decree and Settlement Agreement resolve allegations that the Los Alamos National Laboratory (''LANL''), located in Los Alamos, New Mexico, was not in full compliance with the national emission standard for radionuclides, as set forth at 40 C.F.R. §§ 61.90–61.97 (''Subpart H''). Under the proposed Consent Decree, the U.S. Department of Energy would be required to contract for, fund and facilitate performance of comprehensive independent technical audits described in the Consent Decree, operate additional AIRNET stations, add thermoluminescent dosimeters to detect gamma and thermal neutron emissions, and to make a payment of $150,000 to the U.S. Treasury. The proposed Settlement Agreement would require, in part, the U.S. Department of Energy to fund a program at the University of New Mexico and to conduct radiation education training for the community.

The Department of Justice will receive written comments relating to the proposed Consent Decree and Settlement Agreement for a period of 30 days from the date of publication of this notice. Comments should be addressed to Alan D. Greenberg, U.S. Department of Justice, Environmental Defense Section, 999 18th Street, Suite 945, Denver, CO 80202, should refer to *Concerned Citizens for Nuclear Safety, Inc. & Patrick Jerome Chavez* v. *United States Department of Energy & Siegfried S. Hecker,* Civil No. 94–1039 M (D.N.M.), and should also make reference to DJ# 90–5–2–1–1749A.

The proposed Consent Decree and Settlement Agreement may be examined at the Clerk's Office, United States District Court for the District of New Mexico, 500 Gold Avenue, 10th Floor, Albuquerque, NM 87102 or at the Los Alamos National Laboratory Reading

Room, 1350 Central Avenue, Suite 101, Los Alamos, NM 87544, (505) 665–2122 or (800) 343–2342.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 97–2909 Filed 2–5–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given of a consent decree lodged on November 13, 1996, *United States* v. *Maine Department of Transportation, Bridgecorp, Robert Wardwell & Sons, Inc., and T.Y. Lin International,* Civ. Act. No. 96–0249–B (D. Maine). The proposed decree concerns alleged violations of Sections 301 and 404 of the Clean Water Act, 33 U.S.C. § 1311 and 1344, as the result of defendants' unlawful discharge of dredged or fill material onto jurisdictional wetlands at the site of a proposed cargo terminal (the ''Terminal Site'') and in the course of construction of an access road to the Terminal Site (the ''Access Road'') on Sears Island, Waldo County, Maine. The Sierra Club and the Conservation Law Foundation have intervened in the case and are signatories to the consent decree.

The terms of the consent decree include the following: (a) The defendants are permanently enjoined from discharging fill materials in waters of the United States at the Terminal Site and the Access Road, except in compliance with applicable permits; (b) the defendants are required to pay a $10,000 civil penalty; (c) defendant Maine Department of Transportation (''Maine DOT'') will restore approximately 3.2 acres of filled wetlands and create a number of vernal pools at the Terminal Site; (d) Maine DOT will create or enhance approximately 17 acres of riparian wetlands and associated uplands at Dyer Creek in Newcastle, Lincoln County, Maine, (e) Maine DOT will restore and enhance approximately three-quarters of an acre of degraded former wetland on the south-central portion of Sears Island; and (f) Maine DOT will fund a supplemental environmental project, providing at least $100,000 for the acquisition of one or more properties located in the Ducktrap River watershed in Maine through the Land for Maine's Future Board.

The Department of Justice will receive written comment on this consent decree for a period of thirty (30) days from the date of publication of this notice in the Federal Register. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Daniel W. Pinkston, Environmental Defense Section. P.O. Box 23986, Washington, D.C. 20026–3986, and should refer to *United States* v. *Maine Dept. of Transportation, et al.*, DJ Reference No. 90–5–1–1–4184.

The proposed consent decree may be examined at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy of the consent decree with attachments, please enclose a check in the amount of $14.25. In addition to the Consent Decree Library, the consent may be viewed at the EPA New England Library, located on the Eleventh Floor, One Congress Street, Boston, Massachusetts, and the Office of the Clerk of the United States District Court for the District of Maine, Room 357, 202 Harlow Street, Bangor, Maine.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 97–2896 Filed 2–5–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree United States v. Tenneco Oil Company

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that, on January 22, 1997 a Consent Decree was lodged with the United States District Court for the Western District of Oklahoma in *United States* v. *Tenneco Oil Company,* Civil Action No. CIV–96–017–C, an action under Section 1431(a) of the Safe Drinking Water Act, 42 U.S.C. § 300i(a) for provision of an alternative water supply for the Sac and Fox Indian Nation and damages for contamination of the aquifer.

The proposed Decree is designed to remedy contamination of the lands and groundwater of the Sac and Fox in Lincoln County, Oklahoma. The Decree provides for the purchase and conveyance by Tenneco to the Sac and Fox of specified parcels of land in order to provide an adequate, alternative source of drinking water; installation of a river water intake to provide agricultural irrigation; and the reforestation of a pecan grove. The Decree also provides for the payment of $1,160,000 to the Sac and Fox, both for their discretionary use and for dedicated projects for the clean-up of tribal lands. Finally, the proposed Decree resolves the liability of Tenneco for specified oil and gas related claims by the United States and the Sac and Fox Nation.

The Department of Justice will receive written comments relating to the proposed Decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to Lois J. Schiffer, Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Tenneco Oil Company,*. DOJ #90–6–6–137.

Copies of the Decree may be examined at the offices of the United States Attorney for the Western District of Oklahoma, 210 West Park Avenue, Suite 400, Oklahoma City, Oklahoma 73102; the Untied States Environmental Protection Agency—Region VI, 1445 Ross Avenue, Suite 1200, Dallas, Texas, 75202; the Consent Decree Library, 1120 G Street, NW 4th Floor, Washington, D.C. 20005, (202) 624–0892; and the Sac and Fox Library, Sac and Fox Nation, Route 2, Stroud, Oklahoma 74079. Copies of the Consent Decree may be obtained from the Consent Decree Library. In requesting copies, please enclose a check in the amount of $11.50 (25 cents per page) payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–2908 Filed 2–5–97; 8:45 am]

BILLING CODE 4410–15–M

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8:00 a.m., Tuesday, February 25, 1997.

Place: Phoenix Park Hotel, 520 North Capitol Street, NW., Washington, DC.

Status: Open.

Matters To Be Considered: Updates on the Violent Offender and Truth in Sentencing Grant Program, the District of Columbia Department of Corrections Studies, the NIC Executive Excellence Program, The NIC budget, NIC's all-staff meeting, and the survey on super-maximum prisons. A report on NIC's strategic planning will be given, and new officers for the Board will be elected.

For More Information Contact: Larry Solomon, Deputy Director, (202) 307–3106, ext. 155.

George Keiser,

Acting Director.

[FR Doc. 97–2920 Filed 2–5–97; 8:45 am]

BILLING CODE 4410–36–M

NATIONAL BANKRUPTCY REVIEW COMMISSION

Notice of Public Meeting

AGENCY: National Bankruptcy Review Commission.

TIME AND DATE: Thursday, February 20, 1997; 8:30 A.M. to 4:00 P.M. and Friday, February 21, 1997; 8:30 A.M. to 4:00 P.M.

PLACE: United States Senate Dirksen Office Building—Room 106, Washington, D.C. It is recommended that the public use the entrance located at the intersection of First Street and Constitution Avenue.

STATUS: The meeting will be open to the public.

NOTICE: At its public meeting, the Commission will consider general administrative matters and substantive agenda items including executory contracts, transnational issues, and future claims; Commission working groups will consider the following substantive matters: Chapter 11, government, jurisdiction and procedure, small business, consumer bankruptcy, and service to the estate and ethics. An open forum session devoted to issues related to the United States Trustee Program for public participation will be held on February 20, 1997 from 8:45 A.M. to 10:30 A.M. A general open forum session for public participation will be held on February 21, 1997 from 3:15 P.M. to 4:00 P.M.

SUPPLEMENTARY INFORMATION: Any individual or organization who wants to make an oral presentation to the National Bankruptcy Review Commission concerning the Commission's statutory responsibilities may do so at the open forum sessions. Persons who would like to make an oral presentation to the Commission at the open forum sessions may register in advance by contacting the National Bankruptcy Review Commission at (202) 273–1813 no later than Wednesday, February 19, 1997 before 5:00 P.M. EST and providing name, organization (if applicable), address and phone number, or may register in person at the National Bankruptcy Review Commission registration desk at the meeting site by providing, name, organization (if applicable), address and phone number. If the volume of requests to speak to the Commission at the open forum sessions exceeds the time available to accommodate all such requests, the speakers will be chosen on the basis of order of registration.

Oral presentations will be limited to five minutes per speaker. Persons speaking are requested, but not required, to supply twenty (20) copies of their written statements prior to their presentations to the National Bankruptcy Review Commission, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Suite G–350, Washington, DC 20544. Written submissions are not subject to any limitations.

CONTACT PERSONS FOR FURTHER INFORMATION: Contact Susan Jensen-Conklin or Carmelita Pratt at the National Bankruptcy Review Commission, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Suite G–350, Washington, D.C. 20544; Telephone Number: (202) 273–1813.

Susan Jensen-Conklin,

Deputy Counsel.

[FR Doc. 97–2919 Filed 2–5–97; 8:45 am]

BILLING CODE 6820–36–P

NATIONAL COMMUNICATIONS SYSTEM

AGENCY: National Communications System (NCS).

ACTION: Notice.

SUMMARY: Federal Telecommunication Recommendation (FTR) 1024–1997, ''Project 25 Radio Equipment'' was approved for publication on January 21, 1997. This recommendation describes a family of 12.5 kHz bandwidth or less digital radios that can be used in a wide variety of Government applications. Project 25 is a joint effort of U.S. Federal, state, and local government, and industry. State government participation is through the National Association of State Telecommunications Directors (NASTD); local government participation is through the Association of Public-safety Communications Officials, International, (APCO); and industry participation is through the Telecommunications Industry Association (TIA). A copy of FTR 1024–1997, in PDF format, is available on the World-Wide Web at <http://members.aol.com/Project25/≤.

FOR FURTHER INFORMATION: Contact Mr. Robert Fenichel at telephone (703) 607–6190, e-mail <fenicher@ncs.gov≤, or write to the National Communications System, Attn: N6, 701 South Court House Road, Arlington, VA 22204–2198.

Dennis Bodson,

Chief, Technology and Standards Division.

[FR Doc. 97–2873 Filed 2–5–97; 8:45 am]

BILLING CODE 5000–03–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–9 (50–267)]

Notice of Issuance of Amendment to Materials License SNM–2504; Public Service Company of Colorado, Fort St. Vrain Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment 4 to Materials License No. SNM–2504 held by the Public Service Company of Colorado (PSCo) for the receipt, possession, storage, and transfer of spent fuel at the Fort St. Vrain (FSV) independent spent fuel storage installation (ISFSI), located in Weld County, Colorado. The amendment is effective as of the date of issuance.

By application dated January 9, 1997, and supplement dated January 17, 1997, PSCo requested an amendment to its ISFSI license to change the title of the corporate-level individual directly responsible for oversight of the ISFSI. PSCo requested that the position of ''Corporate Vice President'' responsible for the ISFSI, identified in Technical Specification 4.2, be modified to ''Corporate Executive'' responsible for the ISFSI.

This amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c)(10)(ii), an environmental assessment need not be prepared in connection with issuance of the amendment.

Documents related to this action are available for public inspection at the Commission's Public Document Room located at the Gelman Building, 2120 L

Street, NW, Washington, DC 20555, and at the Local Public Document Room at the Weld Library District, Lincoln Park Branch, 919 7th Street, Greeley, Colorado 80631.

Dated at Rockville, Maryland, this 30th day of January 1997.

For the Nuclear Regulatory Commission.

Charles J. Haughney,

Acting Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–2979 Filed 2–5–97; 8:45 am]

BILLING CODE 7590–01–P

Proposed Generic Communication; Degradation of Steam Generator Internals

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of public comment period.

SUMMARY: On December 31, 1996 (61 FR 69116), the NRC published for public comment a proposed generic letter concerning the importance of performing comprehensive examinations of steam generator internals to ensure steam generator tube structural integrity is maintained in accordance with the requirements of Appendix B to 10 CFR part 50. The generic letter will enable the NRC to verify whether or not the condition of addressees' steam generator internals comply and conform with the current licensing basis for their respective facilities. The comment period for this proposed generic letter was originally scheduled to expire on January 30, 1997. In a letter dated January 27, 1997, the Nuclear Energy Institute requested a 45-day extension of the comment period to permit sufficient time to reach consensus on a coordinated industry response. In response to this request, the NRC has decided to extend the comment period.

DATES: The comment period has been extended 45 days and will now expire on March 15, 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 am to 4:15 pm, Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Stephanie M. Coffin (301) 415–2778.

Dated at Rockville, Maryland, this 30th 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. 97–2812 Filed 2–5–97; 8:45 am]

BILLING CODE 7590–01–P

10-Year License Terms for Materials Licensees

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Nuclear Regulatory Commission (NRC) is extending the license term for materials licenses issued pursuant to 10 CFR Part 30,[1] ''Rules of General Applicability to Domestic Licensing of Byproduct Material''; Part 40, ''Domestic Licensing of Source Material''; and Part 70, ''Domestic Licensing of Special Nuclear Material'' from the current 5-year period to a 10-year period on the next renewal of the affected licenses with the exception of licenses issued pursuant to Part 35. The license term for licenses issued pursuant to Part 35 are established by regulation and must be revised by rulemaking. The 5-year term for licenses other than those issued pursuant to Part 35 has been a matter of practice (see 31 FR 16367; December 22, 1966, and 32 FR 7172; May 12, 1967); the license term is not codified in the regulations.

Over the past several years, the regulatory regime applicable to materials licensees has become more stable and predictable. NRC now has extensive experience in uniform application of health and safety regulations to materials licensees. NRC has developed specific regulatory criteria for materials users in various areas. For example, NRC has revised or amended, specific regulations in the following areas: Industrial radiography, medical use, irradiators, and well-logging. In addition, NRC has recently revised its regulations regarding the standards for protection against radiation, to make them more compatible with international health and safety standards.

NRC has concluded that the term for materials licenses can be increased from 5 to 10 years, with no adverse effect on public health, safety, or the environment. This conclusion is based on the existence of the mature regulatory regime currently in place. NRC's current practice of routinely being in contact with licensees through inspections, license amendments, and annual fee-billing procedures provides further support for increasing the term of materials licenses.

Although NRC is announcing its expectation that materials licenses will be issued for 10-year terms, NRC may issue licenses for shorter terms depending on the individual circumstances of license applicants.

EFFECTIVE DATE: February 6, 1997.

FOR FURTHER INFORMATION CONTACT: Catherine Haney or Diane Flack, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555, telephone (301) 415–7206.

Dated at Rockville, Maryland, this 31st day of January, 1997.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–2978 Filed 2–5–97; 8:45 am]

BILLING CODE 7590–01–P

[1] Reference to Part 30 is intended to include 10 CFR Part 32, ''Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material''; Part 33, ''Specific Domestic Licenses of Broad Scope for Byproduct Material''; Part 34, ''Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations''; Part 35, ''Medical Use of Byproduct Material''; Part 36, ''Licenses and Radiation Safety Requirements for Well Logging''; and any other regulations that are developed in the Part 30 series.

PEACE CORPS

Information Collection Requests Under OMB Review

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C., Chapter 35) Peace Corps of the United States has submitted to the Office of Management and Budget a request for approval of the collection of names of groups and/or individuals which make use of the Peace Corps name or logo by Peace Corps Office of General Counsel. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 3, 1997. This process is conducted in accordance with 5 CFR 1320.10; the initial notice was published in the Federal Register on

November 21, 1996 (pp. 59251–59252). A copy of the information collection may be obtained from Steve Schwinn, Peace Corps Office of General Counsel, 1990 K Street, NW., Washington DC 20526. Mr. Schwinn may be contacted at (202) 606–3114. Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. Comments on this form should be addressed Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: Authority to Use Peace Corps Name and Logo.

Need for and use of the Information: The information will be provided by organizations who intend to use the Peace Corps name. These organizations will normally be charitable or non-profit. The information requested from the respondents is necessary for determining whether these organizations are eligible to use the name and logo of the Peace Corps in their activities and are formed for the purposes of carrying out one or more of the goals of the Peace Corps Act. This information will be kept on file for reference purposes by the Office of General Counsel.

Respondents: Returned Peace Corps Volunteer organizations, other entities using or intending to use the Peace Corps name.

Respondents obligation to reply: Mandatory.

Burden on the Public:

a. Annual reporting burden: 12.5 hrs.

b. Annual record keeping burden: 0 hrs.

c. Estimated average burden per response: 5 min.

d. Frequency of response: one time.

e. Estimated number of likely respondents: 150.

f. Estimated cost to respondents: $1.01.

This notice is issued in Washington, DC on February 3, 1997.

Stanley D. Suyat,

Associate Director for Management.

[FR Doc. 97–2985 Filed 2–5–97; 8:45 am]

BILLING CODE 6051–01–M

Proposed Information Collection Requests

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C., Chapter 35) Peace Corps of the United States has submitted to the Office of Management and Budget a request for approval of information collection Peace Corps Medical History and Examination Forms (PC–1789 and PC–1790). The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 7, 1997. This process is conducted in accordance with 5 CFR 1320.10; the initial notice was published in the Federal Register on September 6, 1996 (pp. 47215–47216), during which time no comments were received by the agency. Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. A copy of the information collection may be obtained from Susan Gambino, Office of Medical Services, United States Peace Corps, 1990 K Street, NW, Washington, DC 20526. Ms. Gambino may be contacted by telephone at (202) 606–3481. Comments on these forms should be addressed to Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: Health Status Review (PC–1790); Report of Medical Exam (PC–1790).

Need for and Use of This Information: This collection of information is necessary to comply with the Peace Corps Act (Section 5(e)) which states that ''applicants for enrollment shall receive such health examinations preparatory to their service * * * as the President may deem necessary or appropriate * * * to provide the information needed for clearance, and to serve as a reference for any future Volunteer medical clearance, and to serve as a reference for any future Volunteer disability claim.'' Peace Corps uses this information to determine the physical and mental suitability for service as a Peace Corps Volunteer.

Respondents: Peace Corps Applicants.

Respondents Obligation to Reply: Mandatory.

Burden on the Public:

Health Status Review (PC 1789)

a. Annual reporting burden: 1,625 hrs.

b. Annual record keeping burden: 0 hrs.

c. Estimated average burden per response: 15 minutes.

d. Frequency of response: one time.

e. Estimated number of likely respondents: 6,500.

f. Estimated cost to respondents: $3.04 per.

Report of Medical Exam (PC 1789)

a. Annual reporting burden: 3,000 hrs.

b. Annual record keeping burden: 0 hrs.

c. Estimated average burden per response: 30 minutes.

d. Frequency of response: one time.

e. Estimated number of likely respondents: 6,000.

f. Estimated cost to respondents: $6.08 per.

- Responses will be returned by postage-paid reply mail.

This notice is issued in Washington, DC on February 3, 1997.

Stanley D. Suyat,

Associate Director for Management.

[FR Doc. 97–2986 Filed 2–5–97; 8:45 am]

BILLING CODE 6051–01–M

Amendment of Privacy Act System of Records

AGENCY: Peace Corps.

ACTION: Notice of amendment to system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act (5 U.S.C. 552a (e)(4) and (11)) the Peace Corps is revising the system of records, Employee Pay and Leave Records (PC–6), to include information regarding employee earnings and leave records. A new

routine use is being added to this system that will allow the agency to release information conained in this system to any other federal agency for the purpose of collection of moneys owed to the federal government. The amendment also makes minor technical changes to the wording of the system that reflect changes to the Peace Corps' organizational structure, but do not involve substantive change. The Associate Director for Management invites the general public and other federal agencies to take this opportunity to comment on the change to this records system as listed below. This change will be adopted following the required period. A copy of the system notice may be obtained from Brian Sutherland, Office of Administrative Services, United States PEACE CORPS, 1990 K Street, NW.—room 5404, Washington, DC 20526. Mr. Sutherland may be contacted by telephone at (202) 606–3261.

In accordance with the requirements of the Privacy Act, the Peace Corps has provided a report of this intended change to this system to OMB, to the President of the Senate, and to the Speaker of the House of Representatives.

DATES: The revision to the system of records published herein will become effective 60 days from publication (April 7, 1997), unless the Peace Corps receives comments which would convince us to make a contrary determination.

Employee Pay and Leave Records (PC–6) is amended to read as follows:

PC–6

SYSTEM NAME: Employee Pay and Leave Records.

SYSTEM LOCATION: Office of Planning, Budget, and Finance, Peace Corps, 1990 K Street, NW., Washington, DC 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: Any recipient eligible for federal disbursement from the Peace Corps.

CATEGORIES OF RECORDS IN THE SYSTEM: Personnel actions employing, promoting and terminating employees, savings bond applications, advices of allotments, IRS tax levels, notice of deduction for health insurance, Combined Federal Campaign, union dues withholdings applications, and educational allowances for children of overseas employees and records regarding collections for overpayments and time and attendance records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: GAO Policy and Procedures Manual, 31 U.S.C. 3512, and, the Budget and Accounting Procedures Act of 1950.

PURPOSE(S): This system was established to record moneys paid, allotments authorized, leave earned and used, and retirement benefits earned.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information from these records are routinely provided as follows:

1. To the Treasury for payroll and savings bonds and other deduction purposes.

2. To Internal Revenue Service with regard to tax matters.

3. To participating insurance companies holding policies with respect to Federal employees employed by Peace Corps.

4. To Federal Agency to perform payroll services for the Peace Corps.

5. These records and information in the records may be disclosed to any other federal agency for the purpose of effecting administrative offset against the debtor to recoup a delinquent debt to the US Government by the debtor.

This notice is issued in Washington, DC on February 3, 1997.

Bessy Kong,

Acting Associate Director for Management.

[FR Doc. 97–2984 Filed 2–5–97; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Form T–1—SEC File No. 270–121—OMB Control No. 3235–0110

Form T–2—SEC File No. 270–122—OMB Control No. 3235–0111

Form T–3—SEC File No. 270–123—OMB Control No. 3235–0105

Form T–4—SEC File No. 270–124—OMB Control No. 3235–0107

Form 14f–1—SEC File No. 270–127—OMB Control No. 3235–0108

Form 12d1–3—SEC File No. 270–116—OMB Control No. 3235–0109

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:

Form T–1 is a statement of eligibility under the Trust Indenture Act of 1939 (''TIA'') of a corporation designated to act as a trustee. It is filed by an estimated 500 respondents for a total estimated annual burden of 7500 hours.

Form T–2 is a statement of eligibility under the TIA of an individual designated to act as a trustee. It is filed by an estimated 36 respondents for a total estimated annual burden of 324 hours.

Form T–3 is used for applications for the qualification of trust indentures. It is filed by an estimated 55 respondents for a total estimated annual burden of 2365 hours.

Form T–4 is used to apply for exemption pursuant to Section 304(c) of the TIA. It is filed by an estimated 3 respondents for a total estimated annual burden of 15 hours.

Rule 14f–1 requires issuers to file information in connection with a change in the majority of their directors. Rule 14f–1 submissions are filed by an estimated 44 respondents for a total estimated annual burden of 792 hours.

Rule 12d1–3 sets forth requirements concerning certification that a security has been approved by an exchange for listing and registration pursuant to Section 12(d) of the Securities Exchange Act of 1934. Rule 12d1–3 submissions are filed by an estimated 688 respondents for a total estimated annual burden of 344 hours.

The information provided by the above forms and submissions is needed to ensure compliance with the requirements of the TIA, Securities Act of 1933 and Securities Exchange Act of 1934. Trustees and corporate issuers are the likely respondents.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the

Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 29, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–2911 Filed 2–5–97; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22486; 812–10164]

SBSF Funds, Inc. d/b/a Key Mutual Funds, et al.; Notice of Application

January 30, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: SBSF Funds, Inc. d/b/a Key Mutual Funds (''KMF''), The Victory Portfolios (''VP''), KeyCorp Mutual Fund Advisers, Inc. (''KMFAI''), and Spears, Benzak, Salomon & Farrell, Inc. (''SBS&F'').

RELEVANT ACT SECTIONS: Order requested under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to implement a ''fund of funds'' arrangement. In addition to the fund of funds investing in other funds in the same group of investment companies, such fund of funds also may invest a portion of its assets in funds that are not part of the same group of investment companies in reliance on Section 12(d)(1)(F) of the Act.

FILING DATES: The application was filed on May 20, 1996, and amended on January 22, 1997. Applicants have agreed to file an 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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 24, 1997, and should be accompanied by proof of service on applicants 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 5th Street, N.W., Washington, D.C. 20549. KMF and VP, 3435 Stelzer Road, Columbus, OH 43219; KMFAI, 127 Public Square, Cleveland, OH 44114; SBS&F, 45 Rockefeller Plaza, New York, NY 10111.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, at (202) 942–0571, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

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.

Applicants' Representations

1. KMF is a Maryland corporation registered under the Act as an open-end management investment company currently consisting of eight operating portfolios and one inactive portfolio. VP is a Delaware business trust registered under the Act as an open-end management investment company currently consisting of 24 operating and four inactive portfolios.

2. Applicants request relief to permit the series of KMF, VP, and any other investment company created in the future that is part of the same ''group of investment companies'' as KMF or VP, as defined in section 12(d)(1)(G)(ii) of the Act (the ''Direct Funds''), to purchase shares of investment companies or series thereof, existing or created in the future, that are part of the same ''group of investment companies'' (the ''Underlying Portfolios'') as the Direct Funds, and to permit the Underlying Portfolios to sell such shares to, and redeem such shares from, the Direct Funds. Some of the Underlying Portfolios may rely upon a ''manager of managers'' exemptive order granted by the SEC that permits the Underlying Portfolios to select a sub-adviser without the approval of their shareholders, subject to certain conditions.[1]

3. The investment policies of the Direct Funds also permit each Fund to invest a portion of its assets in government securities, certain short-term obligations, and, subject to receipt of the request exemptive relief, shares of other investment companies that are not part of the same ''group of investment companies'' as KMF and VP (''Other Portfolios''). Investments in Other Portfolios will conform to the requirements of section 12(d)(1)(F) of the Act.[2]

4. SBS&F currently serves as investment adviser to four of the operating funds of KMF. SBS&F is a wholly-owned subsidiary of KeyCorp Asset Management Holdings, Inc. (''KAMHI''), which is a wholly-owned subsidiary of KeyBank National Association, a national banking association, which, in turn, is a wholly-owned subsidiary of KeyCorp, a bank holding company. KMFAI currently serves as investment adviser to VP and to four funds of KMF, including the Direct Funds. In addition, KMFAI has been retained to act as investment adviser to a fund of KMF that has yet to commence operations. KMFAI is a wholly-owned subsidiary of KAMHI.

5. The Underlying Portfolios will pay investment advisory fees to KMFAI and/or SBS&F. In addition, the Underlying Portfolios will pay fees to their various service providers for all other services relating to their operations. The Direct Funds pay investment advisory fees to their investment adviser(s), as well as fees to the Direct Funds' various service providers. By investing in other investment companies, shareholders of the Direct Funds indirectly will pay their proportionate share of any Underlying Portfolio fees and expenses. Similarly, the Direct Funds' shareholders indirectly pay their proportionate share of any Other Portfolio fees and expenses.

6. The Direct Funds will pay no front-end sales loads or contingent deferred sales charges in connection with the purchase or redemption of shares of either Underlying Portfolios or Other Portfolios. In addition, sales charges, distribution-related fees, and service

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[1] *The Victory Portfolios*, Investment Company Act Release Nos. 22366 (Dec. 3, 1996) (notice) and 22432 (Dec. 31, 1996) (order).

[2] On January 1, 1997, in reliance only on section 12(d)(1)(G) of the Act, KeyChoice Growth Fund, KeyChoice Moderate Growth Fund, and KeyChoice Income and Growth Fund, the initial Direct Funds, commenced operations with investments limited to Underlying Portfolios.

fees charged in connection with shares of the Direct Funds will not exceed the limits set forth on Rule 2830 of the Conduct Rules of the National Association of Securities Dealers, Inc. (the ''NASD'') when aggregated with any sales charges, distribution-related fees, and service fees that the Direct Funds pay relating to Underlying Portfolio and Other Portfolio shares.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) shall not apply to an acquiring company if the company and its affiliates own no more than 3% of an acquired company's securities, provided that the acquiring company does not impose a sales load of more than 1.5% on its shares. In addition, the section provides that 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. Applicants state that no exemptive relief is sought with respect to investments by the Direct Funds in shares of Other Portfolios.

3. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) shall not apply to the securities of an acquired company purchased by an acquiring company if: (i) the acquiring company and the acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are limited; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1) (F) or (G). Section 12(d)(1)(G)(ii) defines the term ''group of investment companies'' to mean any two or more registered investment companies that hold themselves out to investors as related companies for purposes of investment and investor services. Because the Direct Funds will invest in shares of Other Portfolios, they cannot rely on the exemption from section 12(d)(1) (A) and (B) afforded by section 12(d)(1)(G).

4. Applicants request relief from the limitations of section 12(d)(1) (A) and (B) to the extent necessary to permit (i) the Direct Funds to purchase an unlimited amount of the outstanding voting shares of each Underlying Portfolio; (ii) the securities of each Underlying Portfolio to have an aggregate value of as much as 100% of the total assets of the Direct Funds: (iii) the Direct funds to invest up to 100% of their assets in the securities of the Underlying Portfolios; and (iv) each of the Underlying Portfolios to sell more than 10% of its total outstanding voting stock to the Direct Funds.

5. Applicants believe that the purpose of section 12(d)(1) was to limit and address the perceived adverse consequences of ''pyramiding'' of investment companies in a fund of funds arrangement, including the duplicative costs involved in such a structure, the exercise of undue influence or control over the underlying series, and the potential adverse impact of large-scale redemptions.

6. Applicants assert that the structure of applicants' fund of funds will include safeguards designed to address multiple layering of advisory fees. Applicants state that, before approving any advisory contract under section 15 of the Act, the directors of the Direct Funds, including a majority of the directors/trustees who are not ''interested persons,'' as defined in section 2(a)(19), will find that any advisory fees charges under the contract are based on services provided that are in addition to, rather than merely duplicative of, services provided under any Underlying Portfolio advisory contract. Applicants state further that this finding, documented in the minute books of the Direct Funds. Applicants state that the directors of the Direct Funds will make a similar finding with respect to the Other Portfolios, as well, which will be fully documented.

7. Applicants state that, to address the issue of multiple layers of sales loads, the Direct Funds will pay no front-end or contingent deferred sales charge in connection with the purchase or redemption of shares of the Underlying Portfolios, Applicants state further that, as a condition to the requested exemptive relief, any sales charges, distribution-related fees, or service fees relating to the shares of the Direct funds will not exceed the limits set forth in rule 2830 of the Conduct Rules of the NASD when aggregated with any sales charges, distribution-related fees, or service fees that the Direct Funds may pay relating to the acquisition, holding, or disposition of Underlying Portfolio or Other Portfolio shares. Applicants assert that the aggregate sales charges, therefore, will not exceed the amount that otherwise lawfully could be charged at either fund level.

8. Applicants state administrative and similar fees will be charged at the Direct Fund and Underlying Portfolio/Other Portfolio levels. However, applicants believe that the redundancy of administrative fees and expenses between the Direct Funds and the Underlying Portfolios will be minimal, because distinct services are being provided at each level. Likewise, applicants believe that distinct services will be provided at each level of the Direct Funds' investment in Other Portfolios, thus minimizing any concerns of redundancy of administrative fees and expenses. In any event, applicants believe that administrative and other expenses may be reduced at both levels under the proposed Direct Funds' structure. Thus, applicants believe that an investment in the Direct Funds should not be significantly more expensive than a direct investment in an Underlying Portfolio or Other Portfolio.

9. Applicants believe that the concern of undue influence and control is addressed by the proposed structure of the Direct Funds. Applicants assert that there is little risk that the Direct Funds' adviser will exercise inappropriate control over the Underlying Portfolios, which are part of the same ''group of investment companies.'' Applicants also contend that the Other Portfolios cannot be controlled in any meaningful way by the Direct Funds because section 12(d)(1)(F) limits them, together with their affiliates, the acquiring no more than 3% of the total outstanding stock of any Other Portfolio. In addition, applicants note that section 12(D)(1)(F) permits the Other Portfolios to reject redemption requests by a Direct Fund that exceed 1% of the Other Portfolio's total outstanding securities during any

period of less than 30 days. Applicants state that, to protect further the Underlying Portfolios and Other Portfolios from unexpected large redemptions, the Direct Funds generally will be designed for intermediate and long-term investors.

10. Applicants state that an additional concern underlying section 12(d)(1) is that the popularity of fund of funds could lead to the creation of more complex vehicles that would not serve any meaningful purpose. Applicants submit that these concerns are addressed by the fact that no Underlying Portfolio or Other Portfolio can acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A), except to the extent that such Underlying Portfolio or Other Portfolio (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the SEC permitting such Underlying Portfolio or Other Portfolio to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (II) engage in interfund borrowing and lending transactions.

11. Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions 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. Applicants assert that the Direct Funds will provide a simple answer to investor demand for a diversified, professionally managed fund and funds, and that the structure of the Direct Funds is consistent with the public interest and the protection of investors.

12. Section 17(a) generally prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. Applicants submit that the Direct Funds and Underlying Portfolios may be deemed to be affiliated persons of one another by virtue of being under common control of their adviser, or because Direct Funds own 5% or more of the shares of an Underlying Portfolio. Applicants state that sales by the Underlying Portfolios of their shares to the Direct Funds could be deemed to be principal transactions between affiliated persons under section 17(a)

13. Section 6(c) of the Act provides that the SEC may exempt persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that relief under section 6(c) is appropriate for the reasons discussed above.

14. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Applicants request an exemption under sections 6(c) and 17(b) to allow the transactions described above.

15. Applicants believe that the terms of the proposed arrangement are reasonable and fair and do not involve overreaching because the consideration paid for the sale and redemption of shares of Underlying Portfolios will be based on the net asset values of the Underlying Portfolios. Applicants note the investment of assets of the Direct Funds in shares of the Underlying Portfolios and the issuance of shares of the Underlying Portfolios to the Direct Funds will be effected in accordance with the investment restrictions of the Direct Funds and will be consistent with the policies as set forth in the registration statement of the Direct Funds. Applicants also believe that the proposed arrangement is consistent with the general purposes of the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. All Underlying Portfolios will be part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Direct Funds.

2. No Underlying Portfolio or Other Portfolio will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Portfolio or Other Portfolio (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired securities of another investment company pursuant to exemptive relief from the SEC permitting such Underlying Portfolio or Other Portfolio to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions.

3. Any sales charges, distribution-related fees, and service fees relating to the shares of the Direct Funds, when aggregated with any sales charges, distribution-related fees, and service fees paid by the Direct Funds relating to its acquisition, holding, or disposition of shares of the Underlying Portfolios (and Other Portfolios), will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules.

4. Before approving any advisory contract under section 15 of the Act, the boards of directors/trustees of the Direct Funds, including a majority of the directors/trustees who are not ''interested persons,'' as defined in section 2(a)(19), will find that the advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any Underlying Portfolio or Other Portfolio advisory contract. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Direct Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–2905 Filed 2–5–97; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Magellan Health Services, Inc., Common Stock, 25¢ Par Value; 11.25% Series A Senior Subordinated Notes due 2004) File No. 1–6639

January 31, 1997.

Magellan Health Services, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, it has complied with Rule 18 of the AMEX by filing with such Exchange a certified copy of preambles and resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its securities from listing on the AMEX and by setting forth in detail to such Exchange the reasons for such proposed withdrawal, and the facts in support thereof. The Securities began trading on the New York Stock Exchange, Inc. (''NYSE'') on December 31, 1996. In making the decision to withdraw the Securities from listing on the AMEX, the Company considered the breadth of the investment base, the trading liquidity, and number of analysts covering the stock. Additionally, the Company wished to avoid the direct and indirect costs and the division of the market resulting from dual listing on the AMEX and NYSE.

Any interested person may, on or before February 24, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–2910 Filed 2–5–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38218; File No. SR–Phlx–97–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to a 4:02 p.m. Closing Time for Equity Options Trading

January 30, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on January 8, 1997, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 101, Hours of Business, and Rule 1047, Trading Rotations, Halts and Suspensions, to close equity options trading at 4:02 p.m. Currently, equity options trade until 4:10 p.m.

The text of the proposed rule change is available at the Office of the Secretary, Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set froth 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

Since 1978, equity options have traded ten minutes longer than the primary market. At that time, significant delays in the reporting of stock prices were common; therefore, the additional ten minute period was necessary to receive final stock prices. These delays have now been reduced due to technological advances. Currently, the extra time period for options trading after closing prices are reported in the underlying equities results in equity options trading without the pricing benefit of continuing stock trading. The additional ten minutes also results in repeated automatic executions at outdated equity options prices. Further, not all market participants are able to respond quickly to changes in equity options prices between 4:00 and 4:10 p.m. In summary, the Exchange, in balancing the benefits of an extended trading session with the difficulties of trading after the underlying stock has closed, has determined that the benefits do not outweigh the difficulties; therefore, a 4:02 p.m. close for equity options is appropriate.

The purpose of the rule change is to reduce the amount of time equity options trade after the close of the primary market for the underlying security. Under the proposal, there will be a two minute time period for equity options traders and investors to respond to late reports of closing security prices and, where warranted, to bring closing equity option prices in line with stock prices. The proposed changes to Rule 101 establish a 4:02 p.m. close for equity options, and expressly except index options. Reference to narrow-based (industry) index options trading until 4:10 p.m. is being added to Rule 101, and reference to broad-based index options is replacing the listing of specific such index options by name. Broad-based index options will continue to trade until 4:15 p.m. The Exchange understands that other option exchanges have proposed a 4:02 p.m. close for certain index options as well as for equity options; however, the Exchange is not proposing to change the closing time for its index options.

The proposed change to Rule 1047 merely substitutes reference to the current close of 4:10 p.m. with the proposed 4:02 p.m. close. The Exchange notes that pursuant to Commentary .03 of this Rule, in unusual market conditions, a closing rotation after the 4:02 p.m. close may be conducted in an option, whether or not expiring, with the approval of the Options Committee. Further, the Exchange proposes to amend the rule to begin the closing rotation five minutes after the notice is disseminated. Currently under Rule 1047, Commentary .03(b), the closing rotation begins 10 minutes after the notice is disseminated.

2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On January 29, 1997, the Exchange filed Amendment No. 1 to its proposal. Amendment No. 1 is a technical amendment, correcting rule language in Rule 1047, Commentary .03(c), which was submitted as Exhibit B with the rule filing. *See* Letter from Edith Hallahan, Phlx, to Janice Mitnick, Division of Market Regulations, SEC, dated January 29, 1997.

securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest, consistent with Section 6(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–97–04, and should be submitted by February 27, 1997.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–2912 Filed 2–5–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary; Reports, Forms and Recordkeeping Requirements; Proposed Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT), Office of the Secretary (OST).

ACTION: Notice.

SUMMARY: This collection (2105–0517) is resubmitted to the Federal Register because of errors published previously. In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces one information collection request coming up for renewal. Before submitting the renewal package to the Office of Management and Budget (OMB), the Department of Transportation is soliciting comments on specific aspects of the collection as described below. The ICR describes the nature of the information collection and its expected cost and burden. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval.

DATES: Comments must be submitted on or before April 7, 1997.

ADDRESSES: Submit written comments identified by the OMB Control Number 2105–0517, by mail to: Mr. Dave Jordan, M–61, U.S. Department of Transportation, 400 Seventh Street S.W., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Jordan, (202) 366–4265, and refer to OMB Control Number, 2105–0517.

[4] 17 CFR 200.30–3(a)(12).

SUPPLEMENTARY INFORMATION:

Office of the Secretary (OST)

Title: Amendment to the Transportation Acquisition Regulation (TAR).

Form(s): DOT F 4220.4, DOT F 4220.7, DOT F 4220.43, DOT F 4220.44, DOT F 4220.45, DOT F 4220.46, and Form DD 882.

OMB Control Number: 2105–0517.

Affected Public: Individuals or households and business or other for-profit organizations.

Abstract: The requested extension of the approved control number covers forms DOT F 4220.4, DOT F 4220.7, DOT F 4220.43, DOT F 4220.44, DOT F 4220.45, DOT F 4220.46, and Form DD 882. In addition, the control number includes an amended request to obtain data associated with acquisitions for training services. The Transportation Acquisition Regulation (TAR) 48 CFR 1213.70, 1237.70, 1252.237–71, and 1252.237–72 requires contracting officers to obtain and evaluate, qualification data and other pertinent information when it is necessary to determine whether offerors have the capability to perform training services under a proposed contract.

Annual Estimated Burden: The annual estimated burden is 57,167 hours.

Issued in Washington, DC, on February 3, 1997.

Phillip A. Leach,

Clearance Officer, Department of Transportation.

[FR Doc. 97–2999 Filed 2–5–97; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary

Privacy Act; System of Records; General Routine Uses

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Intended Establishment of General Routine Use.

SUMMARY: DOT intends to establish under the Privacy Act of 1974 a General Routine Use applicable to all DOT systems of records to facilitate implementation of the Brady Handgun Violence Prevention Act. Public comment is invited.

DATES: Comments are due March 10, 1997.

ADDRESSES: Comments should be addressed to Information Resources Management Staff, M–31, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General

Counsel, C–10, Department of Transportation, Washington, DC 20590, telephone (202) 366–9156, FAX (202) 366–9170.

SUPPLEMENTARY INFORMATION: The Brady Handgun Violence Prevention Act (Pub. L. 103–159, November 30, 1993) provides for a national instant criminal background check system that a firearms licensee must contact before transferring any firearm to a nonlicensed individual, in order to determine whether that nonlicensed individual is disqualified from receiving, possessing, shipping, or transporting a firearm. DOT, as an agency of the Federal Government, is required by the statute to provide to the Attorney General of the United States, upon request, any information that it possesses that indicates that a person may be prohibited by the statute from receiving, possessing, shipping, or transporting a firearm. Inter-agency transfers of information of this type are regulated by the Privacy Act; to facilitate compliance with the Brady Act and provide additional notice to the public, DOT proposes to establish a Routine Use Number 10, applicable to all of its Privacy Act Systems of Records. For the convenience of the public, DOT herewith publishes all of its General Routine Uses, including the one we intend to establish under the Brady Act:

General Routine Uses Under the Privacy Act of 1974

The following routine uses apply, except where otherwise noted or where obviously not appropriate, to each system of records maintained by the Department of Transportation (DOT).

1. In the event that a system of records maintained by DOT to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

2. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a DOT decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

3. A record from this system of records may be disclosed, as a routine use, to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4.a. *Routine Use for Disclosure for Use in Litigation.* It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or other Federal agency conducting litigation when—

(a) DOT, or any agency thereof, or

(b) Any employee of DOT or any agency thereof (including a member of the Coast Guard), in his/her official capacity, or

(c) Any employee of DOT or any agency thereof (including a member of the Coast Guard), in his/her individual capacity where the Department of Justice has agreed to represent the employee, or

(d) The United States or any agency thereof, where DOT determines that litigation is likely to affect the United States, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or other Federal agency conducting the litigation is deemed by DOT to be relevant and necessary in the litigation, provided, however, that in each case, DOT determines that disclosure of the records in the litigation is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

b. *Routine Use for Agency Disclosure in Other Proceedings.* It shall be a routine use of records in this system to disclose them in proceedings before any court or adjudicative or administrative body before which DOT or any agency thereof, appears, when

(a) DOT, or any agency thereof, or

(b) Any employee of DOT or any agency thereof (including a member of the Coast Guard) in his/her official capacity, or (c) Any employee of DOT or any agency thereof (including a member of the Coast Guard) in his/her individual capacity where DOT has agreed to represent the employee, or

(d) The United States or any agency thereof, where DOT determines that the proceeding is likely to affect the United States, is a party to the proceeding or has an interest in such proceeding, and DOT determines that use of such records is relevant and necessary in the proceeding, provided, however, that in each case, DOT determines that disclosure of the records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

5. The information contained in this system of records will be disclosed to the Office of Management and Budget (OMB) in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

6. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual. In such cases, however, the Congressional office does not have greater rights to records than the individual. Thus, the disclosure may be withheld from delivery to the individual where the file contains investigative or actual information or other materials which are being used, or are expected to be used, to support prosecution or fines against the individual for violations of a statute, or of regulations of the Department based on statutory authority. No such limitations apply to records requested for Congressional oversight or legislative purposes; release is authorized under 49 CFR 10.35(9).

7. One or more records from a system of records may be disclosed routinely to the National Archives and Records Administration in records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

8. Access to all DOT systems of records is authorized to member(s) of the Office of Inspector General where the records are considered '* * * pertinent to the DOT programs or operations being reviewed. Existing orders or (internal) directives contrary to this provision are hereby superseded.' The Secretary of Transportation by the foregoing has clarified the role of Inspector General personnel 'who have need for the record(s) in the performance of their duties.'

9. DOT may make available to another agency or instrumentality of any government jurisdiction, including State and local governments, listings of names from any system of records in DOT for use in law enforcement activities, either civil or criminal, or to expose fraudulent claims, regardless of the stated purpose for the collection of the information in the system of records. These

enforcement activities are generally referred to as 'matching' programs because two lists of names are checked for match using automated assistance. This routine use is advisory in nature and does not offer unrestricted access to systems of records for such law enforcement and related antifraud activities. Each request will be considered on the basis of its purpose, merits, cost effectiveness and alternatives using 'Instructions on reporting computer matching programs to the Office of Management and Budget (OMB), Congress and the public', published by the Director, OMB, dated September 20, 1989.

10. It shall be a routine use of the information in any DOT system of records to provide to the Attorney General of the United States, or his/her designee, information indicating that a person meets any of the disqualifications for receipt, possession, shipment, or transport of a firearm under the Brady Handgun Violence Prevention Act. In case of a dispute concerning the validity of the information provided by DOT to the Attorney General, or his/her designee, it shall be a routine use of the information in any DOT system of records to make any disclosures of such information to the National Background Information Check System, established by the Brady Handgun Violence Prevention Act, as may be necessary to resolve such dispute.

Public comment is invited on the intention to establish General Routine Use Number 10.

Issued in Washington, DC, on January 30, 1997.

Michael P. Huerta,

Associate Deputy Secretary, Acting Chief Information Officer.

[FR Doc. 97–3000 Filed 2–5–97; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Proposed Advisory Circular 25.812–XX, Photoluminescent Floor Proximity Emergency Escape Path Marking Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed Advisory Circular (AC) 25.812–XX and request for comments..

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) which provides guidance material for use in demonstrating compliance with the provisions of part 25 of the Federal Aviation Regulations (FAR) regarding floor proximity emergency escape path marking (FPEEPM) systems using photoluminescent elements. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before March 10, 1997.

ADDRESSES: Send all comments on proposed AC to: Federal Aviation Administration, Attention: Frank Tiangsing, Regulations Branch, ANM–114, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, WA 98055–4056. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Katherine Burks, Transport Standards Staff, at the address above, telephone (206) 227–2114.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**. Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 25.812–XX and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Discussion

Manufacturers of photoluminescent materials have begun marketing FPEEPM systems utilizing such material. These systems do not require electrical power, which has been an integral part of all previous FPEEPM systems. Instead, the elements of these new systems are ''Charged'' by incident light provided by the normal airplane passenger cabin lighting, including sunlight which enters the cabin when the cabin window shades are open during daylight hours. When the cabin darkens, the elements ''discharge the stored energy in the form of a luminescent glow.''

Since these systems employ a different technology from those currently installed in airplanes, guidance in the form of an advisory circular is deemed necessary to ensure appropriate procedures are followed in the evaluations of these systems.

Issued in Renton, Washington, on January 30, 1997.

Darrell M. Pederson,

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

[FR Doc. 97–2961 Filed 2–5–97; 8:45 am]

BILLING CODE 4910–13–M

Approval of Noise Compatibility Program, McGhee Tyson Airport, Knoxville, TN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Metropolitan Knoxville Airport Authority under the provision 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 April 28, 1993, the FAA determined that the noise exposure maps submitted by the Metropolitan Knoxville Airport Authority under Part 150 were in compliance with applicable requirements. On January 17, 1997, the Administrator approved the McGhee Tyson Airport noise compatibility program. All of the recommendations of the program were approved in full or in part. The noise compatibility program updates the original noise compatibility program, approved May 5, 1989, for McGhee Tyson Airport.

EFFECTIVE DATE: The effective date of the FAA's approval of the McGhee Tyson Airport noise compatibility program is January 17, 1997.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, Federal Aviation Administration, Memphis Airports District Office, 2851 Directors Cove, Suite 3, Memphis, Tennessee 38131–0301; Telephone 901–544–3495, Ext. 19. Documents reflecting the FAA action may be reviewed at the same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for McGhee Tyson Airport, effective January 17, 1997.

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:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. 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;

c. 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

d. 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 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 Airports District Office in Memphis, Tennessee.

The Metropolitan Knoxville Airport Authority submitted to the FAA on July 5, 1995, the noise exposure maps, descriptions, and other documentation produced during the FAR Part 150 supplemental noise compatibility planning study conducted from October 1994 through June 1995. The McGhee Tyson Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on October 12, 1995. Notice of this determination was published in the Federal Register on October 26, 1995.

The McGhee Tyson Airport contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion beyond the year 2000. It was requested that the FAA evaluate and approved 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 July 22, 1996, and was required by 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 shall be deemed an approval of such a program.

The submitted program contained two noise abatement measures, 13 land use measures and an amendment to a previously approved land use measure; and three program management actions. 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 Administrator effective January 17, 1997.

Approval for Part 150 was granted, in total or in part, for both of the proposed operational (noise abatement) measures. The operational procedures will require an environmental decision before implementation by FAA. Approval was granted for all the land use and implementation actions. Land Use measures include establishing an airport influence area; airport noise overlay zoning for land use compatibility; amend subdivision regulations to require dedication of aviation easements; local building code amendments for sound insulation; promote fair disclosure; acquisition of homes within the 65 DNL; acquisition of underdeveloped residential-zoned land within the 65 DNL contour; sound insulation; and aviation easements. An amendment to a previously approved measure for purchase assurance or sound insulation extended this mitigation to the remaining homes in the neighborhood. These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on January 17, 1997. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Metropolitan Knoxville Airport Authority.

Issued in Memphis, Tennessee, January 30, 1997.

Wayne R. Miles,

Assistant Manager, Memphis Airports District Office.

[FR Doc. 97–2962 Filed 2–5–97; 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 Chattanooga Metropolitan Airport, Chattanooga, TN

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 Chattanooga Metropolitan Airport, Chattanooga, Tennessee, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 10, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate in the FAA at the following address: Memphis Airports District Office, 2851 Directors Cove, Suite #3, Memphis, TN 38131–0301.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Hugh Davis, President, Chattanooga Metropolitan Airport Authority at the following address: P.O. Box 22245, Chattanooga, TN 37422.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Chattanooga Metropolitan Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, Memphis Airports District Office, 2851 Directors Cove, Suite 3, Memphis, Tennessee 38131–0301; 901–544–3495, Ext. 19. The application may be reviewed in person at this 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 Chattanooga Metropolitan Airport under 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 29, 1997, the FAA determined that the application to impose and use the revenue from a FPC submitted by Chattanooga Metropolitan 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 April 29, 1997.

The following is a brief overview of the application.

PFC application number: 97–02–C–00–CHA.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 2002.

Proposed charge expiration date: August 1, 2010.

Total estimated PFC revenue: $3,197,112.

Brief description of proposed projects: Acquisition of two parcels of land and installation of a flood gate.

Class or classes or air carriers which the public agency has requested not be required to collect PFCs: nonscheduled air taxi/commercial operators filing FAA form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Chattanooga Metropolitan Airport Authority.

Issued in Memphis, Tennessee, on January 29, 1997.

Wayne R. Miles,

Assistant Manager, Memphis Airports District Office.

[FR Doc. 97–2893 Filed 2–5–97; 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 Toledo Express Airport, Toledo, OH

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 Toledo Express Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 10, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to the Toledo Port Authority at the following address: 11013 Airport Hwy., Box 11, Swanton, OH 43558.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Toledo Port Authority under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard J. Mizerowski, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (313–487–7277). The application may be reviewed in person at this same locations.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Toledo Express 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 21, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Toledo Port 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 the application.

PFC Application No.: 97–02–C–00–TOL.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 1997.

Proposed charge expiration date: April 1, 1998.

Total estimated PFC revenue: $799,621.00.

Brief description of proposed project(s): Maintenance Building Expansion, Snow Removal Equipment, Stabilize Shoulders, Public Terminal Canopy Engineering.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Air Taxi/Commercial 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 Toledo Port Authority.

Issued in Des Plaines, Illinois, on January 29, 1997.

Benito DeLeon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 97–2895 Filed 2–5–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Distilled Spirits Plant (DSP) Denaturation Records and Reports.

DATES: Written comments should be received on or before April 7, 1997 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary Wood, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Distilled Spirits Plant (DSP) Denaturation Records and Reports.

OMB Number: 1512–0207.

Form Number: ATF F 5110.43.

Recordkeeping Requirement ID Number: ATF REC 5110/04.

Abstract: This information collection is necessary to account for and verify the denaturation of distilled spirits. It is used to audit plant operations, monitor the industry for the efficient allocation of personnel resources, and compile statistics for government economic planning. The record retention requirement for this information collection is 4 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 98.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,176.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Dated: February 3, 1997.

John W. Magaw,

Director.

[FR Doc. 97–2943 Filed 2–5–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application and Permit For Importation of Firearms, Ammunition and Implements of War.

DATES: Written comments should be received on or before April 7, 1997 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marie Pollard, Firearms & Explosives Imports Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8320.

SUPPLEMENTARY INFORMATION:

Title: Application and Permit For Importation of Firearms, Ammunition and Implements of War.

OMB Number: 1512–0017.

Form Number: ATF F 6 Part 1 (5330.3A).

Abstract: This information collection is needed to determine whether firearms, ammunition and implements of war are eligible for importation into the United States. The form is used to secure authorization to import such articles. All persons who desire to import such articles except for persons who are members of the United States Armed Forces must complete this form.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Individuals or households, business or other for-profit, Federal Government, State, Local or Tribal Government

Estimated Number of Respondents: 9,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 4,500.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 3, 1997.

John W. Magaw,

Director.

[FR Doc. 97–2944 Filed 2–5–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Distilled Spirits Plant (DSP) Transaction and Supporting Data.

DATES: Written comments should be received on or before April 7, 1997 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Steve Simon, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8183.

SUPPLEMENTARY INFORMATION

Title: Distilled Spirits Plant (DSP) Transation and Supporting Data.

OMB Number: 1512–0250.

Recordkeeping Requirement ID Number: ATF REC 5110/5.

Abstract: Transaction records provide the source data for accounts of distilled spirits in all DSP operations. They are used by DSP proprietors to account for spirits and by ATF to verify those accounts and consequent tax liabilities. The record retention requirement for this information collection is 3 years. Current Actions: ATF F 5110.34 is being eliminated, and some of the burden formerly associated with that form is being taken up by records maintained under this submission. The effect of this program change will be an increase of 500 burden hours for this information collection.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 278.

Estimated Time Per Respondent: 22 hours.

Estimated Total Annual Burden Hours: 6,060.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 3, 1997.

John W. Magaw,

Director.

[FR Doc. 97–2945 Filed 2–5–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Registration and Records of Vinegar Vaporizing Plants.

DATES: Written comments should be received on or before April 7, 1997 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary Wood, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8210.

SUPPLEMENTARY INFORMATION:

Title: Registration and Records of Vinegar Vaporizing Plants.

OMB Number: 1512–0462.

Recordkeeping Requirement ID Number: ATF REC 5110/9.

Abstract: Data is necessary to identify persons producing and using distilled spirits in the manufacture of vinegar and to account for spirits so produced and used. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 3, 1997.

John W. Magaw,

Director.

[FR Doc. 97–2946 Filed 2–5–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Equipment and Structures.

DATES: Written comments should be received on or before April 7, 1997 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions

should be directed to Marsha D. Baker, Wine, Beer, and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

SUPPLEMENTARY INFORMATION:

Title: Equipment and Structures.

OMB Number: 1512–0460.

Recordkeeping Requirement ID Number: ATF REC 5110/12.

Abstract: Marks, signs, and calibrations are necessary on equipment and structures at a distilled spirits plant for the identification of major equipment and of the accurate determination of contents. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 281.

Estimated Time Per Respondent: 0.

Estimated Total Annual Burden Hours: 1.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 3, 1997.

John W. Magaw,

Director.

[FR Doc. 97–2947 Filed 2–5–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Alternate Methods or Procedures and Emergency Variations From Requirements For Exports of Liquors.

DATES: Written comments should be received on or before April 7, 1997 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marjorie Ruhf, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Title: Alternate Methods or Procedures and Emergency Variations From Requirements for Exports of Liquors.

OMB Number: 1512–0466.

Recordkeeping Requirement ID Number: ATF REC 5170/7.

Abstract: When an exporter seeks to use an alternate method or procedure or an emergency variation from regulatory requirements of 27 CFR Part 252, such exporter requests a variance by letter, following the procedure in 252.20. ATF uses the information to determine if the requested variance is allowed by statute and does not pose a jeopardy to the revenue. The applicant is informed of the approval or disapproval of the request. ATF also uses information to analyze what changes should be made to existing regulations. Records must be maintained only while the applicant is using the authorization.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 200.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 3, 1997.

John W. Magaw,

Director.

[FR Doc. 97–2948 Filed 2–5–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the User's Report of Denatured Spirits.

DATES: Written comments should be received on or before April 7, 1997 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Steve Simon, Wine, Beer and Spirits Regulations

Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8183.

SUPPLEMENTARY INFORMATION:

Title: User's Report of Denatured Spirits.

OMB Number: 1512–0075.

Form Number: ATF F 5150.18.

Abstract: ATF F 5150.18 is submitted annually by holders of permits to use specially denatured spirits to summarize their manufacturing activities during the preceding year. The information is used by ATF to pinpoint unusual activities that could indicate a threat to the Federal revenue or possible dangers to the public. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,765.

Estimated Time Per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 829.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 3, 1997.

John W. Magaw,

Director.

[FR Doc. 97–2949 Filed 2–5–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Labeling of Sulfites in Alcoholic Beverages.

DATES: Written comments should be received on or before April 7, 1997 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Edward A. Reisman, Product Compliance Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8485.

SUPPLEMENTARY INFORMATION:

Title: Labeling of Sulfites in Alcoholic Beverages.

OMB Number: 1512–0469.

Abstract: In a final rule published in the Federal Register on July 9, 1986 (51 FR 34706) the Food and Drug Administration established 10 parts per million as the threshold for declaration of sulfites in food and wine products. The Bureau of Alcohol, Tobacco and Firearms published a final rule (ATF–236) (51 FR 34706) (9/30/86) establishing the threshold for declaration of sulfites in alcoholic beverages.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 4,787.

Estimated Time Per Respondent: 40 minutes.

Estimated Total Annual Burden Hours: 3,159.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 3, 1997.

John W. Magaw,

Director.

[FR Doc. 97–2950 Filed 2–5–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Formula and/or Process For Articles Made With Specially Denatured Spirits.

DATES: Written comments should be received on or before April 7, 1997 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary Wood, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8210.

SUPPLEMENTARY INFORMATION:

Title: Formula and/or Process For Articles Made With Specially Denatured Spirits.

OMB Number: 1512–0073.

Form Number: ATF F 5150.19.

Abstract: ATF F 5150.19 is completed by persons who use specially denatured spirits in the manufacture of certain articles. ATF uses the information provided on the form to insure the manufacturing formulas and processes conform to the requirements of 26 U.S.C. 5273.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,683.

Estimated Time Per Respondent: 54 minutes.

Estimated Total Annual Burden Hours: 2,415.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 3, 1997.

John W. Magaw,

Director.

[FR Doc. 97–2951 Filed 2–5–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Certificate of Tax Determination, Wine.

DATES: Written comments should be received on or before April 7, 1997 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to David Brokaw, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Title: Certificate of Tax Determination, Wine

OMB Number: 1512–0138

Form Number: ATF F 5120.20

Abstract: Refund of tax on wine that has been manufactured, produced, bottled or packaged in bulk containers in the U.S. and then exported. ATF F 5120.20 supports the exporter's claim for drawback, as the producing winery verifies that the wine being exported was in fact taxpaid.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension

Affected Public: Business or other for-profit, individuals or households

Estimated Number of Respondents: 1,000

Estimated Time Per Respondent: 30 minutes

Estimated Total Annual Burden Hours: 500

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enchance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 3, 1997.

John W. Magaw,

Director.

[FR Doc. 97–2952 Filed 2–5–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Labeling and Advertising Requirements Under the Federal Alcohol Administration Act.

DATES: Written comments should be received on or before April 7, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7768.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Edward A. Reisman, Product Compliance Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8485.

SUPPLEMENTARY INFORMATION:

Title: Labeling and Advertising Requirements Under the Federal Alcohol Administration Act.

OMB Number: 1512–0482.

Recordkeeping Requirement ID Number: ATF Reporting Requirement 5100/1.

Abstract: Bottlers and importers of alcohol beverages are required to display certain information for

consumers on labels and in advertisements. Other optional statements are also required.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, not-for-profit institutions.

Estimated Number of Respondents: 6,060.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 3, 1997.

John W. Magaw,

Director.

[FR Doc. 97–2953 Filed 2–5–97; 8:45 am]

BILLING CODE 4810–31–P

Office of the Comptroller of the Currency

Proposed Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The OCC, 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. Currently, the OCC is soliciting comments concerning an information collection titled Loan Index Information Collection.

DATES: Written comments should be submitted by April 7, 1997.

ADDRESSES: Direct all written comments to the Communications Division, Attention: 1557–LOAN, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection may be obtained by contacting Jessie Gates or Dionne Walsh, (202) 874–5090, Legislative and Regulatory Activities Division (1557–LOAN), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Title: Loan Index Information Collection.

OMB Number: 1557–LOAN.

Form Number: Not applicable.

Abstract: This information collection consists of data on loan underwriting benchmarks (actual and bank management projections) by type of loan product. The OCC needs this information as a supervisory tool to identify trends in underwriting, and to more efficiently and effectively implement its supervision by risk programs and processes.

Type of Review: New collection.

Affected Public: Businesses or other for-profit.

Number of Respondents: 222.

Total Annual Responses: 808.

Frequency of Response: Quarterly; semiannual.

Total Annual Burden Hours: 1,212 hours.

COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 31, 1997.

Karen Solomon,

Director, Legislative & Regulatory Activities Division.

[FR Doc. 97–2940 Filed 2–5–97; 8:45 am]

BILLING CODE 4810–33–P

Customs Service

Announcement of National Customs Automation Program Test Regarding Reconciliation

AGENCY: US Customs Service, Department of Treasury.

ACTION: General notice.

SUMMARY: This notice announces Customs' plan to conduct a third prototype test of Reconciliation. The notice invites public comments concerning any aspect of the planned test, informs interested members of the public of the eligibility requirements for voluntary participation, describes the basis for selecting participants, and establishes the process for developing evaluation criteria. To participate in this prototype test, the necessary information, as outlined in this notice, must be filed with Customs, and approval granted. It is important to note that resources expended by the trade and Customs on these prototypes may not carry forward to the final program.

EFFECTIVE DATES: The test of this prototype will commence no earlier than June 1, 1997, and will run for approximately two years, and may be extended. The prototype will be limited to formal consumption entries filed on or after June 1, 1997, through May 31, 1999. Applications for participation in this prototype must be received on or before May 1, 1997. Comments concerning the test must be received on or before May 1, 1997.

ADDRESSES: Written comments regarding this notice, and information submitted to be considered for voluntary participation in the prototype, should be addressed to Ms. Renee Orme, Reconciliation Team, US Customs Service, 1301 Constitution Ave, NW, Room 1322, Washington, DC, 20229–0001.

FOR FURTHER INFORMATION CONTACT: For operational or policy issues: Ms. Renee Orme, at (202) 927–0644. For systems or automation issues: Mr. Alfred Morawski, at (202) 927–1045.

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Public Law 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subtitle B of Title VI establishes the National Customs Automation Program (NCAP)—an automated and electronic system for the processing of commercial importations. Section 637 of the Act amends Section 484 of the Tariff Act of 1930 by establishing a new subsection (b) entitled ''Reconciliation.'' Reconciliation is a planned component of NCAP. Section 631 authorizes tests of planned NCAP components. Section 101.9(b) of the Customs Regulations (19 CFR101.9(b)) implements the testing of NCAP components. See TD 95–21 (60 FR 14211, March 16, 1995). This test is established pursuant to those regulations.

Previous NCAP initiatives include Customs' prototype of remote location filing (60 FR 17605), and the announcement of a Reconciliation prototype for related party importers making upward adjustments to the price of imported merchandise, pursuant to 26 U.S.C. 482 (60 FR 46141 and 60 FR 64470). On May 10, 1996, Customs announced in the Federal Register (61 FR 21534) that it was conducting a voluntary prototype test regarding Reconciliation, covering only entries to which anti-dumping and countervailing duties applied, commencing July 9, 1996. That prototype, ''RP1,'' was conducted with a very limited number of participants, at limited locations, and generated minimal changes to the Automated Commercial System (ACS). That prototype will conclude when liquidation or reliquidation of all Reconciliations has become final.

Additional prototypes of Reconciliation are being developed by Customs to determine the systemic and operational design of the final Reconciliation program, which will allow all filers to participate in this type of entry process at a national level. This prototype will test the benefits and potential problems of Reconciliation for Customs, the trade community, and other parties impacted by this program.

I. Description of Proposed Test

The Concept of Reconciliation

Reconciliation allows an importer to provide Customs with information (other than that related to the admissibility of merchandise), which is not available at the time of entry summary filing, at a subsequent time. A Reconciliation is treated as a legal entry for purposes of liquidation, reliquidation, and protest.

A notice of intention to file a Reconciliation (''Notice of Intent'') permits the liquidation of an entry as to all issues other than those which are transferred to the Reconciliation. By filing a Notice of Intent, an importer is requesting that a certain issue be separated from the entry. The importer voluntarily requests and accepts that the issue identified in the Notice of Intent remains open and outstanding, and the importer remains liable for any duties, fees, and taxes resulting from liquidation of the Reconciliation. Importers who choose to participate in this prototype will recognize that the liquidation of the underlying consumption entries pertains only to those issues not identified by the importer on the Notice of Intent. During this prototype, the importer will ''flag'' the underlying consumption entries with an electronic indicator, which will be sufficient to serve as the Notice of Intent.

In this prototype, the issue of the correct value of imported merchandise (the ''value issue'') will be transferred to the Reconciliation. The importer must exercise reasonable care in asserting the value at the time the underlying consumption entry is filed, and provide a good faith estimate. The value information will be updated at the filing of the Reconciliation. Other Reconciliation issues, such as classification, special trade programs, and antidumping and countervailing duty, will not be included in this prototype. This permits Customs to liquidate the underlying entries as to other issues (e.g., classification), but the issue of value is held open at the request of the importer, and is transferred to the Reconciliation.

Upon liquidation of any underlying entry, any decision by Customs entering into that liquidation (e.g.,classification) may be protested pursuant to 19 U.S.C. 1514. When the outstanding value information is later furnished in the Reconciliation, the Reconciliation will be liquidated. The liquidation of the Reconciliation will be posted to the Bulletin Notice of Liquidation, and may be protested pursuant to 19 U.S.C. 1514, but the protest may only pertain to the issue of value (i.e., the protest may not re-visit issues previously liquidated in the underlying entry).

The Reconciliation shall be filed within 15 months of the date of the oldest underlying consumption entry.

Absent any specified alternate procedure, the current Customs regulations apply.

This prototype, as described below, will be the exclusive means by which to reconcile entries on the value issue.

Prototype Objectives

The Reconciliation team's objectives for this prototype are:

1. To work with the trade community, other agencies, and other parties impacted by this program in the design, conduct, and evaluation of the prototype;

2. To obtain experience through the prototype for use in the design of operational procedures, automated systems, and regulations;

3. To implement Reconciliation on a national level in conjunction with the Trade Compliance Redesign.

Description of the Prototype

The purpose of this prototype is to test operational issues regarding the establishment of standard operating procedures for Reconciliation on a national scale. Customs would like to afford the opportunity to participate to all those who volunteer for the test. However, the number of participants may be limited in view of the fact that this prototype will be conducted with minimal changes to automation, requiring Customs to manually intervene in tracking and processing. It is important to note that Customs intends to focus primarily on the value issues of ''9802'' (maquiladora) concerns and non-dutiable freight charges in the steel industry. The trade is encouraged, however, to bring other appropriate value issues to our attention for consideration for the prototype.

Only certain service ports are currently scheduled to participate in this prototype (please see section entitled ''Prerequisites''). However, a participant may file a Reconciliation in each selected port in which underlying entries were filed (i.e., an importer may file the Reconciliation in Laredo provided that all of the underlying consumption entries were filed in Laredo).

For the duration of this prototype, Customs will not process drawback claims (including accelerated drawback) filed against entries flagged for Reconciliation, until after the Reconciliation entry is liquidated. (Please refer to section V.1., ''Liquidation of Reconciliation Entry.'')

It is important to note that Reconciliation procedures are designed to closely parallel actual business practice in the trade. As intended by the Act, liquidation of the non-

Reconciliation issues on the underlying entries will result in a reduction of contingent liabilities for the importer. An additional benefit for the trade is that Reconciliation allows the importer additional time after filing an entry to secure the pertinent value information.

Standard Operating Procedures

I. Initial Interview

1. Upon an importer's acceptance into the pilot, Customs port personnel will interview the company's representatives to discuss the specific value issue to be reconciled, the merchandise and Harmonized Tariff System (HTS) classification, which ports the importer uses, and whether the importer has requested Reconciliation in another port.

2. During the interview, the approved value issue is documented. This permits Customs to liquidate the underlying consumption entries concerning all other issues (e.g., classification), but to hold open the issue of value, at the request of the importer, and transfer it to the Reconciliation entry.

3. The approved importer must appear as the importer of record on each of the entries designated for Reconciliation.

II. Importer Files ''Flagged'' Consumption Entries

1. Any formal consumption entry (type 01 or 02) that is subject to Reconciliation for the approved value issue must be filed via the Automated Broker Interface (ABI) ''EI'' (entry summary) application. An electronic indicator, or ''flag,'' signifying that these entries are to be reconciled for the approved value issue, must be provided at the header level. The flag designates that the approved value issue for the entire entry summary (not just a specific line) is subject to Reconciliation. The Reconciliation entry must be filed within 15 months of the date of the oldest of these underlying entry summaries.

2. For purposes of this prototype, the ''flag'' serves as the importer's Notice of Intent to file a Reconciliation entry.

3. The importer must use reasonable care in asserting the value for the consumption entry, providing a good faith value estimate, and depositing the appropriate duties, taxes, and fees.

III. Importer Electronically Transmits the Association File

1. When the importer has completed the information-gathering, and has the answer to the value issue in question on the Reconciliation, the filer will electronically (via ABI) transmit an ''association file'' to Customs. The association file will consist of the following data elements:

a. the Reconciliation entry number

b. all of the associated (underlying) consumption entry numbers which were previously flagged as being subject to Reconciliation

c. the total amount of duty, fees, and taxes (broken out by ''class code'') which should have been paid for each of the underlying consumption entries, had the complete information been available to the importer at the time of filing of that entry summary.

EXAMPLE (association file):
Header: Reconciliation Entry Number XXX
Detail: Flagged Consumption Entry #123
Total Reconciled Duty = $500
Total Fees = $25
Flagged Consumption Entry #456
Total Reconciled Duty = $1,000
Total Fees = $35
(etc.)

2. Transmission of the association file must occur within 15 months of the date of the oldest underlying entry summary.

3. The importer must clearly document how the information in the association file was derived, and provide all supporting documentation to Customs when the Reconciliation entry is filed.

IV. Importer Manually Files the Reconciliation Entry

1. In conjunction with the ABI transmission of the association file, the importer/filer will manually submit the Reconciliation entry (entry type 09). Entry type 09 cannot be filed via ABI, because of limited Customs automation capability for this prototype. The Reconciliation must be manually filed on a CF7501, within 15 months of the date of the oldest underlying consumption entry. The Reconciliation should include no fewer than 10 underlying entries.

2. The Reconciliation must include complete supporting documentation for the information provided, to substantiate the importer's claim. The supporting documentation must include details at the entry line level. Supporting documents may include, but are not limited to:

a. detailed line-level spreadsheets
b. landed cost analysis sheets
c. invoices, purchase orders, and contracts.

3. Adequate bonding will be required for each Reconciliation. Since there is no additional liability created on the Reconciliation, the bond filed on the underlying entries will in most cases suffice.

4. The manual Reconciliation entry header data elements will include, but are not limited to:

a. Reconciliation entry number
b. Reconciliation entry type (09)
c. IRS number
d. Bond type/number
e. Port of entry code
f. Surety code
g. Summary date of oldest underlying consumption entry
h. Reconciliation date.

5. The Reconciliation entry line data elements will include, but are not limited to:

a. Reconciliation issue
b. Country of Origin
c. SPI (if any)
d. HTS number
e. Quantity
f. Value
g. Charges.

6. Each Reconciliation line item will be consolidated for all of the underlying consumption entries listed in the association file. To meet certain requirements of the Bureau of Census, each different HTS number will require a separate line. The reconciled (or corrected) information will be included below the consolidated (original) information, as follows:

EXAMPLE (Reconciliation entry line item)
001 Issue: Value
(Original) C/O SPI HTS
Quantity Value Charges
(Corrected) C/O SPI HTS
Quantity Value Charges

V. Liquidation of Reconciliation Entry

1. The Reconciliation entry will be reviewed and liquidated, and a bill or refund will normally be issued (as appropriate) against each underlying consumption entry, calculated against the duty as shown in the association file. Importers will recognize that there may be instances where no bill or refund is necessary, based on the information provided. Customs will calculate any interest due in any case.

2. On a matter of dispute, the importer may follow normal protest procedures (pursuant to 19 U.S.C. 1514) with regard to the Reconciliation entry.

Prerequisites for Reconciliation Under this Prototype

A. *Common Elements:* Each Reconciliation under this prototype will be limited to entries filed by one importer and one filer, and in one port location. Importers who file entries at more than one port may participate at more than one port, if the other prerequisites are met; however, they must file a separate Reconciliation for

each port used. Further, the Reconciliation must be filed in the same port as the underlying consumption entries covered by the Reconciliation. Value is the only issue which may be reconciled under this prototype.

B. *Bonding:* Adequate bonding will be required for each Reconciliation. Since there is no additional liability created on the Reconciliation, the bond filed on the underlying entries will in most cases be used to cover the Reconciliation. However, Customs will analyze each participant's individual situation, and take action to ensure that sufficient bond coverage exists. While Customs prefers to have one common set of legally responsible parties for each Reconciliation, importers with entries which were secured by more than one surety will not necessarily be excluded from participation in this prototype.

C. *Eligible Entries:* Only entry types 01 and 02, for formal consumption entries, will be eligible for this prototype. Antidumping/countervailing duty entries (entry types 03 and 07) and warehouse withdrawals (entry types 31, 32, 34, and 38) are not eligible for participation. Entry type 09, the Reconciliation entry, will be created effective with this prototype.

D. *Time Frame:* This prototype is scheduled to begin no sooner than June 1, 1997, and run for 24 months, unless Customs decides to extend it. The prototype will be limited to formal consumption entries filed on or after June 1, 1997, through May 31, 1999. It is important to note that, although the test has concluded, Customs will liquidate Reconciliation entries after the closing date of the test.

E. *Port Locations:* The following are service port locations which will be operational under this prototype: Chicago, Detroit, El Paso, Houston, Laredo, Los Angeles, New Orleans, Nogales, and San Diego. We will consider including other service ports, based on requests from applicants. If Customs decides to expand to other ports, we will issue a notice to the Customs Electronic Bulletin Board, and will accordingly extend the deadline for applying to participate in the prototype.

F. *Liquidation:* Importers who choose to participate in this prototype will recognize that the liquidation of the underlying entries pertains only to those issues not identified by the importer as reconcilable (i.e., issues other than value). Upon liquidation of the underlying entries, any decisions of the Customs Service entering into that liquidation can be protested pursuant to 19 U.S.C. 1514. The liquidation of the Reconciliation will be posted to the Bulletin Notice of Liquidation, and may be protested (pursuant to 19 U.S.C. 1514).

Regulatory Provisions Suspended

Certain requirements of Section 113.62 of the Customs Regulations (19 CFR 113.62), pertaining to basic importation and entry bond conditions, will be suspended during this prototype test. Certain provisions in Parts 141 and 142 of the Customs Regulations (19 CFR 141 and 19 CFR 142), pertaining to entry, and of Part 159 of the Customs Regulations (19 CFR Part 159), pertaining to liquidation of duties, will also be suspended during this prototype test.

Absent any specified alternate procedure, the current regulations apply.

II. Eligibility Criteria

The following requirements must be met to be considered for selection in this prototype:

1. No fewer than 10 entries may be subject to a single Reconciliation.
2. Adequate bond coverage must exist for the Reconciliation.
3. Participants may not be the subject of a current investigation by the Customs Service. Closed investigations will not necessarily preclude an importer from participating. However, the findings will be taken into consideration, as will the importer's demonstrated efforts to correct past problems.
4. Participants must be capable of submitting certain information electronically, via ABI.
5. Participants must agree to participate in the evaluation of this test.
6. Only formal consumption entry types 01 and 02 will be accepted.
7. The Reconciliation and its underlying consumption entries must be filed in the same port.

Interested candidates should note that participation in this test will not constitute confidential information, and that lists of participants will be made available on the Customs Electronic Bulletin Board and the Administrative Message System.

Reconciliation Prototype Application

This notice requests importers, or their brokers and/or attorneys, to voluntarily apply for participation in this prototype by submitting the following information:

1. Importer name and IRS number
2. Broker name(s) and filer code(s)
3. Surety name(s) and surety code(s)
4. Bond coverage (i.e., whether a continuous and/or single entry bonds will be used on the underlying entries)
5. Supplier name(s), address(es), and manufacturer's number
6. Commodities covered under the Reconciliation
7. Port(s) at which consumption entries and Reconciliation will be filed
8. Number of entries anticipated to be covered by the Reconciliation
9. Point of contact and telephone number
10. Any comments on prototype participation.

This information should be submitted to Ms. Renee Orme, Reconciliation Team, US Customs Service, 1301 Constitution Ave, NW, Room 1322, Washington, DC, 20229–001, on or before May 1, 1997. If Customs selects more service ports as prototype locations, the deadline to apply will be extended to 30 days after the date of the Customs Electronic Bulletin Board notice announcing the selections. By applying to participate in this test, the importer is agreeing to participate pursuant to the terms of the test as defined in this notice.

Basis for Participant Selection

Eligible importers will be considered for selection as participants in this prototype. Selection will be based upon automation capabilities, port of entry, and volume of entries within the designated criteria. Customs is looking for a variety of circumstances and participants for this prototype, within certain parameters. However, a limited number of participants will be selected, because of minimal automated programming available to support the test. Selected participants will be notified in writing, and the list of participants will be made available on the Customs Electronic Bulletin Board and the Administrative Message System.

We stress that those applicants not selected for participation, and other interested parties, are invited to comment on the design, conduct, and evaluation of this prototype.

Dismissal From Prototype

If a filer attempts to submit data relating to prohibited merchandise, or merchandise subject to antidumping or countervailing duties, or other non-eligible data; if the filer submits non-consumption entries; if the filer is consistently subject to a late-file condition on the Reconciliation; if the filer refuses to supply Customs with sufficient supporting documentation for the Reconciliation; if the filer is habitually delinquent in the payment of bills from Customs; or if the filer otherwise fails to follow the procedures outlined herein, or applicable laws and regulations, then the filer may be

expelled from the program, and/or may be prevented from participation in future Reconciliation prototypes, and/or may be subject to penalties.

Any decision revoking participation may be appealed to the Director of Trade Compliance, within 15 days of the decision date.

III. Test Evaluation Criteria

Once participants are selected, Customs will review all public comments received concerning any aspect of the test program or procedures, answer any questions in light of those comments, and establish baseline measures and evaluation methods and criteria. Interim evaluations of the prototype will be published on the Customs Electronic Bulletin Board, and the results of the final prototype evaluation will be published in the Federal Register as required by 19 CFR 101.9(b). The following evaluation methods and criteria have been suggested:

1. Baseline measurements to be established through dataqueries and questionnaires
2. Reports to be run through use of dataquery throughout the prototype
3. Questionnaires from both trade participants and Customs to be used before, during and after the prototype period.

Customs may assess any or all of the following evaluation criteria:

1. Workload impact (workload shifts/volume, cycle times, etc.)
2. Cost savings (staff, interest, issuance of fewer checks or bills, tracking refunds/bills, reduction in contingent liabilities, etc.)
3. Policy and procedure accommodation
4. Trade compliance impact
5. Problem resolution
6. System efficiency
7. Operational efficiency
8. Other issues identified by the participant group.

Customs will request that test participants be active in the evaluation, identifying costs and savings experienced in this prototype.

Dated: January 31, 1997.

Robert S. Trotter,

Acting Assistant Commissioner, Office of Field Operations.

[FR Doc. 97–2977 Filed 2–5–97; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

Proposed Collection; Comment Request for Form 4419

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).Currently, the IRS is soliciting comments concerning Form 4419, Application for Filing Information Returns Magnetically/Electronically.

DATES: Written comments should be received on or before April 7, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Filing Information Returns Magnetically/Electronically.

OMB Number: 1545–0387.

Form Number: Form 4419.

Abstract: Under section 6011(e)(2)(a) of the Internal Revenue Code, any person, including corporations, partnerships, individuals, estates and trusts, who is required to file 250 or more information returns must file such returns magnetically or electronically. Payers required to file on magnetic media must complete Form 4419 to receive authorization to file.

Current Actions: On Form 4419, item 5 and its instructions were eliminated because the information provided is no longer necessary. In item 6, Cartridges and Tape Cartridges were added as acceptable media types. In item 7, ''Other Cartridge Parameters'' was added to detail the additional types of cartridges which are now acceptable for filing information returns.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, non-profit institutions, Federal government, and state, local or tribal governments.

Estimated Number of Respondents: 15,000.

Estimated Time Per Respondent: 26 minutes.

Estimated Total Annual Burden Hours: 6,500.

The following paragraph applies to all of the collections of information covered by this notice:

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

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

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 3, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–3009 Filed 2–5–97; 8:45 am]

BILLING CODE 4830–01–U

[CO–26–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995,

Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing proposed and temporary regulation, CO–26–96 (TD 8679), Regulations Under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and With Respect to Controlled Groups (§ 1.382–8T).

DATES: Written comments should be received on or before April 7, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION

Title: Regulations Under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and With Respect to Controlled Groups.

OMB Number: 1545–1434.

Regulation Project Number: CO–26–96.

Abstract: Internal Revenue Code section 382 limits the amount of income that can be offset by loss carryovers after an ownership change in a loss corporation. These regulations provide rules for applying section 382 in the case of short taxable years and with respect to controlled groups of corporations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,500.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 875.

The following paragraph applies to all of the collections of information covered by this notice:

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

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

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 3, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–3010 Filed 2–5–97; 8:45 am]

BILLING CODE 4830–01–U

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision, Department of Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Loan Documentation.

DATES: Written comments should be received on or before April 7, 1997 to be assured of consideration.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0083. These submissions may be hand delivered to 1700 G Street, NW, from 9:00 A.M. to 5:00 P.M., on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M., on business days.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to William Magrini, Supervision Policy Division, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–5744.

SUPPLEMENTARY INFORMATION:

Title: Loan Documentation.

OMB Number: 1550–0083.

Form Number: Not Applicable.

Abstract: This information collection allows management of savings associations to exercise prudent controls and provides OTS with a means of determining the integrity of savings association records and operations when examining for safety, soundness, and regulatory compliance.

Current Actions: OTS is proposing to renew this information collection without revision.

Type of Review: Extension of an already approved collection.

Affected Public: Business or For Profit.

Estimated Number of Recordkeepers: 1343.

Estimated Time Per Recordkeeper: 48.9 hours on average.

Estimated Total Annual Burden Hours: 65,673 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 31, 1997.
Catherine C.M. Teti,
Director, Records Management and Information Policy.
[FR Doc. 97–2958 Filed 2–5–97; 8:45 am]
BILLING CODE 6720–01–P

UNITED STATES INFORMATION AGENCY

Partners in Education Program

ACTION: Notice—request for proposals.

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program, not to exceed $850,000. U.S. educational and other not-for-profit organizations with a minimum of four years experience in successfully administering international exchange programs, meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1, may apply to develop a six-week professional internship program for approximately 90 secondary school educators in the social sciences and secondary school administrators, with language proficiency, from Russia and Ukraine, in a 60 to 40 ratio respectively. We envision that some of the hosting U.S. school administrators will visit the schools of their Russian and Ukrainian participants under the grant to strengthen the partnerships. This initiative is intended to provide participants with opportunities to learn about secondary level curriculum development and teaching methodologies in the U.S. The program will add a secondary school teacher component to the Agency's academic programming in Russia and Ukraine, and will build upon USIA's previous linkages in the NIS, such as ''Community Connections'' and youth exchange. While in the U.S., the teachers and administrators will have the opportunity to pursue curriculum development in their own field of interest and learn new teaching methodologies and approaches through five-week internships in U.S. high schools. The internship duration for the administrators may be less than five weeks, subject to individuals' availability. The proposed program will span three academic semesters, starting in the fall of 1997. The contracted organization will be expected to recruit in Russia and Ukraine. After an orientation in Washington, D.C., grantees will be placed in small groups at various school districts in the U.S., and assigned internships in local high schools. Activities for the Russian and Ukrainian teachers and administrators would include: Observing classes, curriculum development, and teaching methods; delivering presentations to student and faculty on their own schools, local educational systems, and communities, either alone or together with their foreign colleagues; reviewing and collecting teaching materials for possible use in their home schools; and collaborating with U.S. school administrators to provide an understanding of the U.S. educational system at the local level. Teachers and administrators should also come to understand the relationship between the community and the educational system. The teachers and administrators would also engage in site visits to other schools, deliver presentations at those schools as well as to local civic and community groups, and attend PTA and school board meetings. We also encourage participants to establish contacts that will foster ongoing school linkages upon their return to Russia and Ukraine. Program participants will be required to meet established criteria upon completion of the program.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

The funding authority for the program cited above is provided through the Freedom Support Act, P.L. 102–511.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/ASX–97–01.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m., Washington, D.C. time, on Friday, March 14, 1997. Faxed documents will not be accepted, nor will documents postmarked on March 14, 1997 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: Ms. Ilo-Mai Harding, Teacher Exchange Branch, E/ASX, room 349, 301 4th Street, S.W., Washington, D.C. 20547, telephone: (202) 619–4556, fax: (202) 401–1433, Internet: IHARDING@USIA.GOV to request a Solicitation Package containing more detailed award criteria, required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/ or from the Internet Gopher at gopher://gopher.usia.gov. Under the heading ''International Exchanges/Training,'' select ''Request for Proposals (RFPs).'' Please read ''About the Following RFPs'' before downloading.

Please specify USIA Program Officer/Specialist, Teacher Exchange branch on all inquiries and correspondences. Interested applicants should read the complete Federal Register announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: E/ASX–97–01, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for this review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

DIVERSITY GUIDELINES: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted

in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal.

SUPPLEMENTARY INFORMATION:

Overview

Grant funding is intended to provide opportunities for 90 committed and engaged—especially younger—Russian and Ukrainian teachers and administrators from secondary schools and pedagogical institutions to actively participate in six-week internships in U.S. high schools. These potential future educational leaders would be placed in various senior high school clusters around the U.S. to experience and gain first-hand exposure to the U.S. educational community. USIA is interested in proposals that foster long-term linkages between U.S. high schools and comparable Russian and Ukrainian schools and pedagogical institutes. The participating U.S. schools should reflect a broad institutional and geographic diversity. Additionally, the recipient institution should be mindful of USIA's goal to reflect the cultural and ethnic diversity of the U.S. in all programs. While the benefits of the exchange may be directly enjoyed by the Russian and Ukrainian participants, the American institutions and individuals will also gain from the cultural and professional expertise which these foreign educators are able to offer.

Guidelines

Eligibility

U.S. non-profit educational and other not-for-profit organizations with a minimum of four years experience in successfully administering international exchange programs are eligible to apply.

Program Planning and Administration

The recipient organization will be responsible for activities related to recruitment, screening, orientation coordination, monitoring in the U.S. and program evaluation. The recipient organization will also be responsible for the identification of up to ten U.S. school districts for participation in the program. However, the recipient organization will maintain overall oversight for the program.

A. Publicity, Recruitment, Selection, and Placement of Russian and Ukrainian Teachers and Administrators

USIA will be responsible for the final selection of all Russian and Ukrainian candidates. Participants will be recruited by the recipient organization, based in Russia and Ukraine, under contract with USIA. Special emphasis will be placed on selecting groups of 6 to 8 qualified candidates, from targeted geographic regions, subject to the concurrence of the U.S. Information Services (USIS) in Moscow and Kiev. Priority should be given to recruitment from cities/regions targeted in USIA's Business for Russia and Community Connections programs. For example, in Russia: Altai Krai, Moscow, Kemerovo, Tula, Karelia, Vladivostok, Nizhny Novgorod, Irkutsk, Chelysbinsk, Rostov, Ekaterinburg, and Tomsk; in Ukraine: Cherkasy, Dnipropetrovsk, Donetsk, Khmeinytskyy, Lviv, Mariupol, Mykolaiv, Odesa, Sevastopol, Simferopol, Ternopil, Uzhorod, and Zaporizhia. The recipient organization will be responsive for:

—Formulating applications and publicizing the program;
—Reviewing the Russian and Ukrainian dossiers, and conducting interviews; and
—Placing the teachers and administrators in appropriate assignments after securing the approval of each candidate by the hosting school district.

Selected participants will be fluent in English. Teachers need to have a minimum of two years experience and should be from such disciplines as the social studies and history. Administrators need to have been in leadership positions in their home schools for a minimum of two years. Special emphasis should be placed on candidates displaying the commitment to follow-on activities who will apply elements of the exchange experience to his/her classroom or school activities with a demonstrated impact on students, other district teachers and the community.

B. Logistics, Orientation and Maintenance

The recipient organization will be responsible for:

—Arranging in-bond and out-bound international travel for all participants;
—Coordinating domestic transportation in Russia and Ukraine to and from the point of international travel with USIS in Moscow and Kiev, if requested by USIS;
—Arranging U.S. domestic and local travel for all participants;
—Preparing and sending necessary pre-departure orientation materials to all participants;
—Conducting an orientation seminar on the U.S. educational system upon arrival in the U.S.;
—Disbursing stipends and administering tax withholding and reporting as required by Federal, State, and local authorities and in accordance with relevant tax treaties;
—Providing assistance to Russian and Ukrainian participants regarding tax procedures;
—Enrolling participants in USIA insurance programs and preparing insurance identification cards:
—Communicaitng clearly the guidelines and information regarding visa regulations and the participants' expedient return upon completion of the program.

Programs must comply with J–1 visa regulations. Please refer to program specific guidelines (POGI) in the Solicitation Package for further details.

C. Identifying and Coordinating the Activities of the Host U.S. School Districts

The recipient organization will be responsible for:

—Identifying, recruiting, and selecting up to ten school districts, to collaborate, on a sub-contractual basis, in hosting selected groups of teachers for the school-based internships;
—The sub-contracted organizations will also organize homestays and participant visits to several local high schools during the five weeks following an orientation/workshop in Washington, DC.

Each segment has approximately 30 participants, and takes place during one school semester (there will be three segments conducted in three sequential semesters). We envision a program agenda guided by the following:

Six-Week Program Agenda

(30 Working days—12 weekend days)

—Three groups of 8–12 arrive in Washington, D.C., preferably, for an intensive orientation/workshop that will include sessions on cross-cultural training, education in the U.S., curricula and methodology in U.S. schools, and administrative matters [each group will include one or more administrator(s)].
—Groups then proceed to school districts, for twenty working days, to shadow professional colleagues, observe educational and

administrative activities, and talk and teach about their respective professional expertise.
—At least five days, during the assignment to school districts, must be devoted to workshops, in-service training, curriculum development training, etc. Training can be interspersed during the program or conducted in five consecutive days.
—*Working days:*
Orientaiton/Workshop—3–4 days
Training—5 days
In classroom—20 days

(Weekends are reserved for traveling and homestays)

The grantee organization is expected to solicit the services of educational/curriculum specialist(s) to design and advise about program content. The advisor(s) will also serve as a consultant for program participants to enhance the professional aspects during the training days. We envision the following thematically focused professional activities:

(1) Civic Education: Visit local, municipal government and learn about local control of education. Interact with civic education teachers, observe their classes, and collect curricula materials.

(2) Methodology/Curriculum Development Seminar: Participate in local, or district workshop/seminars on methodology and curriculum development/implementation.

(3) Site Visits: Visit local professional organizations, educational institutions in order to supplement the learning experience.

All hosting U.S. high schools will be required to submit a brief written proposal that outlines commitment and program goals. The grantee organization will be authorized to offer a financial incentive (not to exceed $5,000) for each participating U.S. school district.

Proposed budget: The contracted organization must submit a comprehensive line-item budget based on the specific guidance in the Solicitation Package. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. Administrative costs should be kept low; this will be an important factor in grant competition. Also, the ability to maximize the number of grantees within budget guidelines will enhance competitive proposals.

Allowable costs for the program include the following:

(1) Participant Costs: Total (per participant)= $6,175.
—Stipends: $3,000
—Airfare (international/domestic): $1,900
—Health Insurance: $75
—Book Materials Allowance: $1,000
—Misc: $200

(2) Program Expenses: Total = $75,000.
—Sub-Contracts with School districts: $50,000
—Academic Advisor: $25,000

(3) Orientation/workshop Costs: Total (per participant) = $660.00.
—Per diem and logistical expenses: $165 a day

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European Affairs and the USIA post overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to Agency mission and principles in the Freedom Support Act.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of U.S. participating institutions, program venue and program evaluation) and program content.

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

9. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other techniques plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. Value to U.S.-Partner Country Relations: Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: January 31, 1997.

Dell Pendergrast,

Deputy Associated Director for Educational and Cultural Affairs.

[FR Doc. 97–2906 Filed 2–5–97; 8:45 am]

BILLING CODE 8230–01–M

Federal Register

Thursday
February 6, 1997

Part II

Department of Education

34 CFR Part 379

Projects With Industry: Final Rule and Fiscal Year 1997 Award Applications, Notice

DEPARTMENT OF EDUCATION

34 CFR Part 379

RIN 1820–AB33

Projects With Industry

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Projects With Industry (PWI) program to clarify statutory intent, reduce grantee burden, address certain implementation problems, and enhance project accountability.

EFFECTIVE DATE: These regulations take effect March 10, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas E. Finch, U.S. Department of Education, 600 Independence Avenue, SW., Room 3315, Mary E. Switzer Building, Washington, DC 20202–2575. Telephone: (202) 205–8292. 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: The PWI program is authorized by section 621 of the Rehabilitation Act of 1973, as amended (the Act). The purpose of the PWI program is to create and expand job and career opportunities for individuals with disabilities in the competitive labor market by establishing partnerships between program grantees and private industry to provide job training, job placement, and career advancement activities.

On January 22, 1996, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the Federal Register (61 FR 1672). The major issues related to this program are discussed in greater detail in the preamble to the NPRM.

The significant changes made in these final regulations from the NPRM include revision of the definitions of ''placement,'' ''competitive employment,'' and ''integrated setting,'' as well as an additional application content requirement for a description of career advancement services. These changes are discussed in detail in the analysis of comments section of the preamble to the final regulations.

The Secretary invited comments on changes needed to improve the compliance indicators in the NPRM, but has made no changes to the indicators in these final regulations. The comments provided in response to the NPRM, as well as the comments provided by interested parties in subsequent follow-up meetings held by the Rehabilitation Services Administration (RSA), will be used by the Department in determining what changes to make to the compliance indicators. The Secretary expects to propose specific revisions to the PWI compliance indicators in the near future.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These regulations address the National Education Goal that every adult American will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Executive Order 12866

Assessment of Costs and Benefits

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, the Secretary has determined that the benefits of the final regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The potential costs and benefits of these final regulations were discussed in the preamble to the NPRM under the following headings: More Accurate Reflection of Statutory Requirements, Reduction of Grantee Burden, and Clarification of Program Requirements (61 FR 1677).

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 87 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

The comments have been grouped according to subject, with appropriate references to sections of the regulations. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Section 379.3 Eligibility for Services

Comments: Several commenters recommended alternative procedures for determining eligibility for PWI services other than those specified in the NPRM. One commenter wanted eligibility to be determined jointly by the State vocational rehabilitation (VR) agency, the PWI grantee, and the individual seeking PWI services. Another commenter stated that only the VR agency or its designee should make eligibility determinations. Another commenter wanted PWI grantees to be allowed to determine eligibility for PWI services without VR agency review. Another commenter wanted the final regulations to clarify that a PWI grantee is responsible for making eligibility determinations even if the grant is subcontracted to another organization. A final commenter raised concerns that some VR agencies do not respond to initial or preliminary determinations of eligibility made by PWI grantees.

Discussion: Section 621(a)(3) of the Act prescribes the manner in which eligibility for PWI services is to be determined. The VR agency is initially authorized to make eligibility determinations in this program, but if the VR agency fails to act, either by not making a determination or failing to disagree within 60 days with a preliminary determination of eligibility made by the PWI grantee, then the PWI grantee can determine eligibility. There is no legal authority to substitute a different eligibility determination process in the regulations. Under the Department's grants regulations, grantees are held responsible for all aspects of their project operations, even if they subcontract project activities. Finally, the regulations address concerns that some VR agencies do not respond to preliminary PWI eligibility determinations by providing, consistent with the statute, that if the VR agency fails to act within 60 days, then the preliminary PWI eligibility

determination becomes a final determination.

Changes: The Secretary has revised the explanatory material in the note following this section to clarify that if the VR agency has referred an individual to a PWI project for services, then the VR agency has already determined that the individual is eligible for project services. In other instances, the PWI grantee makes an initial determination of eligibility that becomes final if not countermanded by the VR agency within 60 days.

Section 379.5 Definitions

Section 379.5(b)(2)(ii) Definition of ''Competitive Employment''—Prevailing Community Wage Requirement

Comments: Several commenters opposed the requirement in the proposed regulations that individuals in competitive employment earn at least the prevailing wage for the same or similar work in the local community performed by non-disabled individuals. Eight commenters believed that it would be unduly burdensome for grantees to ascertain the relevant prevailing wage given the potential differences in wages provided by employers within the same community. A few commenters stated that prevailing community wage rates are sometimes inflated and that many job-seekers are unsuccessful in finding employment at the prevailing community wage. Several commenters recommended that the final regulations require only that the minimum wage be paid and that PWI participants be afforded the same terms and benefits provided to non-disabled co-workers in similar jobs, consistent with section 621(b) (1) and (2) of the Act. Other commenters recommended that the wage standard should be one of parity with the wages paid by the same employer to non-disabled workers doing the same or similar job.

Discussion: The Secretary agrees that requiring individuals placed by the PWI program into competitive employment to earn at least the prevailing wage for the same or similar work in the local community performed by non-disabled individuals is unduly restrictive and potentially burdensome. The Secretary also agrees that a more reasonable wage standard is one that is employer-based rather than community-based and that requires equity in wage and terms and benefits (e.g., insurance premiums, retirement contributions) with non-disabled workers.

Changes: The Secretary has amended § 379.5(b)(2)(ii) to define ''competitive work,'' in part, as work for which an individual earns at least the minimum wage but not less than the customary or usual wage and terms and benefits provided by the same employer to non-disabled workers who perform the same or similar work.

Section 379.5(b)(3) Definition of Integrated Setting, as Part of the Definition of ''Competitive Employment''

Comments: Several commenters were concerned that the proposed standard for integration in competitive employment (the opportunity for interaction with non-disabled individuals at the work site) would preclude certain kinds of employment outcomes from the scope of competitive employment. Specifically, the commenters identified self-employment, home-based employment, and various forms of telecommuting as examples of employment outcomes that are competitive, but are not located in integrated settings. These commenters stated that these employment options should be available to individuals with disabilities served by the PWI program to the same extent that they are available to non-disabled persons. Other commenters stated that individuals in competitive employment should be required to interact with non-disabled persons only to the extent that non-disabled persons in similar positions interact with others.

Discussion: The Secretary agrees with those commenters who contend that the best measure of integration in an employment setting for individuals with disabilities is to require parity with the integration experienced by non-disabled workers in similar positions. The Secretary also believes that interaction between individuals with disabilities and non-disabled persons need not be face-to-face in order to meet this standard. Individuals with disabilities under the PWI program who are self-employed or who telecommute may interact regularly with non-disabled persons through a variety of mediums (e.g., telephone, facsimile, or computer). Self-employment, home-based employment, and other forms of employment in which individuals communicate regularly from separate locations, therefore, would satisfy the integration requirement of competitive employment as long as the individual interacts with non-disabled persons, other than service providers, to the same extent as a non-disabled person in a comparable job.

Changes: The Secretary has revised § 379.5(b)(3) to establish a standard of integration for individuals in competitive employment that is based on ensuring the same level of interaction with non-disabled persons as that experienced by a non-disabled worker in the same or similar job.

Section 379.5(b)(5) Definition of ''Job Training''

Comments: One commenter recommended the inclusion of pre-employment planning under the definition of job training. Another commenter recommended expanding the definition of job training to include social preparation for individuals interviewing for jobs. Ten commenters recommended deleting the phrase ''provided prior to placement'' because the phrase excludes training by employers or other entities after placement. Two commenters recommended that attitudinal change training be provided for employers under the definition of training. Four commenters recommended that training be provided in an integrated setting. Other commenters underscored the need for specific input on the part of the Business Advisory Committee (BAC) in identifying and prescribing training needs. Still other commenters stated that the responsibility for defining the parameters of job training should be the domain of the BAC. Another commenter stated that the emphasis on skills training is contrary to current trends of ''one-stop career centers'' and expressed doubts as to whether grantees have adequate resources and expertise to provide job skills training.

Discussion: The Secretary believes that the final regulations give projects sufficient flexibility to provide pre-employment planning and interview preparation if these services are deemed necessary. However, the Secretary believes that these activities fall under the definition of job readiness training in § 379.5(b)(4), rather than the definition of job training under this section. The Secretary also believes that attitudinal change training for employers is an authorized activity under the PWI program, but does not believe it falls within the scope of job training, as it is defined in this section.

While section 621(a)(2)(B) of the Act requires that training be provided in ''realistic work settings,'' the Secretary does not believe that this can be interpreted to require projects to provide training in an integrated setting. However, the Secretary encourages projects to ensure that training is provided in an integrated setting to the extent possible.

The Secretary strongly agrees with the commenters who stated that the BAC should take an active role in prescribing training programs and notes that this is consistent with section 621(a)(2)(A)(iv)

of the Act, which states that the BAC shall ''prescribe training programs designed to develop appropriate job and career skills.'' The Secretary does not believe that the definition of job training in this section in any way weakens this statutory requirement.

The Secretary notes the concern of some commenters that grantees may have insufficient resources to provide job training. The use of the BAC, other private industry expertise, and active collaboration with State VR agencies and other providers can supplement what individual projects may lack in terms of resources for job training.

Changes: None.

Section 379.5(b)(7) Definition of ''Placement''

Comments: One commenter recommended that the term ''placement'' be deleted throughout the regulations and replaced with the term ''PWI employment outcome.'' This commenter believed the use of the term ''placement'' was confusing because the proposed definition includes two elements: (1) Attaining competitive employment and (2) maintaining it for a certain period.

Other commenters were concerned about the proposed minimum retention period for maintaining competitive employment in order to have the employment outcome considered a placement for purposes of meeting the program compliance indicators. The NPRM proposed the option of using the duration of the employer's normal probationary period or, if the employer does not have an established probationary period, for at least 90 days. The current regulatory time period for maintaining employment is 60 days. These commenters stated that the use of a probationary period was problematical for a variety of reasons, such as (1) an employer's probationary period could be as short as two weeks, and that timeframe would be inadequate; (2) many employers no longer use probationary periods, so the option is not meaningful; and (3) if some employers have long probationary periods, some projects might be disinclined to place individuals with those employers. Some commenters argued for a uniform Federal standard in the regulations that would avoid variations among employers. Some of these commenters suggested that there be no change from the current retention period of 60 days. Other commenters recommended 90 days, 120 days, 180 days, or 12 months. Some commenters objected to any specific timeframe in the regulations and believed the retention period should be individually determined by the individual with a disability, the counselor, and the employer.

Some commenters recommended that the phrase ''who has successfully completed training'' be deleted from the definition because the regulations recognize that not all persons served by a PWI project may need and, therefore, receive job training.

Discussion: The Secretary does not believe the use of the term ''placement,'' as defined in the regulations, is confusing. The PWI regulations for many years have defined ''placement'' to include a required period of time in which a competitive employment outcome must be maintained.

The Secretary agrees with those commenters who believe the use of a probationary period option is problematical and that a uniform minimum retention period prescribed in the regulations is desirable. The Secretary also believes that the retention period should be longer than the 60 days required in the current regulations in order to ensure that the individual's employment remains stable. The Secretary has determined that 90 days is the minimum acceptable standard and that this lengthened time period will result in more successful placements. At the same time, however, the Secretary recognizes that in some instances 90 days may be too short a period to ensure job stability. Section 621(a)(2)(E) of the Act requires projects to provide any support services that may be required for an individual to maintain employment. Therefore, the Secretary encourages projects to make individualized determinations of whether to extend the 90-day period to conform with an employer's longer probationary period if, at the end of the 90 days, it is uncertain whether the individual will be able to successfully satisfy the probationary period without support services from the project.

The Secretary also agrees that the phrase ''who has successfully completed training'' is inaccurate and should be removed from the definition because some project participants may not need job training.

Changes: The Secretary has amended the definition of ''placement'' in the final regulations to provide for a minimum job retention period of 90 days and to substitute the phrase ''who has received services'' for the phrase ''who has successfully completed training.''

Section 379.10(a) Project Requirements Regarding Job Training and the Note to This Section

Comments: One commenter recommended deletion of the last three sentences of the note, which specify that training provided after placement (i.e., attaining competitive employment and maintaining it for at least 90 days) or job-readiness training do not satisfy the requirement that projects provide job training. Another commenter suggested revising this requirement to allow projects the option of providing only job readiness training. Some commenters suggested that individual projects should have the responsibility of assessing each participant's training needs and how that training will be provided. Some commenters suggested that grantees should be allowed the flexibility to work with employers in order to provide training on the job. Some commenters questioned whether job training should be provided for all participants. Two commenters stated that all grantees should have an identifiable training component for individuals who lack job skills, but that all program participants should not be required to avail themselves of training. Other commenters mentioned the added costs of providing job training and asked whether grant awards should be increased to cover these costs.

Discussion: The Secretary disagrees with the commenter who suggests deletion of the clarification in the note that training provided after placement and job readiness training do not by themselves satisfy the requirement in § 379.10(a). In accordance with section 621(a)(2)(B) of the Act, projects are required to provide training in order to prepare the individuals for employment and career advancement in the competitive market. The Secretary, therefore, believes that projects should ensure that training, if deemed appropriate to the participant's needs, is provided either before the individual begins employment or within the first 90 days of employment (i.e., before the individual is considered placed in accordance with the definition of ''placement'' in § 379.5(b)(7)). On-the-job training would meet the requirements of this section if the project ensures its provision and it is provided within the first 90 days of employment. The 90-day requirement, of course, does not apply to employed individuals who are receiving career advancement services from a PWI project.

The Secretary also believes that the job training requirement is not met if a project provides only job readiness

training. While job readiness training is an authorized activity under the PWI program, the Secretary believes that job readiness training alone does not meet the statutory requirement that projects provide training to prepare individuals for employment in the competitive labor market. The final regulations, like the NPRM, therefore contain separate definitions of ''job training'' and ''job readiness training.'' The Secretary agrees with those commenters who suggested that job training need not be provided to every participant. The language in this section requires that job training be provided ''if appropriate to the needs of each individual served by the project.'' However, the Secretary expects that every project will have a job training component (whether the training is provided on-site, through employers and other entities, or both), since a certain population of individuals will enter the program without the job skills necessary to be placed and advance in competitive employment.

The Secretary notes the concern of commenters regarding the costs of providing job training. The Secretary believes the regulations give projects sufficient flexibility to arrange with employers and other entities to provide job training should they find that providing job training themselves is too costly or for other reasons is not feasible.

Changes: The Secretary has added a statement to the note to emphasize that if a project arranges for the provision of job training by outside entities (e.g., an employer), the project must conduct appropriate follow-up measures to ensure that training is provided. The note is also amended to clarify that job training must be provided either prior to, or within 90 days of, attaining competitive employment and that job training provided by the employer after this 90-day period, therefore, does not meet the requirement of § 379.10(a).

Section 379.21(a)(1) Application Content Requirement Regarding Labor Market Analysis

Comments: A number of commenters stated that a labor market analysis obligates applicants to predict for five years the training needs that will meet the demands of the labor market and that the labor market changes too rapidly for this to be accomplished. Other commenters recommended deleting the language regarding labor market analysis. Other commenters stated that individuals with disabilities may not fit appropriately into a market trend and may require individualized job matching. A commenter recommended that each application describe how existing labor market studies will be used in securing employment and validating training needs.

Discussion: The Secretary does not intend to require the use of a particular tool (e.g., a labor market analysis) to identify the needs of the local labor market. If an applicant determines that a labor market analysis is inappropriate for the type of project being proposed, the applicant can choose a different method of identifying local labor market needs. The requirement in § 379.21(a)(1) is intended to ensure that applicants have assessed labor market needs in the geographic area to be served and have designed their projects in accordance with the identified needs for people trained for specific occupations. Applicants can determine labor market needs by either performing their own labor market analyses or needs assessments in conjunction with private industry or by using existing current labor market analyses or needs assessments. The Secretary understands that local labor market needs may change during the five-year duration of the project and that these changes may, in some cases, necessitate adjustments in the project. However, the Secretary believes that this does not diminish the utility of an initial labor market analysis or needs assessment. The Secretary also believes that the identification of local labor market needs does not contravene the practice of individualized job-matching for individuals with disabilities.

Changes: The Secretary has made minor changes to clarify that the applicant may comply with § 379.21(a)(1) either by using an existing current labor market analysis or needs assessment or by performing a labor market analysis or needs assessment in conjunction with private industry.

Section 379.21(a)(4) Application Content Requirement Concerning Unserved or Underserved Areas

Comments: One commenter recommended that an applicant for a PWI grant be required to document geographic need through verification by the State VR agency. This commenter wanted to avoid duplication of awards and to ensure that services are provided in areas most in need.

Discussion: The Secretary encourages all applicants to consult with the relevant State VR agency to ensure that services are to be provided in areas where individuals are unserved or underserved, but does not want to require this. It is the responsibility of each applicant to explain in its grant application how the geographic area it proposes to serve is unserved or underserved by the PWI program and to provide whatever justification it considers necessary to support its position.

Changes: None.

Section 379.21(a)(7) Requirement Concerning Career Advancement Services

Comments: Some commenters suggested that career advancement services be addressed with an application content requirement rather than as a compliance indicator.

Discussion: The 1992 Amendments to the Rehabilitation Act of 1973, as amended, added career advancement services to the range of services PWI projects are required to provide. In the NPRM, the Secretary solicited comments on how best to address the career advancement requirement. The Secretary agrees that an application content requirement is the best way to implement the career advancement services provision.

Changes: In response to commenters' suggestions, the Secretary has added to this section the requirement that a grant application contain a description of how career advancement services will be provided to project participants.

Section 379.30 Recommendation of New Selection Criterion

Comments: One commenter recommended that applicants under this program be required to include a plan for continuing the project after the Federal grant period has ended.

Discussion: The Secretary finds no statutory basis, as exists for the recreation programs authorized under section 316 of the Act, for adding a criterion to require applicants to include a plan for continuation of the project after the Federal grant period has ended.

Changes: None.

Section 379.30(a)(1) Selection Criterion: Extent of Need for Project—Labor Market Analysis

Comments: A number of commenters suggested alternative language to a ''labor market analysis'' and recommended tailoring a needs assessment to local communities rather than to the national or regional job market as implied by the term. Some commenters recommended that the phrase ''labor market analysis'' be deleted.

Discussion: The Secretary intends, and the NPRM stated, that the applicant's labor market analysis or needs assessment be conducted ''for the geographic area to be served.'' The Secretary does not intend by using the

term ''labor market analysis'' to require the applicant to conduct an analysis that is regional or national in scope. While the Secretary expects that projects once established should work with local businesses and the BAC to identify job opportunities for individuals with disabilities, the Secretary does not believe this action eliminates the need for an initial survey of local labor market needs. An initial labor market analysis or needs assessment demonstrates a need for the project and also enables the project to tailor its job training and services to the needs of the local labor market.

Changes: The Secretary has made minor changes to clarify that the applicant may satisfy § 379.30(a)(1) either by using an existing current labor market analysis or needs assessment or by performing a labor market analysis or needs assessment in conjunction with private industry.

Section 379.30(a)(2) Selection Criterion: Extent of Need for Project—Labor Market Analysis

Comments: None.

Discussion: The Secretary believes the phrase ''occupations and occupational categories'' is more precise than ''industry or industries'' because it refers to a type of job or jobs for which participants are to be trained (e.g., computer programmer) rather than the industries in which they might be placed (e.g., the computer industry).

Changes: The Secretary has amended § 379.30(a)(2) in the final regulations to clarify that the job training to be provided must meet the identified needs for specific occupations or occupational categories in the geographic area to be served.

Section 379.41(a)(f) Allowable Costs

Comments: One commenter recommended specifying under this section on allowable costs that, if appropriate, grantees may modify facilities and equipment of employers. Another commenter recommended the addition of job modification and job development as allowable costs.

Discussion: The Secretary agrees with the commenters that the costs of job development and modification and the costs of modifications of employer facilities or equipment to be used by PWI program participants should be specifically identified in the final regulations as permissible expenditures. This is consistent with language in 34 CFR 379.10(d) (1) and (3), which requires grantees to undertake these activities, to the extent appropriate.

Changes: The Secretary has amended § 379.41(a) to include as allowable costs job development and modification and modifications for facilities and equipment of employers participating in the program.

Section 379.43 and § 379.54(a) Annual Evaluation Report and Compliance Indicator Data

Comments: One commenter did not agree with the proposed requirement that projects submit annual evaluation report and compliance indicator data 60 days after the end of the project year.

Discussion: The Secretary believes that the 60-day timeline is reasonable for submission of project evaluation and compliance indicator data in order to ensure timely receipt of project information and to increase program accountability. In addition, the Secretary has the option to extend this timeline for reasonable cause.

Changes: None.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected sections of the regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 379

Education, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, vocational rehabilitation.

Dated: October 25, 1996.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

(Catalog of Federal Domestic Assistance Number 84.234 Projects With Industry)

The Secretary amends Title 34 of the Code of Federal Regulations as follows:

1. By revising part 379, subparts A through E, by revising the heading of subpart F, and by adding a new § 379.54 in subpart F to read as follows:

PART 379—PROJECTS WITH INDUSTRY

Subpart A—General

Sec.

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

Subpart C—How Does One Apply for an Award?

Subpart D—How Does the Secretary Make a Grant?

Subpart E—What Conditions Must Be Met by a Grantee?

Subpart F—What Compliance Indicator Requirements Must a Grantee Meet To Receive Continuation Funding?

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379.54 What are the reporting requirements for the compliance indicators?

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Authority: Sects. 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g, unless otherwise noted.

Subpart A—General

§ 379.1 What is the Projects With Industry (PWI) program?

This program is designed to—

(a) Create and expand job and career opportunities for individuals with disabilities in the competitive labor market by engaging the talent and leadership of private industry as partners in the rehabilitation process;

(b) Identify competitive job and career opportunities and the skills needed to perform these jobs;

(c) Create practical settings for job readiness and job training programs; and

(d) Provide job placements and career advancement.

(Authority: Sect. 621(a)(1) of the Act; 29 U.S.C. 795g(a)(1))

§ 379.2 Who is eligible for a grant award under this program?

(a) The Secretary may make a grant under this program to any—

(1) Community rehabilitation program provider;

(2) Designated State unit;

(3) Employer;

(4) Indian tribe or tribal organization;

(5) Labor Union;

(6) Nonprofit agency or organization;

(7) Trade association; or

(8) Other agency or organization with the capacity to create and expand job and career opportunities for individuals with disabilities.

(b) New awards may be made only to those eligible entities identified in paragraph (a) of this section that propose to serve individuals with disabilities in States, portions of States, Indian tribes, or tribal organizations that are currently unserved or underserved by the PWI program.

(Authority: Section 621(a)(2) and 621(e)(2) of the Act; 29 U.S.C. 795g(a)(2) and 795g(e)(2))

§ 379.3 Who is eligible for services under this program?

(a) An individual is eligible for services under this program if the appropriate State vocational rehabilitation unit determines the individual to be an individual with a disability or an individual with a severe disability, as defined in sections 7(8)(A) and 7(15)(A), respectively, of the Act.

(b) In making the determination under paragraph (a) of this section, the State vocational rehabilitation unit shall rely on the determination made by the recipient of the grant under which the services are provided, to the extent that the determination is appropriate, available, and consistent with the requirements of the Act.

(c) If a State vocational rehabilitation unit does not notify a recipient of a grant within 60 days that the determination of the recipient is inappropriate, the recipient of the grant may consider the individual to be eligible for services.

(Authority: Sect. 621(a)(3) of the Act; 29 U.S.C. 795g(a)(3))

Appendix to § 379.3

The following guidance is provided regarding the determination of eligibility for PWI project services:

(1) If an individual is referred to the PWI project by the State vocational rehabilitation (VR) unit and the individual has been determined by the State VR unit to be an ''individual with a disability'' under section 102(a)(1)(A) of the Act, then the PWI grantee may initiate services to that individual. In these instances, the State VR unit should provide documentation of this determination to the PWI grantee. If the State VR unit has determined that the individual also meets the definition of an ''individual with a severe disability'' under section 7(15)(A) of the Act, the PWI grantee should be advised of that determination and provided appropriate documentation of that determination.

(2) If an individual is not referred to the PWI project by the State VR unit, then the PWI grantee makes an initial or preliminary determination that the individual is eligible for services because the individual meets the definition of an ''individual with a disability'' or an ''individual with a severe disability.'' The State VR unit has a maximum of 60 days to assess the appropriateness of the preliminary determination. If the State VR unit does not decide that the preliminary eligibility determination is inappropriate within this time period, the eligibility determination becomes final.

§ 379.4 What regulations apply?

The following regulations apply to the Projects With Industry program:

(a) The regulations in this part 379; and

(b) The regulations in 34 CFR part 369, except for the regulations in §§ 369.30 and 369.31.

Authority: Sect. 621 of the Act; 29 U.S.C. 795g)

§ 379.5 What definitions apply?

(a) The definitions in 34 CFR part 369 apply to this program.

(b) The following definitions also apply to this program:

(1) *Career advancement services* mean services that develop specific job skills beyond those required by the position currently held by an individual with a disability to assist the individual to compete for a promotion or achieve an advanced position.

(2) *Competitive employment*, as the placement outcome under this program, means work—

(i) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and

(ii) For which an individual is compensated at or above the minimum wage, but not less than the customary or usual wage and terms and benefits provided by the employer for the same or similar work performed by individuals who are not disabled.

(3) *Integrated setting*, as part of the definition of *competitive employment*, means a setting typically found in the community in which individuals with disabilities interact with non-disabled individuals, other than non-disabled individuals who are providing services to them, to the same extent that non-disabled individuals in comparable positions interact with other persons.

(4) *Job readiness training*, as used in § 379.41(a), means—

(i) Training in job-seeking skills;

(ii) Training in the preparation of resumes or job applications;

(iii) Training in interviewing skills;

(iv) Participating in a job club; or

(v) Other related activities that may assist an individual to secure competitive employment.

(5) *Job training*, as used in this part, means one or more of the following training activities provided prior to placement, as that term is defined in § 379.5(b)(7):

(i) Occupational skills training.

(ii) On-the-job training.

(iii) Workplace training combined with related instruction.

(iv) Job skill upgrading and retraining.

(v) Training to enhance basic work skills and workplace competencies.

(vi) On-site job coaching.

(6) *Person served* means an individual for whom services by a PWI project have been initiated with the objective that those services will result in a placement in competitive employment.

(7) *Placement means* the attainment of competitive employment by a person who has received services from a PWI project and has maintained employment for a period of at least 90 days.

(Authority: Sects. 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 379.10 What types of project activities are required of each grantee under this program?

Each grantee under the PWI program shall—

(a) Arrange for the provision of, or provide individuals with disabilities with, job training in a realistic work setting, if appropriate to the needs of the individual, in order to prepare individuals for employment and career advancement in the competitive labor market;

(b) Provide individuals with disabilities with job placement and career advancement services;

(c) Provide individuals with disabilities with supportive services that are necessary to permit them to maintain the employment and career advancement for which they have received training under this program;

(d) To the extent appropriate, provide for—

(1) The development and modification of jobs and careers to accommodate the special needs of the individuals with disabilities being trained and employed under this program;

(2) The purchase and distribution of rehabilitation technology to meet the needs of individuals with disabilities at job sites; and

(3) The modification of any facilities or equipment of the employer that are to be used by individuals with disabilities under this program; and

(e) Provide for the establishment of a Business Advisory Council (BAC) comprised of representatives of private industry, business concerns, organized labor, and individuals with disabilities and their representatives who will identify job and career availability within the community, the skills necessary to perform those jobs and careers, and prescribe appropriate training programs.

Appendix to § 379.10

A PWI grantee can meet the requirements of § 379.10(a) (1) by directly providing job training to project participants, (2) by arranging for the provision of this training by other entities and taking appropriate follow-up measures to ensure that the training is, in fact, provided, or (3) by a combination of both (1) and (2). The job training provided must meet the definition of job training in § 379.5(b)(5) and must be provided as appropriate to the needs of each individual served by the project. Although each individual served by the project may not need job training, the Secretary expects that each PWI project will have an identifiable job training component that is available to those individuals who need it. In order to meet the requirements of § 379.10(a), the job training must be provided while the individual is participating in the project (i.e. prior to, or within 90 days of, attaining competitive employment). Therefore, training provided by an employer more than 90 days after the individual begins competitive employment would not meet this requirement. In addition, a project that provides only job readiness training, as defined in § 379.5(b)(4), would not meet the requirements of § 379.10(a).

(Authority: Sect. 621(a) of the Act; 29 U.S.C. 795g)

§ 379.11 What additional types of project activities may be authorized under this program?

The Secretary may include, as part of grant agreements with recipients under this program, authority for recipients to provide the following types of technical assistance:

(a) Assisting employers in hiring individuals with disabilities.

(b) Improving or developing relationships between grant recipients or prospective grant recipients and employers or organized labor.

(c) Assisting employers in understanding and meeting the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C 12101 *et seq.*) as that Act relates to employment of individuals with disabilities.

(Authority: Sect. 621(a) of the Act; 29 U.S.C 795g)

Subpart C—How Does One Apply for an Award?

§ 379.20 How does an eligible entity apply for an award?

In order to apply for a grant, an eligible entity shall submit an application to the Secretary in response to an application notice published in the Federal Register.

(Approved by the Office of Management and Budget under control number 1820–0612.)

(Authority: Sec. 621(e)(1)(B) of the Act; 29 U.S.C. 795g(e)(1)(B))

§ 379.21 What is the content of an application for an award?

(a) The grant application must include a description of—

(1) The proposed job training to prepare project participants for specific jobs in the competitive labor market for which there is a need in the geographic area to be served by the project, as identified by an existing current labor market analysis or other needs assessment or one conducted by the applicant in collaboration with private industry;

(2) The involvement of private industry in the design of the proposed project and the manner in which the project will collaborate with private industry in planning, implementing, and evaluating job training, job placement, and career advancement activities;

(3) The responsibilities of the BAC and how it will interact with the project in carrying out grant activities;

(4) The geographic area to be served by the project, including an explanation of how the area is currently unserved or underserved by the PWI program;

(5) A plan for evaluating annually the operation of the proposed project, which, at a minimum, provides for collecting and submitting to the Secretary the following information and any additional data needed to determine compliance with the program compliance indicators established in subpart F of this part:

(i) The numbers and types of individuals with disabilities served.

(ii) The types of services provided.

(iii) The sources of funding.

(iv) The percentage of resources committed to each type of service provided.

(v) The extent to which the employment status and earning power of individuals with disabilities changed following services.

(vi) The extent of capacity building activities, including collaboration with business and industry and other organizations, institutions, and agencies, including the State vocational rehabilitation unit.

(vii) A comparison, if appropriate, of activities in prior years with activities in the most recent year.

(viii) The number of project participants who were terminated from project placements and the duration of those placements;

(6) A description of the manner in which the project will address the needs of individuals with disabilities from minority backgrounds, as required by 34 CFR 369.21; and

(7) A description of how career advancement services will be provided to project participants.

(b) The grant application must also include assurances from the applicant that—

(1) The project will carry out all activities required in § 379.10;

(2) Individuals with disabilities who are placed by the project will receive compensation at or above the minimum wage, but not less than the customary or usual wage paid by the employer for the same or similar work performed by individuals who are not disabled;

(3) Individuals with disabilities who are placed by the project will be given

terms and benefits of employment equal to those that are given to similarly situated co-workers and will not be segregated from their co-workers; and

(4) The project will maintain any records required by the Secretary and make those records available for monitoring and audit purposes.

(Approved by the Office of Management and Budget under control number 1820–0612.)

(Authority: Secs. 621(a)(4), 621(a)(5), 621(b), and 621(e)(1)(B) of the Act; 29 U.S.C. 795g(a)(4), 795g(a)(5), 795g(b), and 795g(e)(1)(B))

Subpart D—How Does the Secretary Make a Grant?

§ 379.30 What selection criteria does the Secretary use under this program?

The Secretary uses the following criteria to evaluate an application:

(a) *Extent of need for project* (20 points). The Secretary reviews each application to determine the extent to which the project meets demonstrated needs. The Secretary looks for evidence that—

(1) The applicant has described an existing current labor market analysis or other needs assessment, or one that it has performed in collaboration with private industry, that shows, for the geographic area to be served, a demand in the competitive labor market for the types of jobs for which project participants will be trained; and

(2) The job training to be provided meets the identified needs for personnel in specific occupations or occupational categories in the geographic area to be served.

(b) *Partnership with industry* (25 points). The Secretary looks for information that demonstrates—

(1) The extent of the project's proposed collaboration with private industry in the planning, implementation, and evaluation of job training, placement, and career advancement activities; and

(2) The extent of proposed participation of the BAC in the identification of job and career opportunities, the skills necessary to perform the jobs and careers identified, and the development of training programs designed to develop these skills.

(c) *Project design and plan of operation for achieving competitive employment outcomes* (25 points). The Secretary reviews each application to determine—

(1) The extent to which the project goals and objectives for achieving competitive employment outcomes for individuals with disabilities to be served by the project are clearly stated and meet the needs identified by the applicant and the purposes of the program;

(2) The extent to which the project provides for all services and activities required under § 379.10;

(3) The feasibility of proposed strategies and methods for achieving project goals and objectives for competitive employment outcomes for project participants;

(4) The extent to which project activities will be coordinated with the State vocational rehabilitation unit and with other appropriate community resources in order to ensure an adequate number of referrals and a maximum use of comparable benefits and services;

(5) The extent to which the applicant's management plan will ensure proper and efficient administration of the project; and

(6) Whether the applicant has proposed a realistic timeline for the implementation of project activities to ensure timely accomplishment of proposed goals and objectives to achieve competitive employment outcomes for individuals with disabilities to be served by the project.

(d) *Adequacy of resources and quality of key personnel* (10 points). The Secretary reviews each application to determine—

(1) The adequacy of the resources (including facilities, equipment, and supplies) that the applicant plans to devote to the project;

(2) The quality of key personnel who will be involved in the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The experience and training of key personnel in fields related to the objectives and activities of the project; and

(3) The way the applicant plans to use its resources and personnel to achieve the project's goals and objectives, including the time that key personnel will commit to the project.

(e) *Budget and cost effectiveness* (10 points). The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Project evaluation* (10 points). The Secretary reviews each application to determine the quality of the proposed evaluation plan with respect to—

(1) Evaluating project operations and outcomes;

(2) Involving the BAC in evaluating the project's job training, placement, and career advancement activities;

(3) Meeting the annual evaluation reporting requirements in § 379.21(a)(5);

(4) Determining compliance with the indicators; and

(5) Addressing any deficiencies identified through project evaluation.

(Approved by the Office of Management and Budget under control number 1820–0612.)

(Authority: Secs. 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

§ 379.31 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria in § 379.30, the Secretary, in making awards under this program, considers—

(a) The equitable distribution of projects among the States; and

(b) The past performance of the applicant in carrying out a similar PWI project under previously awarded grants, as indicated by factors such as compliance with grant conditions, soundness of programmatic and financial management practices, and meeting the requirements of subpart F of this part.

(Authority: Secs. 621(e)(2) and 621(f)(4) of the Act; 29 U.S.C. 795g(e)(2) and 795g(f)(4))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 379.40 What are the matching requirements?

The Federal share may not be more than 80 percent of the total cost of a project under this program.

(Authority: Sec. 621(c) of the Act; 29 U.S.C. 795g(c))

Appendix to § 379.40

(a) For example, if the total cost of a project is $500,000, the Federal share would be no more than $400,000 and the grantee's required minimum share (matching contribution) would be $100,000 (provided in cash or through third party in-kind contributions). The matching contribution is based upon the total cost of the project, not on the amount of the Federal grant award.

(b) The matching contribution must comply with the requirements of 34 CFR 74.23 (for grantees that are institutions of higher education, hospitals, or other nonprofit organizations) or 34 CFR 80.24 (for grantees that are State, local, or Indian tribal governments). The term *third party in-kind contributions* is defined in either 34 CFR 74.2 or 34 CFR 80.3, as applicable to the type of grantee.

§ 379.41 What are allowable costs?

In addition to those costs that are allowable in accordance with 34 CFR 74.27 and 34 CFR 80.22, the following items are allowable costs under this program:

(a) The costs of job readiness training, as defined in § 379.5(b)(4); job training, as defined in § 379.5(b)(5); job placement services; job development and modification; and related vocational rehabilitation services and supportive rehabilitation services.

(b) Instruction and supervision of trainees.

(c) Training materials and supplies, including consumable materials.

(d) Instructional aids.

(e) The purchase or modification of rehabilitation technology to meet the needs of individuals with disabilities.

(f) Alteration and renovation appropriate and necessary to ensure access to and use of buildings by persons with disabilities served by the project.

(g) The modification of any facilities or equipment of the employer to be used by individuals with disabilities under this program.

(Authority: Secs. 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g))

§ 379.42 What are the requirements for a continuation award?

(a) A grantee that wants to receive a continuation award must—

(1) Comply with the provisions of 34 CFR 75.253(a), including making substantial progress toward meeting the objectives in its approved application and submitting all performance and financial reports required by 34 CFR 75.118; and

(2) Submit data in accordance with § 379.54 showing that it has met the program compliance indicators established in Subpart F of this part.

(b) In addition to the requirements in paragraph (a) of this section, the following other conditions in 34 CFR 75.253(a) must be met before the Secretary makes a continuation award:

(1) Congress must appropriate sufficient funds under the program.

(2) Continuation of the project must be in the best interest of the Federal Government.

(Approved by the Office of Management and Budget under control number 1820–0612.)

(Authority: Secs. 12(c) and 621(f)(4) of the Act; 29 U.S.C. 711(c) and 795g(f)(4))

§ 379.43 What are the additional reporting requirements?

Each grantee shall submit the data from its annual evaluation of project operations required under § 379.21(a)(5) no later than 60 days after the end of each project year, unless the Secretary authorizes a later submission date.

(Approved by the Office of Management and Budget under control number 1820–0612.)

(Authority: Secs. 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

Subpart F—What Compliance Indicator Requirements Must a Grantee Meet To Receive Continuation Funding?

§ 379.54 What are the reporting requirements for the compliance indicators?

(a) In order to receive continuation funding for the third or any subsequent year of a PWI grant, each grantee must submit data for the most recent complete project year no later than 60 days after the end of that project year, unless the Secretary authorizes a later submission date, in order for the Secretary to determine if the grantee has met the program compliance indicators established in this Subpart F.

(b) If the data for the most recent complete project year provided under paragraph (a) of this section shows that a grantee has failed to achieve the minimum composite score required in § 379.52(f) to meet the program compliance indicators, the grantee may, at its option, submit data from the first 6 months of the current project year no later than 60 days after the end of that 6-month period, unless the Secretary authorizes a later submission date, to demonstrate that its project performance has improved sufficiently to meet the minimum composite score.

(Approved by the Office of Management and Budget under control number 1820–0612.)

(Authority: Sec. 621(f)(2) of the Act; 29 U.S.C. 795g(f)(2))

Note: A grantee receives its second year of funding (or the first continuation award) under this program before data from the first complete project year is available. Data from the first project year, however, must be submitted and is used (unless the grantee exercises the option in paragraph (b) of this section) to determine eligibility for the third year of funding (or the second continuation award).

* * * * *

§ 379.53 [Amended]

2. Section 379.53 is amended by adding ''(Approved by the Office of Management and Budget under control number 1820–0612.)'' before the authority citation at the end of the section.

[FR Doc. 97–2834 Filed 2–5–97; 8:45 am]

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.234M]

Projects With Industry; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

PURPOSE OF PROGRAM: The Projects With Industry (PWI) program creates and expands job and career opportunities for individuals with disabilities in the competitive labor market by engaging the talent and leadership of private industry as partners in the rehabilitation process. PWI projects identify competitive job and career opportunities and the skills needed to perform those jobs, create practical settings for job readiness and training programs, and provide job placement and career advancement services.

ELIGIBLE APPLICANTS: Employers and profitmaking and nonprofit organizations, including any designated State units, labor unions, employers, community rehabilitation program providers, trade associations, Indian tribes or tribal organizations, and other agencies or organizations with the capacity to create and expand job and career opportunities for individuals with disabilities.

Only eligible applicants that propose to serve a geographic area that is currently unserved or underserved by the PWI program can receive new awards under this program.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: April 21, 1997.

DATELINE FOR INTERGOVERNMENTAL REVIEW: June 20, 1997.

APPLICATIONS AVAILABLE: February 7, 1997.

AVAILABLE FUNDS: $18,472,708.

ESTIMATED RANGE OF AWARDS: $158,000–238,000.

ESTIMATED AVERAGE SIZE OF AWARDS: $198,000.

ESTIMATED NUMBER OF AWARDS: 78–117.

Note: The Department is not bound by any estimates in this notice.

PROJECT PERIOD: Up to 60 months.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; (b) The regulations for this program in 34 CFR part 369; and (c) The regulations for this program in 34 CFR part 379, as published elsewhere in this issue of the Federal Register.

PRIORITIES: *Competitive Preference Priority*. The competitive preference priority concerning Empowerment Zones and Enterprise Communities in the notice of final priorities for this program, published in the Federal Register on December 9, 1994 (59 FR 63860), applies to this competition.

The Federal Government has designated 9 Empowerment Zones (Atlanta, Georgia; Baltimore, Maryland; Chicago, Illinois; Detroit, Michigan; New York, New York; Philadelphia, Pennsylvania/Camden, New Jersey; Kentucky Highlands, Kentucky; Mid-Delta, Mississippi; and Rio Grande Valley, Texas). Two Supplemental Empowerment Zones have been designated—Los Angeles, California and Cleveland, Ohio. A total of 95 Enterprise Communities have been designated. A full list of Enterprise Communities is available upon request from the Department of Housing and Urban Development (HUD) at 1–800–998–9999.

The Secretary gives preference to applications that meet the following competitive priority. Ten bonus points will be assigned to applications determined to be approvable on the basis of their evaluation under the applicable program selection criteria. These bonus points are in addition to any points the application earns under the selection criteria for the program.

Competitive Preference Priority—Providing Program Services in an Empowerment Zone or Enterprise Community

Under the Projects With Industry program, competitive preference will be given to applications that—(1) Propose the provision of substantial services in Empowerment Zones or Enterprise Communities; and (2) Propose projects that contribute to the strategic plan of the Empowerment Zone or Enterprise Community and that are made an integral component of the Empowerment Zone or Enterprise Community activities.

A PWI project may provide services at one or more sites. Under this program a PWI project is considered to be providing substantial services in a zone or community if a minimum of 51 percent of the total number of persons served by the project, irrespective of the number of sites, reside in a zone or community and at least 1 of the project sites is located within the boundaries of a zone or community. If there is only one project site, it must be located within the boundaries of a zone or community.

Invitational Priorities

Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1. Projects that demonstrate the use of alternative work settings, such as flexiplace or telecommuting, to assist individuals with disabilities, especially individuals with severe disabilities, to secure job skills training and employment opportunities in the competitive labor market.

Invitational Priority 2. Projects that demonstrate the use of workplace apprenticeship programs to train persons with disabilities for employment in careers with advancement potential.

Invitational Priority 3. Projects that demonstrate effective outreach and collaboration with minority-owned businesses in order to secure competitive placement opportunities for persons with disabilities. Minority-owned businesses are defined as nonprofit and for-profit entities that are at least 51 percent owned or controlled by one or more minority individuals. Applications should demonstrate a project's capacity to address cultural diversity issues as these issues relate to the training and placement of individuals with disabilities in competitive employment.

Invitational Priority 4. Projects designed to facilitate the school-to-work transition of students who are individuals with disabilities. Projects should focus on placing youth with disabilities in employment with clearly defined career-path or career-advancement opportunities, or both.

FOR APPLICATIONS OR INFORMATION CONTACT: Martha Muskie, U.S. Department of Education, 600 Independence Avenue, SW., Room 3332, Switzer Building, Washington, DC 20202–2649. Telephone: (202) 205–3293. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including 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/). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 29 U.S.C. 795g.

Dated: January 30, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–2835 Filed 2–5–97; 8:45 am]

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Federal Register

Thursday
February 6, 1997

Part III

Department of Health and Human Services

Centers for Disease Control and Prevention

Revised Polio Vaccine Information Materials; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Revised Polio Vaccine Information Materials

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: Under the National Childhood Vaccine Injury Act (42 U.S.C. 300aa–26), the CDC must develop vaccine information materials that health care providers are required to distribute to patients/parents prior to administration of specific vaccines. On August 16, 1996, CDC published a notice in the Federal Register (61 FR 42770) seeking public comment on proposed revision of the polio vaccine information materials to provide information regarding revised recommendations for use of inactivated poliovirus vaccine (IPV) and oral poliovirus vaccine (OPV). The 60 day comment period ended on October 15, 1996. Following review of the comments submitted and consultation as required under the law, CDC has finalized the revised polio vaccine information materials. Those final materials are contained in this notice.

DATES: Effective February 6, 1997. Beginning as soon as practicable, each health care provider who administers any polio vaccine shall, prior to administration of each dose of the vaccine, provide a copy of the vaccine information materials contained in this notice to the parent or legal representative of any child to whom such provider intends to administer the vaccine and to any adult to whom such provider intends to administer the vaccine.

FOR FURTHER INFORMATION CONTACT: Walter A. Orenstein, M.D., Director, National Immunization Program, Centers for Disease Control and Prevention, Mailstop E–05, 1600 Clifton Road, N.E., Atlanta, Georgia 30333, (404) 639–8200.

SUPPLEMENTARY INFORMATION: The National Childhood Vaccine Injury Act of 1986 (Pub. L. 99–660), as amended by section 708 of Public Law 103–183, added section 2126 to the Public Health Service Act. Section 2126, codified at 42 U.S.C. 300aa–26, requires the Secretary of Health and Human Services to develop and disseminate vaccine information materials for distribution by health care providers to any patient (or to the parent or legal representative in the case of a child) receiving vaccines covered under the National Vaccine Injury Compensation Program.

The vaccines currently covered under this program are diphtheria, tetanus, pertussis, measles, mumps, rubella, and poliomyelitis vaccines. Since April 15, 1992, any health care provider who intends to administer one of the covered vaccines is required to provide copies of the vaccine information materials prior to administration of any of these vaccines. The materials currently in use were published in a Federal Register notice on June 20, 1994 (59 FR 31888). (Interim vaccine information materials pertaining to acellular pertussis vaccine combined with diphtheria and tetanus toxoids (DTaP) were published in the Federal Register on September 13, 1996 (61 FR 48596).)

Development and revision of the vaccine information materials have been delegated by the Secretary to the Centers for Disease Control and Prevention. Section 2126 requires that the materials be developed, or revised, after notice to the public with a 60 day comment period, and in consultation with the Advisory Commission on Childhood Vaccines, appropriate health care provider and parent organizations, and the Food and Drug Administration. The law also requires that information contained in the materials be based on available data and information, be presented in understandable terms, and include:

(1) A concise description of the benefits of the vaccine,

(2) A concise description of the risks associated with the vaccine,

(3) A statement of the availability of the National Vaccine Injury Compensation Program, and

(4) Such other relevant information as may be determined by the Secretary.

Revised Polio Vaccine Information Materials

During the past two years, the Advisory Committee on Immunization Practices (ACIP) has been considering changing the recommended schedule for polio vaccination from four doses of oral poliovirus vaccine (OPV) to a sequential schedule of two doses of inactivated poliovirus vaccine (IPV), followed by two doses of OPV for routine childhood immunization. At its meeting in June 1996, the committee voted to approve this new sequential schedule as the preferred polio vaccination schedule, while considering schedules using either all IPV or all OPV as also acceptable and preferred for some children in certain situations. Following review of these recommendations, the Director of the Centers for Disease Control and Prevention adopted the ACIP recommendations on September 18, 1996.

The ACIP based their revised recommendations on a determination that the risk-benefit ratio associated with the exclusive use of OPV for routine immunization has changed because of rapid progress in global polio eradication efforts. In particular, the relative benefits of OPV to the Untied States population have diminished because of the elimination of wild-virus-associated poliomyelitis in the Western Hemisphere and the reduced threat of poliovirus importation into the United States. The risk for vaccine-associated poliomyelitis caused by OPV is now judged less acceptable because of the diminished risk for wild-virus-associated disease. Consequently, the ACIP recommended a transition policy that will increase use of IPV and decrease use of OPV during the next 3–5 years. Implementation of these recommendations should reduce the risk for vaccine-associated paralytic poliomyelitis and facilitate a transition to exclusive use of IPV following further progress in global polio eradication.

Details regarding these recommendations can be found in ''poliomyelitis Prevention in the United States: Introduction of a Sequential Vaccination Schedule of Inactivated Poliovirus Vaccine Followed by Oral Poliovirus Vaccine: Recommendations of the Advisory Committee on Immunization practices (ACIP),'' which was published in the Recommendations and Reports series of the Morbidity and Mortality weekly report on January 24, 1997 (MMWR 1997;46 (No. RR–3) :1–25).

Pending completion of the CDC Director's review and in order to assure timely availability of revised vaccine information materials should the Director adopt the ACIP recommendations, on August 16, 1996, CDC published a notice in the Federal Register (61 FR 42770) seeking public comment on proposed revised polio vaccine information materials.

The 60 day comment period ended on October 15, 1996. Comments were submitted by few individuals and organizations in response to the August 16, 1996 notice. As required by the statute, CDC has also consulted with various groups, including the Advisory Commission on Childhood Vaccines, Food and Drug Administration, American Academy of Family Practitioners, American Academy of Pediatrics, American College of Osteopathic Pediatricians, American Nurses Association, Association of Maternal and Child Health Programs,

Association of State and Territorial Health Officials, Council of State and Territorial Epidemiologists, Dissatisfied Parents Together, Immunization Education and Action Committee: Healthy Mothers/Healthy Babies Coalition, Interamerican College of Physicians and Surgeons, National Association of County Health Officials, National Association of Hispanic Nurses, National Black Nurses' Association, National Coalition of Hispanic Health and Human Services Organizations (COSSMHO), National Council of La Raza, National Medical Association, and Ohio Parents for Vaccine Safety. Comments from the consultants, along with the comments submitted in response to the Federal Register notice, were fully considered in revising the vaccine information materials.

Following consultation and review of comments submitted, revised polio vaccine information materials that comply with the provisions of the National Childhood Vaccine Injury Act have been finalized and are contained in this notice. They are entitled ''Polio Vaccines: What You Need to Know.''

* * * * *

Instructions for Use of Vaccine Information Materials (Vaccine Information Statements)

Required Use

As required under the National Childhood Vaccine Injury Act (42 U.S.C. § 300aa–26), all health care providers in the United States who administer any vaccine containing diphtheria, tetanus, pertussis, measles, mumps, rubella, or polio vaccine shall, prior to administration of *each dose* of the vaccine, provide a copy of the relevant vaccine information materials that have been produced by the Centers for Disease Control and Prevention (CDC):

(a) To the parent or legal representative of any child to whom the provider intends to administer such vaccine, and

(b) To any adult to whom the provider intends to administer such vaccine.

The materials shall be supplemented with visual presentations or oral explanations, in appropriate cases.

''Legal representative'' is defined as a parent or other individual who is qualified under State law to consent to the immunization of a minor.

Additional Recommended Use of Materials

Health care providers may also want to give parents copies of all vaccine information materials prior to the first visit for immunization, such as at the first well baby visit.

Use of Revised Polio Vaccine Information Materials

Beginning as soon as practicable after February 6, 1997, health care providers shall distribute copies of the February 6, 1997 version of the polio vaccine information materials in place of the June 10, 1994 version of the polio materials.

Recordkeeping

Health care providers shall make a notation in each patient's permanent medical record at the time vaccine information materials are provided indicating the edition (date of publication) of the materials distributed and the date these materials were provided. This recordkeeping requirement supplements the requirement of 42 U.S.C. 300aa–25 that all health care providers administering these vaccines must record in the patient's permanent medical record (or in a permanent office log) the name, address and title of the individual who administers the vaccine, the date of administration and the vaccine manufacturer and lot number of the vaccine used.

Applicability of State Law

Health care providers should consult their legal counsel to determine additional State requirements pertaining to immunization. The Federal requirement to provide the vaccine information materials supplements any applicable State law.

Availability of Copies

Single camera-ready copies of the vaccine information materials are available from State health departments. Copies are available in English and in other languages.

* * * * *

Polio Vaccines

What You Need To Know

1. Why Get Vaccinated?

Polio is a disease. It can paralyze (make arms and legs unable to move) or even cause death.

Polio vaccine prevents polio. Before polio vaccine, thousands of our children got polio every year. Polio vaccine is helping to rid the whole of polio. When that happens, no one will ever get polio again, and we will not need polio vaccine.

2. There Are 2 Kinds of Polio Vaccine

IPV

Inactivated Polio Vaccine

A shot

OPV

Oral Polio Vaccine
Drops by mouth

Both vaccines work well.

3. Which Vaccines Should My Child Get and When?

Most children should get 4 doses of polio vaccine at these ages:

- 2 months.
- 4 months.
- 12–18 months.
- 4–6 years.

You can choose to get any of these 3 acceptable schedules:

- 2 shots of IPV, then 2 doses of OPV drops.

or

- 4 shots of IPV.

or

- 4 doses of OPV drops (the 3rd dose can be given as early as 6 months of age).

The Centers for Disease Control and Prevention (CDC) recommends 2 shots of IPV, then 2 doses of OPV drops for most children because this has the advantage of both vaccines.

4. What Are the Risks and Advantages of Each Choice?

Almost all children who complete any of the 3 schedules will be protected from polio.

As with any medicine, vaccines carry a small risk of serious harm, such as a severe allergic reaction (hives, difficulty breathing, shock) or even death.

On rare occasions, OPV can cause polio because it contains live, but weakened, virus. IPV cannot cause polio because it does not contain live virus.

Most people have no problems from either IPV or OPV.

2 Shots/2 Drops (2 IPV, Then 2 OPV)

Risks and Advantages

For most children, the choice using both shots and drops gives the benefits of both vaccines:

- Less risk of getting polio than from all OPV.
- Only 2 shots.
- Protects the community from polio outbreaks better than all IPV.

All Shots (4 IPV)

Risks

- Mild soreness of arm or leg.

Other Disadvantages

- Not as good as OPV for protecting the community from polio outbreaks.

Advantages

- Does not cause polio.

All Drops (4 OPV)

Risks

- Causes about 8 cases of polio each year. (At least 15 million doses have been given each year in the U.S.) This can happen to children who get OPV or people who are in close contact with them. The risk of polio is higher with the first dose than with later doses.

Advantages

- No shots.
- Can best protect the community from polio outbreaks.

5. Some Children Should Get Only Shots. And Some Should Get Only Drops

Do NOT use OPV drops, if your child, *you, or anyone who takes care of your child*

- Can't fight infections.
- Is taking long term steroids.
- Has cancer.
- Has AIDS or HIV infection.

Do NOT use OPV drops, *if you or anyone who takes care of your child* never had polio vaccine.

Do NOT use IPV shots, if your child is allergic to the drugs neomycin, streptomycin, or polymyxin B.

6. Some Children Should Not Get These Vaccines or Should Wait

Tell your doctor or nurse if your child:

- Ever had a serious reaction after getting polio vaccine.
- Now has a moderate or severe illness.

7. What If There Is a Serious Reaction?

What should I look for?

- See item 4, on the other side, for some possible risks.

What should I do?

- Call a doctor or get the person to a doctor right away.
- Tell your doctor what happened, the date and time it happened, and when the vaccination was given.
- Ask your doctor, nurse, or health department to file a Vaccine Adverse Event Report (VAERS) form, or call VAERS yourself at: 1–800–822–7967.

8. The National Vaccine Injury Compensation Program

The National Vaccine Injury Compensation Program is a federal program that gives payment for serious vaccine injuries.

For details call 1–800–338–2382.

9. How Can I Learn More?

- Ask your doctor or nurse. She/he can give you the vaccine package insert or suggest other sources of information.
- Call your local or state health department.
- Contact the Centers for Disease Control and Prevention (CDC):

Call 1–800–232–7468 (English).

or

Call 1–800–232–0233 (Spanish).

or

Visit the CDC website at http://www.cdc.gov/nip.

U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Immunization Program.

Polio (2/6/97)

Vaccine Information Statement

42 U.S.C. 300aa–26

Dated: January 31, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

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Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Ch. I

Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Dietary Supplements; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 96N–0417]

RIN 0910–AA59

Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is considering whether to institute rulemaking to develop current good manufacturing practice (CGMP) regulations for dietary supplements and dietary supplement ingredients. FDA solicits comments on whether it should do so, and if it should, what constitutes CGMP for these products. In issuing this notice, FDA is responding to the section of the Federal Food, Drug, and Cosmetic Act (the act) that provides that the Secretary of Health and Human Services (the Secretary) may, by regulation, prescribe good manufacturing practice for dietary supplements and to a submission from representatives of the dietary supplement industry asking FDA to consider a framework that the industry had developed as a basis for CGMP regulations. FDA is publishing the industry submission and is asking for public comment on the framework that the submission presents. In addition, FDA is requesting comment on a number of other related issues.

DATES: Written comments by May 7, 1997.

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

FOR FURTHER INFORMATION CONTACT: Robert J. Moore, Center for Food Safety and Applied Nutrition (HFS–456), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4605.

SUPPLEMENTARY INFORMATION:

I. Background

On October 25, 1994, the Dietary Supplement Health and Education Act (the DSHEA) (Pub. L. 103–417) was signed into law. The DSHEA, among other things, amended the act by adding section 402(g) (21 U.S.C. 342(g)), which provides, in part, that:

> The Secretary may by regulation prescribe good manufacturing practices for dietary supplements. Such regulations shall be modeled after current good manufacturing practice regulations for food and may not impose standards for which there is no current and generally available analytical methodology. No standard of current good manufacturing practice may be imposed unless such standard is included in a regulation promulgated after notice and opportunity for comment in accordance with chapter 5 of title 5, United States Code.

While section 402(g) of the act does not require that the Secretary (and by delegation, FDA) adopt regulations that prescribe CGMP, a significant segment of the dietary supplement industry has told the agency that such regulations would be helpful for ensuring that dietary supplements are safe for their intended use.

On November 20, 1995, representatives of the dietary supplement industry submitted to FDA a suggested outline for the development of CGMP regulations for dietary supplements. FDA evaluated the outline and determined that it provided an extremely useful starting point should FDA decide to proceed to rulemaking to adopt such regulations. However, the agency recognizes that the first question that must be addressed is whether there is a need for such regulations or whether part 110 (21 CFR part 110) continues to be adequate. The agency also recognizes that if it decides that there is a need for CGMP regulations, certain issues were not addressed in the submission, and that other interested parties, such as consumers, segments of the industry not represented by the manufacturers and trade associations who submitted the outline, and the health care community, should have an opportunity to provide comment before the agency developed a proposal. Therefore, the agency is issuing this notice to solicit comments and other information on whether it should propose new CGMP regulations for dietary supplements and, if it should, what those regulations should include. Based on the submission and the comments that the agency receives in response to this notice, FDA will consider whether to develop a proposed rule that is designed to establish CGMP that will ensure that dietary supplements are produced under conditions that will result in a safe and properly labeled product but that does not impose any unnecessary burden on the industry.

II. The Industry Submission

A. Introduction

On November 30, 1995, FDA met with representatives of the dietary supplement industry at their request (Ref. 1). At that meeting, the industry representatives submitted a document that outlined suggested CGMP for dietary supplements (Ref. 2). The objectives of the CGMP, as stated by the industry representatives, are to ensure that consumers are provided with dietary supplement products that: (1) Are safe and not adulterated or misbranded; (2) have the identity and provide the quantity of dietary ingredients declared in labeling; and (3) meet the quality specifications that the supplement is represented to meet. The industry submission was patterned after the CGMP for food regulation contained in part 110, but also contained requirements beyond those in part 110 that the industry representatives stated that they ''consider essential to the manufacture of safe and properly labeled dietary supplements.'' FDA is publishing the industry suggested dietary supplements CGMP and soliciting comments from industry, consumers, and other interested parties on the need for dietary supplement CGMP regulations and on the requirements that should be included in such regulations.

B. The Industry Draft

The text of the industry suggested dietary supplements CGMP follows:

Good Manufacturing Practices (GMP's) for Dietary Supplements: Statement of Purpose

This document describes Good Manufacturing Practices to be followed in the manufacturing and control operations for dietary supplements and dietary ingredients. The objective of these Good Manufacturing Practices is to assure that consumers are provided with safe dietary supplement products which are not adulterated or misbranded, which have the identity and provide the quantity of dietary ingredients declared in labeling, and which meet the quality specifications that the supplement is represented to meet.

The Food, Drug, and Cosmetic Act defines dietary supplements in section 201(ff). Dietary supplements include a broad spectrum of product forms and a broad spectrum of dietary ingredients. Dietary ingredients may include vitamins; minerals; herbs or other botanicals; amino acids; other dietary substances used to supplement the diet; and concentrates, metabolites, constituents, extracts, or combinations of these. Product forms include tablets, capsules, softgels, gelcaps, liquids, and other forms including—under some conditions—conventional food forms. These Good Manufacturing Practices are intended to encompass all of these types of products. In some cases, judgment may be required in determining the applicability of a specific provision to a particular product or class of products.

Dietary supplements in the physical form of conventional food shall comply with these

Good Manufacturing Practices and with applicable food GMP's. For example, if they are thermally processed low-acid products packaged in hermetically sealed containers, they shall also comply with the applicable GMP's covering that product category.

These Good Manufacturing Practices are modeled after good manufacturing practices for foods. Provisions have been adopted, modified, or expanded as appropriate, considering the special requirements applicable to the manufacture of dietary supplements and dietary ingredients. There is no desire or intent to impose on dietary supplements the type of documentation and validation currently required in the manufacture of pharmaceutical products, where it would be inappropriate or unnecessary to ensure safe and unadulterated products. Dietary supplements are classified as foods, and the Good Manufacturing Practices applicable to them are similar to those generally applicable to other foods.

Proposed Supplement GMP

Definitions

The definitions and interpretations of terms in section 201 of the Federal Food, Drug, and Cosmetic Act (the act) are applicable to such terms when used in this part. The following definitions shall also apply:

(a) ''Adequate'' means that which is needed to accomplish the intended purpose in keeping with good public health practice.

(b) ''Batch or Lot'' means a specific quantity of a finished product or other material that is intended to have uniform character and quality, within specified limits, and is produced according to a single manufacturing order during the same cycle of manufacture.

(c) ''Blanching'' means a prepackaging heat treatment of a dietary product for a sufficient time and at a sufficient temperature to partially or completely inactivate the naturally occurring enzymes and to effect other physical or biochemical changes in the product.

(d) ''Composition'' means, as appropriate:

(1) the identity of a dietary ingredient or dietary supplement, and

(2) the concentration of a dietary ingredient (e.g., weight or other unit of use/weight or volume), or the potency or activity of one or more dietary ingredients, as indicated by appropriate procedures.

(e) ''Dietary ingredient'' means an ingredient intended for use or used in a dietary supplement that is:

(1) a vitamin,

(2) a mineral,

(3) an herb or other botanical,

(4) an amino acid,

(5) a dietary substance for use by man to supplement the diet by increasing the total dietary intake, or

(6) a concentrate, metabolite, constituent, extract, or combination of any of the foregoing ingredients.

(f) ''Dietary product'' means either a dietary ingredient or dietary supplement as defined in this Part.

(g) ''Dietary supplement'' means dietary supplement as defined in section 201(ff) of the act.

(h) ''In-process material'' means any material fabricated, compounded, blended, ground, extracted, sifted, sterilized, derived by chemical reaction or processed in any other way that is produced for, and used in, the preparation of a dietary product.

(i) ''Lot'' means ''batch'' as defined in this part.

(j) ''Lot number'' means any distinctive combination of letters, numbers, or symbols, or any combination of them from which the complete history of the manufacture, processing, packing, holding, and distribution of a batch or lot of a finished dietary ingredient, dietary supplement or other material can be determined.

(k) ''Manufacture'' or ''manufacturing'' includes all operations associated with the production of dietary products, including packaging and labeling operations, testing, and quality control of a dietary ingredient or dietary supplement.

(l) ''Microorganisms'' means yeasts, molds, bacteria, and viruses and includes, but is not limited to, species having public health significance. The term ''undesirable microorganisms'' includes those microorganisms that are of public health significance, that subject food to decomposition, that indicate that a dietary ingredient or dietary supplement is contaminated with filth, or that otherwise may cause a dietary product to be adulterated within the meaning of the act. Occasionally in these regulations, the adjective ''microbial'' is used instead of using an adjectival phrase containing the word microorganism.

(m) ''Pest'' refers to any objectionable animals or insects including, but not limited to, bird, rodents, flies, and larvae.

(n) ''Plant'' means the building or facility or parts thereof, used for or in connection with the manufacturing, packaging, labeling, or holding of a dietary product.

(o) ''Quality control operation'' means a planned and systematic procedure for taking all actions necessary to prevent a dietary product from being adulterated within the meaning of the act.

(p) ''Quality control unit'' means any person or organizational element designated by the firm to be responsible for the duties relating to quality control operations.

(q) ''Raw material'' means any ingredient intended for use in the manufacture of a dietary ingredient or dietary supplement, including those that may not appear in such finished product.

(r) ''Representable sample'' means a sample that consists of a number of units that are drawn based on rational criteria, such as random sampling, and is intended to assure that the sample accurately portrays the material being sampled.

(s) ''Rework'' means clean, unadulterated material that has been removed from processing for reasons other than insanitary conditions or that has been successfully reconditioned by reprocessing and that is suitable for use in the manufacture of a dietary product.

(t) ''Sanitize'' means to adequately treat equipment, containers, or utensils by a process that is effective in destroying vegetative cells of microorganisms of public health significance, and in substantially reducing numbers of other undesirable microorganisms, but without adversely affecting the product or its safety for the consumer.

(u) ''Shall'' is used to state mandatory requirements.

(v) ''Should'' is used to state recommended or advisory procedures or identify recommended equipment.

(w) ''Water activity (a_w)'' is a measure of the free moisture in a dietary ingredient or dietary supplement and is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.

Personnel

The plant management shall take all reasonable measures and precautions to assure the following:

(a) Disease control. Any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination by which there is a reasonable possibility of an in-process or finished dietary product becoming adulterated, or processing equipment, utensils or packaging materials becoming contaminated, shall be excluded from any operations which may be expected to result in such adulteration or contamination until the condition is corrected. Personnel shall be instructed to report such health conditions to their supervisors.

(b) Cleanliness. All persons working in direct contact with raw materials, in-process or finished dietary products, processing equipment, utensils or packaging materials shall conform to hygienic practices while on duty to the extent necessary to protect against adulteration or contamination of such materials. The methods for maintaining cleanliness include, but are not limited to:

(1) Wearing outer garments suitable to the operation in a manner that protects against the adulteration of in-process or finished dietary products, or contamination of processing equipment, utensils or packaging materials.

(2) Maintaining adequate personal cleanliness.

(3) Washing hands thoroughly (and sanitizing if necessary to protect against contamination with undesirable microorganisms) in an adequate hand-washing facility before starting work, after each absence from the work station, and at any other time when the hands may have become soiled or contaminated.

(4) Removing all unsecured jewelry and other objects that might fall into raw materials, in-process or finished dietary product, equipment, or containers, and removing hand jewelry that cannot be adequately sanitized during periods in which in-process or finished product is manipulated by hand. If such hand jewelry cannot be removed, it may be covered by material which can be maintained in an intact, clean, and sanitary condition and which effectively

protects against the adulteration of dietary products or contamination of processing equipment, utensils or packaging materials.

(5) Maintaining gloves, if they are used in-process or finished product handling, in an intact, clean, and sanitary condition. The gloves should be of a material that adequately protects the product from contamination.

(6) Wearing, where appropriate, in an effective manner, hair nets, caps, beard covers, or other effective hair restraints.

(7) Storing clothing or other personal belongings in areas other than where in-process or finished product is exposed or where processing equipment or utensils are washed.

(8) Confining the following to areas other than where in-process or finished product may be stored or exposed, or where processing equipment or utensils are washed: eating food, chewing gum, drinking beverages, or using tobacco.

(9) Taking any other necessary precautions to protect against adulteration of raw materials, in-process or finished product, or contamination of processing equipment, utensils or packaging materials with micro-organisms or foreign substances including, but not limited to, perspiration, hair, cosmetics, tobacco, chemicals, and medicines applied to the skin.

(c) Education and training. Each person engaged in the manufacture of a dietary product should have the proper education, training, and experience (or any combination thereof) needed to perform the assigned functions. Training should be in the particular operation(s) that the employee performs as they relate to the employee's functions. Appropriate documentation of training shall be retained by the manufacturer.

(d) Supervision. Responsibility for assuring compliance by all personnel with all requirements of this part shall be clearly assigned to qualified personnel with proper education, training and experience (or any combination thereof).

Exclusions

The following operations are not subject to this part: Establishments engaged solely in the harvesting, storage, or distribution of one or more ''raw agricultural commodities,'' as defined in section 201(r) of the act, which are ordinarily cleaned, prepared, treated, or otherwise processed before being marketed to the consuming public.

Plant and Grounds

(a) Grounds. The grounds about a dietary product manufacturing plant under the control of the operator shall be kept in a condition that will protect against the adulteration of dietary products. The methods for adequate maintenance of grounds include, but are not limited to:

(1) Properly storing equipment, removing litter and waste, and cutting weeds or grass within the immediate vicinity of the plant buildings or structures that may constitute an attractant, breeding place, or harborage for pests.

(2) Maintaining roads, yards, and parking lots so that they do not constitute a source of adulteration in areas where product is exposed.

(3) Adequately draining areas that may contribute to product adulteration by seepage, foot-borne filth, or providing a breeding place for pests.

(4) Operating systems for waste treatment and disposal in an adequate manner so that they do not constitute a source of adulteration in areas where product is exposed. If the plant grounds are bordered by grounds not under the operator's control and not maintained in the manner described in paragraph (a)(1) through (3) of this section, care shall be exercised in the plant by inspection, extermination, or other means to exclude pests, dirt, and filth that may be a source of product adulteration.

(b) Plant construction and design. Plant buildings and structures shall be suitable in size, construction. and design to facilitate maintenance, cleaning and sanitary operations for dietary product manufacturing purposes and to prevent mixups between different raw materials and products. The plant and facilities shall:

(1) Provide sufficient space for such placement of equipment and storage of materials as is necessary for the prevention of mixups, maintenance of sanitary operations and the production of safe dietary products.

(2) Permit the taking of proper precautions to reduce the potential for mixups or adulteration of in-process or finished dietary product, or contamination of processing equipment, utensils or packaging materials with microorganisms, chemicals, filth, or other extraneous material. The potential for mixups and product adulteration may be reduced by adequate product safety controls and operating practices or effective design, including the separation of operations in which contamination is likely to occur, by one or more of the following means: Location, time, partition, air flow, enclosed systems, or other effective means.

(3) Permit the taking of proper precautions to protect dietary ingredients or dietary supplements in outdoor bulk fermentation vessels by any effective means, including:

(i) Using protective coverings.

(ii) Controlling areas over and around the vessels to eliminate harborages for pests.

(iii) Checking on a regular basis for pests and pest infestation.

(iv) Skimming the fermentation vessels, as necessary.

(4) Be constructed in such a manner that floors, walls, and ceilings may be adequately cleaned and kept clean and kept in good repair; that drip or condensate from fixtures, ducts and pipes does not adulterate raw materials, in-process or finished dietary products, or contaminate product containers, utensils or packaging materials; and that aisles or working spaces are provided between equipment and walls and are adequately unobstructed and of adequate width to permit employees to perform their duties and to protect against adulterating in-process or finished product, or contaminating processing equipment with clothing or personal contact.

(5) Provide adequate lighting in hand-washing areas, dressing and locker rooms, and toilet rooms and in all areas where product is examined, processed, or stored and where equipment or utensils are cleaned; and provide safety-type light bulbs, fixtures, sky-lights, or other glass suspended over exposed product in any step of preparation or otherwise protect against product adulteration in case of glass breakage.

(6) Provide adequate ventilation or control equipment to maintain adequate control over microorganisms, dust, humidity, and temperature, when appropriate, for the manufacture of dietary products; to minimize odors and vapors (including steam and noxious fumes) in areas where they may adulterate dietary products; and locate and operate fans and other air-blowing equipment in a manner that minimizes the potential for adulterating raw materials, in-process or finished dietary products, or contaminating processing equipment, utensils or packaging materials.

(7) Provide, where necessary, adequate screening or other protection against pests.

Sanitation of Buildings and Facilities

(a) General maintenance. Buildings, fixtures, and other physical facilities of the plant shall be maintained in a sanitary condition and shall be kept in repair sufficient to prevent raw materials, in-process or finished dietary products from becoming adulterated within the meaning of the act.

(b) Cleaning and sanitizing materials.

(1) Cleaning compounds and sanitizing agents used in cleaning and sanitizing procedures shall be free from undesirable microorganisms and shall be safe and adequate under the conditions of use. Compliance with this requirement may be verified by any effective means including purchase of these substances under a supplier's guarantee or certification, or examination of these substances for contamination. Only the following toxic materials may be used or stored in a plant where product is processed or exposed:

(i) Those required to maintain clean and sanitary conditions;

(ii) Those necessary for use in laboratory testing procedures;

(iii) Those necessary for plant and equipment maintenance and operation; and

(iv) Those necessary for use in the plant's operations.

(2) Toxic cleaning compounds, sanitizing agents, and pesticide chemicals shall be identified, used, held, and stored in a manner that protects against adulteration of raw materials, in-process or finished product, or contamination of processing equipment or packaging materials. All

relevant regulations promulgated by other Federal, State, and local government agencies for the application, use or holding of these products should be followed. Rodenticides, insecticides, and fungicides should be registered and used in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act.

(c) Pest control. No pests shall be allowed in any area of a dietary product manufacturing plant. Effective measures shall be taken to exclude pests from the processing areas and to protect against the adulteration of product on the premises by pests. The use of insecticides or rodenticides is permitted only under precautions and restrictions that will protect against the adulteration of raw materials, in-process or finished product, or contamination of processing equipment, utensils or packaging materials.

(d) Water supply. Potable water at a suitable temperature, and under pressure as needed, shall be provided in all areas where required for the processing of dietary products, for the cleaning of processing equipment, utensils, and packaging materials, or for employee sanitary facilities. Any water that contacts in-process or finished dietary products, utensils or processing equipment shall meet the standards prescribed in the Environmental Protection Agency's Primary Drinking Water Regulations (40 CFR part 141).

(e) Plumbing. Plumbing shall be of adequate size and design and adequately installed and maintained to:

(1) Carry sufficient quantities of water to required locations throughout the plant.

(2) Properly convey sewage and liquid disposable waste from the plant.

(3) Avoid constituting a source of adulteration to product, or contamination of water supplies, processing equipment, or utensils or creating an unsanitary condition.

(4) Provide adequate floor drainage or other appropriate means of water removal in all areas where floors are subject to flooding-type cleaning or where normal operations release or discharge water or other liquid waste on the floor.

(5) Provide that there is not backflow from, or crossconnection between, piping systems that discharge waste water or sewage and piping systems that carry water used for the manufacture of dietary products.

(f) Sewage disposal. Sewage disposal shall be made into an adequate sewerage system or disposed of through other adequate means.

(g) Toilet facilities. Each plant shall provide its employees with adequate, readily accessible toilet facilities. Compliance with this requirement may be accomplished by:

(1) Maintaining the facilities in a sanitary condition.

(2) Keeping the facilities in good repair at all times.

(3) Providing self-closing doors.

(4) Providing doors that do not open into areas where dietary product is exposed to airborne contamination, except where alternate means have been taken to protect against such contamination (such as double doors or positive air-flow systems).

(h) Hand-washing facilities. Hand-washing facilities shall be adequate and convenient and be furnished with running water at a suitable temperature. Compliance with this requirement may be accomplished by providing:

(1) Hand-washing and, where appropriate, hand-sanitizing facilities at each location in the plant where good sanitary practices require employees to wash and/or sanitize their hands.

(2) Effective hand-cleaning and sanitizing preparations.

(3) Air driers, sanitary towel service or suitable drying devices.

(4) Devices or fixtures, such as water control valves, so designed and constructed to protect against recontamination of clean, sanitized hands.

(5) Readily understandable signs directing employees handling unprotected product, packaging materials, utensils or processing equipment to wash and, where appropriate, sanitize their hands before they start work, after each absence from post of duty, and when their hands may have become soiled or contaminated. These signs may be posted in the processing room(s) and in all other areas where employees may handle such products, materials, utensils or equipment.

(6) Refuse receptacles that are constructed and maintained in a manner that protects against adulteration of dietary products.

(i) Rubbish disposal. Rubbish shall be so conveyed, stored, and disposed of as to minimize the development of odor, minimize the potential for the waste becoming an attractant and harborage or breeding place for pests, and protect against adulteration of raw materials, in-process or finished dietary products, or contamination of utensils, processing equipment, water supplies, and ground surfaces.

(j) Supervision. Overall sanitation of the plant shall be under the supervision of one or more individuals qualified by education, experience and training (or any combination thereof) assigned responsibility for assuring that sanitation procedures are accomplished.

Equipment and Utensils

(a) Design and construction.

(1) All plant equipment and utensils shall be so designed and of such material and workmanship as to be adequately cleanable, and shall be properly maintained.

(2) The design, construction and use of equipment and utensils shall preclude the adulteration of raw materials, packaging materials, in-process materials or finished product with lubricants, fuel, metal fragments, contaminated water, or any other contaminants.

(3) All equipment should be so installed and maintained as to facilitate the cleaning of the equipment and of all adjacent spaces. Processing equipment and utensils shall be corrosion-resistant when in contact with raw materials, in-process or finished dietary product. They shall be made of nontoxic materials and designed to withstand the environment of their intended use and the action of dietary products, and, if applicable, cleaning compounds and sanitizing agents. Processing equipment and utensils shall be maintained to protect dietary products from being adulterated by any source.

(4) Seams on utensils and processing equipment shall be smoothly bonded or maintained so as to minimize accumulation of product, dirt, and organic matter and thus minimize the opportunity for growth of microorganisms.

(5) Equipment that is in the manufacturing or product handling area and that does not come into contact with a dietary product shall be so constructed that it can be kept in a clean condition.

(6) Holding, conveying, and manufacturing systems, including gravimetric, pneumatic, closed, and automated systems, shall be of a design and construction that enables them to be maintained in an appropriate clean condition.

(7) Each freezer and cold storage compartment used to store and hold a dietary product capable of supporting growth of microorganisms shall be fitted with an indicating thermometer, temperature-measuring device, or temperature-recording device so installed as to show the temperature accurately within the compartment, and should be fitted with an automatic control for regulating temperature or with an automatic alarm system to indicate a significant temperature change in a manual operation.

(8) Instruments and controls used in the manufacture, processing, packing or holding dietary products, including instruments and controls used for measuring, regulating, or recording temperatures, pH, acidity, water activity, or other conditions that control or prevent the growth of undesirable microorganisms in such products shall be accurate and adequately maintained, and adequate in number for their designated uses.

(9) Compressed air or other gases mechanically introduced into a dietary product or used to clean equipment or utensils shall be treated in such a way that dietary ingredients or dietary supplements are not adulterated.

(b) Sanitation of equipment and utensils.

(1) Cleaning and sanitizing of utensils and equipment shall be conducted in a manner that protects against adulteration of raw materials, in-process or finished dietary product, processing equipment, utensils or packaging materials.

(2) All utensils and processing equipment shall be cleaned as frequently as necessary to protect against product adulteration.

(3) Utensils and processing equipment used for manufacturing or holding of dry dietary products shall be in a dry, sanitary condition at the time of use. When the surfaces are wet-cleaned, they shall, when necessary, be sanitized and thoroughly dried before subsequent use.

(4) In wet processing, when cleaning is necessary to protect against the introduction of microorganisms into a dietary product, all utensils and processing equipment shall be cleaned and sanitized as appropriate before use and after any interruption during which the utensils or processing equipment may have become contaminated. Where equipment and utensils are used in a continuous production operation or in back-to-back operations involving different batches of the same products, the utensils and product-contact surfaces of the equipment shall be cleaned and sanitized as appropriate.

(5) Nonproduct-contact surfaces of equipment should be cleaned as frequently as necessary to protect against product adulteration.

(6) Single-service articles (such as utensils intended for one-time use, paper cups, and paper towels) should be stored in appropriate containers and shall be handled, dispensed, used, and disposed of in a manner that protects against adulteration of dietary products, and contamination of utensils and processing equipment.

(7) Sanitizing agents shall be adequate and safe under conditions of use. Any facility, procedure, or machine is acceptable for cleaning and sanitizing equipment and utensils if it is established that the facility, procedure, or machine will routinely render equipment and utensils clean and provide adequate cleaning and sanitizing treatment.

(8) Cleaned and sanitized portable equipment with product-contact surfaces and utensils should be stored in a location and manner that protects product-contact surfaces from contamination.

(9) Equipment and utensils and finished product containers shall be maintained in an acceptable condition through appropriate cleaning and sanitizing, as necessary. Insofar as necessary, equipment shall be taken apart for thorough cleaning.

(10) Written procedures shall be established and followed for cleaning and maintaining equipment and utensils used in the manufacture of dietary products.

(11) A written record of major equipment cleaning and use shall be maintained in individual equipment logs that show the date, product and lot number of each batch processed. The persons performing the cleaning shall record in the log that the work was performed. Entries in the log should be in chronological order.

(12) Equipment, containers, and utensils used to convey, hold, or store raw materials, in-process material, rework, or finished product shall be constructed, handled, and maintained during manufacturing or storage in a manner that protects against contamination.

Quality Control and Laboratory Operations

Appropriate quality control operations shall be employed to assure that dietary products conform to appropriate standards of purity, quality and composition, and that packaging materials are safe and suitable for their intended purpose.

(a) Quality control unit.

(1) There shall be a quality control unit that has the responsibility and authority to:

(i) Approve or reject all procedures, specifications, controls, tests and examinations, or deviations from them, that impact the purity, quality and composition of a dietary ingredient or dietary supplement;

(ii) Approve or reject all raw materials, packaging materials labeling, and finished dietary products, including products manufactured. processed, packed, or held under contract by another company, based on adequate determination of conformance to established specifications; and

(iii) Assure that completed production records are reviewed as appropriate. Quality control shall be responsible for evaluation of errors committed in the manufacture of a product and shall have the final authority to determine if the error may be corrected in such manner that the product can be approved for distribution or must be destroyed. Such evaluations and their resolution must be documented and maintained with and/or cross referenced in the batch production record.

(2) Adequate laboratory facilities should be available, as needed, to the quality control unit.

(3) The responsibilities and procedures applicable to the quality control unit shall be established in writing and followed.

(b) Laboratory records. Laboratory records shall be maintained and shall include complete data derived from all specified tests.

(c) Expiration dating.

(1) Whenever a dietary ingredient or dietary supplement bears an expiration date, such date shall be supported by data and rationale to reasonably assure that the product meets established specifications at the expiration date.

(2) Appropriate accelerated stability studies or data from similar product formulations may be used for an initial determination of shelf life. Product shelf life shall be confirmed and may be extended on the basis of real time studies on product stored under labeled storage conditions.

Production and Process Controls

(a) Master production and control records.

(1) To assure uniformity from batch to batch, a master production and control record shall be prepared for the manufacture of each dietary ingredient and dietary supplement, and shall be reviewed and approved by the quality control unit.

(2) Master production and control records shall include, as appropriate.

(i) A complete list of raw materials used in the manufacture of a dietary product, designated by names or codes sufficiently specific to indicate any special quality characteristic(s).

(ii) An accurate statement of the weight or measure of each raw material used in the manufacture of a dietary product. Each batch shall be formulated with the intent to provide not less than 100 percent of each claimed dietary ingredient.

(iii) For dietary supplements, the name and weight or measure of each dietary ingredient per unit or portion or per unit of weight or measure of the supplement.

(iv) A statement concerning any calculated excess of dietary ingredient contained in a dietary supplement.

(v) A statement of the total weight or measure of any dietary supplement unit.

(vi) A statement of theoretical weight or measure of a dietary ingredient or dietary supplement expected at the conclusion of manufacture, including the maximum and minimum percentages of theoretical yield beyond which investigation is required.

(vii) A description of the product container(s), closure(s), and other packaging materials, including positive identification of all labeling used.

(viii) Manufacturing and control instructions, designed to assure that the dietary product has the purity, composition, and quality it is represented to possess.

(b) Batch production and control records.

(1) Individual batch production and control records shall be prepared and followed for each batch of dietary product produced and shall include complete information relating to the production and control of each batch.

(2) These records shall be an accurate reproduction of the appropriate master production and control record and shall include documentation that each significant step in the manufacture, processing, packing, or holding of the batch was accomplished, including:

(i) Dates;

(ii) Identity of individual major equipment and lines used;

(iii) Specific identification, including lot number, of each raw material or in-process material used;

(iv) Weight or measure of each raw material used in the course of processing;

(v) Quality control results;

(vi) Inspection of the packaging and labeling area;

(vii) A statement of the actual yield at the conclusion of manufacture and a statement of the percentage of theoretical yield, as appropriate;

(viii) Label control records, including specimens, copies, or records of all labels used;

(ix) Description of product containers and closures used; and

(x) Any special notes of investigations or deviations from the described process.

(3) Any deviation from written, approved specifications, standards, test procedures, or other laboratory control mechanisms shall be recorded and justified.

(c) Handling and storage of raw materials, in-process materials and rework.

(1) Raw materials, in-process materials and rework shall be inspected and segregated or otherwise handled as necessary to ascertain that they are clean and suitable for processing into dietary products and shall be stored under conditions that will protect against adulteration and minimize deterioration.

Containers of raw materials should be inspected on receipt to assure that their condition has not contributed to the adulteration or deterioration of the contents.

Liquid or dry raw materials and other ingredients received and stored in bulk form shall be held in a manner that protects against contamination.

(2) Raw agricultural materials that contain soil or other contaminants shall be washed or cleaned as necessary. Water used for washing, rinsing, or conveying raw agricultural materials shall be safe and of adequate sanitary quality. Notwithstanding the general requirement for potable water, water may be reused for washing, rinsing, or conveying raw agricultural materials, if it does not increase the level of contamination of the such materials.

(3) Raw materials, in-process materials, and rework shall be held in bulk, or in containers designed and constructed so as to protect against adulteration and shall be held at such temperature and relative humidity and in such a manner as to prevent a dietary ingredient or dietary supplement from becoming adulterated within the meaning of the act. Material scheduled for rework shall be identified as such.

(4) Frozen raw materials and other ingredients shall be kept frozen. If thawing is required prior to use, it shall be done in a manner that prevents the raw materials and other ingredients from becoming adulterated within the meaning of the act.

(5) Written procedures shall be established and followed describing the receipt, identification, examination, handling, sampling, testing and approval or rejection of raw materials.

(6) Each lot of raw material shall be identified with a distinctive lot number and shall be appropriately controlled according to its status (e.g., quarantined, approved, rejected).

(7) Raw material samples shall be examined and tested as follows:

(i) Each lot of raw material, in-process material, and rework that is liable to adulteration with filth, insect infestation, or other visually evident extraneous material shall be examined against established specifications for such adulteration, and shall comply with any applicable Food and Drug Administration regulations and guidelines. In lieu of such examination by the manufacturer, a guarantee or certification of examination may be accepted from the supplier of a component provided that the manufacturer establishes the reliability of the supplier's examination.

(ii) Each lot of a raw material that is liable to microbiological contamination that is objectionable in view of its intended use shall be subjected to microbiological tests before use. Raw materials shall either not contain levels of microorganisms that may produce food poisoning or other disease in humans, or they shall be otherwise treated during manufacturing operations so that they no longer contain levels that would cause the product to be adulterated within the meaning of the act. In lieu of such testing by the manufacturer, a guarantee or certification of analysis may be accepted from the supplier of a component provided that the manufacturer establishes the reliability of the supplier's analyses.

(iii) Raw materials and other ingredients susceptible to adulteration with aflatoxin or other natural toxins shall comply with current Food and Drug Administration regulations, guidelines, and action levels for poisonous or deleterious substances before these materials or ingredients are incorporated into a finished dietary ingredient or dietary supplement. Compliance with this requirement may be accomplished by analyzing these materials and ingredients for aflatoxins and other natural toxins or, in lieu of such testing by the manufacturer, a guarantee or certification of analysis may be accepted from the supplier of a component provided that the manufacturer establishes the reliability of the supplier's analyses.

(iv) Each lot of raw material shall undergo at least one test by the manufacturer to verify its identity. Such tests may include any appropriate test with sufficient specificity to determine identity, including chemical and laboratory tests, gross organoleptic analysis, microscopic identification, or analysis of constituent markers.

(v) Each lot of raw material shall be tested for conformity with all other established specifications. In lieu of such testing by the manufacturer, a guarantee or certification of analysis may be accepted from the supplier of a component provided that the manufacturer establishes the reliability of the supplier's analyses.

(8) Approved raw materials shall be rotated so that the oldest approved stock is used first. Deviation from this requirement is permitted if such deviation is temporary and appropriate.

(9) Raw materials shall be retested or reexamined and approved or rejected by the quality control after a specified time in storage or after exposure to air, heat, or other conditions that are likely to adversely affect the purity, quality, or composition of the raw material.

(10) Rejected raw materials, shall be identified and controlled under a system that prevents their use in manufacturing or processing operations for which they are unsuitable.

(d) Manufacturing operations.

(1) All operations in the receiving, inspecting, transporting, segregating, preparing, manufacturing, packaging, and storing of dietary products shall be conducted in accordance with adequate sanitation principles.

(2) All reasonable precautions shall be taken to assure that production procedures do not contribute adulteration from any source. Chemical, microbial, or extraneous-material testing procedures shall be used where necessary to identify sanitation failures or possible product adulteration.

(3) All product that has become contaminated to the extent that it is adulterated within the meaning of the act shall be rejected, or if permissible, treated or processed to eliminate the contamination.

(4) All product manufacturing, including packaging and storage, shall be conducted under such conditions and controls as are necessary to minimize the potential for the growth of microorganisms, or for the adulteration of raw materials, in-process materials and finished product.

(5) Measures such as sterilizing, irradiating, pasteurizing, freezing, refrigerating, controlling pH or controlling water activity (a_w) that are taken to destroy or prevent the growth of undesirable microorganisms, particularly those of public health significance, shall be adequate under the conditions of manufacture, handling, and distribution to prevent dietary products from being adulterated within the meaning of the act.

(6) Work-in-process shall be handled in a manner that protects against adulteration.

(7) Effective measures shall be taken to protect finished dietary ingredients and dietary supplements from adulteration by raw materials, in-process materials or refuse. When raw materials, in-process materials or refuse are unprotected, they shall not be handled simultaneously in a receiving, loading, or shipping area if that handling could result in adulterated dietary products. Dietary ingredients and dietary supplements transported by conveyor shall be protected against adulteration as necessary.

(8) All raw material containers, compounding and storage containers, processing lines and major equipment used during the production of a batch shall be properly identified at all times to indicate their contents and when necessary, the phase of processing of the batch.

(9) Effective measures shall be taken as necessary to protect against the inclusion of metal or other extraneous material in product. Compliance with this requirement may be accomplished by using sieves, traps, magnets, electronic metal detectors, or other suitable effective means.

(10) Dietary products, raw materials, and in-process materials that are rejected or adulterated within the meaning of the act shall be identified, stored and disposed of in a manner that protects against the adulteration of other products.

(11) Written procedures shall be established and followed that describe

appropriate tests, and/or examinations to be conducted that may be necessary to assure the purity, composition, and quality of the finished product.

(12) Written procedures shall be established and followed prescribing the method for reprocessing batches or operational start-up materials that do not conform to finished goods standards or specifications. Finished goods manufactured using such materials shall meet all established purity, composition, and quality standards.

(13) Mechanical manufacturing steps such as cutting, sorting, inspecting, shredding, drying, grinding, blending, and sifting shall be performed so as to protect dietary ingredients and dietary supplements against adulteration. Compliance with this requirement may be accomplished by providing adequate physical protection of dietary products from contact with adulterants. Protection may be provided by adequate cleaning and sanitizing of all processing equipment between each manufacturing step.

(14) Heat blanching, when required in the preparation of a dietary product, should be effected by heating the product to the required temperature, holding it at this temperature for the required time, and then either rapidly cooling the material or passing it to subsequent manufacturing without delay. Thermophilic growth and contamination in blanchers should be minimized by the use of adequate operating temperatures and by periodic cleaning. Where the blanched product is washed prior to filling, potable water shall be used.

(15) Intermediate or dehydrated dietary products that rely on the control of water activity (a_w) for preventing the growth of undesirable microorganisms shall be processed to and maintained at a safe moisture level. Compliance with this requirement may be accomplished by any effective means, including employment of one or more of the following practices:

(i) Monitoring the water activity (a_w) of the material.

(ii) Controlling the soluble solids-water ratio in finished product.

(iii) Protecting finished product from moisture pickup, by use of a moisture barrier or by other means, so that the water activity (a_w) of the product does not increase to an unsafe level.

(16) Dietary ingredients and dietary supplements that rely principally on the control of pH for preventing the growth of undesirable microorganisms shall be monitored and maintained at an appropriate pH. Compliance with this requirement may be accomplished by any effective means, including employment of one or more of the following practices:

(i) Monitoring the pH of raw materials, in process material, and finished product.

(ii) Controlling the amount of acid added to the product.

(17) When ice is used in contact with dietary products, it shall be made from potable water, and shall be used only if it has been manufactured in accordance with current good manufacturing practice as outlined in 21 CFR part 110.

(e) Packaging and labeling operations.

(1) Filling, assembling, packaging, and other operations shall be performed in such a way that dietary products are protected against adulteration. Compliance with this requirement may be accomplished by any effective means, including:

(i) Adequate cleaning and sanitizing of all filling and packaging equipment, utensils, and product containers, as appropriate.

(ii) Using materials for product containers and packaging materials that are safe and suitable.

(iii) Providing physical protection from adulteration, particularly airborne contamination.

(iv) Using sanitary handling procedures.

(2) Written procedures shall be established and followed describing in sufficient detail the control procedures employed for the receipt, storage, handling, sampling, examination, and/or testing that may be necessary to assure the identity of labeling and the appropriate identity, cleanliness and quality characteristics of packaging materials for dietary products.

(3) For dietary supplements, labels and other labeling materials for each different product type, strength, or quantity of contents shall be stored separately with suitable identification.

(4) Obsolete labels, labeling, and other packaging materials for dietary products shall be destroyed.

(5) Written procedures shall be established and followed to assure that correct labels, labeling, and packaging materials are issued and used for dietary products.

(6) Dietary ingredient and dietary supplement packages shall be identified with a lot number that permits determination of the history of the manufacture and control of the batch.

(7) Packaged and labeled dietary supplements shall be examined to provide assurance that containers and packages in the lot have the correct label and lot number. Products not meeting specifications shall be rejected by the quality control unit.

Warehousing, Distribution and Post-Distribution Procedures

(a) Storage and distribution.

(1) Storage and transportation of finished product shall be under conditions that will protect product against physical, chemical, and microbial adulteration as well as against deterioration of the product and the container.

(2) Adequate distribution records shall be maintained and retained by the manufacturer at least 1 year beyond expected product shelf life, whereby an effective product recall can be achieved should one become necessary.

(b) Reserve samples. An appropriately identified reserve sample that is representative of each batch of a dietary product should be retained and stored under conditions consistent with the product labeling until at least 1 year after the expiration date, or if no expiration date is identified on the product, for at least 3 years after the date of manufacture. The reserve sample should be stored in the same immediate container-closure system in which the finished product is marketed or in one that provides similar protection. The reserve sample shall consist of at least twice the quantity necessary to perform all the required tests.

(c) Records retention.

(1) Any laboratory, production, control or distribution record specifically associated with a batch of product shall be retained for at least 1 year after the expiration date of the batch, or if no expiration date is identified on the product, for at least 3 years after the date of manufacture.

(2) Raw material records shall be maintained for at least 1 year after the expiration date of the last batch of product incorporating the raw material, or if no expiration date is identified on the product, for at least 3 years after the date of manufacture of the finished product.

(d) Complaint files.

(1) Written procedures describing the handling of all written and oral complaints regarding a dietary product shall be established and followed. Such procedures shall include provisions for review by the quality control unit of any complaint involving the possible failure of a product to meet any of its specifications and, for such products, a determination as to the need for an investigation.

(2) A written record of each complaint shall be maintained, until at least 1 year after the expiration date of the product, or 1 year after the date that the complaint was received, whichever is longer.

(3) The written record shall include, where known: The name and description of the product, lot number, name of complainant, nature of complaint, and reply to complainant, if any.

(4) Where an investigation is conducted, the written record shall include the findings of the investigation and followup action taken.

(e) Returned products. Returned dietary products shall be identified as such and held. If the conditions under which returned dietary products have been held, stored, or shipped before or during their return, or if the condition of the product, its container, carton, or labeling as a result of storage or shipping, casts doubt on the purity, composition or quality of the product, the returned product shall be destroyed unless examination, testing, or other investigations prove the product meets appropriate standards of purity, composition, and quality. A product may be reprocessed provided the subsequent product meets appropriate specifications. Records pertaining to returned products that are subsequently reprocessed and/or redistributed shall be maintained and shall include the name and description of the

product, lot number, reason for the return, quantity returned, date of disposition, and ultimate disposition of the returned product.

(f) Product salvaging. Dietary products that have been subjected to improper storage conditions including extremes in temperature, humidity smoke, fumes, pressure, age, or radiation due to natural disasters, fires, accidents, or equipment failures shall not be salvaged and returned to the marketplace. Whenever there is a question whether products have been subjected to such conditions, salvaging operations may be conducted only if there is: (1) Evidence from laboratory tests that the products meet all applicable standards of purity, quality, and composition; and (2) evidence from inspection of the premises that the products and their associated packaging were not subjected to improper storage conditions as a result of the disaster or accident. Records including name, lot number, and disposition shall be maintained for products subject to this section.

(g) Defect action levels.

(1) Some dietary ingredients and dietary supplements, even when produced under current good manufacturing practice, contain natural or unavoidable defects that at low levels are not hazardous to health. The Food and Drug Administration establishes maximum levels for these defects in dietary products produced under current good manufacturing practice and uses these levels in deciding whether to recommend regulatory action.

(2) Defect action levels are established for dietary products whenever it is necessary and feasible to do so. These levels are subject to change upon the development of new technology or the availability of new information.

(3) Compliance with defect action levels does not excuse violation of the requirement in section 402(a)(4) of the act that dietary products not be prepared, packed, or held under unsanitary conditions or the requirements in this part that dietary product manufacturers, distributors, and holders shall observe current good manufacturing practice. Evidence indicating that such a violation exists causes a dietary product to be adulterated within the meaning of the act, even though the amounts of natural or unavoidable defects are lower than the currently established defect action levels. The manufacturer, distributor, and holder of a dietary product shall at all times utilize quality control operations that reduce natural or unavoidable defects to the lowest level currently feasible.

(4) The mixing of a dietary ingredient or dietary supplement containing defects above the current defect action level with another lot of dietary ingredient or dietary supplement is not permitted and renders the final product adulterated within the meaning of the act, regardless of the defect level of the final product.

(5) A compilation of the current defect action levels for natural or unavoidable defects in dietary products that present no health hazard may be obtained upon request from the Industry Programs Branch (HFF–326), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

III. Economic Issues

FDA requests comment on and descriptions of CGMP in the dietary supplement industry. The agency seeks information on how closely the current practices of firms manufacturing dietary supplements conform to the industry submission, and on how costly it would be to bring those practices into conformity. The agency asks for comments on whether there should be new CGMP regulations, whether the regulations should be mandatory or voluntary, and, if mandatory, how long it would take establishments to come into compliance. Because FDA would like to determine how current manufacturing practices differ with plant size, the agency particularly requests comments from both small businesses and large businesses.

The establishment of CGMP could have effects on small businesses in the dietary supplement industry. There are several possible definitions of ''small'' that can be applied to dietary supplements. Although the Small Business Administration (SBA) does not define small for the dietary supplement industry, the industry's products are generally closest to foods and botanicals. The SBA size standards for small businesses are 500 or fewer employees for food preparations, 750 or fewer employees for botanical products, and annual sales revenue less than $5 million for businesses that cannot be classified into a specific industry. The *Nutrition Business Journal* (August 1996) divides firms into large (annual sales over $100 million), medium (annual sales between $20 and $100 million), and small (annual sales under $20 million). Under any of the possible definitions, instituting CGMP's for the industry has the potential to affect a significant number of small businesses. FDA asks for comments on this matter.

IV. Summary and Request for Comments

FDA asks for comments on the regulatory framework presented in the industry submission in section II. of this document and the economic issues discussed above. In addition, the agency requests comments on the following issues:

1. Is there a need to develop specific defect action levels (DAL's) for dietary ingredients? While FDA has established DAL's for many food ingredients, including botanical food ingredients, these DAL's reflect their use for specific purposes, for example, the use of many botanicals as spices, flavorings, or other trace ingredients in foods. The DAL's are designed to provide reasonable assurance of the safety and wholesomeness of the ingredient when it is present in the food supply in small quantities. However, the use of a botanical in a dietary supplement may result in a much greater exposure to the botanical ingredient for consumers because the dietary supplement will be consumed in greater amounts than if the ingredient was in a food as a spice or flavoring agent. Therefore, FDA tentatively concludes that it would not be appropriate to apply the current DAL's to dietary supplements, and the agency requests comments that would assist in developing DAL's for dietary supplements.

2. FDA requests comments on appropriate testing requirements to provide positive identification of dietary ingredients, particularly plant materials, used in dietary supplements. The misidentification of dietary ingredients, particularly plant materials, used in dietary supplements may present a significant public health and economic concern. However, the analytical methodology available for identifying many dietary ingredients is limited. Furthermore, section 402(g)(2) of the act states that CGMP regulations may not impose standards for which there is no current and generally available analytical methodology. FDA is asking for comments on the technical and scientific feasibility for the identification of different types of dietary ingredients. The agency also solicits information on what constitutes ''adequate testing'' for identity of different types of ingredients, and, in the absence of testing, what types of practices would be effective alternatives to testing to ensure the identity of different types of dietary ingredients.

3. FDA requests comments on standards that should be met in certifying that a dietary ingredient or dietary supplement is not contaminated with filth; that it is free of harmful contaminants, pesticide residues, or other impurities; that it is microbiologically safe; and that it meets specified quality and identity standards. For food (§ 110.80), it is CGMP for a manufacturer to accept certification from a supplier that products do not contain microorganisms or filth or other foreign material that would adulterate the product in lieu of direct testing or evaluation of the raw materials or final product. However, many ingredients used in dietary supplements do not have a history of food use in the United

States, and thus the potential for contamination with microorganisms or filth is unknown. The agency does not have information that provides a basis for it to determine whether certification by a supplier provides adequate assurance that a dietary ingredient is what it purports to be and is not adulterated. Therefore, the agency asks for comments on whether a certification will provide assurance that dietary ingredients are not contaminated, or whether specific testing requirements are necessary and would effectively ensure the safety and wholesomeness of these products.

4. CGMP is intended to ensure that a firm follows quality control and other procedures necessary to ensure that a food is safe for its intended use. It is possible that a firm will develop adequate standard operating procedures and other mechanisms to achieve this end, but that such procedures will not be followed. The agency asks for comments on whether there is a need for CGMP to include requirements for manufacturers to establish procedures to document that the procedures prescribed for the manufacture of a dietary supplement are followed on a continuing or day-to-day basis.

FDA is aware that no provision of part 110 deals with the establishment of documentation that a manufacturer is following established procedures prescribed for the manufacture of a dietary supplement, and that section 402(g) of the act states that any CGMP regulations for dietary supplements are to be modeled after the CGMP regulations for food. However, FDA's tentative judgment is that section 402(g) of the act does not preclude FDA from adopting CGMP regulations for dietary supplements that have no counterpart in part 110 if there is an appropriate basis for so doing. FDA requests comments on this issue.

5. The agency asks for comments on whether dietary supplement CGMP should require that reports of injuries or illnesses to a firm be evaluated by competent medical authorities to determine whether followup action is necessary to protect the public health. Many dietary supplements contain pharmacologically active substances, and some may contain potential allergens that result in adverse events in certain consumers. The presence of pharmacologically active substances in these products distinguishes them from most other foods. Because of the potential for serious injury or illness in some persons from the consumption of such substances, it may be necessary that trained medical professionals, rather than quality control or nonmedical scientific/regulatory personnel, evaluate all reported adverse events associated with the use of a specific substance and advise responsible management of their findings. FDA also asks for comments on whether CGMP for dietary supplements should contain a requirement that a firm establish procedures for determining whether a reported injury constitutes a serious problem, and what actions are to be taken when serious problems are identified.

FDA is aware that no provision of part 110 deals with followup to reports of illness or injury, and that section 402(g) of the act states that any CGMP regulations for dietary supplements are to be modeled after the CGMP regulations for food. However, as stated above, FDA's tentative judgment is that section 402(g) of the act does not preclude FDA from adopting CGMP regulations for dietary supplements that have no counterpart in part 110 if there is an appropriate basis for so doing.

6. FDA asks for comments on whether CGMP for dietary supplements should require that manufacturers establish procedures to identify, evaluate, and respond to potential safety concerns with dietary ingredients. As discussed above, many dietary ingredients have little history of use in food in the United States or of use in the amounts that would be used in a dietary supplement. Moreover, dietary ingredients are excepted from the definition of ''food additive'' in section 201(s)(6) of the act (21 U.S.C. 321(s)(6)). In these circumstances, it may be appropriate to provide that CGMP requires that a manufacturer critically evaluate the available scientific information on the safety of the dietary ingredients that it intends to use in its products to assure itself that those products will be safe. FDA asks for comments on whether such an evaluation is necessary, and, if so, what elements need to be included in such an evaluation and their relative importance (e.g., the presence and potency of pharmacologically active substances, the presence of different microorganisms, the presence of different contaminants and impurities). In addition, the agency asks for comments on whether it should require that such an evaluation be documented in a firm's records, and, if so, what type of records would be adequate to document that such an evaluation had occurred.

7. The agency asks for comments on whether specific controls are necessary for computer controlled or assisted operations. Many modern manufacturing operations rely on computers to ensure that proper procedures are followed in the handling and processing of ingredients and the manufacture of food products. If such equipment is used in the production of dietary supplements, FDA requests comment on how best to ensure that the software programs and equipment used to direct and monitor the manufacturing process are properly designed, tested, validated, and monitored.

8. The agency asks for comments on whether certain, or all, of the requirements for manufacturing and handling dietary ingredients and dietary supplements may be more effectively addressed by a regulation based on the principles of Hazard Analysis and Critical Control Points (HACCP), rather than the system outlined in the industry submission. FDA has issued regulations based on HACCP to ensure the safety of other foods (i.e., seafood) (Ref. 3) and has issued an advance notice of proposed rulemaking on the appropriateness of extending the HACCP concept to other segments of the food industry (Ref. 4). HACCP-based requirements enable manufacturers to develop and implement processes and controls that are tailored to their specific products and manufacturing operations. Because of the wide variety of dietary ingredients and dietary supplements and because of the heterogenous composition of the dietary supplement industry, CGMP based on the principles of HACCP may provide a more flexible and less burdensome regulatory framework for manufacturers and distributors than the approach set out in the industry submission.

9. The dietary supplement industry includes a broad spectrum of firms that conduct one or more distinct operations, such as the manufacture or distribution of raw dietary ingredients, the manufacture of finished products, or solely the distribution and sale of finished products (manufactured by a separate firm) at the wholesale or retail level. Consequently, the dietary supplement CGMP regulations may need to address the distinctive requirements of each of these segments of the industry in order to effectively ensure that dietary supplements are what they are represented to be and are safe for their intended use. The agency asks for comments on whether broad CGMP regulations will be adequate, or whether it will be necessary to address the operations of particular segments of the dietary supplement industry.

VII. Comments

Interested persons may, on or before May 7, 1997, submit to the Dockets Management Branch (address above)

written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum of Meeting, Center for Food Safety and Applied Nutrition, Food and Drug Administration, Washington, DC, November 30, 1995.

2. Discussion Draft of GMP's for Dietary Supplements, submitted to the Food and Drug Administration, November 21, 1995.

3. Food and Drug Administration, ''Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products,'' final rule, 60 FR 65096, December 18, 1995.

4. Food and Drug Administration, Food and Safety Assurance Program; ''Development of Hazard Analysis Critical Control Points for the Food Industry,'' proposed rule, 59 FR 39888, August 4, 1994.

Dated: December 11, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–3014 Filed 2–5–97; 8:45 am]

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Federal Register

Thursday
February 6, 1997

Part V

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Parts 350, et al.

Disability and Rehabilitation Research Projects and Centers Program; Final Rule

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Parts 350, 351, 352, 353, 355, 357, and 360

RIN 1820–AB38

Disability and Rehabilitation Research Projects and Centers Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: After reviewing the regulations governing the Disability and Rehabilitation Research Programs, administered by the Department's National Institute on Disability and Rehabilitation Research (NIDRR), the Secretary amends these regulations. These amendments consolidate the regulations for six programs into one CFR part. As part of the Department's efforts to implement the President's Regulatory Reinvention Initiative, the amendments remove unnecessary regulations, clarify program requirements, and improve the selection criteria.

EFFECTIVE DATE: These regulations will take effect on October 1, 1997.

FOR FURTHER INFORMATION CONTACT: David Esquith. Telephone: 202–205–8801 or by e-mail to david__esquith@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at 202–205–8133. An electronic copy of this document may be found on the Internet at the Department's home page at http://www.ed.gov in the ''News'' section.

SUPPLEMENTARY INFORMATION: In January of 1995, the Department developed its ''Principles for Regulating'' (Principles) premised on the tenet that the Department will regulate only when absolutely necessary. The Principles were developed to ensure that the Department regulates in the most flexible, most equitable, and least burdensome way possible. The President, on March 4, 1995, announced the Regulatory Reinvention Initiative (Initiative) to reform the Federal regulatory system. The Initiative required all Federal agencies to review their regulations page by page. Regulators were asked to eliminate obsolete regulations, revise regulations to reward results rather than process, and streamline regulations to achieve agency goals in the most efficient and least intrusive way possible. Since March of 1995, the Department has been reviewing thoroughly all of its regulations consistent with the Initiative and the Principles.

Disability and Rehabilitation Research Projects and Centers Program

As a part of these efforts, the Department examined all of the regulations governing NIDRR's existing Disability and Rehabilitation Research Programs as authorized under Title II of the Rehabilitation Act of 1973 (29 U.S.C. 760–762) (Act). After this examination, the Secretary determined that the regulations in Parts 350 (General Provisions), 351 (Research and Demonstration Projects), 352 (Rehabilitation Research and Training Centers), 353 (Rehabilitation Engineering Research Centers), 355 (Knowledge Dissemination and Utilization Programs), 357 (Field-Initiated Projects), and 360 (Research Training and Career Development Program) could be consolidated and improved.

In addition to consolidating the regulations, the Secretary establishes one program to govern many projects and centers, the Disability and Rehabilitation Research Projects and Centers Program (Program). The Program contains three types of projects and two types of centers. The Disability and Rehabilitation Research and Related Projects authority encompasses the current Research and Demonstration Projects program (Part 351) and Knowledge Dissemination and Utilization Programs (Part 355). The Field-Initiated Projects authority is similar to the existing Field-Initiated Projects program (Part 357), but the scope of projects that can be funded under the new Field-Initiated Projects authority is changed. The Advanced Rehabilitation Research Training Project is the new name for the existing Research Training and Career Development Program (Part 360). The Secretary continues to fund Rehabilitation Research Training Centers and Rehabilitation Engineering Research Centers under requirements virtually identical to the current ones. The Secretary believes that placing all these regulations in one CFR part makes it easier for grantees to identify common requirements and to understand the differences among all the projects and centers. By making structural changes, removing unnecessary regulations, and revising regulatory language, the Secretary improves the existing programs because he clarifies the differences among the programs and revises the regulations to focus on obtaining the highest quality results.

As part of its efforts to consolidate the regulations, the Department establishes a new set of selection criteria for use in evaluating all applications. This new approach allows the Secretary to reduce five different sets of selection criteria to one.

On October 11, 1996, the Secretary published a notice of proposed rulemaking (NPRM) for the Disability and Rehabilitation Research Projects and Centers Program in the Federal Register (61 FR 53560).

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands ideas and obtain information needed to achieve the goals.

These programs support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, one party submitted a comment on the proposed regulations that was not substantive. Two parties submitted comments on the proposed regulations that were received after the deadline and were not considered for response. Except for minor editorial and technical revisions, there are no differences between the NPRM, and these final regulations. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collections of information in these final regulations are displayed at the end of the affected sections of the regulations.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not

require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 350

Disabled, Grant programs—education, Minority groups, Research, Vocational rehabilitation.

34 CFR Part 351

American Indians, Disabled, Grant programs—education, Medical research, Minority groups, Research, Vocational rehabilitation.

34 CFR Part 352

American Indians, Disabled, Education of disabled, Grant programs—education, Research, Training programs, Vocational rehabilitation.

34 CFR Part 353

American Indians, Disabled, Education of disabled, Grant programs—education, Research, Science and technology, Training programs, Vocational rehabilitation.

4 CFR Part 355

Disabled, Grant programs—education, Vocational rehabilitation.

34 CFR Part 357

Disabled, Education of disabled, Grant programs—education, Research, Science and technology, Vocational rehabilitation.

34 CFR Part 360

Disabled, Education of disabled, Grant programs—education, Research, Training programs, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance Number 84.133, Disability and Rehabilitation Research Projects and Centers Program)

Dated: February 3, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

1. Under the authority of 20 U.S.C. 1221(e)–3, Title 34 of the Code of Federal Regulations is amended by removing parts 351, 352, 353, 355, 357, and 360.

2. Part 350 is revised to read as follows:

PART 350—DISABILITY AND REHABILITATION RESEARCH PROJECTS AND CENTERS PROGRAM

Subpart A—General

Sec.

Subpart B—What Projects Does the Secretary Assist?

Subpart C—What Rehabilitation Research and Training Centers Does the Secretary Assist?

Subpart D—What Rehabilitation Engineering Research Centers Does the Secretary Assist?

Subpart E—How Does One Apply for an Award?

Subpart F—How Does the Secretary Make an Award?

Subpart G—What Conditions Must Be Met After an Award?

Authority: Section 204; 29 U.S.C. 761–762, unless otherwise noted.

Subpart A—General

§ 350.1 What is the Disability and Rehabilitation Research Projects and Centers Program?

The Disability and Rehabilitation Research Projects and Centers Program provides grants to establish and support—

(a) The following Disability and Rehabilitation Research and Related Projects:

(1) Disability and Rehabilitation Research Projects.

(2) Field-Initiated Projects.

(3) Advanced Rehabilitation Research Training Projects; and

(b) The following Disability and Rehabilitation Research Centers:

(1) Rehabilitation Research and Training Centers.

(2) Rehabilitation Engineering Research Centers.

(Authority: Section 204; 29 U.S.C. 762)

§ 350.2 What is the purpose of the Disability and Rehabilitation Research Project and Centers Program?

The purpose of the Disability and Rehabilitation Research Project and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to—

(a) Develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; and

(b) Improve the effectiveness of services authorized under the Act.

(Authority: Section 204(a) and (b)(6); 29 U.S.C. 762(a) and (b)(6))

§ 350.3 Who is eligible for an award?

The following entities are eligible for an award under this program:

(a) States.

(b) Public or private agencies, including for-profit agencies.

(c) Public or private organizations, including for-profit organizations.

(d) Institutions of higher education.

(e) Indian tribes and tribal organizations.

(Authority: Section 204(a); 29 U.S.C. 762(a))

§ 350.4 What regulations apply?

The following regulations apply to the Disability and Rehabilitation Research Projects and Centers Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR Part 82 (New Restrictions on Lobbying).

(7) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this Part 350.

(c)(1) Subject to the additional requirement in paragraph (c)(2) of this section, 34 CFR Part 97 (Protection of Human Subjects).

(2) If an institutional review board (IRB) reviews research that purposefully requires inclusion of children with disabilities or individuals with mental disabilities as research subjects, the IRB must have at least one member who is primarily concerned with the welfare of these research subjects.

(Authority: 29 U.S.C. 761a, 762, 42 U.S.C. 300v–1(b))

§ 350.5 What definitions apply?

(a) The following definitions in 34 CFR part 77 apply to this part—

Applicant
Application
Award
Budget
Department
EDGAR
Equipment
Facilities
Grant
Grantee
Nonprofit
Private
Project
Project period
Public
Recipient
Secretary
Supplies
State

(Authority: Section 202(i)(1); 29 U.S.C. 761a(i)(1))

(b) The following definitions also apply to this part. *Act* means the Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as amended.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1))

Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially or off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

(Authority: Section 7(23); 29 U.S.C. 706(23))

Assistive technology service means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device, including—

(1) The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment;

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;

(3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(5) Training or technical assistance for individuals with disabilities, or, if appropriate, their family members, guardians, advocates, or authorized representatives; and

(6) Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to employ, or are otherwise substantially involved in the major life functions of, individuals with disabilities.

(Authority: Section 7(24); 29 U.S.C. 706(24))

Disability means a physical or mental impairment that substantially limits one or more major life activities.

(Authority: Section 202(i)(1); 29 U.S.C. 761a(i)(1))

Individual with a disability means any individual who:

(1) Has a physical or mental impairment that substantially limits one or more of the individual's major life activities;

(2) Has a record of this impairment; or

(3) Is regarded as having this impairment.

(Authority: Section 7(8)(B); 29 U.S.C. 706(8)(B))

Individual with a severe disability means—

(1)(i) An individual with a disability who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord impairments, sickle cell anemia, specific learning disability, end-stage renal disease, or another

disability or combination of disabilities determined on the basis of an assessment of rehabilitation needs to cause comparable substantial functional limitation; or

(2) An individual with a severe mental or physical impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of independent living services will improve the ability to function, continue functioning, or move towards functioning independently in the family or community or to continue in employment, respectively.

(Authority: Section 7(15)(C); 29 U.S.C. 706(15)(C))

Personal assistance services means a range of services, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities, on and off the job, that the individual would typically perform if the individual did not have a disability. These services must be designed to increase the individual's control in life and ability to perform everyday activities on and off the job.

(Authority: Section 12(c); 29 U.S.C. 711(c))

Rehabilitation technology means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in such areas as education, rehabilitation, employment, transportation, independent living, and recreation, and includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(Authority: Section 7(13); 29 U.S.C. 706(13))

Research is classified on a continuum from basic to applied:

(1) *Basic research* is research in which the investigator is concerned primarily with gaining new knowledge or understanding of a subject without reference to any immediate application or utility.

(2) *Applied research* is research in which the investigator is primarily interested in developing new knowledge, information or understanding which can be applied to a predetermined rehabilitation problem or need. Applied research builds on selected findings from basic research.

(Authority: Section 202(i)(1); 29 U.S.C. 761a(i)(1))

State rehabilitation agency means the sole State agency designated to administer (or supervise local administration of) the State plan for vocational rehabilitation services. The term includes the State agency for the blind, if designated as the State agency with respect to that part of the plan relating to the vocational rehabilitation of blind individuals.

(Authority: Section 101(a)(1)(A); 29 U.S.C. 721(a)(1)(A))

Target population means the group of individuals, organizations, or other entities expected to be affected by the project. More than one group may be involved since a project may affect those who receive services, provide services, or administer services.

(Authority: Section 202(i)(1); 29 U.S.C. 761a(i)(1))

Subpart B—What Projects Does the Secretary Assist?

§ 350.10 What are the general requirements for Disability and Rehabilitation Research Projects?

Disability and Rehabilitation Research Projects must meet the following requirements:

(a) Carry out one or more of the following types of activities, as specified in §§ 350.13–350.19:

(1) Research.
(2) Development.
(3) Demonstration.
(4) Training.
(5) Dissemination.
(6) Utilization.
(7) Technical assistance.

(b) Further one or more of the purposes listed in § 350.2.

(Authority: Section 202; 29 U.S.C. 761a)

§ 350.11 What are the general requirements for a Field-Initiated Project?

A Field-Initiated Project must—

(a) Further one or more of the purposes in § 350.2; and

(b) Carry out one of the following types of activities:

(1) Research.
(2) Development.

(Authority: Section 202; 29 U.S.C. 761a)

§ 350.12 What are the general requirements for an Advanced Rehabilitation Research Training Project?

An Advanced Rehabilitation Research Training Project must—

(a) Provide research training and experience at an advanced level to individuals with doctorates or similar advanced degrees who have clinical or other relevant experience;

(b) Further one or more of the purposes in § 350.2; and

(c) Carry out all of the following activities:

(1) Recruitment and selection of candidates for advanced research training.

(2) Provision of a training program that includes didactic and classroom instruction, is multidisciplinary, and emphasizes scientific methodology, and may involve collaboration among institutions.

(3) Provision of research experience, laboratory experience or its equivalent in a community-based research setting, and a practicum that involve each individual in clinical research and in practical activities with organizations representing individuals with disabilities.

(4) Provision of academic mentorship or guidance, and opportunities for scientific collaboration with qualified researchers at the host university and other appropriate institutions.

(5) Provision of opportunities for participation in the development of professional presentations and publications, and for attendance at professional conferences and meetings as appropriate for the individual's field of study and level of experience.

(Authority: Section 202(k); 29 U.S.C. 761a(k))

§ 350.13 What must a grantee do in carrying out a research activity?

In carrying out a research activity under this program, a grantee shall—

(a) Identify one or more hypotheses; and

(b) Based on the hypotheses identified, perform an intensive systematic study directed toward—

(1) New or full scientific knowledge; or

(2) Understanding of the subject or problem studied.

(Authority: Section 202; 29 U.S.C. 761a)

§ 350.14 What must a grantee do in carrying out a training activity?

In carrying out a training activity under this program, a grantee shall conduct a planned and systematic sequence of supervised instruction that is designed to impart predetermined skills and knowledge.

(Authority: Section 202; 29 U.S.C. 761a)

§ 350.15 What must a grantee do in carrying out a demonstration activity?

In carrying out a demonstration activity under this program, a grantee shall apply results derived from previous research, testing, or practice to determine the effectiveness of a new strategy or approach.

(Authority: Section 202; 29 U.S.C. 761a)

§ 350.16 What must a grantee do in carrying out a development activity?

In carrying out a development activity under this program, a grantee must use knowledge and understanding gained from research to create materials,

devices, systems, or methods beneficial to the target population, including design and development of prototypes and processes.

(Authority: Section 202; 29 U.S.C. 761a)

§ 350.17 What must a grantee do in carrying out a utilization activity?

In carrying out a utilization activity under this program, a grantee must relate research findings to practical applications in planning, policy making, program administration, and delivery of services to individuals with disabilities.

(Authority: Section 202; 29 U.S.C. 761a)

§ 350.18 What must a grantee do in carrying out a dissemination activity?

In carrying out a dissemination activity under this program, a grantee must systematically distribute information or knowledge through a variety of ways to potential users or beneficiaries.

(Authority: Section 202; 29 U.S.C. 761a)

§ 350.19 What must a grantee do in carrying out a technical assistance activity?

In carrying out a technical assistance activity under this program, a grantee must provide expertise or information for use in problem-solving.

(Authority: Section 202; 29 U.S.C. 761a)

Subpart C—What Rehabilitation Research and Training Centers Does the Secretary Assist?

§ 350.20 What general requirements must a Rehabilitation Research and Training Center meet?

A Rehabilitation Research and Training Center shall—

(a) Plan and conduct activities that further one or more of the purposes listed in § 350.2;

(b) Serve as a center of national excellence and as a national or regional resource for providers and individuals with disabilities and the parents, family members, guardians, advocates, or authorized representatives of the individuals;

(c) Be of sufficient size, scope, and quality to effectively carry out the activities in an efficient manner consistent with appropriate State and Federal law; and

(d) Be able to carry out training activities either directly or through another entity that can provide such training.

(Authority: Section 204(b) and (b)(2)(K); 29 U.S.C. 762(b) and (b)(2)(K))

§ 350.21 What collaboration must a Rehabilitation Research and Training Center engage in?

A Rehabilitation Research and Training Center must be operated by or in collaboration with—

(a) One or more institutions of higher education; or

(b) One or more providers of rehabilitation or other appropriate services.

(Authority: Section 204(b)(2); 29 U.S.C. 762(b)(2))

§ 350.22 What activities must a Rehabilitation Research and Training Center conduct?

A Rehabilitation Research and Training Center shall—

(a) Carry out research activities by conducting coordinated and advanced programs of research in rehabilitation targeted toward the production of new knowledge that will—

(1) Improve rehabilitation methodology and service delivery systems;

(2) Alleviate or stabilize disabling conditions; and

(3) Promote maximum social and economic independence of individuals with disabilities;

(b) Conduct training activities by providing training (including graduate, pre-service, and in-service training) to assist—

(1) Rehabilitation personnel and other individuals to more effectively provide rehabilitation services; and

(2) Rehabilitation research personnel and other rehabilitation personnel to improve their capacity to conduct research; and

(c) Conduct technical assistance activities by serving as an informational and technical assistance resource for providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of the individuals with disabilities, through conferences, workshops, public education programs, in-service training programs, and similar activities.

§ 350.23 What restriction exists on Rehabilitation Research and Training Centers regarding indirect costs?

A host institution with which a Rehabilitation Research and Training Center is affiliated may not collect more than fifteen percent of the total grant award as indirect cost charges, notwithstanding the provisions in 34 CFR 75.562.

(Authority: Section 204(b)(2)(O); 29 U.S.C. 762(b)(2)(O))

Subpart D—What Rehabilitation Engineering Research Centers Does the Secretary Assist?

§ 350.30 What requirements must a Rehabilitation Engineering Research Center meet?

A Rehabilitation Engineering Research Center shall plan and conduct activities that—

(a) Further one or more of the purposes listed in § 350.2; and

(b) (1) Lead to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities; or

(2) Involve rehabilitation technology and enhance opportunities for meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives.

(Authority: Section 204(b)(3); 29 U.S.C. 762(b)(3))

§ 350.31 What collaboration must a Rehabilitation Engineering Research Center engage in?

A Rehabilitation Engineering Research Center must be operated by or in collaboration with—

(a) One or more institutions of higher education; or

(b) One or more nonprofit organizations.

(Authority: Section 204(b)(3); 29 U.S.C. 762(b)(3))

§ 350.32 What activities must a Rehabilitation Engineering Research Center conduct?

A Rehabilitation Engineering Research Center shall—

(a) Conduct research or demonstration activities by using one or more of the following strategies:

(1) Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to solve rehabilitation problems and remove environmental barriers through—

(i) Planning and conducting research, including cooperative research with public or private agencies and organizations, designed to produce new scientific knowledge and new or improved methods, equipment, or devices; and

(ii) Studying and evaluating new or emerging technologies, products, or environments and their effectiveness and benefits.

(2) Demonstrating and disseminating—

(i) Innovative models for the delivery to rural and urban areas of cost-effective rehabilitation technology services that

will promote the use of assistive technology services; and

(ii) Other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities.

(3) Conducting research and demonstration activities that facilitate service delivery systems change by demonstrating, evaluating, documenting, and disseminating—

(i) Consumer-responsive and individual and family-centered innovative models for the delivery, to both rural and urban areas, of innovative, cost-effective rehabilitation technology services that promote use of rehabilitation technology; and

(ii) Other scientific research to assist in meeting the employment and independent living needs of, and addressing the barriers confronted by individuals with disabilities, including individuals with severe disabilities;

(b) To the extent consistent with the nature and type of research or demonstration activities described in paragraph (a) of this section, carry out research, training, and information dissemination activities by—

(1) Providing training opportunities to individuals, including individuals with disabilities, to enable them to become rehabilitation technology researchers and practitioners of rehabilitation technology in conjunction with institutions of higher education and nonprofit organizations; and

(2) Responding, through research or demonstration activities, to the needs of individuals with all types of disabilities who may benefit from the application of technology within the subject area of focus of the Center.

(c) Conduct orientation seminars for rehabilitation service personnel to improve the application of rehabilitation technology;

(d) Conduct activities that specifically demonstrate means for utilizing rehabilitation technology; and

(e) Provide technical assistance and consultation that are responsive to concerns of service providers and consumers.

(Authority: Section 204(b)(3); 29 U.S.C. 762(b)(3))

§ 350.33 What cooperation requirements must a Rehabilitation Engineering Research Center meet?

A Rehabilitation Engineering Research Center—

(a) Shall cooperate with State agencies and other local, State, regional, and national programs and organizations developing or delivering rehabilitation technology, including State programs funded under the Technology-Related Assistance for Individuals With Disabilities Act of 1988 (29 U.S.C. 2201 *et seq.*); and

(b) To the extent consistent with the nature and type of research or demonstration activities described in § 350.32(a), shall cooperate with the entities described in paragraph (a) of this section to provide information to individuals with disabilities and their parents, family members, guardians, advocates, or authorized representatives, to—

(1) Increase awareness and understanding of how rehabilitation technology can address their needs; and

(2) Increase awareness and understanding of the range of options, programs, services, and resources available, including financing options for the technology and services covered by the subject area of focus of the Center.

(Authority: Section 204(b)(3) and (c); 29 U.S.C. 762(b)(3) and (c))

§ 350.34 Which Rehabilitation Engineering Research Centers must have an advisory committee?

A Rehabilitation Engineering Research Center conducting research or demonstration activities that facilitate service delivery systems change must have an advisory committee.

(Authority: Section 204 (b)(3)(D); 29 U.S.C. 762 (b)(3)(D))

§ 350.35 What are the requirements for the composition of an advisory committee?

The majority of a Rehabilitation Engineering Research Center advisory committee's members must be comprised of individuals with disabilities who are users of rehabilitation technology, or their parents, family members, guardians, advocates, or authorized representatives.

(Authority: Section 204(b)(3)(D); 29 U.S.C. 762(b)(3)(D))

Subpart E—How Does One Apply for an Award?

§ 350.40 What is required of each applicant regarding the needs of individuals with disabilities from minority backgrounds?

(a) Unless the Secretary indicates otherwise in a notice published in the Federal Register, an applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

(b) The approaches an applicant may take to meet this requirement may include one or more of the following:

(1) Proposing project objectives addressing the needs of individuals with disabilities from minority backgrounds.

(2) Demonstrating that the project will address a problem that is of particular significance to individuals with disabilities from minority backgrounds.

(3) Demonstrating that individuals from minority backgrounds will be included in study samples in sufficient numbers to generate information pertinent to individuals with disabilities from minority backgrounds.

(4) Drawing study samples and program participant rosters from populations or areas that include individuals from minority backgrounds.

(5) Providing outreach to individuals with disabilities from minority backgrounds to ensure that they are aware of rehabilitation services, clinical care, or training offered by the project.

(6) Disseminating materials to or otherwise increasing the access to disability information among minority populations.

(Approved by the Office of Management and Budget under control number 1820–0027)

(Authority: Sections 21(b)(6); 29 U.S.C. 718b(b)(6))

§ 350.41 What State agency review must an applicant under the Disability and Rehabilitation Research Projects and Centers Program obtain?

(a) An applicant that proposes to conduct research, demonstrations, or related activities that will either involve clients of the State vocational rehabilitation agency as research subjects or study vocational rehabilitation services or techniques under this program, shall follow the requirements in 34 CFR 75.155 through 75.159.

(b) For the purposes of this Program, ''State'' as used in 34 CFR 75.155 through 75.159 means the State rehabilitation agency or agencies in the primary State or States to be affected by the proposed activities.

(Authority: Sections 204(c) and 306(i); 29 U.S.C. 762(c) and 766(a))

Subpart F—How Does the Secretary Make an Award?

§ 350.50 What is the peer review process for this Program?

(a) The Secretary refers each application for a grant governed by those regulations in this part to a peer review panel established by the Secretary.

(b) Peer review panels review applications on the basis of the applicable selection criteria in § 350.54.

(Authority: Section 202(e); 29 U.S.C. 761a(e))

§ 350.51 What is the purpose of peer review?

The purpose of peer review is to insure that—

(a) Those activities supported by the National Institute on Disability and Rehabilitation Research (NIDRR) are of the highest scientific, administrative, and technical quality; and

(b) Activity results may be widely applied to appropriate target populations and rehabilitation problems.

(Authority: Section 202(e); 29 U.S.C. 761a(e))

§ 350.52 What is the composition of a peer review panel?

(a) The Secretary selects as members of a peer review panel scientists and other experts in rehabilitation or related fields who are qualified, on the basis of training, knowledge, or experience, to give expert advice on the merit of the applications under review.

(b) Applications for awards of $60,000 or more, except those for the purposes of evaluation, dissemination of information, or conferences, must be reviewed by a peer review panel that consists of a majority of non-Federal members.

(c) In selecting members to serve on a peer review panel, the Secretary takes into account all of the following factors:

(1) The level of formal scientific or technical education completed by potential panel members.

(2)(i) The extent to which potential panel members have engaged in scientific, technical, or administrative activities appropriate to the category of applications that the panel will consider;

(ii) The roles of potential panel members in those activities; and

(iii) The quality of those activities.

(3) The recognition received by potential panel members as reflected by awards and other honors from scientific and professional agencies and organizations outside the Department.

(4) Whether the panel includes knowledgeable individuals with disabilities, or parents, family members, guardians, advocates, or authorized representatives of individuals with disabilities.

(5) Whether the panel includes individuals from diverse populations.

(Authority: Sections 18 and 202(e); 29 U.S.C. 717 and 761a(e))

§ 350.53 How does the Secretary evaluate an application?

(a)(1)(i) The Secretary selects one or more of the selection criteria in § 350.54 to evaluate an application;

(ii) The Secretary establishes selection criteria based on statutory provisions that apply to the Program which may include, but are not limited to—

(A) Specific statutory selection criteria;

(B) Allowable activities;

(C) Application content requirements; or

(D) Other pre-award and post-award conditions; or

(iii) The Secretary uses a combination of selection criteria established under paragraph (a)(1)(ii) of this section and selection criteria in § 350.54.

(2) For Field-Initiated Projects, the Secretary does not consider § 350.54(b) (Responsiveness to the Absolute or Competitive Priority) in evaluating an application.

(b)(1) In considering selection criteria in § 350.54, the Secretary selects one or more of the factors listed in the criteria except as provided for in paragraph (b)(2) of this section.

(2) Under § 350.54, the Secretary always considers the factor in paragraph (n)(2) of that section.

(c) The maximum possible score for an application is 100 points.

(d)(1) In the application package or a notice published in the Federal Register, the Secretary informs applicants of—

(i)(A) The selection criteria chosen; and

(B) The maximum possible score for each of the selection criteria; and

(ii)(A) The factors selected for considering the selection criteria; and

(B) If points are assigned to each factor, the maximum possible score for each factor under each criterion.

(2) If no points are assigned to each factor, the Secretary evaluates each factor equally.

(e) For Field-Initiated Projects, in addition to the selection criteria, the Secretary uses the additional considerations in selecting applications for funding as described in § 350.55.

(Authority: Section 202(e); 29 U.S.C. 761a(e))

§ 350.54 What selection criteria does the Secretary use in evaluating an application?

In addition to criteria established under § 350.53(a)(1)(ii), the Secretary may select one or more of the following criteria in evaluating an application:

(a) *Importance of the problem.* (1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers one or more of the following factors:

(i) The extent to which the applicant clearly describes the need and target population.

(ii) The extent to which the proposed activities further the purposes of the Act.

(iii) The extent to which the proposed activities address a significant need of one or more disabled populations.

(iv) The extent to which the proposed activities address a significant need of rehabilitation service providers.

(v) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities.

(vi) The extent to which the applicant proposes to provide training in a rehabilitation discipline or area of study in which there is a shortage of qualified researchers, or to a trainee population in which there is a need for more qualified researchers.

(vii) The extent to which the proposed project will have beneficial impact on the target population.

(b) *Responsiveness to an absolute or competitive priority.* (1) The Secretary considers the responsiveness of the application to an absolute or competitive priority published in the Federal Register.

(2) In determining the application's responsiveness to the absolute or competitive priority, the Secretary considers one or more of the following factors:

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority.

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority.

(c) *Design of research activities.* (1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art.

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art;

(B) Each research hypothesis is theoretically sound and based on current knowledge;

(C) Each sample population is appropriate and of sufficient size;

(D) The data collection and measurement techniques are appropriate and likely to be effective; and

(E) The data analysis methods are appropriate.

(iii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable.

(d) *Design of development activities.* (1) The Secretary considers the extent to which the design of development activities is likely to be effective in accomplishing the objectives of the project.

(2) (i) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(ii) The extent to which the plan for development, clinical testing, and evaluation of new devices and technology is likely to yield significant products or techniques, including consideration of the extent to which—

(A) The proposed project will use the most effective and appropriate technology available in developing the new device or technique;

(B) The proposed development is based on a sound conceptual model that demonstrates an awareness of the state-of-the-art in technology;

(C) The new device or technique will be developed and tested in an appropriate environment;

(D) The new device or technique is likely to be cost-effective and useful;

(E) The new device or technique has the potential for commercial or private manufacture, marketing, and distribution of the product; and

(F) The proposed development efforts include adequate quality controls and, as appropriate, repeated testing of products.

(e) *Design of demonstration activities.* (1) The Secretary considers the extent to which the design of demonstration activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(i) The extent to which the proposed demonstration activities build on previous research, testing, or practices.

(ii) The extent to which the proposed demonstration activities include the use of proper methodological tools and theoretically sound procedures to determine the effectiveness of the strategy or approach.

(iii) The extent to which the proposed demonstration activities include innovative and effective strategies or approaches.

(iv) The extent to which the proposed demonstration activities are likely to contribute to current knowledge and practice and be a substantial addition to the state-of-the-art.

(v) The extent to which the proposed demonstration activities can be applied and replicated in other settings.

(f) *Design of training activities.* (1) The Secretary considers the extent to which the design of training activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(i) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety.

(ii) The extent to which the proposed training methods are of sufficient quality, intensity, and duration.

(iii) The extent to which the proposed training content—

(A) Covers all of the relevant aspects of the subject matter; and

(B) If relevant, is based on new knowledge derived from research activities of the proposed project.

(iv) The extent to which the proposed training materials, methods, and content are appropriate to the trainees, including consideration of the skill level of the trainees and the subject matter of the materials.

(v) The extent to which the proposed training materials and methods are accessible to individuals with disabilities.

(vi) The extent to which the applicant's proposed recruitment program is likely to be effective in recruiting highly qualified trainees, including those who are individuals with disabilities.

(vii) The extent to which the applicant is able to carry out the training activities, either directly or through another entity.

(viii) The extent to which the proposed didactic and classroom training programs emphasize scientific methodology and are likely to develop highly qualified researchers.

(ix) The extent to which the quality and extent of the academic mentorship, guidance, and supervision to be provided to each individual trainee are of a high level and are likely to develop highly qualified researchers.

(x) The extent to which the type, extent, and quality of the proposed clinical and laboratory research experience, including the opportunity to participate in advanced-level research, are likely to develop highly qualified researchers.

(xi) The extent to which the opportunities for collegial and collaborative activities, exposure to outstanding scientists in the field, and opportunities to participate in the preparation of scholarly or scientific publications and presentations are extensive and appropriate.

(g) *Design of dissemination activities.* (1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(i) The extent to which the content of the information to be disseminated—

(A) Covers all of the relevant aspects of the subject matter; and

(B) If appropriate, is based on new knowledge derived from research activities of the project.

(ii) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format.

(iii) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration.

(iv) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter.

(v) The extent to which the information to be disseminated will be accessible to individuals with disabilities.

(h) *Design of utilization activities.* (1) The Secretary considers the extent to which the design of utilization activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(i) The extent to which the potential new users of the information or technology have a practical use for the information and are likely to adopt the practices or use the information or technology, including new devices.

(ii) The extent to which the utilization strategies are likely to be effective.

(iii) The extent to which the information or technology is likely to be of use in other settings.

(i) Design of technical assistance activities. (1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration.

(ii) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter.

(iii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information.

(iv) The extent to which the technical assistance is accessible to individuals with disabilities.

(j) *Plan of operation.* (1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers one or more of the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks.

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective.

(k) *Collaboration.* (1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers one or more of the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project.

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant.

(iii) The extent to which agencies, organizations, or institutions that commit to collaborate with the applicant have the capacity to carry out collaborative activities.

(l) *Adequacy and reasonableness of the budget.* (1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers one or more of the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities.

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities.

(iii) The extent to which the applicant is of sufficient size, scope, and quality to effectively carry out the activities in an efficient manner.

(m) *Plan of evaluation.* (1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers one or more of the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation; and

(B) Achieving the project's intended outcomes and expected impacts.

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments.

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population; and

(B) Are objective, and quantifiable or qualitative, as appropriate.

(n) *Project staff.* (1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers one or more of the following:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities.

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project.

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas.

(iv) The extent to which the project staff includes outstanding scientists in the field.

(v) The extent to which key personnel have up-to-date knowledge from research or effective practice in the subject area covered in the priority.

(o) *Adequacy and accessibility of resources.* (1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers one or more of the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate.

(ii) The quality of an applicant's past performance in carrying out a grant.

(iii) The extent to which the applicant has appropriate access to clinical populations and organizations representing individuals with disabilities to support advanced clinical rehabilitation research.

(iv) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project.

(Approved by the Office of Management and Budget under control number 1820–0027) (Authority: Sections 202 and 204; 29 U.S.C. 761a and 762)

§ 350.55 What are the additional considerations for selecting Field-Initiated Project applications for funding?

(a) The Secretary reserves funds to support some or all of the Field-Initiated Project applications that have been awarded points totaling 80% or more of the maximum possible points under the procedures described in § 350.53.

(b) In making a final selection of applications to support as Field-Initiated Projects, the Secretary considers the extent to which applications that have been awarded a rating of 80% or more of the maximum possible points and meet one or more of the following conditions:

(1) The proposed project represents a unique opportunity to advance rehabilitation knowledge to improve the lives of individuals with disabilities.

(2) The proposed project complements research already planned or funded by the NIDRR through annual priorities published in the Federal

Register or addresses the research in a new and promising way.

(Authority: Sections 202 (g) and (i)(1); 29 U.S.C. 761a(g) and 761a(i)(1))

Subpart G—What Conditions Must Be Met After an Award?

§ 350.60 How must a grantee conduct activities?

A grantee must—

(a) Conduct all activities in a manner that is accessible to and usable by individuals with disabilities; and

(b) If a grantee carries out more than one activity, carry out integrated activities.

(Authority: Sections 202 and 204(b)(2); 29 U.S.C. 761a and 762(b))

§ 350.61 What evaluation requirements must a grantee meet?

(a) A grantee must establish performance measures for use in its evaluation that—

(1) Are clearly related to the—

(i) Intended outcomes of the project; and

(ii) Expected impacts on the target population; and

(2) To the extent possible are quantifiable, or are objective and qualitative.

(b) A grantee must make periodic assessments of progress that will provide the grantee with performance feedback related to—

(1) Progress in implementing the plan of operation; and

(2) Progress in achieving the intended outcomes and expected impacts as assessed by the established performance measures.

(Authority: Sections 202 and 204; 29 U.S.C. 761a and 762)

§ 350.62 What are the matching requirements?

(a) (1) The Secretary may make grants to pay for part of the costs of research and demonstration projects that bear directly on the development of procedures, methods, and devices to assist the provision of vocational and other rehabilitation services, and research training and career development projects.

(2) Each grantee must participate in the costs of those projects.

(3) The specific amount of cost sharing to be borne by each grantee—

(i) Is negotiated at the time of the award; and

(ii) Is not considered in the selection process.

(b) (1) The Secretary may make grants to pay for part or all of the costs of—

(i) Establishment and support of Rehabilitation Research and Training Centers and Rehabilitation Engineering Research Centers; and

(ii) Specialized research or demonstration activities described in Section 204(b) (2)–(16) of the Act.

(2) The Secretary determines at the time of the award whether the grantee must pay a portion of the project or center costs.

(Authority: Section 204; 29 U.S.C. 762)

§ 350.63 What are the requirements of a grantee relative to the Client Assistance Program?

All Projects and Centers that provide services to individuals with disabilities with funds awarded under this Program must—

(a) Advise those individuals who are applicants for or recipients of services under the Act, or their parents, family members, guardians, advocates, or authorized representatives, of the availability and purposes of the Client Assistance Program (CAP) funded under the Act; and

(b) Provide information on the means of seeking assistance under the CAP.

(Authority: Section 20; 29 U.S.C. 718a)

§ 350.64 What is the required duration of the training in an Advanced Rehabilitation Research Training Project?

A grantee for an Advanced Rehabilitation Research Training Project shall provide training to individuals that is at least one academic year, unless a longer training period is necessary to ensure that each trainee is qualified to conduct independent research upon completion of the course of training.

(Authority: Sections 202–204; 29 U.S.C. 760–762)

§ 350.65 What level of participation is required of trainees in an Advanced Rehabilitation Research Training Project?

Individuals who are receiving training under an Advanced Rehabilitation Research Training Project shall devote at least eighty percent of their time to the activities of the training program during the training period.

(Authority: Sections 202–204; 29 U.S.C. 760–762)

§ 350.66 What must a grantee include in a patent application?

Any patent application filed by a grantee for an invention made under a grant must include the following statement in the first paragraph:

The invention described in this application was made under a grant from the Department of Education.

(Authority: 20 U.S.C. 1221e–3)

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February 6, 1997

Part VI

Federal Trade Commission

16 CFR Part 423

Textile Wearing Apparel and Piece Goods; Care Labeling; Interim Rule

FEDERAL TRADE COMMISSION

16 CFR Part 423

Concerning Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods; Conditional Exemption From Terminology Section of the Care Labeling Rule

AGENCY: Federal Trade Commission.

ACTION: Interim rule, with request for public comments.

SUMMARY: The Federal Trade Commission (the ''Commission'') has reviewed the public comments on a proposed conditional exemption to its Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods (''the Care Labeling Rule'' or ''the Rule'') and has decided to adopt the conditional exemption. The conditional exemption will permit the use of the system of care symbols developed by the American Society for Testing and Materials (''ASTM'') and designated as ASTM Standard D5489–96c Guide to Care Symbols for Care Instructions on Consumer Textile Products, in lieu of words on the permanently attached care label, as long as explanatory information is provided to consumers for the first 18-month period after the effective date of the conditional exemption. The Commission seeks comments on the minor changes made in ASTM D5489 since the Commission last sought comment in November 1995.

DATES: This conditional exemption is effective July 1, 1997. The incorporation by reference of the ASTM standard is approved by the Director of the Federal Register effective July 1, 1997. Comments must be received by March 10, 1997.

ADDRESSES: Send comments to Secretary, Room 159, Federal Trade Commission, Washington, D.C. 20580. Comments should be identified as ''16 CFR Part 423—Comment.'' Copies of this notice can be obtained through the Public Reference Branch, Room 130, Federal Trade Commission, Washington, D.C. 20580; (202) 326–2222; or through the Commission's homepage on the World Wide Web at http://www.ftc.gov.

FOR FURTHER INFORMATION CONTACT: Constance M. Vecellio or Edwin Rodriguez, Attorneys, Federal Trade Commission, Washington, DC 20580, (202) 326–2966 or (202) 326–3147.

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 15, 1994, the Commission published a Federal Register notice (''FRN''), requesting comment on various aspects of the care Labeling Rule, including whether the Rule should be modified to permit the use of symbols in lieu of words.[1] On November 16, 1995, the Commission published a FRN, 60 FR 57552, announcing that the Commission had tentatively determined to adopt a proposed conditional exemption to the Care Labeling Rule to permit the use of certain care symbols in lieu of words on the permanently attached care label.[2] The Notice sought additional comment on the specifies of the proposal.

In particular, the November 1995 FRN stated that the Commission had tentatively decided to allow the use of the system of care symbols developed by ASTM and designated as ASTM Standard D5489 Guide to Symbols for Care Instructions on Consumer Textile Products, with one exception and addition.[3] Certain other modifications to that system were under consideration by ASTM at the time the FRN was published. The FRN described these possible modifications and sought comment on them.[4] In the FRN, the Commission noted that the proposed changes appeared to be useful, and, if these changes were adopted by ASTM, the Commission proposed adopting the ASTM system with those changes. These changes were adopted by ASTM, and were reflected in the standard designated ASTM Standard D5489–96a.[5] Certain additional minor changes were made later in 1996, and these changes are embodied in the final standard designated ASTM Standard D5489–96c.[6]

After reviewing the 39 public comments that were submitted [7] concerning the proposed conditional exemption, the Commission has now decided to adopt the exemption and to allow the use of the symbol system designated as ASTM Standard D5489–96c.

II. Background

The Care Labeling Rule was promulgated by the Commission on December 16, 1971, 36 FR 23883 (1971), and amended on May 20, 1983, 48 FR 22733 (1983). The Rule makes it an unfair or deceptive act or practice for manufacturers and importers of textile wearing apparel and certain piece goods to sell these items without attaching care labels stating ''what regular care is needed for the ordinary use of the product.'' (16 CFR 423.6 (a) and (b)) The Rule also requires that the manufacturer or importer possess, prior to sale, a reasonable basis for the care instructions. (16 CFR 423.6(c))

The ''Terminology'' section of the Rule, 16 CFR 423.2(b), currently requires that care instructions be stated in ''appropriate terms,'' although it also states that ''any appropriate symbols may be used on care labels or care instructions, in addition to the required appropriate terms so long as the terms

[1] 59 FR 30733 (June 15, 1994). This notice sought comment about the overall costs and benefits of the Rule and its overall regulatory and economic impact as part of the Commission's systematic review of all its current rules and guides. This notice also sought comment on the use of symbols in lieu of words on care labels and on certain other issues.

[2] On December 28, 1995, the Commission published a notice, 60 FR 67102, seeking comment on other parts of the Rule and other proposed changes. The issues raised in the December 1995 notice will be addressed in a separate FRN at a later time.

[3] The Commission note that the ASTM ''do not bleach'' symbol (an empty triangle with an ''X'' through it) had a different meaning in Mexico. To avoid this conflict, the Commission tentatively decided to accept ASTM Standard D5489–93 with the exception of this ''do not bleach'' symbol and the addition of a shaded triangle with an ''X'' through it. The exception is no longer necessary because ASTM deleted the empty triangle with an ''X'' through it. Although ASTM replaced it with a shaded triangle with an ''X'' through it, ASTM subsequently changed the ''do not bleach'' symbol again as discussed in part III.A.1.a. of this Notice *infra.*

[4] These changes are described in part III.A.1.a. of this Notice *infra.*

[5] The version of ASTM Standard D5489 discussed in the November 1995 FRN was adopted by ASTM in 1993 and officially referred to as ASTM Standard D5489–93. When ASTM changes a standard, the suffix is changed to reflect the year of the revision. Thus, when Standard D5489 was revised in early 1996, it was referred to as ASTM Standard D5489–96a.

[6] These minor changes are also described in parts III.A.1.a. and b. of this Notice *infra.*

[7] The commenters included consumers; public interest-related groups; fiber, textile, or apparel manufacturers, importers or sellers (or conglomerates); a federal government agency; textile and clothing educators; fiber, textile, or apparel manufacturers, importers or retailers trade associations, including two associations from foreign countries; one textile printing company; four label manufacturers; one association representing the leather apparel industry; one supplier of leather cleaning products and equipment; one Committee formed by industry members from the countries signatory to NAFTA; one appliance manufacturers trade association; two standards-related organizations; and three representatives from foreign nations. Each comment was assigned a number. The first time a comment is cited it is cited by the full name of the commenter and the assigned number; subsequently, it is cited by the number and a shortened form of the name. The comments are available for inspection in the Public Reference Room, room 130, Federal Trade Commission, 6th and Pennsylvania Ave., NW., Washington, DC, from 8:30 a.m. to 5:00 p.m., Monday through Friday, except federal holidays.

fulfill the requirements of this regulation.'' (Emphasis added).

The FRN the Commission published on June 15, 1994 stated that the North American Free Trade Agreement (''NAFTA'') ''has created industry interest in being permitted to use symbols in lieu of words to provide care instructions, and the Commission seeks comment on the costs and benefits of such a change.'' Based on the comments submitted in response to that notice, the Commission decided to give further consideration to the use of symbols. In a FRN published on November 16, 1995, the Commission proposed a conditional exemption to the ''Terminology'' section of the Rule to allow the use of care symbols without language. The Commission proposed that, for a 12 month period, care labels with information conveyed only in symbols must be accompanied by hangtags explaining the meaning of the symbols.

The Commission examined two existing symbol systems—the system of care symbols developed by the International Association for Textile Care Labeling (''Ginetex'') and adopted by the International Organization for Standardization (''ISO'') as International Standard 3758, and the system of care symbols developed by ASTM and designated as ASTM Standard D5489–93—to identify which conveys all or most of the information required by the Rule and meets other important criteria.[8] The Commission concluded that ASTM Standard D5489 provided symbols relating to the information required by the Rule and that it best met the needs of consumers and industry. The Commission also concluded that the ASTM system was compatible with the care symbol systems used in Canada and Mexico, and that any difference among the symbol systems used in these countries did not pose insurmountable problems.

The Commission determined that the use of ISO Standard 3758 was not appropriate for the United States for three reasons. The Commission concluded that the ISO/Ginetex system does not provide symbols for some of the basic information required by the Rule and, therefore, cannot convey all the information that the Commission has found to be necessary to prevent the unfair and deceptive practices that the Rule was designed to prevent.[9] The Ginetex system also assumes that washing machines have internal mechanisms for heating water to a precise temperature, and it links symbols for cool-down rinse, reduced spin, and reduced mechanical action to precise temperature settings. In addition, it includes only normal and low temperature ranges for tumble drying. Both of these aspects of the Ginetex system are inconsistent with the technology of laundry equipment used in the United States. The Commission also determined that Ginetex's assertion of trademark rights relating to the ISO/Ginetex symbols weighed against adoption of that system.

III. Analysis of Comments

The Commission received 39 comments in response to the November 16, 1995 FRN. These comments overwhelmingly support allowing the voluntary use of a system of symbols without language to communicate care instructions.[10] Only two comments opposed the voluntary use of symbols without language.[11]

Some comments noted the need for additional symbols not found in either of the symbol systems that were considered. Kirk's and Leather stated there was a need for symbols for the care of leather wearing apparel.[12] The Care Labeling Rule, however, applies to *textile* wearing apparel and certain piece goods. In the FRN published in December 1995, the Commission rejected a proposal to expand the coverage of the Rule to garments made completely of leather. 60 FR 67103 n.3 (Dec. 28, 1995). EPA noted the need for a symbol for professional wet cleaning.[13] In a separate proceeding, however, the Commission is considering whether to initiate a rulemaking to amend the Rule specifically to include professional wet cleaning. See 60 FR 67103 (Dec. 28, 1995). If the Commission later determines to amend the Rule to encompass professional wet cleaning, it may be appropriate to amend the conditional exemption to add a symbol for professional wet cleaning.

A. Comments Addressing Most Appropriate Symbols System

1. The ASTM System

Seventeen comments support the use of the ASTM system of care symbols.[14] One comment, however, expressed concern about the procedures for amending the ASTM system: that ASTM will only review ASTM Standard D5489 every five years, and that, as a private party, ASTM may not respond to requests from the public regarding changes to the symbol system.[15] ASTM, however, can amend a standard at any time, not merely every five years, and it has already made changes to ASTM

[8] The ASTM and Ginetex systems use the same five basic symbols: a washtub to indicate washing (with a hand in the washtub to indicate hand washing), a triangle to indicate bleaching, a square to indicate drying (and a circle within a square to indicate machine drying), an iron to indicate ironing, and a circle to indicate drycleaning. An ''X'' cancelling out the symbol warns against using the designated cleaning technique, *e.g.*, ''do not dryclean.'' The differences in the systems consist in the manner in which refinements to the basic processes are conveyed (or are not conveyed).

[9] The Commission noted that the ISO/Ginetex system has no symbols for natural drying, the use of non-chlorine bleach, or the use of steam in ironing, which are care practices addressed by the Rule. The Commission also noted that the ISO/Ginetex system's symbol for drycleaning does not address all the warnings required by the Rule for drycleaning. In the Ginetex system, an underlined circle warns professional drycleaners generally about potential harm from ''mechanical action and/or drying temperature and/or water addition in the solvent.'' But the ISO/Ginetex system does not have a method for providing warnings about which specific parts of the drycleaning process should be avoided as required by Section 423.6(b)(2)(ii) of the Rule. Ginetex (14) stated at p.3 that a symbol that provides warnings about all potential problems would be very complicated and difficult to understand and that professional cleaners should know what drycleaning process is required depending on the textile article. But this position shifts the burden from the manufacturer or importer subject to the Rule to the cleaner. In adopting the Rule, the Commission determined that the manufacturer or importer was in the best position to obtain information about the components of a garment and how the garment should be cleaned.

[10] H.H. Cutler (1) p.1; Salant Corporation (2) p.1; Ardis W. Koester (3) p.1; National Association of Hosiery Manufacturers (4) p.1; Kirk's Suede-Life, Inc. (5); Consumers Union (7) p.1; Supreme International (8) p.1; Host Apparel, Inc. (9) p.1; Cranston Print Works Company (10) p.1; United States Association of Importers of Textiles and Apparel (11) p.2; Leather Apparel Association, Inc. (12); American Textile Manufacturers Institute (13) p.1; International Association for Textile Care Labeling (14) p.1; American Apparel Manufacturers Association (15) p.1; Trilateral Labeling Committee (16) p.2; Paxar Corporation (17) p.1; Robert D. Stiehler (18) p.1; Italian Federation of Associations of Textile and Clothing Industries (19) p.2; National Knitwear & Sportswear Association (20) p.1; Warnaco, Inc. (21) p.1; International Fabricare Institute (22) p.1; Springs Industries, Inc. (23) p.1; Scott Tag & Label Co., Inc. (25) p.1; Fieldcrest Cannon, Inc. (26) p.1; National Cotton Council of America (27) p.1; United States Environmental Protection Agency (28) p.1; Association of Home Appliance Manufacturers (29) p.1, 2; Pittsfield Weaving Co., Inc. (30) p.1; Proctor & Gamble (31) p.1; Labelize, Inc. (32) p.1; The European Apparel and Textile Organization (33) p.1; Jo Ann Pullen (34) p.1; Industry Canada (35) p.1; ASTM Subcommittee D13.62 on Care Labeling (36) p.1; American Association of Family and Consumer Sciences (37) p.1; Embassy of Switzerland (38) p.1; European Commission, Directorate A (Industrial Policy) (39) p.1.

[11] Sheila Settles (6) p.1; Harriet Nelson (24) p.1.

[12] Comments 5 and 12, respectively.

[13] Comment 28, p.1.

[14] Cutler (1) p.1; Koester (3) p.1; NAHM (4) p.1; ATMI (13) p.1; AAMA (15) p.2; TLC (16) p.2; Stiehler (18) p.1; NKSA (20) p.1; IFI (22) p.1; Springs (23) p.1; Fieldcrest (26) p.1; NCCA (27) p.1; AHAM (29) p.1; Pittsfield (30) p.1; P&G (31) p.2; Pullen (34) p.1; ASTM (36) p.1. The comments stated that the ASTM system is more comprehensive, more consistent with American technology, and more flexible and easily amended than the Ginetex system. See NAHM (4) p.1; Pullen (34) p.1, 5.

[15] P&G (31) p.2.

Standard D5489 at the request of interested parties. Moreover, the Commission notes that the Commission itself must authorize changes to whatever system of symbols the Commission allows. In addition, the public may, at any time, file a petition with the Commission seeking to change the conditional exemption, and, if necessary, the Commission can adopt exceptions and additions to the ASTM system for the purposes of this Rule.

a. Changes Affecting the Manner in Which the ASTM Symbol System May Be Used To Comply With the Rule

The November 1995 FRN described a specific version of the ASTM system—ASTM Standard D5489–1993—and minor modifications that were being considered by ASTM to that system.[16] The FRN sought comment on these changes, which have already been made by ASTM.

Only Industry Canada addressed the proposed changes. Industry Canada stated that, for clarity, the proposed new symbol for ''tumble dry, no heat (air only)'' should be an empty circle rather than a blacked-in circle.[17] The Commission believes, however, that clarity is enhanced by the use of the blacked-in circle, as originally proposed. In addition, Industry Canada's suggested change would not improve harmonization with the Canadian system, which requires that the tumble dry symbol be either green [to indicate normal heat] or yellow [to indicate low heat]. Industry Canada also opposed having a symbol that means ''any heat,'' stating that it believes a temperature should be given for tumble drying.[18] The Rule, however, allows manufacturers who are conveying instructions in words to omit a temperature instruction for drying if the hottest temperature for drying would not harm the garment; the symbol for ''tumble dry, any heat'' is thus consistent with the Rule.

Industry Canada also suggested a change to the ASTM ''do not bleach'' symbol. ASTM previously changed the ''do not bleach'' symbol from an empty triangle with an ''X'' through it to a shaded triangle with an ''X'' through it to prevent confusion with other systems.[19] Industry Canada pointed out that confusion might nevertheless result because consumers may interpret the revised symbol as meaning ''do not use non-chlorine bleach'' rather than do not use any bleach.''[20] This concern was addressed by ASTM, which changed the ''do not bleach'' symbol to a blacked-in triangle with an ''X'' through it to make clear that no bleach, whether chlorine or non-chlorine, should be used. The Commission welcomes public comment on this change and on the other minor modifications discussed below.

Many changes made by ASTM to Standard D5489 solve harmonization problems that were raised by commenters. The European Commission commented that water temperature indications in words—such as ''very hot,'' ''warm,'' and ''cool/cold,''—may be linked to different specific temperatures in different countries.[21] Industry Canada also noted this problem, and pointed out that in the Canadian system ''warm'' is defined as 50 degrees Centigrade, whereas in the United States ''warm'' is defined as a maximum of 43 degrees Centigrade.[22] ASTM has changed ASTM Standard D5489 by deleting the water temperature *word* indicators in its explanatory chart. Thus, a consumer consulting the ASTM chart to find the meaning of one, two, or three dots, in the wash tub would be told the temperatures in Centigrade and Fahrenheit that correspond to one, two, or three dots rather than ''cool,'' ''warm'' or ''hot.'' This change in the ASTM chart solves the problem of, for example, a Canadian consumer interpreting warm to mean 50 degrees Centigrade.[23]

The Commission notes that this change in the ASTM explanatory chart may mean that the chart does not communicate adequate information about temperature settings on washing machines to American consumers. Commission staff, industry members, and others, however, are coordinating a major educational campaign designed to educate consumers about the care symbols, and materials distributed through that campaign will explain the correlation of the temperature dot system to dial selections on washing and drying machines. Moreover, the conditional exemption requires that, for the first 18 months after the effective date of the conditional exemption, explanatory material ''decoding'' the care symbols used on a care label must be provided to the consumer purchasing the garment. If a ''machine wash'' symbol is used with a temperature indication (*e.g.*, one dot for cold), the explanatory material provided to the consumer would have to explain what washing machine cycle should be selected.[24]

Other recent ASTM changes simply clarify that the symbols used in the Canadian system of care symbols for a washtub and an iron are acceptable although they differ slightly in shape from the ASTM symbols.[25] In addition, ASTM modified the standard so as to make clear that instructions for ''permanent press'' or ''gentle cycle'' may be reported in symbols (*i.e.*,

[16] These modifications were discussed in note 45 in the November 1995 FRN. They are: (1) two additions to the symbols for machine drying [a circle in the square with no dots to indicate any heat; a blacked-in circle to indicate air dry only (no heat)]; and, (2) a change to the refinements to the drycleaning symbol (a circle) so that lines indicating refinements to dryccleaning are placed next to the circle at an acute angle; if all four refinements were used, the symbol would consist of a circle surrounded by four lines in a diamond formation rather than a square, which avoids conflict with the symbol for machine drying (a circle in a square).

[17] Comment 35 p.4–5.

[18] Comment 35 p.6.

[19] See n.3 *supra.*

[20] Comment 35 at p.5.

[21] Comment 39 p.2. The comment, which was from the European Commission, Directorate A (Industrial Policy), Unit III A/1 (International Technology and Industrial Relations) responded to the November 16, 1995 FRN, described above, and to the December 28, 1995 FRN, which addressed certain other issues about the Care Labeling Rule, including definitions of temperatures. The comment was numbered comment 39 in response to the November 1995 notice.

[22] Comment 35 p.6; Care Labeling Rule Appendix A.1.b.

[23] The ISO/Ginetex system used in Europe conveys temperature for wash water by means of a specific centigrade temperature in the washtub (*e.g.*, 50 C). ASTM system allows temperature for wash water to be conveyed by one, two, or three dots; the Centigrade temperature can also be placed in the washtub. The dots were originally also defined as cool, warm, and hot, with a specific temperature range (identical to that in the Appendix to the Care Labeling Rule) to precisely define those terms. However, as noted above, ASTM deleted the word indicators from its explanatory chart because of conflicting definitions of those terms in different countries.

ASTM also changed the definition of ''one dot'' from the definition in the Appendix to the Care Labeling Rule (a *maximum* of 85 Fahrenheit, with no minimum) to a *range* from 65 to 85 degrees Fahrenheit. The reason given for this change was to educate consumers that detergents ''are not effective at lower temperatures.'' ASTM Standard D5489–96c Note 5. In the advance notice of proposed rulemaking published on December 28, 1995 (60 FR 67102, 67103), the Commission noted that changes in the definitions of water temperature for ''cold,'' ''warm,'' and ''hot'' water may be necessary. The Commission will address this issue in a notice in a separate issue of the Federal Register.

[24] American washing machines set on ''cool'' may deliver water below 65 Fahrenheit in the winter in many parts of the United States; as noted above, the Commission will address the issue of whether the definition of cold water in the Appendix to the Care Labeling Rule needs to be revised in a later Federal Register Notice. Under the current provisions of the Rule, there is no requirement that consumers be advised that the cold water they use should not be below 65 Fahrenheit. However, the ASTM system encourages informing consumers that detergents are not effective at lower temperatures, and the Rule would not prohibit any such truthful information.

[25] The ASTM Standard now specifies that it allows the use, in addition to the ASTM symbols, of a washtub symbol without the representation of the water wave inside the tub and an iron symbol with a closed handle.

underlining the washtub) *or* words on a label with the symbolic instructions for machine wash or machine dry. This option can be used by garment manufacturers who believe that the underlining might be confusing, especially to Canadian or Mexican consumers, whose existing symbol systems do not include underlining.

ASTM also removed the steam markings from the iron symbol and has clarified that the iron symbol may mean ''Iron—dry or steam.'' This makes the ASTM system more compatible with the Canadian, Mexican, and European systems, none of which contain a separate symbol for steam ironing. ASTM, however, also created a symbol—an iron symbol with steam markings that have been canceled out by an ''X''—that can be used for the warning ''do not steam.'' Finally, ASTM added a statement to the text of the Standard explaining that ''the iron symbol may be used with the drycleaning symbol to report how to restore the item by ironing after wearing.''

b. Other Changes

Other recent ASTM changes relate to changes in the Standard that are not an integral part of the symbol system (*e.g.*, the Table of Additional Words to Use with Care Symbols) or that involve additions to, or linguistic changes in, the explanatory text of the Standard or the text appearing under the symbols in the explanatory chart. These changes help explain the system but do not change its use. In addition, one change relates to the order in which the symbols should be used. This change is not relevant to the use of the ASTM system to fulfill the requirements of the Care Labeling Rule because the Rule does not require that instructions appear in any particular order (though of course they must be intelligible).

Finally, several changes relate to safety concerns raised by commenters. ASTM revised the text in Standard D5489 that explains the meaning of dots within the iron symbol to refer to *maximum* temperatures for the iron heat setting rather than simply to ironing temperatures. This at least partially addresses safety concerns raised by one commenter.[26] Another safety concern was raised by Industry Canada, which commented that, at least theoretically, the symbol for hand washing could be combined with the hottest water temperatures.[27] ASTM revised the text of the Standard to state that the only water temperatures that may be used with the hand washing symbol are 40 C (105 F) or 30 C (85 F).

2. The Ginetex/ISO System

Six comments stated that the Commission should adopt the Ginetex care symbol system to harmonize with the system used in Europe.[28] Two comments recommended either that the Commission allow ''the use of GINETEX symbols supplemented by ASTM symbols for those care labeling elements required by the FTC but not conveyed by Ginetex symbols'' [29] or allow the use of either the ASTM or the GINETEX systems until there is a consensus on an international system.[30]

Some comments also noted that trademark issues should not prevent the Commission from adopting the GINETEX system, but should become the focus of investigation and consultation.[31] One comment indicated that country-specific royalty waivers may be a possibility.[32] Despite this possibility, the Commission continues to have concerns about Ginetex's assertion of trademark rights over the ISO/Ginetex system.

After reviewing the comments, the Commission reaffirms its conclusion that the use of the ISO standard 3758 is not appropriate for the United States at this time.[33] The Commission's concerns with the comprehensiveness of the ISO/Ginetex system, with the system's inconsistency with U.S. technology, and with trademark issues have not been adequately resolved. The Commission therefore has decided to adopt the ASTM Standard D5489–96c system of care symbols for the conditional exemption. The Commission agrees, however, that harmonization of the symbol system adopted in the United States with the system used in Europe is very important. The Commission is aware that representatives of ASTM and Ginetex have been discussing harmonization of the two systems, and a Commission representative has attended ISO and Ginetex meetings. The Commission intends to continue its liaison efforts with Ginetex and ISO in an effort to promote harmonization. But, the Commission does not believe it is necessary to wait for a consensus on an international system before it allows the use of symbols without words. Many countries—Canada, Mexico, and Japan, among them—allow the use of symbols without language in the absence of an international consensus. Efforts to harmonize the U.S. and European care symbol systems can continue even though the Commission has decided to adopt the ASTM system at this time.

B. Comments Responding to Questions Posed in the FRN

The November 16, 1995 FRN included the following questions about the possible introduction of the ASTM system in the United States:

1. Will the underlining of the washtub or the machine drying symbol be confusing to Canadian and Mexican consumers? Will the underlining be confusing to American consumers? If so, should the Commission ''except'' this part of the ASTM system from the conditional exemption? Will ''excepting'' the underlining of symbols reduce the benefit of symbols or impose costs on manufacturers?

A few comments stated that underlining (which denotes what cycle—*i.e.*, ''gentle'' or ''permanent press''—should be used) may be confusing to consumers, at least initially.[34] But most of the comments

[26] Stiehler (18) stated at p. 1 that the ASTM chart shows three iron symbols with indications for the use of steam at 200, 150, or 110 degrees Celsius and expressed the concern that the use of steam at these temperatures could be dangerous.

[27] Comment 35 p. 6.

[28] Cranston (10) p. 4; GINETEX (14) p. 5; FEDERTESSILE (19) p. 1–2; EURATEX (33) p. 1; Switzerland (38) p. 1–2; European Commission (39) p. 1–2. These comments noted that if the U.S. adopts the ASTM system, European Community manufacturers will be obliged to continue to use different care labels for goods intended for export to the U.S. and U.S. manufacturers would have to do the same for goods destined for export to Europe, which would diminish the utility of symbols.

[29] Warnaco (21) p. 2.

[30] USA–ITA (11) p. 2. However, the Commission has concluded that allowing the use of both systems at the same time in the United States would result in the inconsistent use of symbols by manufacturers and confusion on the part of consumers.

[31] FEDERTESSILE (19) p. 2, 3; Warnaco (21) p. 2; EURATEX (33) p. 2.

[32] Warnaco (21) p. 2.

[33] Switzerland (38) at p. 2 and European Commission (39) at pp. 1–2 stated that Article 2.4 of the Agreement on Technical Barriers to Trade requires that technical regulations be based on international standards and encouraged the Commission to adopt the Ginetex/ISO standard because the adoption of a different system could create technical barriers to trade. In the Federal Register notice of November 16, 1995, the Commission gave careful consideration to ISO Standard 3758, acknowledging that the Trade Agreements Act of 1979 encourages federal agencies to use international standards whenever possible. But the Commission also noted that the Trade Agreements Act explicitly identifies several reasons why basing a standard on an international standard may not be appropriate, including the prevention of deceptive practices and fundamental technological problems. 19 U.S.C. 2532(2)(B)(i).

[34] Koester (3) p. 1; USA–ITA (11) p.4; AAMA (15) p.2; TLC (16) p.2; Springs (23) p.1; NCCA (27) p.1. Paxar (17) stated at p.8 that consumers might find a color code easier to understand than underlining. Industry Canada (35) stated at p.2 that the use of underlining would probably confuse Canadian consumers, who would probably find written instructions for ''Permanent Press'' or ''Delicate/Gentle'' more helpful. The Care Labeling Rule presently allows the use of symbols and words together. The conditional exemption does not change that aspect of the Rule. Thus, ''permanent

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stated that the underlining of symbols will not be confusing and should not be an exception from the ASTM system.[35] Two comments stated that the elimination of the underlining would decrease the specificity and effectiveness of the symbol system.[36] For example, eliminating the underlining may lead some consumers to wash and dry apparel items in a normal cycle, which could damage the items,[37] or might require consumers to interpret the fiber content and finish of a garment to determine the specific cycle to use.[38] Some comments noted that deleting the underlining would require substituting written cycle instructions, probably in multiple languages, increasing the label size and imposing additional costs on manufacturers.[39] One comment stated that adopting a care symbol system in phases, with the basic symbols adopted at one time and the underlining at another, may confuse consumers.[40]

Based on these comments, the Commission has decided to allow the use of underlining. A comprehensive educational program, including the use of explanatory hangtags and other materials, should convey what the underlining means.[41]

2. Should the Commission specify the minimum size of the symbols or are existing requirements of legibility sufficient?

A few comments recommended that the Rule specify a point type size for symbols[42] in part because a legibility standard might allow arbitrary judgment concerning what is legible and what is not.[43] One comment stated that care instructions often become difficult to read after repeated cleanings and that therefore the printing used on care labels should be large enough to remain legible through several care cycles;[44] specifying a minimum type size would help ensure that symbols on both printed and woven labels remain legible after repeated washings.[45] A few comments stated that using 20 point type[46] or a symbol height of not less than 5mm[47] would ensure legibility of the more complex symbols, prevent eye strain and help people with less than perfect eyesight and senior citizens. Another comment stated that, because of the different characteristics of printed and woven labels, care instructions on printed labels should be printed in a minimum 20 point type and instructions on woven labels should be printed in a minimum 25 point type.[48] One comment stated that the Commission should work with ASTM to determine the minimum size necessary to convey the symbols.[49]

Nevertheless, many other comments stated that the existing requirement of legibility is sufficient and that the Commission should not specify the minimum size of the symbols.[50] The GINETEX system does not require a minimum point size; it requires that the symbols be legible and proportional to the size of the textile article.[51] Industry Canada stated that Canada also follows a legibility standard and does not specify a minimum size for symbols.[52] A few comments stated that the marketplace will address the needs of the consumer so that specifying a minimum print size is not necessary.[53] Because different garments have different label size needs, some comments stated that requiring a minimum point size would unnecessarily restrict manufacturers.[54]

The Commission finds that the existing requirement of legibility is sufficient and that the interim conditional exemption should not specify a type size for symbols. The Commission has no evidence that the existing legibility standard has caused problems with written instructions and no evidence that the legibility standard would cause problems with the comprehension of care symbols. The Commission agrees that the marketplace will provide incentives for manufacturers to print legible care symbols. In addition, the failure to provide legible symbols would be an unfair or deceptive practice, and a violation of the Rule for which the Commission could seek civil penalties.[55]

3. Should explanatory hangtags providing care information in language be required for more than one year? Less than one year? How long would it take for hangtags to be prepared and affixed to garments?

Some comments stated that requiring hangtags for at least a twelve month period is sufficient to introduce the care symbols[56] because one year would insure that products with a wide range of product distribution and life cycles would reach the market with the explanatory labels.[57] Other comments stated that one year is not enough for the public to learn the symbols and get used to doing without words.[58] Several comments stated that explanatory hangtags should be required for two years to help consumers learn the details of the system, such as the underlining, and to increase the chances that consumers who do not buy clothing frequently, such as the elderly, would encounter the hangtags explaining the care symbols.[59] One comment stated that explanatory hangtags should be required for at least five years.[60] Other comments, while supporting the use of hangtags did not specify a time period for their use.[61]

press'' or ''gentle cycle'' could be used with symbols, such as the washtub or drying symbol. (As noted above, ASTM's recent revision of Standard D5489 makes clear that these symbols can be used with words.)

[35] Koester (3) p.1; Cranston (10) p.2; USA–ITA (11) p.4; ATMI (13) p.1; AAMA (15) p.2; TLC (16) p.2; IFI (22) p.2; Springs (23) p.1; Fieldcrest (26) p.1; NCCA (27) p.1; Pittsfield (30) p.1; Pullen (34) p.1; AAFCS (37) p.1.

[36] Cranston (10) p.2; Pittsfield (30) p.1.

[37] Cranston (10) p.2.

[38] Pullen (34) p.1.

[39] ATMI (13) p.1; Springs (23) p.1; Pittsfield (30) p.1; Pullen (34) p.1.

[40] AAMA (15) p.2.

[41] Koester (3) p.1; USA–ITA (11) p.4; ATMI (13) p.1; AAMA (15) p.2; TLC (16) p.2; IFI (22) p.2; Springs (23) p.1; NCCA (27) p.1; Pullen (34) p.1; AAFCS (37) p.1.

[42] Koester (3) p.1; Paxar (17) p.3; Pittsfield (30) p.1.

[43] Paxar (17) p.14; Pittsfield (30) p.1. Paxar (17) stated at p.4 that a legibility standard may result in problems in the international transport of apparel.

[44] Koester (3) p.1.

[45] Pullen (34) p.2.

[46] Koester (3) p.1.

[47] Pittsfield (930) p.1; Pullen (34) p.2. Pittsfield (30) stated at pp.1–2 that symbol size becomes critical when both dots and a temperature designation are used inside the washtub symbol.

[48] Paxar (17) noted at p.4 that the use of any point size less than 25pt on woven labels would make the washing temperature and the lines that indicate steam in the ironing symbol difficult to read. The recommended minimum point sizes include only the basic symbols and not any underlining of symbols. Koester (3) at p.1 stated that a 20pt type size would make temperature indications in the washtub symbol legible, but did not distinguish between woven and printed labels.

[49] AHAM (20) p.1.

[50] Cranston (10) p.2; USA–ITA (11) p.4; ATMI (13) p.2; AAMA (15) p.2; TLC (16) p.2; NKSA (20) p.1; Springs (23) p.1; Fieldcrest (26) p.2; NCCA (27) p.1; AAFCS (37) p.1.

[51] GINETEX (14) p.4.

[52] Comment 35 p.2.

[53] ATMI (13) p.2; AAMA (15) p.2.

[54] ATMI (13) p.2; Springs (23) p.1.

[55] See Section 5(m)(1)(A) of the Federal Trade Commission Act, 15 U.S.C. 45(m)(1)(A); and, the Care Labeling Rule, 16 CFR 423.1(a), 423.2, and 423.5.

[56] NAHM (4) p.2; Paxar (17 p.5; Warnaco (21) p.2; Pullen (34) p.2.

[57] ATMI (13) p.2.

[58] Consumers Union (7) p.2; GINETEX (14) p.4; IFI (22) p.2.

[59] Koester (3) p.1; Cranston (10) p.3; AAFCS (37) p.1.

[60] Salant (2) p.1.

[61] P&G (31) pp.2, 3. Consumers Union (7) stated, at p.2, that explanatory hangtags should be used until the public is fully aware of what the care symbols mean; the comment suggested that the Commission conduct a poll after one year to gauge public awareness, and issue another call for comments. Industry Canada (35) stated, at p.3, that the adequacy of the one year period can only be assessed in the context of the total campaign implemented to educate consumers about the symbols.

A few comments stated that hangtags may not be the most effective way of educating consumers in part because consumers tend to discard hangtags after purchasing apparel.[62] Many comments suggested that the Commission condition the use of symbols on the provision of explanatory information without specifying the means by which that information should be conveyed, to allow for the use of stickers, ultrasound and thermal labeling, and other labeling methods that are appropriate for different products.[63] One comment noted, for example, that the use of hangtags on packaged products is not practical and may require changes to manufacturing operations.[64]

After reviewing these comments, the Commission has determined that conditioning the exemption on the provision of explanatory information for 18 months after the effective date of the conditional exemption is sufficient to prevent the unfair or deceptive practices to which the Rule relates.[65] The conditional exemption does not require that manufacturers or importers print the whole chart on the explanatory information provided to the consumer.[66] The conditional exemption does not alter the requirements of the Care Labeling Rule, and the Rule only requires that the care instruction indicate ''what regular care is needed for the ordinary use of the product.'' Section 423.6(b).

In addition, the Commission has determined that limiting the explanatory information to hangtags is not warranted because other methods of conveying the meaning of the symbols would be equally effective. Allowing manufacturers to determine the best way to convey the information—whether by hangtags, stickers, or by other means—would allow them to tailor the means of conveying the information to the textile item and its packaging.

4. What types of consumer education should be planned and to what extent are industry members willing to participate in such campaigns? How long would it take to develop and undertake such campaigns?

Many comments expressed the need for and willingness to participate in a strong, nationwide consumer education effort.[67] The comments emphasized the importance of coordinating consumer education efforts;[68] consumer education must include the participation of the textile and apparel industries, dry-cleaning and laundering industries, consumer groups, and the government.

The comments suggested many specific consumer education initiatives. Many comments suggested that home laundering equipment manufacturers include the symbol chart on new equipment and in instruction packages.[69] Laundry detergent manufacturers could also print the symbol charts on laundry detergent containers.[70] A few comments focused on the importance of home economics extension programs and other school programs in educating consumers with the help of training materials provided by apparel, equipment, and detergent manufacturers.[71] Many comments stated that clothing retailers and cleaners can display and distribute educational information and can educate their employees to answer consumer questions about caring for clothing. Two comments recommended posting the care symbol chart at laundromats and apartment laundry rooms.[72]

The Commission agrees that a strong consumer education campaign will be necessary to educate consumers about the meaning of the symbols, and intends to work with all interested parties to plan and coordinate an educational campaign. The Commission's staff will contact all commenters (and any other relevant groups and associations) in the near future to announce a public meeting to coordinate an educational campaign.[73]

5. If the Commission were to grant a conditional exemption, when should it become effective?

Numerous comments stated that the conditional exemption should not become effective until interested parties have had the opportunity to prepare a consumer education campaign.[74] Several comments stated that it would take about 6 to 8 months to prepare explanatory labels and approximately six months to one year for manufacturers to dispose of existing inventory and to start affixing hangtags to apparel.[75]

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[62] Cranston (10) p.3; Pittsfield (30) p.2. FEDERTESSILE (19) stated, at p.2, that requiring explanatory hangtags would impose significant costs on manufacturers and that educating consumers through media outlets and ''ad hoc activities at points of sale'' would be more appropriate and equally effective. Labelize (32) p.1 also considered requiring hangtags an unnecessary burden on manufacturers.

[63] USA–ITA (11) p.5; ATMI (13) p.2; AAMA (15) p.1, 3; TLC (16) p.2; NKSA (20) p.1; Springs (23) p.1; Fieldcrest (26) p.2; Pittsfield (30) p.2.

[64] Springs (23) p.2.

[65] Consumers Union (7) p.1 and Paxar (17) p.1 recommended that care labels contain a combination of words and care symbols for the period during which explanatory information will be required because the explanatory hangtags or other information may get lost on the selling floor or misplaced in consumers' homes, leaving the consumers without a guide to interpret the symbols. The Care Labeling Rule permits the joint use of symbols and written instructions on a care lable. The conditional exemption permits the use of symbols alone on care labels. The decision whether to use both words and symbols on the permanent care label during the 18 month period during which explanatory information is required has been left to the parties subject to the Rule.

[66] Paxar (17) at p.5 interpreted the requirement that manufacturers or importers provide explanatory information as a requirement that they print the whole care symbol chart.

[67] Salant (2) p.1; Koester (3) p.2; NAHM (4) p.2; Cranston (10) p.3; TLC (16) p.2; Paxar (17) p.1, 6, 7; Warnaco (21) p.2; IFI (22) p.1, 2; Springs (23) p.2; Fieldcrest (26); NCCA (27) p.2: AHAM (29) p.2; P&G (31) p.3; Pullen (34) p.2; AAFCS (37) p.1, 2. Consumers Union (7) stated, at p.1, that it will publish an article in Consumer Reports explaining the symbols. ATMI (13) stated, at p.3, that it is willing to participate, by helping to plan an educational campaign, disseminating information, compiling a media contact list, providing limited printing services, and educating trade associations in Canada and Mexico. GINETEX (14) stated, at p.4, that, if the Ginetex and the ASTM systems could be harmonized closely, a common educational campaign could be developed that would strengthen the media impact of the new system. AAMA (15 stated, at p.3, that two of its members desired to know the scope and cost of an educational campaign before they would be willing to endorse it. Paxar stated, at p.7, that it intends ''to conduct extensive educational programs through print, electronic and other means of distribution.'' NKSA (20) stated at p.1 that it ''will assist in developing and promoting such a consumer information effort through our Association's normal publications, including the Knitting Times.'' AAFCS stated at p.1 that ''[b]ecause of their expertise in both the areas of textiles and education, AAFCS members should be enlisted to provide nation-wide educational programs * * *. Members of AAFCS can be of great assistance in educating the public through the communications channels they already have in place.''

[68] Paxar (17) p.6; AHAM (29) p.2; Industry Canada (35) p.3.

[69] Koester (3) p.2; USA–ITA (11) p.5; Springs (23) p.2; Pittsfield (30) p.2. AHAM (29) stated at p.1 that ''AHAM members likely will use ASTM-devised care symbols with equipment use and care booklets and on the actual washer and dryer equipment.'' AHAM also stated at pp.1–2 that iron manufacturers might place the care symbols on iron control dials so that consumers can refer to them to interpret the meaning of the ironing care symbols on garments; AHAM urged the Commission to consider the value of this measure.

[70] Koester (3) p.2; Consumers Union (7) p.1; Cranston (10) p.3; USA–ITA (11) p.5; Springs (23) p.2; Pittsfield (30) p.2. ATMI (13) suggested, at p.3, that home laundering product manufacturers provide stickers of the chart, so that consumers can place the chart on or near laundering appliances.

[71] Koseter (3) p.2; ATMI (13) p.3; AAFCS (37) p.1. P&G (31) stated at p.3 that it has educated consumers on proper garment care through toll free 1–800 numbers and by providing publications to home economics teachers.

[72] Koester (3) p.2; ATMI (13) p.3.

[73] Parties who would like to participate in such a meeting but who have not submitted comments on the Rule in the past two years should contact staff listed in the information section of this Notice to receive information about the meeting.

[74] Cranston (10) p.3; ATMI (13) p.4; Paxar (17) p.6; IFI (22) p.2; Springs (23) p.2.

[75] ATMI (13) p.2–3; AAMA (15) p.3; Paxar (17) p.5, 6; IFI (22) p.2. Koester (3) at p.3 recommended that the exemption not become effective until 1½ years after the exemption is adopted to allow time for educators and manufacturers to prepare

Continued

A few comments noted that the conditional exemption does not impose any new labeling requirements and provides for the voluntary, not mandatory, use of care symbols, and that, therefore, the effective date of the exemption is important only in terms of the requirement that manufacturers and importers provide explanatory information for a certain period.[76] The Commission finds that approximately six months will be sufficient to allow manufacturers to prepare explanatory labels and to allow the coordination of a consumer education campaign. The Commission has therefore decided that the conditional exemption will become effective July 1, 1997.

6. Does ASTM's copyright pose a barrier to the use of the ASTM system?

A few comments stated that ASTM's copyright could pose problems to using the ASTM symbols if, for example, ASTM requires a reference to the copyright on clothing labels or hangtags or if it insists on royalty payments.[77] One comment stated that the utility of a symbol-based system would be reduced if Condition #2 of the Conditions for Republishing the ASTM Standard Care Symbol Chart[78] requires an ASTM credit line even when the entire chart is not used; however, the comment assumed correctly that no obligation to credit ASTM exists if the entire ASTM chart is not copied.[79] The same comment correctly assumed that Condition #3, which permits duplication of the ASTM chart royalty-free when the chart is affixed to goods, would also allow the duplication of the chart royalty-free for consumer education programs even though the chart is not attached to goods.[80]

Most comments stated that ASTM's copyright would not pose a barrier to the use of the ASTM system.[81] A few comments expressed the opinion that the five basic care symbols are non-proprietary and in the public domain and could therefore not be copyrighted or trademarked in the U.S. and stated that ASTM's Conditions for Republishing the ASTM Standard D5489 Care Symbol Chart adequately addresses any concerns regarding ASTM's copyright for use of the symbol system chart.[82]

The Commission finds that the ASTM copyright is not an impediment to adopting the ASTM system. ASTM holds a copyright on ASTM Standard D5489 and on the ASTM Care Symbol Chart, but not on the ASTM symbols. Although ASTM has placed certain conditions on the use of its Care Symbol Chart, the conditional exemption does not require the use of ASTM's Care Symbol Chart. ASTM's Condition #1 would not allow modified charts or symbols to be represented as the ASTM Standard, but modified charts could be distributed under some other title, thus avoiding the credit line requirement of ASTM's Condition #2. In the event that manufacturers, or others, wish to use ASTM's chart, they must comply with its conditions. But the Commission does not believe that those conditions pose an impediment to adopting the system.

IV. Summary of Commission's Decision

Section 18(g)(2) of the Federal Trade Commission Act, 15 U.S.C. 57a(d)(2)(B), provides that ''[i]f * * * the Commission finds that the application of a rule prescribed under subsection (a)(1)(B) to any person or class of persons is not necessary to prevent the unfair or deceptive act or practice to which the rule relates, the Commission may exempt such person or class from all or part of such rule.'' The Commission now finds that the provision presently found in the Terminology section of the Care Labeling Rule, that appropriate care symbols may be used on care labels or care instructions only in addition to the required appropriate terms, is not necessary to prevent the unfair or deceptive act or practice to which the rule relates. Specifically, the Commission exempts manufacturers and importers of textile wearing apparel who use the system of care symbols designated ASTM Standard D5489–96c from the requirement that written care instructions accompany care instructions in symbols. The Commission has not specified a type size for the symbols, but they must be legible. The exemption is adopted on the condition that the parties subject to the Rule provide explanatory information with any garment offered for sale in the period from July 1, 1997 to December 31, 1998 to consumers regarding the meaning of the care symbols that appear on the label of that garment. To implement this conditional exemption, the Commission revises Sections 423.2 and 423.8, the Terminology and Exemptions sections of the Rule, respectively.

The incorporation by reference of ASTM Standard D5489–96c was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASTM Standard D5489–96c Guide to Care Symbols for Care Instructions on Consumer Textile Products may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428, or may be inspected at the Federal Trade Commission, room 130, 600 Pennsylvania Avenue, N.W., Washington, DC, or at the Office of the Federal Register, suite 700, 800 North Capitol Street, N.W., Washington, DC.

Pursuant to the requirements of section 18(g) of the Federal Trade Commission Act, 15 U.S.C. 57a(g), and the provisions of the Administrative Procedure Act, 5 U.S.C. 553(b), the Commission published notices requesting comment on the proposed conditional exemption on June 15, 1994 (59 FR 30733) and November 16, 1995 (60 FR 57552). This conditional exemption is not subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501, because the conditional exemption does not create requirements for information collection; rather, it provide an alternative method of communicating information. The Regulatory Flexibility Act, 44 U.S.C. 601(2), does not apply to this conditional exemption because, pursuant to section 18(d)(2)(B) of the Federal Trade Commission Act, 15 U.S.C. 57a(d)(2)(B), an exemption to a rule under section 18(g) of the Federal Trade Commission Act, 15 U.S.C. 57(a)(g), shall not be treated as an amendment or repeal of a rule. The conditional exemption will become effective on July 1, 1997. The Commission welcomes comment on the minor changes that have been made in ASTM D5489 since the Commission last sought comment on this subject in November 1995. The Commission will consider further revision of this interim conditional exemption, as appropriate. Such comments may be filed with the Office of the Secretary until March 10, 1997.

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themselves. USA–ITA (11) stated at p.5 that its members indicated that it would not take longer than eight months to prepare explanatory labels. Industry Canada (35) stated at p.3 that conversion to the use of symbols may take several clothing seasons because manufacturers consider their existing label stock and the capacities of their printing equipment before they convert.

[76] Pittsfield (30) p. 2; Industry Canada (35) p. 3.

[77] Cranston (10) p. 4; AHAM (29) p. 2.

[78] See Conditions for Republishing the ASTM D5489 Care Symbol Chart, attached to this notice.

[79] Paxar (17) p. 7.

[80] Paxar (17) p. 7.

[81] Koester (3) p. 3; USA–ITA (11) p. 6; AAMA (15) p. 3; TLC (16) p. 2; IFI (22) p. 1; Springs (23) p. 2; Fieldcrest (26) p. 2; NCCA (27) p. 2; Pittsfield (30) p. 2; Pullen (34) p. 2. Industry Canada (35) stated at p. 4 that if Canadian manufacturers are able to use the ASTM symbols ''license-free,'' ASTM's copyright would not pose a problem.

[82] ATMI (13) p. 4; Springs (23) p. 2; Fieldcrest (26) p. 2; Pullen (34) p. 2.

List of Subjects in 16 CFR Part 423

Labeling; Incorporation by reference; Textiles; Trade practices.

Appendix to the Preamble—Conditions for Republishing the ASTM D 5489 Care Symbol Chart

Upon written request, ASTM will grant other organizations a royalty-free license for republication of the Care Symbol Chart provided the following conditions are agreed to:

1. Should the chart or the symbols be modified, then they may not be represented as being the ASTM standard.

2. The following credit line shall appear on all copies made of the chart: ''Copyright American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103.''

3. Copies of the chart shall not be made available for sale except by separate license under which royalty payments to ASTM are required. This would not apply to copies of the chart affixed to goods such as appliances, cleaning agents, apparel, or home furnishings which are in fact sold. In these cases the chart is being used to convey information about the care symbol system to the ultimate consumer.

4. The license for republishing the chart is for a specific number of copies and for a specific period of time which is to be agreed upon by ASTM and the licensee.

5. The original standard or original art work for the symbols, if needed, may be purchased separately from ASTM.

6 September 1995, ASTM

Text of Amendments

Accordingly, the Commission amends 16 CFR Part 423 as follows:

PART 423—[AMENDED]

1. The authority citation for part 423 continues to read as follows:

Authority: 38 Stat. 717, as amended; (15 U.S.C. 41, et seq.)

2. Section 423.2 is amended by revising paragraph (b) to read as follows:

§ 423.2 Terminology

* * * * *

(b) Any appropriate symbols may be used on care labels or care instructions, in addition to the required appropriate terms so long as the terms fulfill the requirements of this regulation. See § 423.8(g) for conditional exemption allowing the use of symbols without terms.

* * * * *

3. Section 423.8 is amended by adding paragraph (g) to read as follows:

§ 423.8 Exemptions

* * * * *

(g) The symbol system developed by the American Society for Testing and Materials (ASTM) and designated as ASTM Standard D5489–96c, Standard Guide for Care Symbols for Care Instructions on Textile Products may be used on care labels or care instructions in lieu of terms so long as the symbols fulfill the requirements of this regulation. In addition, symbols from the symbol system designated as ASTM Standard D5489–96c may be combined with terms so long as the symbols and terms used fulfill the requirements of the regulation. Provided, however, that for the 18-month period following the effective date of this section, such symbols may be used on care labels in lieu of terms only if an explanation of the meaning of the symbols used on the care label in terms is attached to, or provided with, the item of textile wearing apparel. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASTM Standard D5489–96c, Standard Guide for Care Symbols for Care Instructions on Textile Products may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428, or may be inspected at the Federal Trade Commission, room 130, 600 Pennsylvania Avenue, N.W., Washington, DC, or at the Office of the Federal Register, suite 700, 800 North Capitol Street, N.W., Washington, DC.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

Statement of Commissioner Christine A. Varney, Conditional Exemption to the Care Labeling Rule, December 16, 1996

I am voting today to support adopting a conditional exemption to the Care Labeling Rule to permit the use of symbols, without accompanying written instructions, to convey the care information required by the Rule. We live in an increasingly global marketplace, and, by allowing the use of symbols, the Commission has taken a positive step towards enhancing global harmonization.

In moving toward a symbol-based system, the Commission had the opportunity to decide which system would be permitted: the one developed by the American Society of Testing and Materials (ASTM), the one adopted by the International Standards Organization (ISO), currently in use in Europe, or a hybrid of the two. Although the two systems are very similar, they are not identical.

The Commission adopted the ASTM system over the ISO system because it believed ASTM was preferable for several reasons. The ISO system is trademarked, which could require U.S. companies to pay royalties, and the ISO system does not provide all of the information required by the Rule. The Commission also determined that allowing manufacturers to use either the ASTM system or the ISO system (at the manufacturer's choice) could confuse consumers.

Although I understand the Commission's rationale for selecting the ASTM system, I am not convinced that the differences between the two schemes are so great that some sort of accommodation could not have been reached. While I support the current proposal for achieving harmony with our NAFTA partners, I nonetheless believe we may have missed an opportunity to achieve global consistency.

I understand, however, that staff will continue to pursue further harmonization efforts through negotiations with the International Standards Organization. I strongly support such efforts.

[FR Doc. 97–3048 Filed 2–5–97; 8:45 am]

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Federal Register

Thursday
February 6, 1997

Part VII

Federal Emergency Management Agency

44 CFR Parts 65, 70, and 72
Identification and Mapping of Special Flood Hazard Areas, Procedures for Map Correction, and Procedures and Fees for Processing Map Changes, Final Rule and Fee Schedule for Processing Requests for Map Changes and for Flood Insurance Study Backup Data for Fiscal Year 1997, Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 65, 70, and 72

RIN 3067–AC53

Identification and Mapping of Special Flood Hazard Areas, Procedures for Map Correction, and Procedures and Fees for Processing Map Changes

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule revises the National Flood Insurance Program (NFIP) regulations concerning the identification and mapping of Special Flood Hazard Areas (SFHAs) and correction of NFIP maps by revising the fee requirements and fee schedule for processing certain changes to NFIP maps. Under this final rule, the fees will be adjusted periodically, but no more than once annually, to provide for changes in the prevailing private-sector labor rate on which the fees are predicated. Revised fees will be published as a notice in the Federal Register.

EFFECTIVE DATE: This rule is effective March 10, 1997.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: This final rule revises the NFIP regulations governing identification and mapping of SFHAs and correction of NFIP maps by revising the fee requirements and fee schedule for processing certain changes to NFIP maps. FEMA established the current fee requirements under a final rule published in the Federal Register, at 57 FR 29036, on June 30, 1992.

This action reduces expenses to the NFIP and contributes to maintaining the NFIP as a self-supporting program by: (1) Establishing flat user fees for most requests for Conditional Letters of Map Amendment (CLOMAs), Letters of Map Revision Based on Fill (LOMR–Fs), Conditional Letters of Map Revision Based on Fill (CLOMR–Fs), Letters of Map Revision (LOMRs), Conditional Letters of Map Revision (CLOMRs), and Physical Map Revisions (PMRs); (2) reducing the number of user fee categories; (3) requiring full payment of user fees before FEMA begins work on a request; (4) changing the initial fee and hourly rate for LOMR, CLOMR, and PMR requests based on structural measures on alluvial fans; (5) limiting exemptions; and (6) replacing the mechanism for recovering the cartographic production costs related to incorporating map changes made by letter in Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs).

This final rule supersedes the fee schedules that FEMA established on June 30, 1992. It also expands the payment method to include credit card payments.

The listing of fees that are effective as of the date of this rule is published as a notice elsewhere in this issue of the Federal Register. A primary component of the fees is the prevailing private-sector rates charged to FEMA for labor and materials. Because these rates and the actual review and processing costs may vary from year to year, FEMA will evaluate the fees at the end of each fiscal year and publish revised fee schedules, when needed, as notices in the Federal Register.

These revisions to the NFIP regulations are a result of the continuing reappraisal of the NFIP to achieve administrative and fiscal effectiveness and to encourage sound floodplain management so that the Program can realize reductions in the loss of life and property and in disaster-related expenditures.

Revisions to Interim Final Rule

FEMA published an interim final rule concerning these regulation changes in the Federal Register, at 61 FR 46330, on August 30, 1996. In the interim final rule, we invited the public to comment on the regulation changes within 30 days. One commenter wrote:

> In view of the fact that the National Flood Insurance Program was promulgated by the United States Congress and assigned to the Federal Emergency Management Agency as a regulative measure in order to ensure that minimal development occurs in the floodplain areas, I feel that promulgation of this regulation is a mandate upon local government in that it closes access to appealing errors and omissions or changes on the National Flood Insurance Program maps * * *. It may well thwart applications for appropriate regulations and changes due to the fact that many municipalities and counties do not have sufficient funding to cover the costs without overburdening their budgets. Accordingly, I disagree with the statement on Page 46631 concerning the Regulatory Flexibility Act, wherein the Acting Associate Director of the Mitigation Directorate certifies that the interim [final] rule does not have a significant economic impact on substantial number of small entities * * *.
>
> There are numerous small communities and rural counties that adjoin rivers throughout the United States and are impacted by flooding. They have not, in many cases, been offered the opportunity for protection by levees or urban flood walls and, therefore, remain at the mercy of the rivers upon which they were located a century or two ago. To now require them to pay fees to have maps revised is not an acceptable position.
>
> I feel that if the federal government wishes to continue this program that it should stand the costs fully for carrying out the administrative, mapping and implementation requirements of the National Flood Insurance Program.

In response to these comments the changes published in this final rule do not establish completely new requirements for the payment of user fees. They expand an existing system established during the 1980s to allow the NFIP to recover costs for providing certain map products and services and, at the same time, to allow the NFIP to remain self-supporting for the historic average flood loss year. The objective of the changes is to distribute the costs of certain products and services equitably between flood insurance policyholders and the users of the products and services, rather than to distribute these costs to the general taxpayer who may or may not benefit from the product or service. This effort is in keeping with 31 U.S.C. 9701, under which the U.S. Congress allows Federal agencies to charge fees for products and services. 31 U.S.C. 9701 provides, in part:

''(a) It is the sense of Congress that each service or thing of value provided by an agency * * * to a person * * * is to be self-sustaining to the extent possible.

''(b) The head of each agency * * * may prescribe regulations establishing the charge for a service or thing of value provided by the agency. * * * Each charge shall—(1) be fair; and (2) based on: (A) The costs to the Government; (B) the value of the service or thing to the recipient; (C) public policy or interest served; and (D) other relevant facts.''

This rule also does not ''close access to appealing errors and omissions'' on the NFIP map as suggested in the commenter's September 27 letter. Community officials and property owners may continue to appeal proposed base (1-percent-annual-chance) flood elevations shown on NFIP maps under 44 CFR part 67 of the NFIP regulations without charge. In addition, map revision requests submitted under 44 CFR part 65 of the NFIP regulations will be exempt from fees if the requests are made to correct mapping or study analysis errors. Furthermore, community officials who believe a FEMA-contracted restudy of flood hazards is necessary because conditions have changed since the NFIP map for their community was last published

may continue to request such restudies from FEMA. Funding for such restudies comes from the National Flood Insurance Fund, and FEMA bears the costs of revising the NFIP maps fully as a result of these restudies.

FEMA is aware that flooding impacts numerous small communities and rural counties throughout the United States. FEMA, working in conjunction with many State and Federal agencies, works with these communities to develop an overall strategy for mitigating the damage caused by flooding. Numerous funding options are made available to communities by FEMA, other Federal agencies, and State agencies to ensure proper mitigation options are exercised. The regulation changes promulgated by this final rule will have no impact on those activities.

As indicated in § 72.4(e) of the revised regulations, the entity that applies to FEMA through the local community for review is responsible for the cost of the review. The local community incurs no financial obligation under the reimbursement procedures set forth in this part as a result of transmitting the application by another party to FEMA.

Finally, since the requirements for user fees for certain types of map changes were established, the number of requests for CLOMAs, CLOMR–Fs, LOMR–Fs, CLOMRs, LOMRs, and PMRs received each year has grown and is expected to continue to grow. Therefore, the available statistics do not support the contention that promulgation of these regulation changes will ''thwart applications for appropriate regulations and changes * * *'' in the future.

As a result of internal FEMA review, we incorporated the following changes in this final rule:

1. We revised § 72.3(c) to include two new categories to cover LOMR–Fs based on as-built information for projects for which CLOMR–Fs were issued previously by FEMA.

2. We revised Category 6 (now Category 7) in § 72.3(c) to clarify that this category does not apply to requests based on as-built information for projects involving structural measures on alluvial fans. The $5,000 initial fee will be charged to all map revision requests involving structural measures on alluvial fans.

3. We added § 72.3(d) which reads: ''If a request involves more than one of the above categories, the highest applicable flat user fee must be submitted.''

4. We revised § 72.3(e) (now § 72.3(f)) to read: ''The flat user fees for conditional and final map amendments and map revisions are based on the actual costs for reviewing and processing the requests. The fees for requests for LOMR–Fs, LOMRs, and PMRs also include a fee of $35 to cover FEMA's costs for physically revising affected FIRM and FBFM panels to reflect the map changes.''

5. We deleted § 72.3(e), which covered cartographic production fees.

6. We added § 72.5(c), which reads:

(c) Map change requests based on the following shall be exempt from fees:

(1) Federally sponsored flood-control projects where 50 percent or more of the project's costs are federally funded; and

(2) Detailed hydrologic and hydraulic studies conducted by Federal, State, or local agencies to replace approximate studies conducted by FEMA and shown on the effective FIRM.

Establishment of Flat User Fees

The existing fee collection process is complex and requires time-intensive efforts on the part of FEMA to administer. More importantly, it also increases the time required to provide the requesters with the Letter of Map Change (LOMC) product or PMR they require. The current system requires requesters to submit an initial fee that is not intended to cover the full review and processing costs or the cartographic production costs. Requesters subsequently receive invoices for the balance. The current system is complicated further by the pre-authorized spending limits placed on each product. When FEMA determines that these limits will be exceeded, we must obtain written authorization before proceeding with their review. We must then delay the request until we receive the written authorization.

Under this final rule, FEMA charges a single flat user fee for most LOMC and PMR requests, thereby reducing the turnaround time for preparing and issuing determination letters and reducing FEMA costs of administering the fee-charge system. FEMA can recover more of the actual costs than are recovered by the current system and redistribute the overall cost of operations.

Requirement for Full Payment Before Work Begins

Under this final rule, the requester must submit the full fee payment before FEMA begins work on most map change requests. This minimizes the need for followup invoicing and ensures that FEMA collects appropriate fees for services rendered.

Consolidation of Product Categories

Under this final rule, we consolidate LOMC products and PMRs with similar review and processing requirements into the same fee category. As a result, we reduced the number of fee categories from 19 to 10.

Limitation of Fee Exemptions

Under current standards, we exempt requesters from paying user fees when they submit requests for changes to (1) remove properties or structures from the SFHA shown on the FIRM that were inadvertently included in the SFHA because of map scale limitations, which is handled by the LOMA process detailed in 44 CFR part 70 of the NFIP regulations; (2) reflect more detailed information on flooding sources, floodways, or topographic data; (3) correct mapping errors or errors in the effective Flood Insurance Study analysis; or (4) reflect projects that are for public benefit and are primarily intended for flood loss reduction to insurable structures in identified flood hazard areas that were in existence prior to the commencement of the projects. Such exemptions preclude FEMA from recovering fees for a substantial volume of work.

Under this final rule, we maintain the exemptions for: Requests for LOMAs; requests to correct mapping or analysis errors; map change requests based on federally sponsored flood-control projects where 50 percent or more of the project's costs are federally funded; and map change requests based on detailed hydrologic and hydraulic studies conducted by Federal, State, or local agencies to replace approximate studies conducted by FEMA and shown on the effective FIRM.

Maintenance of Initial Fee for Requests Based on Structural Measures on Alluvial Fans

Under this final rule, we maintain the initial fee for LOMC requests based on structural measures on alluvial fans. These requests are rare, the FEMA engineering review for these requests is usually very complex, and FEMA's costs for processing these requests can fluctuate significantly. Based on a review of actual processing costs for Fiscal Year 1995, we established $5,000 as the initial fee for such requests. The remaining costs are recovered before we issue the LOMC, consistent with current fee-reimbursement practices. Under this final rule, we increased to $50 the hourly rate used to calculate the total fees that must be reimbursed.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this final rule does not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. *et seq.*, because it is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities, nor (2) to create any additional burden on small entities. A regulatory flexibility analysis has not been prepared.

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

This final rule meets the applicable standards of § 2(b)(2) of Executive Order 12778, Civil Justice Reform.

Executive Order 12866, Regulatory Planning and Review

Promulgation of this final rule is required by statute, 42 U.S.C. 4014(f), which also specifies the regulatory approach taken in the final rule. To the extent possible under the statutory requirements of 42 U.S.C. 4014(f), this final rule adheres to the principles of regulation as set forth in Executive Order 12866, Regulatory Planning and Review.

List of Subjects in 44 CFR Parts 65, 70, and 72

Administrative practice and procedure, Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Parts 65, 70, and 72 are amended as follows:

PART 65—IDENTIFICATION AND MAPPING OF SPECIAL FLOOD HAZARD AREAS

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p.376.

2. Section 65.4(c) is revised to read as follows:

§ 65.4 Right to submit new technical data.

* * * * *

(c) Requests for changes to effective Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs) are subject to the cost recovery procedures described in 44 CFR part 72. As indicated in part 72, revisions requested to correct mapping errors or errors in the Flood Insurance Study analysis are not to be subject to the cost-recovery procedures.

3. In section 65.5 the heading and paragraph (d) are revised to read as follows:

§ 65.5 Revision to special flood hazard area boundaries with no change to base flood elevation determinations.

* * * * *

(d) *Submission procedures.* All requests shall be submitted to the FEMA Regional Office servicing the community's geographic area or to the FEMA Headquarters Office in Washington, DC, and shall be accompanied by the appropriate payment, in accordance with 44 CFR part 72.

4. In section 65.6(g) is revised to read as follows:

§ 65.6 Revision of base flood elevation determinations.

* * * * *

(g) *Submission procedures.* All requests shall be submitted to the FEMA Regional Office servicing the community's geographic area or to the FEMA Headquarters Office in Washington, DC, and shall be accompanied by the appropriate payment, in accordance with 44 CFR part 72.

5. Section 65.8 is revised to read as follows:

§ 65.8 Review of proposed projects.

A community, or an individual through the community, may request FEMA's comments on whether a proposed project, if built as proposed, would justify a map revision. FEMA's comments will be issued in the form of a letter, termed a Conditional Letter of Map Revision, in accordance with 44 CFR part 72. The data required to support such requests are the same as those required for final revisions under §§ 65.5, 65.6, and 65.7, except as-built certification is not required. All such requests shall be submitted to the FEMA Headquarters Office in Washington, DC, and shall be accompanied by the appropriate payment, in accordance with 44 CFR part 72.

6. In section 65.9 the heading and paragraph (h) are revised to read as follows:

§ 65.9 Review and response by the Administrator.

* * * * *

(h) The required payment has not been submitted in accordance with 44 CFR part 72, no review will be conducted and no determination will be issued until payment is received.

PART 70—PROCEDURE FOR MAP CORRECTION

7. The authority citation for part 70 is revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

8. Section 70.9 is revised to read as follows:

§ 70.9 Review of proposed projects.

An individual who proposes to build one or more structures on a portion of property that may be included inadvertently in a Special Flood Hazard Area (SFHA) may request FEMA's comments on whether the proposed structure(s), if built as proposed, will be in the SFHA. FEMA's comments will be issued in the form of a letter, termed a Conditional Letter of Map Amendment. The data required to support such requests are the same as those required for final Letters of Map Amendment in accordance with § 70.3, except as-built certification is not required and the requests shall be accompanied by the appropriate payment, in accordance with 44 CFR part 72. All such requests for CLOMAs shall be submitted to the FEMA Regional Office servicing the community's geographic area or to the FEMA Headquarters Office in Washington, DC.

PART 72—PROCEDURES AND FEES FOR PROCESSING MAP CHANGES

9. The authority citation for part 72 is revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

10. Section 72.1 is revised to read as follows:

§ 72.1 Purpose of part.

This part provides administrative and cost-recovery procedures for the engineering review and administrative processing associated with FEMA's response to requests for Conditional Letters of Map Amendment (CLOMAs), Conditional Letters of Map Revision (CLOMRs), Conditional Letters of Map Revision Based on Fill (CLOMR–Fs), Letters of Map Revision Based on Fill (LOMR–Fs), Letters of Map Revision (LOMRs), and Physical Map Revisions (PMRs). Such requests are based on proposed or actual manmade alterations within the floodplain, such as the

placement of fill; modification of a channel; construction or modification of a bridge, culvert, levee, or similar measure; or construction of single or multiple residential or commercial structures on single or multiple lots.

11. Section 72.2 is revised to read as follows:

§ 72.2 Definitions.

Except as otherwise provided in this part, the definitions in 44 CFR part 59 are applicable to this part. For the purposes of this part, the products are defined as follows:

CLOMA. A CLOMA is FEMA's comment on a proposed structure or group of structures that would, upon construction, be located on existing natural ground above the base (1-percent-annual-chance) flood elevation on a portion of a legally defined parcel of land that is partially inundated by the base flood.

CLOMR. A CLOMR is FEMA's comment on a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the Special Flood Hazard Area (SFHA).

CLOMR–F. A CLOMR–F is FEMA's comment on a proposed project that would, upon construction, result in a modification of the SFHA through the placement of fill outside the existing regulatory floodway.

LOMR. A LOMR is FEMA's modification to an effective Flood Insurance Rate Map (FIRM), or Flood Boundary and Floodway Map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the SFHA. The LOMR officially revises the FIRM or FBFM, and sometimes the Flood Insurance Study (FIS) report, and, when appropriate, includes a description of the modifications. The LOMR is generally accompanied by an annotated copy of the affected portions of the FIRM, FBFM, or FIS report.

LOMR–F. A LOMR–F is FEMA's modification of the SFHA shown on the FIRM based on the placement of fill outside the existing regulatory floodway.

PMR. A PMR is FEMA's physical revision and republication of an effective FIRM, FBFM, or FIS report. PMRs are generally based on physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the SFHA.

12. Section 72.3 is revised to read as follows:

§ 72.3 Fee schedule.

(a) For requests for CLOMRs, LOMRs, and PMRs based on structural measures on alluvial fans, an initial fee of $5,000, subject to the provisions of § 72.4, shall be paid to FEMA before FEMA begins its review of the request. The initial fee represents the minimum cost for reviewing these requests and is based on the prevailing private-sector labor rate. A revision to this initial fee, if necessary, will be published as a notice in the Federal Register.

(b) For requests for CLOMRs, LOMRs, and PMRs based on structural measures on alluvial fans, the total fee will be calculated based on the total hours by FEMA to review and process the request multiplied by an hourly rate based on the prevailing private-sector labor rate. The hourly rate is published as a notice in the Federal Register. A revision to the hourly rate, if necessary, shall be published as a notice in the Federal Register.

(c) For conditional and final map revision requests for the following categories, flat user fees, subject to the provisions of § 72.4, shall be paid to FEMA before FEMA begins its review of the request:

(1) Requests for CLOMAs, CLOMR–Fs, and LOMR–Fs for single structures or single lots;

(2) Requests for CLOMAs for multiple structures or multiple lots;

(3) Requests for CLOMR–Fs and LOMR–Fs for multiple structures or multiple lots;

(4) Requests LOMR–Fs for single structures or single lots based on as-built information for projects for which FEMA issued CLOMR–Fs previously;

(5) Requests for LOMR–Fs for multiple structures or multiple lots based on as-built information for projects for which FEMA issued CLOMR–Fs previously;

(6) Requests for LOMRs and PMRs based on projects involving bridges, culverts, or channels, or combinations thereof;

(7) Requests for LOMRs and PMRs based on projects involving levees, berms, or other structural measures;

(8) Requests for LOMRs and PMRs based on as-built information for projects for which FEMA issued CLOMRs previously, except those based on structural measures on alluvial fans;

(9) Requests for LOMRs and PMRs based solely on more detailed data;

(10) Requests for CLOMRs based on projects involving new hydrologic information, bridges, culverts, or channels, or combinations thereof; and

(11) Requests for CLOMRs based on projects involving levees, berms, or other structural measures.

(d) If a request involves more than one of the categories listed above, the highest applicable flat user fee must be submitted.

(e) The flat user fees for conditional and final map amendments and map revisions are based on the actual costs for reviewing and processing the requests. The fees for requests for LOMR–Fs, LOMRs, and PMRs also include a fee of $35 to cover FEMA's costs for physically revising affected FIRM and FBFM panels to reflect the map changes.

(f) Revisions to the fees, if necessary, shall be published as a notice in the Federal Register.

13. Section 72.4 is revised to read as follows:

§ 72.4 Submittal/payment procedures and FEMA response.

(a) The initial fee shall be submitted with a request for FEMA review and processing of CLOMRs, LOMRs, and PMRs based on structural measures on alluvial fans; the appropriate flat user fee shall be submitted with all other requests for FEMA review and processing.

(b) FEMA must receive initial or flat user fees before it will begin any review. The fee is non-refundable once FEMA begins its review.

(c) Following completion of FEMA's review for any CLOMR, LOMR, or PMR based on structural measures on alluvial fans, FEMA shall invoice the requester at the established hourly rate for any actual costs exceeding the initial fee incurred for review and processing. FEMA shall not issue a determination letter or revised map panel(s) until it receives the invoiced amount.

(d) For all map revision requests, FEMA shall bear the cost of reprinting and distributing the revised FIRM panel(s), FBFM panel(s), or combination.

(e) The entity that applies to FEMA through the local community for review is responsible for the cost of the review. The local community incurs no financial obligation under the reimbursement procedures of this part when another party sends the application to FEMA.

(f) Requesters shall submit payments by check or money order or by credit card. Checks or money orders, in U.S. funds, shall be made payable to the National Flood Insurance Program.

(g) For CLOMA, CLOMR–F, LOMA, and LOMR–F requests, FEMA shall:

(1) Notify the requester and community within 30 days as to the adequacy of the submittal, and

(2) Provide to the requester and the community, within 60 days of receipt of adequate information and fee, a determination letter or other written comment in response to the request.

(h) For CLOMR, LOMR, and PMR requests, FEMA shall:

(1) Notify the requester and community within 60 days as to the adequacy of the submittal; and

(2) Provide to the requester and the community, within 90 days of receipt of adequate information and fee, a CLOMR, a LOMR, other written comment in response to the request, or preliminary copies of the revised FIRM panels, FBFM panels, and/or affected portions of the FIS report for review and comment.

14. Section 72.5 is revised to read as follows:

§ 72.5 Exemptions.

(a) Requests for map changes based on mapping or study analysis errors or the effects of natural changes within SFHAs shall be exempt from fees.

(b) Requests for LOMAs shall be exempt from fees.

(c) Map change requests based on the following shall be exempt from fees:

(1) Federally sponsored flood-control projects where 50 percent or more of the project's costs are federally funded; and

(2) Detailed hydrologic and hydraulic studies conducted by Federal, State, or local agencies to replace approximate studies conducted by FEMA and shown on the effective FIRM.

15. Section 72.6 is revised to read as follows:

§ 72.6 Unfavorable response.

(a) Requests for CLOMAs, CLOMRs, or CLOMR–Fs may be denied or the determinations may contain specific comments, concerns, or conditions regarding proposed projects or designs and their impacts on flood hazards in a community. Requesters are not entitled to any refund of fees paid if the determinations contain such comments, concerns, or conditions, or if the requests are denied. Requesters are not entitled to any refund of fees paid if the requesters are unable to provide the appropriate scientific or technical documentation or to obtain required authorizations, permits, financing, etc., for which requesters seek the CLOMAs, CLOMRs, or CLOMR–Fs.

(b) Requests for LOMRs, LOMR–Fs, or PMRs may be denied or the revisions to the FIRM, FBFM, or both, may not be in the manner or to the extent desired by the requesters. Requesters are not entitled to any refund of fees paid if the revision requests are denied or if the LOMRs, LOMR–Fs, or PMRs do not revise the map specifically as requested.

16. Section 72.7 is revised to read as follows:

§ 72.7 Resubmittals.

(a) Resubmittals of CLOMA, CLOMR, CLOMR–F, LOMR, LOMR–F, or PMR requests more than 90 days after FEMA notification that the requests were denied or after FEMA ended its review because the requester provided insufficient information will be treated as original submissions and subject to all submittal/payment procedures described in § 72.4. The procedure in § 72.4 also applies to a resubmitted request (regardless of when submitted) if the project on which the request is based has been altered significantly in design or scope other than as necessary to respond to comments, concerns, or other findings made by FEMA regarding the original submission.

(b) When LOMR, LOMR–F, or PMR requests are made after FEMA issues CLOMRs or CLOMR–Fs, the procedures in § 72.4 and the appropriate fee apply, as referenced in § 72.3(c). When the as-built conditions differ from the proposed conditions on which FEMA issued the CLOMRs or CLOMR–Fs, the reduced fee for as-built requests will not apply.

(Catalog of Federal Domestic Assistance No. 83–100, Flood Insurance)

Dated: January 28, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–2963 Filed 2–5–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Fee Schedule for Processing Requests for Map Changes and for Flood Insurance Study Backup Data for Fiscal Year 1997

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice contains the revised fee schedules for processing certain requests for changes to National Flood Insurance Program (NFIP) maps and for processing requests for Flood Insurance Study (FIS) backup data. The changes in the fee schedules will allow FEMA to reduce further the expenses to the NFIP by recovering more fully the costs associated with (1) processing conditional and final map change requests and (2) retrieving, reproducing, and distributing technical and administrative support data related to FIS analyses and mapping.

DATES: The revised fee schedules are effective for all requests dated October 1, 1996 or later.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, 500 C Street SW., Washington, DC 20472, (202) 646–2756 or by facsimile at (202) 646–4596 (not toll-free calls).

SUPPLEMENTARY INFORMATION: This notice contains the revised fee schedules for processing certain requests for changes to NFIP maps and for processing requests for FIS backup data. The revised schedule for map changes is effective for all requests dated October 1, 1996, or later, in accordance with the final rule for changes to 44 CFR parts 65, 70, and 72 published elsewhere in this edition of the Federal Register, and supersedes the current fee schedule established on June 30, 1992.

The revised fee schedule for requests for FIS backup data also is effective for all requests dated October 1, 1996 or later, and supersedes the current fee schedule published in the Federal Register on June 30, 1992.

The basis for the fee schedule for requests for Conditional Letters of Map Amendment (CLOMAs), Conditional Letters of Map Revision Based on Fill (CLOMR–Fs), Conditional Letters of Map Revision (CLOMRs), Letters of Map Revision Based on Fill (LOMR–Fs), Letters of Map Revision (LOMRs), and Physical Map Revisions (PMRs) and for the fee schedule for requests for FIS backup data is provided in the separately published final rule.

A primary component of the fees is the prevailing private-sector rates charged to FEMA for labor and materials. Because these rates and the actual review and processing costs may vary from year to year, FEMA will evaluate the fees at the end of each fiscal year and publish revised fee schedules, when needed, as notices in the Federal Register.

Simplification of Fee Schedule for Conditional and Final Map Changes

The existing fee collection process is complex and its administration requires time-intensive efforts on the part of FEMA. It also increases the time required to provide the requesters with the product they require. The current system requires requesters to submit an initial fee that is not intended to cover the full review and processing costs or the cartographic production costs. Requesters subsequently receive invoices for the balances. The current system is complicated further by the pre-authorized spending limits placed on each product. When FEMA determines these limits will be exceeded, written authorization to proceed must be obtained before FEMA can proceed with its review. Processing of the request is delayed until the written authorization is received.

FEMA has streamlined the process by (1) charging flat user fees for most map change products and services; (2) requiring full payment of fees before work is begun on most map change requests; (3) consolidating similar products or services into a limited number of user fee categories; and (4) limiting the number of products for which requesters may receive exemptions from payment of fees. As a result, requesters know the cost of most products before FEMA begins work.

The initial fee for requests for LOMRs and CLOMRs based on structural measures on alluvial fans has been maintained because (1) such requests are rare, (2) the FEMA review for these requests is usually very complex, and (3) the costs involved in processing the requests can fluctuate significantly.

Fees for Conditional and Final Map Revisions Based on Structural Measures on Alluvial Fans

Based on a review of actual cost data for Fiscal Year 1995, FEMA established $5,000 as the initial fee for requests for LOMRs and CLOMRs based on structural measures on alluvial fans. FEMA will recover the remainder of the review and processing costs by invoicing the requester before issuing a determination letter, consistent with current practice. The prevailing private-sector labor rate charged to FEMA ($50 per hour) will be used to calculate the total reimbursable fees.

Fee Schedule for Requests for Conditional Letters of Map Amendment and Conditional and Final Letters of Map Revision Based on Fill

Based on a review of actual cost data for Fiscal Year 1995, FEMA established the following flat user fees, which are to be submitted by requesters with all requests dated October 1, 1996 or later:

Request for single-lot/single-structure CLOMA, CLOMR–F, and LOMR–F, $400

Request for multiple-lot/multiple-structure CLOMA, $700

Request for multiple-lot/multiple-structure CLOMR–F and LOMR–F, $800

Request for single-lot/single-structure LOMR–F based on as-built information (CLOMR–F previously issued by FEMA), $300

Request for multiple-lot/multiple-structure LOMR–F based on as-built information (CLOMR–F previously issued by FEMA), $700

Fee Schedule for Requests for Map Revisions

Unless the request is otherwise exempted under 44 CFR 72.5, requesters must submit the flat user fees shown below with requests for LOMRs and PMRs dated October 1, 1996 or later that are not based on structural measures on alluvial fans. These fees are based on a review of actual cost data for Fiscal Year 1995.

Request based on bridge, culvert, channel, or combination thereof, $3,700

Request based on levee, berm, or other structural measure, $4,300

Request based on as-built information submitted as followup to CLOMR, $2,300

Request based solely on submission of more detailed data, $2,300

Fee Schedule for Requests for Conditional Map Revisions

Unless the request is otherwise exempted under 44 CFR 72.5, requesters must submit the flat user fees shown below with requests for CLOMRs dated October 1, 1996 or later that are not based on structural measures on alluvial fans. These fees are based on a review of actual cost data for Fiscal Year 1995.

Request based on new hydrology, bridge, culvert, channel, or combination thereof, $3,100

Request based on levee, berm, or other structural measure, $3,300

Fee Schedule for Requests for Flood Insurance Study Backup Data

Requesters must submit the user fees shown below with requests for FIS backup data dated October 1, 1996 or later. These fees are based on a review of actual cost data for Fiscal Year 1995. They are based on the complete recovery of FEMA's costs for retrieving, reproducing, and distributing the data, as well as a pro rata share of the costs for maintaining the data and operating the fee reimbursement system.

As under the previous fee schedule, all entities except FEMA's Study Contractors, FEMA's Technical Evaluation Contractors, and the Federal agencies involved in performing FISs (i.e., U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resources Conservation Service, and Tennessee Valley Authority) will be charged for requests for FIS backup data. The only other exception is that one copy of the FIS backup data will be provided to a community free of charge if the data are requested during the statutory 90-day appeal period for an initial or revised FIS for that community.

FEMA has established seven categories into which requests for FIS backup data are separated. These categories are:

(1) Category 1—Paper copies, microfiche, or diskettes of hydrologic and hydraulic backup data for current or previously effective FIS

(2) Category 2—Paper or mylar copies of topographic mapping developed during FIS process

(3) Category 3—Paper copies or microfiche of survey notes developed during FIS process

(4) Category 4—Paper copies of individual Letters of Map Change

(5) Category 5—Paper copies of preliminary map panels

(6) Category 6—Computer tapes of Digital Line Graph files

(7) Category 7—Computer diskettes and user's manuals for FEMA programs (e.g., Wave Height, Wave Runup, Alluvial Fan)

A non-refundable fee of $90, to cover the preliminary costs of research and retrieval, must be submitted to initiate requests for data under Categories 1, 2, and 3. The total costs of processing requests in Categories 1, 2, and 3 above will vary based on the complexity of the research involved in retrieving the data and the volume and medium of data to be reproduced and distributed. The initial fee will be applied against the total costs to process the request, and FEMA will invoice the requester for the balance before the data are provided. No data will be provided to a requester until all required fees have been paid.

No initial fee is required to initiate a request for data under Categories 4 through 7. Requesters will be notified by telephone about the availability of materials and the fees associated with requested data. As with requests for data under Categories 1, 2, and 3, no data will be provided to requesters until all required fees are paid.

The costs for processing requests under Categories 4 through 7 will not vary. Therefore, FEMA established flat user fees for these categories of requests. The flat user fees are shown below.

Request Under Category 4

First letter, $ 40

Each additional letter, $10

Request Under Category 5

First panel, $35

Each additional panel, $2

Request Under Category 6 (per county), $150

Request Under Category 7 (per copy), $25

Payment Submission Requirements

Fee payments must be made in advance of services being rendered. These payments shall be made in the form of a check or money order or by credit card payment. Checks and money orders must be made payable, in U.S. funds, to the National Flood Insurance Program. FEMA will provide receipts to requesters for their records or billing purposes.

The fees collected will be deposited to the National Flood Insurance Fund, which is the source of funding for providing these services.

Dated: January 28, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

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