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Presidential Documents

Title 3—

The President

Executive Order 13089 of June 11, 1998

Coral Reef Protection

By the authority vested in me as President by the Constitution and the laws of the United States of America and in furtherance of the purposes of the Clean Water Act of 1977, as amended (33 U.S.C. 1251, *et seq.*), Coastal Zone Management Act (16 U.S.C. 1451, *et seq.*), Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*), National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, *et seq.*), National Marine Sanctuaries Act, (16 U.S.C. 1431, *et seq.*), National Park Service Organic Act (16 U.S.C. 1, *et seq.*), National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-ee), and other pertinent statutes, to preserve and protect the biodiversity, health, heritage, and social and economic value of U.S. coral reef ecosystems and the marine environment, it is hereby ordered as follows:

Section 1. *Definitions.* (a) ''U.S. coral reef ecosystems'' means those species, habitats, and other natural resources associated with coral reefs in all maritime areas and zones subject to the jurisdiction or control of the United States (e.g., Federal, State, territorial, or commonwealth waters), including reef systems in the south Atlantic, Caribbean, Gulf of Mexico, and Pacific Ocean. (b) ''U.S. Coral Reef Initiative'' is an existing partnership between Federal agencies and State, territorial, commonwealth, and local governments, nongovernmental organizations, and commercial interests to design and implement additional management, education, monitoring, research, and restoration efforts to conserve coral reef ecosystems for the use and enjoyment of future generations. The existing U.S. Islands Coral Reef Initiative strategy covers approximately 95 percent of U.S. coral reef ecosystems and is a key element of the overall U.S. Coral Reef Initiative. (c) ''International Coral Reef Initiative'' is an existing partnership, founded by the United States in 1994, of governments, intergovernmental organizations, multilateral development banks, nongovernmental organizations, scientists, and the private sector whose purpose is to mobilize governments and other interested parties whose coordinated, vigorous, and effective actions are required to address the threats to the world's coral reefs.

Sec. 2. *Policy.* (a) All Federal agencies whose actions may affect U.S. coral reef ecosystems shall: (a) identify their actions that may affect U.S. coral reef ecosystems; (b) utilize their programs and authorities to protect and enhance the conditions of such ecosystems; and (c) to the extent permitted by law, ensure that any actions they authorize, fund, or carry out will not degrade the conditions of such ecosystems.

(b) Exceptions to this section may be allowed under terms prescribed by the heads of Federal agencies:

(1) during time of war or national emergency;

(2) when necessary for reasons of national security, as determined by the President;

(3) during emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution; or

(4) in any case that constitutes a danger to human life or a real threat to vessels, aircraft, platforms, or other man-made structures at sea, such as cases of *force majeure* caused by stress of weather or other act of God.

Sec. 3. *Federal Agency Responsibilities.* In furtherance of section 2 of this order, Federal agencies whose actions affect U.S. coral reef ecosystems, shall, subject to the availability of appropriations, provide for implementation of measures needed to research, monitor, manage, and restore affected ecosystems, including, but not limited to, measures reducing impacts from pollution, sedimentation, and fishing. To the extent not inconsistent with statutory responsibilities and procedures, these measures shall be developed in cooperation with the U.S. Coral Reef Task Force and fishery management councils and in consultation with affected States, territorial, commonwealth, tribal, and local government agencies, nongovernmental organizations, the scientific community, and commercial interests.

Sec. 4. *U.S. Coral Reef Task Force.* The Secretary of the Interior and the Secretary of Commerce, through the Administrator of the National Oceanic and Atmospheric Administration, shall co-chair a U.S. Coral Reef Task Force (''Task Force''), whose members shall include, but not be limited to, the Administrator of the Environmental Protection Agency, the Attorney General, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Defense, the Secretary of State, the Secretary of Transportation, the Director of the National Science Foundation, the Administrator of the Agency for International Development, and the Administrator of the National Aeronautics and Space Administration. The Task Force shall oversee implementation of the policy and Federal agency responsibilities set forth in this order, and shall guide and support activities under the U.S. Coral Reef Initiative (''CRI''). All Federal agencies whose actions may affect U.S. coral reef ecosystems shall review their participation in the CRI and the strategies developed under it, including strategies and plans of State, territorial, commonwealth, and local governments, and, to the extent feasible, shall enhance Federal participation and support of such strategies and plans. The Task Force shall work in cooperation with State, territorial, commonwealth, and local government agencies, nongovernmental organizations, the scientific community, and commercial interests.

Sec. 5. *Duties of the U.S. Coral Reef Task Force.* (a) *Coral Reef Mapping and Monitoring.* The Task Force, in cooperation with State, territory, commonwealth, and local government partners, shall coordinate a comprehensive program to map and monitor U.S. coral reefs. Such programs shall include, but not be limited to, territories and commonwealths, special marine protected areas such as National Marine Sanctuaries, National Estuarine Research Reserves, National Parks, National Wildlife Refuges, and other entities having significant coral reef resources. To the extent feasible, remote sensing capabilities shall be developed and applied to this program and local communities should be engaged in the design and conduct of programs.

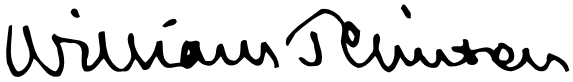
(b) *Research.* The Task Force shall develop and implement, with the scientific community, research aimed at identifying the major causes and consequences of degradation of coral reef ecosystems. This research shall include fundamental scientific research to provide a sound framework for the restoration and conservation of coral reef ecosystems worldwide. To the extent feasible, existing and planned environmental monitoring and mapping programs should be linked with scientific research activities. This Executive order shall not interfere with the normal conduct of scientific studies on coral reef ecosystems.

(c) *Conservation, Mitigation, and Restoration.* The Task Force, in cooperation with State, territorial, commonwealth, and local government agencies, nongovernmental organizations, the scientific community and commercial interests, shall develop, recommend, and seek or secure implementation of measures necessary to reduce and mitigate coral reef ecosystem degradation and to restore damaged coral reefs. These measures shall include solutions to problems such as land-based sources of water pollution, sedimentation, detrimental alteration of salinity or temperature, over-fishing, over-use, collection of coral reef species, and direct destruction caused by activities such as recreational and commercial vessel traffic and treasure salvage. In developing these measures, the Task Force shall review existing legislation

to determine whether additional legislation is necessary to complement the policy objectives of this order and shall recommend such legislation if appropriate. The Task Force shall further evaluate existing navigational aids, including charts, maps, day markers, and beacons to determine if the designation of the location of specific coral reefs should be enhanced through the use, revision, or improvement of such aids.

(d) *International Cooperation*. The Secretary of State and the Administrator of the Agency for International Development, in cooperation with other members of the Coral Reef Task Force and drawing upon their expertise, shall assess the U.S. role in international trade and protection of coral reef species and implement appropriate strategies and actions to promote conservation and sustainable use of coral reef resources worldwide. Such actions shall include expanded collaboration with other International Coral Reef Initiative (''ICRI'') partners, especially governments, to implement the ICRI through its Framework for Action and the Global Coral Reef Monitoring Network at regional, national, and local levels.

Sec. 6. This order does not create any right or benefit, substantive or procedural, enforceable in law or equity by a party against the United States, its agencies, its officers, or any person.



THE WHITE HOUSE,
June 11, 1998.

[FR Doc. 98–16161
Filed 6–15–98; 8:45 am]
Billing code 3195–01–P

Presidential Documents

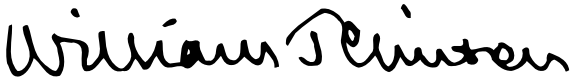
Presidential Determination No. 98–26 of June 3, 1998

Determination Under Section 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (hereinafter ''the Act''), I determine, pursuant to section 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by section 402 of the Act will substantially promote the objectives of section 402 of the Act. I further determine that continuation of the waiver applicable to the People's Republic of China will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, June 3, 1998.

[FR Doc. 98–16136
Filed 6–15–98; 8:45 am]
Billing code 4710–10–M

Presidential Documents

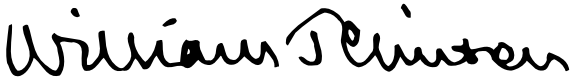
Presidential Determination No. 98–27 of June 3, 1998

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (hereinafter the ''Act''), I determine, pursuant to section 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by section 402 of the Act will substantially promote the objectives of section 402 of the Act. I further determine that continuation of the waiver applicable to Vietnam will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, June 3, 1998.

[FR Doc. 98–16137
Filed 6–15–98; 8:45 am]
Billing code 4710–10–M

Presidential Documents

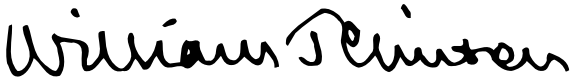
Presidential Determination No. 98–28 of June 3, 1998

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (hereinafter the ''Act''), I determine, pursuant to subsection 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by section 402 of the Act will substantially promote the objectives of section 402 of the Act. I further determine that continuation of the waiver applicable to the Republic of Belarus will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register.**



THE WHITE HOUSE,
Washington, June 3, 1998.

[FR Doc. 98–16138
Filed 6–15–98; 8:45 am]
Billing code 4710–10–M

Presidential Documents

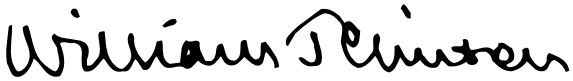
Presidential Determination No. 98–29 of June 3, 1998

Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization

Memorandum for the Secretary of State

Pursuant to the authority vested in me under section 539(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998, Public Law 105–118, I hereby determine and certify that it is important to the national security interests of the United States to waive the provisions of section 1003 of the Anti-Terrorism Act of 1987, Public Law 100–204, through November 26, 1998.

You are authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, June 3, 1998.

[FR Doc. 98–16139
Filed 6–15–98; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 63, No. 115
Tuesday, June 16, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AA59

Fees for Official Inspection and Official Weighing Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is implementing an increase of approximately 2.9 percent in certain service fees for official inspection and weighing services performed in the United States under the United States Grain Standards Act (USGSA), as amended. The increase covers hourly rates and certain unit rates on tests performed at other than an applicant's facility. The increase is designed to generate additional revenue required to recover operational costs created by cost-of-living increases to Federal salaries in fiscal year 1998.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: George Wollam, USDA, GIPSA, ART, Stop 3649, Washington, D.C. 20250–3649, telephone (202) 720–0292, or FAX (202) 720–4628. Electronic mail or Internet to: gwollam@fgisdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in § 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this final rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this final rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to provisions of this final rule.

Effects on Small Entities

James R. Baker, Administrator, GIPSA, has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Many users of GIPSA inspection and weighing services do not meet the requirements for small entities. GIPSA is required by statute to make services available and to recover costs of providing such services, as nearly as practicable.

The final fee revision is primarily applicable to entities engaged in the export of grain. Under provisions of the USGSA, most grain exported from U.S. export port locations must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA on a fee basis at 37 export facilities. All of the export facilities are owned and managed by multi-national corporations, large cooperatives, or public entities that do not meet the criteria for small entities as defined under the Regulatory Flexibility Act and the regulations issued thereunder. Some users of the service who request non-mandatory official inspection and weighing services (most of which represent appeals) at other than export locations could be considered small entities. However, this fee increase merely reflects the cost-of-living increases in Federal salaries for hourly and certain unit fees.

In fiscal year 1997, GIPSA's obligations were $22,972,026 with revenue of $21,527,695, resulting in a loss of $1,444,331 and retained earnings of negative $419,417. In fiscal year 1998, as of April 30, GIPSA's obligations were $13,658,981 with revenue of $13,454,057 and retained earnings of negative $254,728. GIPSA cannot absorb the 2.9 percent increase in salary costs with the existing deficit in retained earnings. Additionally, GIPSA will continue to monitor its costs to improve operating efficiencies, and adopt cost saving measures, where possible and practicable.

The approximate 2.9 percent increase in fees would not have a significant impact on either small or large entities. GIPSA estimates an annual increase of $509,000 in revenue based on a work volume of 74,045,472 metric tons, the equivalent to fiscal year 1997.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements in Part 800 have been previously approved by the Office of Management and Budget under control number 0580–0013.

Background

On March 27, 1998, GIPSA published in the **Federal Register** (63 FR 14840) a proposal to increase by approximately 2.9 percent certain fees it charges for official inspection and weighing services.

The USGSA requires GIPSA to charge and collect reasonable fees for performing official inspection and weighing services. The fees are to cover, as nearly as practicable, GIPSA's costs for performing these services, including related administrative and supervisory costs.

The 2.9 percent fee increase will generate additional revenue required to recover operational costs created by a January 1998 cost-of-living increase to Federal salaries. The average salary increase for GIPSA employees in calendar year 1998 is approximately 2.9 percent. This final action is being taken to ensure that service fees charged by GIPSA generate adequate revenue to cover the additional cost created by the January 1998 Federal salary increase.

The current USGSA fees covering hourly rates and certain unit rates on tests performed at other than an applicant's facility were published in the **Federal Register** on June 11, 1997 (62 FR 31701), and became effective on June 15, 1997. They appear in the 1998 edition of 7 CFR 800.71, Schedule A, Fees for Official Inspection and Weighing Services Performed in the United States. The hourly fees covered by this final rule will generate revenue

to cover the basic salary, benefits, and leave for those employees providing direct service delivery. GIPSA has also identified certain unit fees, for services not performed at an applicant's facility, that contain direct labor costs. This final rule increases those unit fees based on a 2.9 percent increase to the labor cost of each unit. Other associated costs, including overhead, are collected through additional fees contained in the published fee schedule and are not included under this final rule.

The amount of revenue collected as a result of this final rule is a direct function of the work volume. GIPSA estimates an annual increase of $509,000 in revenue based on a work volume of 74,045,472 metric tons, the equivalent to fiscal year 1997. If GIPSA foregoes this adjustment, GIPSA will incur a net loss equivalent to 2.9 percent for every hour worked by an employee providing direct service delivery.

In fiscal year 1997, GIPSA's obligations were $22,972,026 with revenue of $21,527,695, resulting in a loss of $1,444,331 and retained earnings of negative $419,417. In fiscal year 1998, as of April 30, GIPSA's obligations were $13,658,981 with revenue of $13,454,057 and retained earnings of negative $254,728. GIPSA cannot afford to absorb an additional $509,000 loss due to the 2.9 percent increase in salary costs with the existing deficit in retained earnings. Additionally, GIPSA will continue to monitor its costs to improve operating efficiencies and adopt cost saving measures, where possible and practicable.

Comment Review

GIPSA received two comments, one from an industry exporter and the other from an industry trade association representing grain, feed, and processing companies during the 60-day comment period. One commenter opposed the proposed increase. This commenter raised several concerns, including that the fees charged by GIPSA are spiraling upward out of control; that they had no other option but to use our service since inspection and weighing services on export grain are mandatory; and that private business were not allowed to compete with GIPSA in providing official services, noting that the service GIPSA provides is a totally non-competitive service.

The second commenter did not oppose the fee increase, but indicated that it was disappointed that GIPSA was again proposing to increase user fees for official services. The commenter indicated that GIPSA must begin to anticipate the yearly salary increases and take action that will offset their effects by implementing cost cutting measures, improving productivity, or a combination of both. The commenter stated that it remained concerned about the continued financial deterioration in the official inspection system, the continued losses, the depleted operating reserve, and weak imports. The commenter reiterated its view that GIPSA should not rely on fee increases as the primary tool to reverse the declining financial condition of the inspection and weighing programs and it went on to state that the Agency should continue its efforts to significantly and quickly reduce costs and increase productivity. The commenter stated that GIPSA should review its operating structure to determine and identify cost savings efficiencies as discussed in the comment.

The proposed fee increase, a cost-of-living increase, covers the hourly rate and certain unit fees on tests performed at other than an applicant's facility. These fees cover only the basic salary, benefit, and leave costs associated with those employees directly providing service to the applicant. The hourly cost to the industry is directly related to the number of employees required to perform service at any particular facility.

GIPSA continually monitors its overall costs and has implemented numerous cost cutting measures. GIPSA has streamlined, restructured, and reorganized to respond to changes in marketing practices and industry structure. Restructuring efforts have focused on streamlining headquarters and administrative operations and consolidating the field structure into fewer, but better staffed and equipped offices. Other associated costs, including overhead, are collected through other published fees. Any increases to those fees would be addressed through separate rulemaking.

Given the status of the inspection and weighing programs in terms of costs, revenues, and operating reserves, we believe that these fee changes are the most responsible and reasonable action that can be taken at this time in the administration of these programs. The Agency has embarked upon cost savings initiatives, including reductions-in-force over the past several years. These efforts will continue to play a central role in GIPSA's efforts to reduce costs. At the same time, we do note that some costs, such as salary increases, require close attention and become more significant and compelling when the Agency's financial condition is such that operating reserves are depleted. The USGSA explicitly identifies the structure and makeup of the Federal, State and private agency relationship for performance of official services. The Act also requires GIPSA to charge and collect reasonable fees for performing official inspection and weighing services. We believe that GIPSA should continue to work closely with the FGIS Advisory Committee and the industry itself in order to provide the most cost efficient and productive program services possible.

It is found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) Projected exports and the associated requests for official services for such grain are projected to decrease in the coming months due to seasonal and other adjustments; (2) given the current level of the operating reserve, the fee increase should be implemented as soon as possible; and (3) the effective date coincides with the beginning of a billing cycle.

Final Action

GIPSA is applying an approximate 2.9 percent increase to those hourly and certain unit rates in 7 CFR 800.71, Table 1—Fees for Official Services Performed at an Applicant's Facility in an Onsite GIPSA Laboratory; Table 2—Services Performed at Other Than an Applicant's Facility in a GIPSA Laboratory; and Table 3—Miscellaneous Services.

In reviewing the fee schedule to identify fees that would require an approximate 2.9 percent increase, GIPSA has identified several fees that, under the current fee schedule, are at levels that would not require any change. Accordingly, these fees would remain the same at this time.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grains.

For the reasons set out in the preamble, 7 CFR part 800 is amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. Section 800.71, paragraph (a), Schedule A is revised to read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

Schedule A.—Fees for Official Inspection and Weighing Services Performed in the United States

TABLE 1.—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY [1]

	Monday to Friday (6 a.m to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and overtime [2]	Holidays
(1) Inspection and Weighing Services Hourly Rates (per service representative)				
1-year contract	$24.40	$26.40	$34.40	$41.40
6-month contract	26.80	28.60	36.60	47.80
3-month contract	30.60	31.60	39.80	49.40
Noncontract	35.40	37.40	45.40	55.80

(2) Additional Tests (cost per test, assessed in addition to the hourly rate) [3]	
(i) Aflatoxin (other than Thin Layer Chromatography)	$8.50
(ii) Aflatoxin (Thin Layer Chromatography method)	20.00
(iii) Soybean protein and oil (one or both)	1.50
(iv) Wheat protein (per test)	1.50
(v) Sunflower oil (per test)	1.50
(vi) Vomitoxin (qualitative)	7.50
(vii) Vomitoxin (quantitative)	12.50
(viii) Waxy corn (per test)	1.50
(ix) Fees for other tests not listed above will be based on the lowest noncontract hourly rate.	
(x) Other services:	
(a) Class Y Weighing (per carrier)	
(1) Truck/container	.30
(2) Railcar	1.25
(3) Barge	2.50

(3) Administrative Fee (assessed in addition to all other applicable fees, only one administrative fee will be assessed when inspection and weighing services are performed on the same carrier).	
(i) All outbound carriers (per-metric-ton): [4]	
(a) 1–1,000,000	$0.1013
(b) 1,000,001–1,500,000	0.0923
(c) 1,500,001–2,000,000	0.0473
(d) 2,000,001–5,000,000	0.0360
(e) 5,000,001–7,000,000	0.0192
(f) 7,000,000+	0.0023

[1] Fees apply for original inspection and weighing, reinspection, and appeal inspection service include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72 (a).

[2] Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.

[3] Appeal and reinspection services will be assessed the same fee as the original inspection service.

[4] The administrative fee is assessed on an accumulated basis beginning at the start of the Service's fiscal year (October 1 each year).

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1 2]

(1) Original Inspection and Weighing (Class X) Services	
(i) Sampling only (use hourly rates from Table 1)	
(ii) Stationary lots (sampling, grade/factor, & checkloading):	
(a) Truck/trailer/container (per carrier)	$18.00
(b) Railcar (per carrier)	27.50
(c) Barge (per carrier)	174.25
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iii) Lots sampled online during loading (sampling charge under (i) above, plus):	
(a) Truck/trailer container (per carrier)	9.75
(b) Railcar (per carrier)	19.00
(c) Barge (per carrier)	108.00
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iv) Other services:	
(a) Submitted sample (per sample—grade and factor)	10.50
(b) Warehouseman inspection (per sample)	17.50
(c) Factor only (per factor—maximum 2 factors)	4.50
(d) Checkloading/condition examination (use hourly rates from Table 1, plus an administrative fee per hundredweight if not previously assessed) (CWT)	0.02
(e) Reinspection (grade and factor only. Sampling service additional, item (i) above)	11.50
(f) Class X Weighing (per hour per service representative)	46.40
(v) Additional tests (excludes sampling):	
(a) Aflatoxin (per test—other than TLC method)	25.50

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1] [2]—Continued

(b) Aflatoxin (per test—TLC method)	101.50
(c) Soybean protein and oil (one or both)	8.00
(d) Wheat protein (per test)	8.00
(e) Sunflower oil (per test)	8.00
(f) Vomitoxin (qualitative)	26.00
(g) Vomitoxin (quantitative)	31.00
(h) Waxy corn (per test)	9.25
(i) Canola (per test—00 dip test)	9.25
(j) Pesticide Residue Testing [3]	
(1) Routine Compounds (per sample)	$200.00
(2) Special Compounds (per service representative)	100.00
(k) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	
(2) Appeal inspection and review of weighing service.[4]	
(i) Board Appeals and Appeals (grade and factor)	75.25
(a) Factor only (per factor—max 2 factors)	39.00
(b) Sampling service for Appeals additional (hourly rates from Table 1)	
(ii) Additional tests (assessed in addition to all other applicable fees)	
(a) Aflatoxin (per test, other than TLC)	25.75
(b) Aflatoxin (TLC)	111.00
(c) Soybean protein and oil (one or both)	15.75
(d) Wheat protein (per test)	15.75
(e) Sunflower oil (per test)	15.75
(f) Vomitoxin (per test—qualitative)	36.00
(g) Vomitoxin (per test—quantitative)	41.00
(h) Vomitoxin (per test—HPLC Board Appeal)	128.00
(i) Pesticide Residue Testing [3]	
(1) Routine Compounds (per sample)	200.00
(2) Special Compounds (per service representative)	100.00
(j) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	
(iii) Review of weighing (per hour per service representative)	67.40
(3) Stowage examination (service-on-request) [3]	
(i) Ship (per stowage space) (minimum $250 per ship)	50.00
(ii) Subsequent ship examinations (same as original) (minimum $150 per ship).	
(iii) Barge (per examination)	40.00
(iv) All other carriers (per examination)	15.00

[1] Fees apply for original inspection and weighing, reinspection, and appeal inspection service include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72(a).

[2] An additional charge will be assessed when the revenue from the services in Schedule A, Table 2, does not cover what would have been collected at the applicable hourly rate as provided in § 800.72(b).

[3] If performed outside of normal business, 1½ times the applicable unit fee will be charged.

[4] If, at the request of the Service, a file sample is located and forwarded by the Agency for an official agency, the Agency may, upon request, be reimbursed at the rate of $2.50 per sample by the Service.

TABLE 3.—MISCELLANEOUS SERVICES [1]

(1) Grain grading seminars (per hour per service representative) [2]	$46.40
(2) Certification of diverter-type mechanical samplers (per hour per service representative) [2]	46.40
(3) Special weighing services (per hour per service representative): [2]	
(i) Scale testing and certification	46.40
(ii) Evaluation of weighing and material handling systems	46.40
(iii) NTEP Prototype evaluation (other than Railroad Track Scales)	46.40
(iv) NTEP Prototype evaluation of Railroad Track Scales (plus usage fee per day for test car)	46.40 100.00
(v) Mass standards calibration and reverification	46.40
(vi) Special projects	46.40
(4) Foreign travel (per day per service representative)	430.00
(5) Online customized data EGIS service:	
(i) One data file per week for 1 year	500.00
(ii) One data file per month for 1 year	300.00
(6) Samples provided to interested parties (per sample)	2.50
(7) Divided-lot certificates (per certificate)	1.50
(8) Extra copies of certificates (per certificate)	1.50
(9) Faxing (per page)	1.50
(10) Special mailing (actual cost)	
(11) Preparing certificates onsite or during other than normal business hours (use hourly rates from Table 1)	

[1] Any requested service that is not listed will be performed at $46.40 per hour.

[2] Regular business hours—Monday thru Friday—service provided at other than regular hours charged at the applicable overtime hourly rate.

* * * * *

Dated: June 5, 1998.

James R. Baker,

Administrator.

[FR Doc. 98–15751 Filed 6–15–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Docket No. FV98–922–1 IFR]

Apricots Grown in Designated Counties in Washington; Revision in Container Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the container requirements currently prescribed under the Washington apricot marketing order. The marketing order regulates the handling of apricots grown in designated counties in Washington and is administered locally by the Washington Apricot Marketing Committee (Committee). This rule removes the requirement to use a top pad when apricots are packed loose in closed containers that weigh not less than 24 pounds. This revision will allow handlers greater flexibility in determining the need for a top pad depending on apricot variety or container dimensions. This change is expected to increase returns to producers and to improve the quality of apricots available to consumers.

DATES: Effective June 17, 1998. Comments received by August 17, 1998 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 132 and Marketing Order No. 922 (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This rule revises the order's container regulations by removing the requirement to use a top pad when apricots are packed loose in closed containers that weigh not less than 24 pounds. A top pad is a pad made of various materials, typically paper, which is placed on top of fruit packed in a closed container. This change will allow handlers greater flexibility in determining the need for a top pad depending on apricot variety or container dimensions. This change is expected to increase returns to producers and handlers, and to improve the quality of apricots available to consumers.

Section 922.52 of the order provides authority for container regulations and section 922.53 allows the modification, suspension, or termination of the container regulations. The container regulations are prescribed in section 922.306. Paragraph (a)(4) of that section currently requires handlers to use a top pad when apricots are packed loose in closed containers that weigh not less than 24 pounds.

At its May 14, 1998, meeting the Committee unanimously recommended removing the requirement requiring mandatory use of a top pad in apricots packed loose in closed containers weighing not less than 24 pounds. This requirement for a top pad was intended to protect apricots from bouncing and bruising during transportation to market. However, some varieties of apricots, typically the newer and larger varieties, are often damaged from rubbing against a top pad. The Committee believed that some varieties of apricots, typically the older and smaller varieties, still derive benefit from the use of a top pad. Therefore, the Committee believed that handlers should have the flexibility to determine whether or not to use a top pad in these closed containers depending on apricot variety or container dimensions. Currently, the container regulations require the use of a top pad regardless of the apricot variety or the dimensions of the closed container. This rule provides handlers greater flexibility to use different packaging techniques for different varieties, and to develop new packaging techniques that do not require a top pad. This rule also provides handlers greater flexibility to use containers with different dimensions because some containers may not have sufficient space for a top pad. This change is expected to increase returns to producers and handlers because of the elimination of the cost of a top pad (ranging in cost from 4 cents per pad for paper to 25 cents per pad for foam) and to improve the quality of apricots available to consumers because of decreased fruit damage during transit. The removal of the requirement requiring mandatory use of a top pad for apricots packed loose in closed containers weighing not less than 24

pounds will save producers and handlers the cost of a top pad when the pad is not needed.

An editorial change which removes, for clarity, reference in section 922.306(a)(4) to containers being row-faced or tray-packed does not eliminate the current requirement in section 922.306(a)(2) which applies to all containers with a net weight of apricots greater than 14 pounds.

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

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

There are approximately 75 handlers of Washington apricots who are subject to regulation under the order and approximately 400 apricot producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of Washington apricot handlers and producers may be classified as small entities.

At its May 14, 1998, meeting the Committee unanimously recommended removing the requirement requiring mandatory use of a top pad in apricots packed loose in closed containers weighing not less than 24 pounds. The requirement for a top pad was intended to protect apricots from bouncing and bruising during transportation to market. However, some varieties of apricots, typically the newer and larger varieties, are often damaged from rubbing against a top pad. The Committee believed that some varieties of apricots, typically the older and smaller varieties, still derive benefit from the use of a top pad. Therefore, the Committee believed that handlers should have the flexibility to determine whether or not to use a top pad in these closed containers depending on apricot variety or container dimensions. Currently, the container regulations require the use of a top pad regardless of the apricot variety or the dimensions of the closed container. This rule provides handlers greater flexibility to use different packaging techniques for different varieties, and to develop new packaging techniques that do not require a top pad. This rule also provides handlers greater flexibility to use containers with different dimensions because some containers may not have sufficient space for a top pad. This change is expected to increase returns to producers and handlers because of the elimination of the cost of a top pad (ranging in cost from 4 cents per pad for paper to 25 cents per pad for foam) and to improve the quality of apricots available to consumers because of decreased fruit damage during transit.

The removal of the mandatory use of a top pad for apricots packed loose in closed containers weighing not less than 24 pounds will save producers and handlers the cost of a top pad when the pad is not needed.

The only alternative would be to continue the mandatory use of a top pad to the detriment of the quality of certain varieties of apricots.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large apricot handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Washington apricot industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the May 14, 1998, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 12 members, of which four are handlers and eight are growers, the majority of whom are small entities. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on a revision to the container regulations currently prescribed under the Washington apricot marketing order. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule removes a requirement to use a top pad in Washington apricots packed loose in closed containers weighing not less than 24 pounds; (2) this rule was unanimously recommended by the Committee at an open public meeting and all interested parties had an opportunity to express their views and provide input; (3) Washington apricot handlers are aware of this rule and need no additional time to comply with the relaxed requirements; (4) June 15, 1998, is the date 1998 season shipments of the Washington apricot crop are expected to begin; and (5) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 922 is amended as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR part 922 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 922.306, paragraph (a)(4) is revised to read as follows:

§ 922.306 Apricot Regulation 6.

(a) * * *

(4) In closed containers containing not less than 24 pounds, net weight, of apricots when packed loose in such containers; or

* * * * *

Dated: June 12, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–16092 Filed 6–12–98; 1:41 p.m.]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–04–AD; Amendment 39–10593; AD 98–13–05]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Segelflugzeugbau Model AS–K13 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Alexander Schleicher Segelflugzeugbau (Alexander Schleicher) Model AS–K13 sailplanes. This AD requires inspecting the main spar fitting for excessive tolerance, traces, movement, etc., and repairing the main spar fitting if any of the above conditions exist. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent failure of the main spar caused by excessive movement of the main spar fitting, which could result in loss of control of the sailplane.

DATES: Effective August 1, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 1, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–04–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Project Officer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Alexander Schleicher Model AS–K13 sailplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 2, 1998 (63 FR 16163). The NPRM proposed to require inspecting the main spar fitting for excessive tolerance, traces, movement, etc., and repairing the main fitting if any of the above conditions exist. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Sportflugzeugbau JUBI GmbH AS–K13 Service Bulletin No. 13, dated December 19, 1990.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

Although the problems identified with the main spar fitting will only be unsafe during flight, this condition is not a result of the number of times the sailplane is operated. The chance of this situation occurring is the same for a sailplane with 10 hours time-in-service (TIS) as it is for a sailplane with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all gliders in a reasonable time period.

Cost Impact

The FAA estimates that 2 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 5 workhours per sailplane to accomplish this inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of this inspection on U.S. operators is estimated to be $600, or $300 per sailplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–13–05 Alexander Schleicher Segelflugzeugbau: Amendment 39–10593; Docket No. 98-CE–04–AD.

Applicability: Model AS–K13 sailplanes, serial numbers 13618 through 13689 (with or without an A.B. suffix), certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the

owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the main spar caused by excessive movement of the main spar fitting, which could result in loss of control of the sailplane, accomplish the following:

(a) Within the next 6 calendar months after the effective date of this AD, inspect the main spar fitting for excessive tolerance, traces, movement, etc., in accordance with Sportflugzeugbau JUBI GmbH AS–K13 Service Bulletin No. 13, dated December 19, 1990.

(b) If any excessive tolerance, traces, movement, etc., is found in the area of the main spar fitting during the inspection required by paragraph (a) of this AD, prior to further flight, accomplish the following:

(1) Obtain a repair scheme from the manufacturer through the FAA, Small Airplane Directorate, at the address specified in paragraph (d) of this AD; and

(2) Incorporate this scheme in accordance with the instructions to the repair scheme.

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

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) Questions or technical information related to Sportflugzeugbau JUBI GmbH AS–K13 Service Bulletin No. 13, dated December 19, 1990, should be directed to Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The inspection required by this AD shall be done in accordance with Sportflugzeugbau JUBI GmbH AS–K13 Service Bulletin No. 13, dated December 19, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 91–144, dated July 31, 1991.

(g) This amendment becomes effective on August 1, 1998.

Issued in Kansas City, Missouri, on June 8, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15889 Filed 6–15–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–133–AD; Amendment 39–10592; AD 98–13–04

RIN 2120–AA64

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH Models DG–100 and DG–400 Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Glaser-Dirks Flugzeugbau GmbH (Glaser-Dirks) Models DG–100 and DG–400 gliders. This AD requires repetitively inspecting the airbrakes to assure they retract at their outboard end first, and repairing the airbrakes if they do not retract at their outboard end first; and repetitively inspecting the airbrake torque tube in the fuselage for cracks or deformations, and reinforcing or replacing, as necessary, if cracks or deformations are found in the airbrake torque tube. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent overloading of the airbrake control system caused by free play between the bellcrank and airbrake plate, which could result in failure of the operating lever of the airbrake torque tube in the fuselage.

DATES: Effective August 2, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 2, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from DG-Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–133–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Glaser-Dirks Models DG–100 and DG–400 gliders airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 1, 1998 (63 FR 15793). The NPRM proposed to require repetitively inspecting the airbrakes to assure they retract at their outboard end first, and repairing the airbrakes if they do not retract at their outboard end first; and repetitively inspecting the airbrake torque tube in the fuselage for cracks or deformations, and reinforcing or replacing, as necessary, if cracks or deformations are found in the airbrake torque tube. Accomplishment of the proposed action as specified in the NPRM would be in accordance with DG-Flugzeugbau Technical Note No. 301/18, No. 323/9, and No. 826/34, dated November 4, 1996.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections

will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

Although the problems identified with the airbrake control system will only be unsafe during flight, this condition is not a result of the number of times the glider is operated. The chance of this situation occurring is the same for a glider with 10 hours time-in-service (TIS) as it is for a glider with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all gliders in a reasonable time period.

Cost Impact

The FAA estimates that 45 gliders in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per glider to accomplish this inspections, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $10,800, or $240 per glider.

These figures are based only on the initial inspections and do not take into account the costs of any repetitive inspections or reinforcements and modifications that will be needed based on the results of this inspections. The FAA has no way of determining the number of repetitive inspections each owner/operator of the affected airplanes will incur, or the number of airbrake control systems that will require modification, reinforcement, or repair.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–13–04 Glaser-Dirks Flugzeugbau GMBH: Amendment 39–10592; Docket No. 97–CE–133–AD.

Applicability: Models DG–100 and DG–400 gliders, all serial numbers, certificated in any category.

Note 1: This AD applies to each glider identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For gliders that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent overloading of the airbrake control system caused by free play between the bellcrank and airbrake plate, which could result in failure of the operating lever of the airbrake torque tube in the fuselage, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, and thereafter at intervals not to exceed 12 calendar months, inspect the airbrakes to assure they retract at their outboard end first in accordance with DG-Flugzeugbau GmbH Working instructions No. 1 for Technical Notes No. 301/18, 323/9, and 826/34, dated November 4, 1996. If the airbrakes do not retract at their outboard end first, prior to further flight, repair the airbrakes in accordance with the above-referenced working instructions.

(b) Within the next 30 calendar days after the effective date of this AD, and thereafter at intervals not to exceed 12 calendar months, inspect the airbrake torque tube in the fuselage for cracks or deformations in accordance with DG-Flugzeugbau GmbH Working instructions No. 2 for Technical Notes No. 301/18, 323/9, and 826/34, dated November 4, 1996. If cracks or deformations are found in the airbrake torque tube, prior to further flight, reinforce or replace, as necessary, in accordance with the above-referenced working instructions.

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

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) Questions or technical information related to service information referenced in this AD should be directed to DG-Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The inspections, repair, reinforcement, and replacement required by this AD shall be done in accordance with DG-Flugzeugbau Working Instruction No. 1 and No. 2 for Technical Notes No. 301/18, No. 323/9, and No. 826/34, dated November 4, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from DG-Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 97–011, dated January 30, 1997.

(g) This amendment becomes effective on August 2, 1998.

Issued in Kansas City, Missouri, on June 8, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15894 Filed 6–15–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–2]

Revision of Class E Airspace; Homer, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule modifies Class E airspace at Homer, AK. The modification of the Localizer (LOC)/Distance Measuring Equipment (DME) instrument approach to Runway (RWY) 21at Homer, AK, made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Homer, AK.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863; fax: (907) 271–2850; email: Robert.van.Haastert@faa.dot.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On March 16, 1998, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace at Homer, AK, was published in the **Federal Register** (63 FR 13016). The proposal was necessary due to the modifications to the LOC/DME instrument approach to RWY 21 at Homer, AK.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments to the proposal were received. However, the coordinates for Homer Airport changed when the runway thresholds were relocated to provide standard runway safety areas. The new coordinates for the airport reference point at Homer Airport, AK, are 59°38′44″ N., 151°28′36″ W. The Federal Aviation Administration has determined that these changes are editorial in nature and will not increase the scope of this rule. Except for the non-substantive change just discussed, the rule is adopted as written.

The coordinates for this airspace docket are based on North American Datum 83. The area will be depicted on aeronautical charts for pilot reference. The Class E airspace areas designated as surface areas for an airport are published in paragraph 6002 and the Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1 (62 FR 52491; October 8, 1997). The Class E airspace designations listed in this document will be revised and published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises the Class E airspace at Homer, AK. The modification of the LOC/DME instrument approach to RWY 21 has made this action necessary. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Homer, AK.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 The Class E airspace areas listed below are designated as a surface area for an airport.

* * * * *

AAL AK E2 Homer, AK [Revised]

Homer Airport, AK
(Lat. 59°38′44″ N., long. 151°28′36″ W.)
Kachemak NDB
(Lat. 59°38′29″ N., long. 151°30′01″ W.)
Homer Localizer
(Lat. 59°39′07″ N., long. 151°27′31″ W.)

Within a 4.2 mile radius of the Homer Airport and within 1.9 miles either side of the Homer localizer northeast backcourse extending from the localizer to 7.2 miles northeast of the Homer localizer, and within 2.4 miles north and 4.2 miles south of the Kachemak NDB 235° radial extending from the Kachemak NDB to 8.3 miles southwest the Kachemak NDB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Supplement Alaska (Airport/Facility Directory).

* * * * *

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

* * * * *

AAL AK E5 Homer, AK [Revised]

Homer Airport, AK
(Lat. 59°38′44″ N., long. 151°28′36″ W.)
Kachemak NDB
(Lat. 59°38′29″ N., long. 151°30′01″ W.)
Homer Localizer
(Lat. 59°39′07″ N., long. 151°27′31″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7 mile radius of the Homer Airport and within 4 miles either side of the Homer localizer northeast backcourse extending from localizer to 12 miles northeast of the Homer localizer, and within 8 miles north and 4.2 miles south of the Kachemak NDB 235° radial extending from the Kachemak NDB to 16 miles southwest of the Kachemak NDB.

* * * * *

Issued in Anchorage, AK, on June 4, 1998.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 98–15715 Filed 6–15–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–3]

RIN 2120–AA66

Realignment of Colored Federal Airway; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies three Colored Federal Airways, Green 10 (G–10), Green 12 (G–12), and Red 99 (R–99), located in Offshore Airspace Area 1234L, Alaska (AK). The FAA is taking this action to raise the floors of the airways to be consistent with the 2,000-foot above ground level (AGL) floor of Offshore Control Area 1234L.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1998, the FAA proposed to amend 14 CFR part 71 (part 71) to modify three Colored Federal Airways, G–10, G–12, and R–99, by raising the floors of the airways to be consistent with the 2,000-foot above ground level (AGL) floor of Offshore Control Area 1234L, AK (63 FR 6633). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice.

Colored Federal airways are published in paragraph 6009 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The colored Federal airway listed in this document will be published subsequently in the Order.

The Rule

This action amends part 71 by modifying three Colored Federal Airways, G–10, G–12, and R–99, located in Offshore Airspace Area 1234L, K. Specifically, this action raises the floor of Colored Federal Airways G–10, G–12, and R–99 to be consistent with the 2,000-foot above ground level (AGL) floor of Offshore Control Area 1234L.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6009(a) Green Federal Airways

* * * * *

G–10

From Cape Newenham, AK, NDB; 20 AGL St. Paul Island, AK, NDB; 20 AGL Elfee, AK, NDB; 20 AGL INT Elfee NDB 041° and Port Heiden, AK, NDB 248° bearings; 20 AGL Port Heiden NDB; 67 miles 12 AGL, 77 miles 85 MSL, 67 miles 12 AGL, Woody Island, AK, NDB; to Kachemak, NDB.

* * * * *

G–12

From Saldo, AK, NDB; 20 AGL Port Heiden, AK, NDB; 20 AGL Borland, AK, NDB; 20 AGL to Elfee, AK, NDB.

* * * * *

Paragraph 6009(b) Red Federal Airways

* * * * *

R–99

From St. Paul Island, AK, NDB; 20 AGL Dutch Harbor, AK, NDB; 20 AGL Saldo, AK, NDB; 20 AGL Iliamna, AK, NDB; INT Iliamna NDB 124° and Kachemak, AK, NDB 269° bearings; to Kachemak.

* * * * *

Issued in Washington, DC, on June 9, 1998.

John S. Walker,

Program Director for Air Traffic Airspace Management.

[FR Doc. 98–15955 Filed 6–15–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 98–AWP–13]

RIN 2120–AA66

Amendment to Time of Designation for Restricted Areas; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reduces the times of designation for Restricted Areas 2534A and 2534B (R–2534A and R–2534B), Vandenberg AFB, California (CA). The FAA is taking this action in response to a request from the United States Air Force (USAF) to more accurately reflect the actual times of use for these restricted areas.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

As a result of a review of restricted area activity, the USAF requested the FAA to change the times of operation for R–2534A and R–2534B, Vandenberg AFB, CA, to more accurately reflect

actual use. This is an administrative change and does not affect the boundaries, designated altitudes, or activities conducted within the restricted areas.

The Rule

This amendment to 14 CFR part 73 changes the times of designation for R–2534A and R–2534B, Vandenberg AFB, CA, from ''continuous'' to ''intermittent by Notice to Airmen (NOTAM) at least 4 hours in advance.'' The FAA is taking this action in response to written notification from the using agency that a reduction in the times of use for the restricted areas is appropriate. As the solicitation of comments would not offer any meaningful right or benefit to any segment of the public, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

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

Environmental Review

This action reduces the time of designation for restricted areas. In accordance with FAA Order 1050.1D, ''Polices and Procedures for Considering Environmental Impacts,'' this action is not subject to environmental assessments and procedures and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 73

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

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

§ 73.25 [Amended]

§ 73.25 is amended as follows:

* * * * *

R–2534A Vandenberg AFB, CA [Amended]

By removing ''Time of designation. Continuous,'' and inserting ''Time of designation. Intermittent by NOTAM at least 4 hours in advance.''

R–2534B Vandenberg AFB, CA [Amended]

By removing ''Time of designation. Continuous,'' and inserting ''Time of designation. Intermittent by NOTAM at least 4 hours in advance.''

* * * * *

Issued in Washington, DC, on June 9, 1998.

John S. Walker,

Program Director for Air Traffic Airspace Management.

[FR Doc. 98–15956 Filed 6–15–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 98–AEA–3]

RIN 2120–AA66

Alteration of Restricted Areas; New Jersey and New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the titles of the using agencies for Restricted Areas R–5002A, R–5002B, R–5002C, R–5002D, and R–5002E Warren Grove, NJ; and R–5203 Oswego, NY. This is an administrative change to reflect organizational name changes that resulted from Department of Defense realignment actions.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

As a result of decisions by the Defense Base Realignment and Closure Commission, the titles of a number of military units have been changed. These changes affect the units designated as using agencies for Restricted Areas R–5002A, R–5002B, R–5002C, R–5002D, and R–5002E Warren Grove, NJ; and R–5203 Oswego, NY. This action amends the using agency titles to reflect the current organizational name changes.

The Rule

This amendment to 14 CFR part 73 (part 73) changes the using agency organizational names for R–5002A, R–5002B, R–5002C, R–5002D, and R–5002E Warren Grove, NJ; and R–5203 Oswego, NY. This administrative change will not alter the boundaries, altitudes, time of designation, or activities conducted within the affected restricted areas; therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

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

Sections 73.50 and 73.52 of 14 CFR part 73 were republished in FAA Order 7400.8E, dated November 7, 1997.

Environmental Review

This action is a minor administrative change to amend the titles of designated using agencies for existing restricted areas. There are no changes to air traffic control procedures or routes, or the use of the restricted areas as a result of this action. Therefore, this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts,'' and the National Environmental Policy Act of 1989.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

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

§ 73.50 [Amended]

2. § 73.50 is amended as follows:

* * * * *

R–5002A Warren Grove, NJ [Amended]

By removing ''Using agency. Commander, 108th Tactical Fighter Wing, New Jersey Air National Guard, McGuire AFB, NJ,'' and adding ''Using agency. Air National Guard, 108th Air Refueling Wing, McGuire AFB, NJ.''

R–5002B Warren Grove, NJ [Amended]

By removing ''Using agency. Commander, 108th Tactical Fighter Wing, New Jersey Air National Guard, McGuire AFB, NJ,'' and adding ''Using agency. Air National Guard, 108th Air Refueling Wing, McGuire AFB, NJ.''

R–5002C Warren Grove, NJ [Amended]

By removing ''Using agency. Commander, 108th Tactical Fighter Wing, New Jersey Air National Guard, McGuire AFB, NJ,'' and adding ''Using agency. Air National Guard, 108th Air Refueling Wing, McGuire AFB, NJ.''

R–5002D Warren Grove, NJ [Amended]

By removing ''Using agency. Commander, 108th Tactical Fighter Wing, New Jersey Air National Guard, McGuire AFB, NJ,'' and adding ''Using agency. Air National Guard, 108th Air Refueling Wing, McGuire AFB, NJ.''

R–5002E Warren Grove, NJ [Amended]

By removing ''Using agency. Commander, 108th Tactical Fighter Wing, New Jersey Air National Guard, McGuire AFB, NJ,'' and adding ''Using agency. Air National Guard, 108th Air Refueling Wing, McGuire AFB, NJ.''

* * * * *

§ 73.52 [Amended]

3. § 73.52 is amended as follows:

* * * * *

R–5203 Oswego, NY [Amended]

By removing ''Using agency. 24th Air Division/DOTS, Griffiss AFB, NY,'' and adding ''Using agency. Air National Guard, Northeast Air Defense Sector/DOS, Rome, NY.''

* * * * *

Issued in Washington, DC, on June 8, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–15957 Filed 6–15–98; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Minimum Financial Requirements for Futures Commission Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is amending its minimum financial requirements for futures commission merchants (''FCMs''). The amendment will eliminate a charge presently required to be taken by FCMs in the computation of the amount of their net capital. This charge is commonly referred to as the ''short option value charge'' (''SOV charge''). The Commission is rescinding this charge, because it has found that the charge is not closely correlated to the actual risk of the customers' short option positions and, in any event, there are other protections in place to address this risk.

EFFECTIVE DATE: July 16, 1998.

FOR FURTHER INFORMATION CONTACT: Paul H. Bjarnason, Jr., Chief Accountant, or Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W. Washington, D.C. 20581; telephone (202) 418–5459 or 418–5439.

SUPPLEMENTARY INFORMATION:

I. Background

The minimum adjusted net capital requirement for an FCM is currently the greatest of: (A) $250,000; (B) four percent of the customer funds required to be segregated pursuant to the Commodity Exchange Act and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade: Provided, however, that the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts; (C) the amount of adjusted net capital required by a registered futures association of which it is a member; or (D) for securities brokers and dealers, the amount of net capital required by Rule 15c3–1(a) of the Securities and Exchange Commission (17 CFR 240.15c3–1(a)).

In calculating the amount of adjusted net capital needed to meet the minimum requirement, FCMs are presently required under Commission Rule 1.17(c)(5)(iii) to deduct a capital charge, based upon four percent of the market value of commodity options granted (sold) by option customers on or subject to the rules of a contract market or a foreign board of trade. The Commission adopted this provision in 1982 to require that an FCM recognize the risk involved in customers selling or going short an option. Under this provision, an FCM is required to take this charge, regardless of the trading strategy of the customer. Some customers have used a short option position in combination with another futures or commodity option position, such as an inter-month spread position. Although such a position would involve less risk than a naked position, the SOV charge would be the same or, perhaps, greater.

On March 9, 1998, the Commission proposed an amendment to the minimum financial requirements for futures commission merchants which would eliminate Rule 1.17(c)(5)(iii).[1] The Commission received two (2) comment letters. Both supported elimination of the charge. One letter was jointly signed by representatives from each of seven (7) U.S. commodity exchanges and the other was filed by an FCM.

The effect of the amendment is to decrease the amount of charges taken against capital in the computation of net capital. The reduction in capital charges taken by an FCM will result in an increase in the stated amount of adjusted net capital of an FCM carrying short option positions in customer accounts. The total amount of the increase in an FCM's net capital would depend on the quantity and value of short options carried in the accounts of the FCM's customers.

As stated in the proposing release, the Commission proposed to rescind this rule, because the charge is not closely correlated to the actual risk of the options carried on behalf of customers and, in any event, there are other protections in place to address the risk of short options. In particular, the Standard Portfolio Analysis of Risk (''SPAN'') margining system has been effectively used in setting appropriate levels of risk margin, and there are many other non-capital protections. These protections include effective self-regulatory organization (''SRO'') audit and financial surveillance programs and modern risk management and control systems at FCMs. All of the comments received on the Commission's proposal to rescind the SOV charge confirmed these views. Moreover, no comments were received which provided any reason to believe that the SOV charge should not be rescinded.

II. Summary of Comments

A. Portfolio Margining System

Commenters noted that the four percent capital charge is not closely correlated to the actual risk of customer

[1] 63 FR 12713 (March 16, 1998).

short option positions and that, subsequent to the adoption of Rule 1.17(c)(5)(iii), the SPAN margining system was developed. SPAN uses option pricing models to calculate the theoretical gains and losses on an option at various market prices of the underlying commodity and is a significant improvement in measuring the risk of an option. All U.S. commodity exchanges and many foreign exchanges have adopted SPAN to assess option risk. In addition, SPAN recognizes trading strategies in which short option positions are risk reducing and SPAN has been tested and proven to assess adequately the risk in the customer's portfolio.

B. Large Trader Positions

Commenters also noted that the commodity exchanges closely monitor large trader positions in each contract market to identify those market participants that may pose a financial risk to the FCM carrying their account. This includes option positions at clearing firms carrying option customers' accounts. Safeguards such as intraday variation margin calls, continuous monitoring of the markets and direct contact with the FCMs alert the exchanges to any potential problems.

C. Financial Surveillance

Commenters further noted that additional protection exists in the form of capital and segregation requirements for FCMs. Commission regulations require FCMs not only to maintain a minimum amount of adjusted net capital, but also to maintain a sufficient amount of excess adjusted net capital. In the event an FCM's adjusted net capital falls below an early warning level, generally 150% of the minimum dollar amount (e.g., 6% of customer segregated funds), the FCM is required to notify the Commission within five (5) business days. The FCM must continue filing financial reports monthly until the FCM's adjusted net capital is at or above the early warning level for three consecutive months. In calculating adjusted net capital, FCMs must deduct deficits and any undermargined amounts in customer accounts. With respect to the segregation requirements, an FCM is required to deposit customer funds in accounts designated for the benefit of customers. The FCM must also make a daily calculation showing whether there are sufficient funds in segregated accounts.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined that FCMs are not ''small entities'' for purposes of the RFA.[2] Therefore, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995[3] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. While this proposed rule has no burden, the group of rules (3038–0024) of which this is a part has the following burden:

Average burden hours per response: 128.

Number of respondents: 235.

Frequency of response: Monthly.

Copies of the OMB-approved information collection package associated with this rule may be obtained from the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB Washington, DC 20503, (202) 395–7340.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Net capital requirements, Reporting and recordkeeping requirements.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 4f, 4g and 8a(5) thereof, 7 U.S.C. 6d, 6g and 12a(5), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6I, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24.

[2] 47 FR 18619–18620 (April 30, 1982).

[3] Pub. L. No. 104–13, 109 Stat. 163 (1995).

§ 1.17 [Amended]

2. Section 1.17(c)(5)(iii) is removed and reserved.

Issued in Washington, DC on June, 10, 1998, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–15975 Filed 6–15–98; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 33

Final Rulemaking Permitting Futures-Style Margining of Commodity Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is repealing Commission Regulation 33.4(a)(2) and amending Commission Regulation 33.7(b). The Commission also is implementing technical amendments to its regulations imposing financial and segregation requirements on futures commission merchants (''FCMs'') and introducing brokers (''IBs'').

Regulation 33.4(a)(2) requires the purchaser of a commodity option to pay the full option premium at the initiation of the transaction. Regulation 33.7 requires an FCM, or an IB in the case of an introduced account, to provide each option customer with a written option disclosure statement prior to the opening of the account.

The repeal of Regulation 33.4(a)(2) will permit commodity options to be margined using a ''futures-style'' margining system. Futures-style margining requires both the purchaser (''long'') and the seller (''short'') of a commodity option to post risk-based, original margin upon entering into an option position. During the life of the option, the option value is marked to market daily, and gains and losses are posted to the accounts of the long and short position holders. The repeal does not impose an obligation on exchanges to adopt futures-style margining for commodity options. Exchanges may continue to use their current option margining systems. Any exchange wishing to implement futures-style margining must submit proposed rules for Commission review pursuant to Section 5a(a)(12)(A) of the Commodity Exchange Act (''Act'') and Commission Regulation 1.41.

Regulation 33.7(b) sets forth the terms of the disclosure statement and

currently reflects the prohibition against the margining of long option positions. The Commission is amending the disclosure statement to reflect the permissibility of futures-style margining for options.

EFFECTIVE DATE: July 16, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Smith, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5495; or electronic mail: tsmith@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 19, 1997, the Commission published for public comment in the **Federal Register** a proposal to repeal Commission Regulation 33.4(a)(2) and proposed amendments to the option disclosure statements in Regulation 33.7(b) and Appendix A to Regulation 1.55(c).[1] The original comment period was scheduled to end on February 2, 1998, but was extended by the Commission until March 4, 1998.[2]

Regulation 33.4(a)(2) is one of several regulations that were implemented as part of a pilot program for the exchange trading of options on non-agricultural futures instituted by the Commission on November 3, 1981.[3] Regulation 33.4(a)(2) requires the purchaser of an option to pay the full premium at the initiation of the transaction. Overall, the Commission's experience with the pilot program was positive, and the trading of options on non-agricultural futures was made permanent on August 1, 1986.[4]

Regulation 33.4(a)(2) requires commodity options to be subject to a ''stock-style'' margining system that obligates the option buyer to pay the full purchase premium when the transaction is initiated.[5] The long is not required to make any additional payments during the life of the option. The option premium is credited to the account of the option seller, who must keep it posted with his or her FCM. The short also must deposit risk margin with his or her FCM to cover potential adverse market moves in the option position. If the option increases in value, the short must deposit additional funds into the account. These funds, however, are not transferred to the long, who must exercise or offset the option in order to realize any increase in its value. By contrast, if the option value decreases, the short may withdraw any excess funds from its account.

Futures-style margining of commodity options will require that both the long and the short position holders post risk-based, original margin upon entering into their option positions. The option value will be marked to market daily during the life of the option. Any increase in value will result in a credit to the long option holder's account and a corresponding debit against the short option seller's account. Conversely, any decrease in value will result in a credit to the short's account and a corresponding debit to the long's account.

Thus, under futures-style margining, the cash flows associated with option contracts will be symmetric, as is the case for cash flows for futures. Futures-style margining, however, will not alter the fundamental nature of each party's overall obligation. A long's potential for loss will remain limited to the full option premium and transaction costs. As is the case now, a short's potential for loss will not be so limited.

In the Notice of Proposed Rulemaking, the Commission identified several potential benefits and potential costs that may result from the adoption of futures-style margining. The potential benefits included the enhancement of the financial integrity and market liquidity that may result from the more efficient cash flows associated with futures-style margining. The potential costs included an increase in the use of leverage in the futures markets, an increase in customer confusion, including an increase in the opportunity for unscrupulous individuals to mislead unsophisticated option customers, and transition costs to the industry in adopting futures-style margining.[6]

II. Comments Received

The Commission received 27 comment letters on the proposal. Supporting comments were submitted by six futures exchanges, four trade associations, one clearing organization, one FCM and one law firm.[7] Eight commercial firms, two securities options exchanges, one FCM and one investment management firm submitted opposing comments.[8] Two FCMs submitted comments that, while not opposing the proposal, raised concerns about the implementation and operation of futures-style margining.[9]

The material issues raised by the comment letters are set forth below. In most instances, the issues raised were previously identified by the Commission in the Notice of Proposed Rulemaking.

One commenter stated that many of the cash flow benefits identified in the Notice of Proposed Rulemaking could be achieved by expanding the availability of cross-margining between futures markets and securities markets. Another commenter stated that the Standard Portfolio Analysis of Risk (''SPAN'') margining system provides market participants with many of the cash flow benefits that are identified with futures-style margining.[10]

The Commission recognizes that cross-margining and the SPAN margining system provide cash flow benefits to market participants. The Commission believes, however, that futures-style margining could provide additional cash flow benefits not

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[1] 62 FR 66569 (December 19, 1997).

[2] 63 FR 6112 (February 6, 1998).

[3] 46 FR 54500 (November 3, 1981).

[4] 51 FR 17464 (May 13, 1986); 51 FR 27529 (August 1, 1986). Subsequently, the Commission approved the exchange trading of options on agricultural futures and options on non-agricultural physicals effective February 9, 1987. 52 FR 777 (January 9, 1987). On April 8, 1998, the Commission approved a three-year pilot program for the off-exchange trading of certain agricultural trade options and also approved exchange trading of options on agricultural physicals. 63 FR 18821 (April 16, 1998).

[5] Regulations 33.4 in pertinent part states:

§ 33.4 Designation as a contract market for the trading of commodity options.

The Commission may designate any board of trade...as a contract market for the trading of options on contracts of sale for future delivery... when the applicant complies with and carries out the requirements of the Act (as provided in § 33.2), these regulations, and the following conditions and requirements with respect to the commodity option for which the designation is sought:

(a) Such board of trade * * *

(2) Provides that the clearing organization must receive from each of its clearing members, that each clearing member must receive from each other person for whom it clears commodity option transactions, and that each futures commission merchant must receive from each of its option customers, the full amount of each option premium at the time the option is purchased.

[6] *See*, 62 FR 66571–66572

[7] Supporting comments were submitted by: Chicago Board of Trade; Chicago Mercantile Exchange; New York Mercantile Exchange; Coffee, Sugar & Cocoa Exchange, Inc.; New York Cotton Exchange; Minneapolis Grain Exchange; National Grain Trade Council; Commodity Floor Brokers & Traders Association; National Grain and Feed Association; Futures Industry Association; Board of Trade Clearing Corporation; ABN Amro Chicago Corporation; and Philip McBride Johnson of Skadden, Arps, Slate, Meagher & Flom, and a former Chairman of the Commission.

[8] The opposing comments were submitted by: André & CIE S.A. Lausanne; Transcatalana De Comercio, S.A.; Garnac Grain Co., Inc.; Refinadora De Óleos Brasil LTDA.; SAROC S.P.A.; Compagnie Commerciale André; La Plata Cereal; Andre & CIE (Singapore) PTE LTD.; The Options Clearing Corporation; The Chicago Board Options Exchange; The Clifton Group; and FIMAT Futures USA, Inc.

[9] The two comments were submitted by Lind Waldock & Company and DKB Financial Futures Corp.

[10] The SPAN margining system was developed by the Chicago Mercantile Exchange and is currently used by all domestic futures exchanges and clearing organizations, except the Philadelphia Board of Trade.

available through cross-margining or SPAN. For example, cross-margining is restricted to specified products with offsetting risk characteristics that are traded on different exchanges that have cross-margining arrangements. In contrast, futures-style margining could be available for any futures exchange-traded options, and the cash flow benefits would not be dependent on preexisting arrangements between exchanges. Similarly, under SPAN, the long is still obligated to pay the full option premium at the inception of the transaction regardless of the portfolio's risk calculation. Thus, a trader who hedged a short futures position with a long option would be required to pay the full option premium at the initiation of the transaction under the stock-style margining system, even though SPAN would calculate the margin on the two positions on a portfolio basis.

Two commenters expressed a concern that futures-style margining will result in an increase in the use of leverage in the futures market. As the Commission stated in the Notice of Proposed Rulemaking, futures-style margining will result in an increase in the amount of leverage in the futures market. The purchaser of an option will be able to acquire an option position upon payment of less than the full option premium at the initiation of the transaction. The option position will then be marked to market on a daily basis, with gains or losses posted to the respective accounts of the long and short position holders. The substitution of a margining system for the full, up-front payment of the option also will introduce a risk of default by the long that does not exist under the stock-style margining system.

The Commission believes, however, that the leverage associated with long options will not substantially increase the risk to the financial integrity of the markets. First, as the Commission noted in the Notice of Proposed Rulemaking, long option positions entail less total risk than short options or long or short futures positions. Under futures-style margining, the maximum loss that a long may incur on an option position will continue to be limited to the full option premium at the initiation of the transaction. In contrast, holders of short options or long or short futures positions will continue to be subject to much greater risk from adverse market moves.

Second, with respect to the added risk of default, FCMs that currently hold customer accounts that include short options and long and short futures positions assess the creditworthiness of each customer as part of their normal business practices. Requiring such firms to assess the creditworthiness of potential option purchasers should not require any significant adjustments in such firms' operating procedures in this regard.

Third, the Commission is not requiring that exchanges adopt futures-style margining for options. The exchanges may continue to use their current margining systems and require option purchasers to pay the option premium at the initiation of the transaction. The Commission expects that exchanges will not propose adopting futures-style margining until they have developed appropriate systems and/or procedures to monitor the margining of long option positions and have considered the views and market needs of their members and other market participants.

Finally, an FCM may require that option purchasers pay the full option premium at the initiation of the transaction even if the exchange permits futures-style margining. Therefore, FCMs that do not have the systems or procedures to monitor the margining of long option positions may elect to retain the stock-style margining system even though an exchange might permit futures-style margining.

Several commenters expressed a concern that futures-style margining would benefit option buyers at the expense of option sellers. The primary concern of these commenters is that the Commission did not demonstrate that expected increases in option premiums would sufficiently compensate option sellers for their loss of interest income.

In the Notice of Proposed Rulemaking, the Commission noted that a futures-style margining system may alter option pricing. Sellers of options may charge a higher premium to compensate for the loss of interest income. Conversely, option buyers may be willing to pay a higher premium because they will not have to pay the full premium up-front. The Commission believes, however, that market forces should ensure that pricing changes will not benefit longs at the expense of shorts. In this regard, commenters did not submit any support for the assertion that futures-style margining would benefit option buyers at the expense of option sellers.

One commenter stated that permitting futures-style margining, which does not require the up-front payment of option premiums, may result in additional low-capital customers entering the option markets. The commenter argued that such customers may not be very knowledgeable about futures markets and may be susceptible to unscrupulous individuals seeking to take advantage of them.

By amending the option disclosure statement in Regulation 33.7 to reflect the permissibility of futures-style margining, the Commission is attempting to ensure that potential option customers receive adequate notice concerning the risks of trading in commodity options. In addition, the distribution of the disclosure statement does not relieve an FCM or IB from any other disclosure obligations that it may have under applicable law.

One commenter stated that futures-style margining will require some FCMs to increase staff and upgrade systems capabilities in order to perform continuous intraday monitoring of long option positions. The commenter further stated that the increased costs may be passed on to option customers, thereby making trading more expensive. The commenter also claimed that exchanges should not be permitted to offer futures-style margining until they are able to provide continuous, updated information regarding the volatility levels of their options to their member firms.

The Commission recognizes that certain FCMs may be required to expend additional capital to monitor properly long option positions with the implementation of a futures-style margining system. However, many firms already have such systems in place. As noted above, short option positions are currently margined and marked to market on a daily basis. Firms that carry short option positions on their books must have monitoring and margining systems in place in order to track properly the short option positions. In addition, futures-style margining has been in place at the London International Financial Futures and Options Exchange for over ten years.

In addition, the Commission anticipates that the exchanges will take into consideration the views of their members and other market participants prior to proposing any changes to their option margining systems. Moreover, any proposal to adopt a futures-style margining system must be submitted to the Commission for review pursuant to Section 5a(a)(12)(A) of the Act and Commission Regulation 1.41. As part of the review process, the Commission may determine that publication of the proposal in the **Federal Register** is necessary in order to obtain the views and comments of interested persons.

One commenter stated that the Commission's proposal lacked specificity with respect to the implementation and operation of a futures-style margining system. The

commenter argued that a lack of specificity may result in the adoption of different margining systems or standards for each exchange or different systems within one exchange. In contrast, two other commenters stated that exchanges should have discretion to determine which option contracts should be subject to a stock-style or futures-style margining system as part of the contract design process. In addition, one of these two commenters stated that an exchange should be afforded the flexibility of designing margining systems that result in a hybrid of the stock-style and futures-style system. For example, an exchange should have the discretion to design an option contract that would require the option buyer to pay the full premium at the time of purchase (stock-style) while also allowing that customer to withdraw any subsequent option value gains from the account (futures-style).

By repealing Commission Regulation 33.4(a)(2), the Commission does not intend to require that an exchange use a uniform margining system for all of its listed option markets or that the exchanges adopt futures-style margining in a concerted manner. While the Commission recognizes that a uniform margining system across all futures markets might increase efficiency and reduce potential confusion among market participants, the Commission believes that it is not its role to mandate such a result. Each exchange should have the discretion to design margining systems that it believes are appropriate for its option markets. Accordingly, the Commission will review each proposal to implement a futures-style margining system on an individual basis.

III. Amendments to the Option Disclosure Statement

A. Amendments to the Option Disclosure Statement in Regulation 33.7(b)

Commission Regulation 33.7 was issued as part of the initial option pilot program in November 1981 and requires an FCM, or an IB in the case of an introduced account, to provide each option customer with a detailed disclosure statement prior to the opening of an account. The customer is required to sign an acknowledgment indicating that he or she read and understood the document before any transaction is effected for that customer's account.

The disclosure statement, which is set forth in Regulation 33.7(b), contains a detailed description of option trading and the risks associated with option positions. The statement was drafted to reflect the prohibition against the margining of long option positions.

In the Notice of Proposed Rulemaking, the Commission proposed several amendments to the disclosure statement to reflect the permissibility of futures-style margining. The Commission has determined to adopt the amendments with one modification.

The Commission's proposed amendments included adding the following language to the option disclosure statement:

BOTH THE PURCHASER AND THE GRANTOR SHOULD KNOW WHETHER THE PARTICULAR OPTION IN WHICH THEY CONTEMPLATE TRADING IS SUBJECT TO A ''STOCK-STYLE'' OR ''FUTURES-STYLE'' SYSTEM OF MARGINING. UNDER A STOCK-STYLE MARGINING SYSTEM, A PURCHASER IS REQUIRED TO PAY THE FULL PURCHASE PRICE OF THE OPTION AT THE INITIATION OF THE TRANSACTION. THE PURCHASER HAS NO FURTHER OBLIGATION ON THE OPTION POSITION. UNDER A FUTURES-STYLE MARGINING SYSTEM, THE PURCHASER DEPOSITS INITIAL MARGIN AND MAY BE REQUIRED TO DEPOSIT ADDITIONAL MARGIN IF THE MARKET MOVES AGAINST THE OPTION POSITION. *THE PURCHASER'S TOTAL MARGIN OBLIGATION, HOWEVER, WILL NOT EXCEED THE ORIGINAL OPTION PREMIUM.* IF THE PURCHASER OR GRANTOR DOES NOT UNDERSTAND HOW OPTIONS ARE MARGINED UNDER A STOCK-STYLE OR FUTURES-STYLE MARGINING SYSTEM, HE OR SHE SHOULD REQUEST AN EXPLANATION FROM THE FUTURES COMMISSION MERCHANT (''FCM'') OR INTRODUCING BROKER (''IB''). (Emphasis added.)

One commenter stated that the statement—THE PURCHASER'S TOTAL MARGIN OBLIGATION, HOWEVER, WILL NOT EXCEED THE ORIGINAL OPTION PREMIUM—while strictly true, could be open to honest misinterpretation. The commenter stated that under certain circumstances a long option position holder may incur margin payment obligations that exceed the initial option premium. For example, an FCM may require risk margin that exceeds the option premium. In addition, a bought option may first increase substantially in value immediately after purchase and then lose nearly all of its value on the next day. If the option owner had withdrawn the initial value increase from the account, he or she would be required to make a large daily variation margin payment to the FCM to settle the subsequent value loss. In such situations, the variation margin payments on the second day may exceed the initial option premium. Accordingly, the commenter proposed that the sentence be modified to state:

THE PURCHASER'S TOTAL SETTLEMENT VARIATION MARGIN OBLIGATION OVER THE LIFE OF THE OPTION, HOWEVER, WILL NOT EXCEED THE ORIGINAL OPTION PREMIUM, ALTHOUGH SOME INDIVIDUAL PAYMENT OBLIGATIONS AND/OR RISK MARGIN REQUIREMENTS MAY AT TIMES EXCEED THE ORIGINAL OPTION PREMIUM.

The Commission concurs with the commenter and is amending the risk disclosure statement to include the above sentence in lieu of the proposed sentence.

B. Proposed Amendments to Appendix A of Regulation 1.55(c)

Appendix A of Commission Regulation 1.55(c) contains a generic risk disclosure statement applicable to the Commission's disclosure requirements for domestic and foreign commodity futures and commodity option transactions.[11] The disclosure statement includes a discussion of the risks associated with the futures-style margining of options, which has been permitted on certain foreign exchanges, including the London International Financial Futures and Option Exchange.

In the Notice of Proposed Rulemaking, the Commission proposed minor amendments to the risk disclosure statement to reflect explicitly the permissibility of futures-style margining for options traded on U.S. markets. Upon reconsideration, the Commission has determined that the disclosures in the risk disclosure statement, as currently drafted, are appropriate. Accordingly, the Commission is not amending Appendix A to Commission Regulation 1.55(c).

IV. Technical Amendments

In the Notice of Proposed Rulemaking, the Commission requested comment on any amendments that would need to be made to the Commission's regulations governing net capital requirements for FCMs and IBs to reflect the permissibility of futures-style margining. No comments were received on this point.

Several of the Commission's regulations impose financial requirements on FCMs and IBs. In various sections of those regulations, reference is made to the manner in which an FCM's net capital requirement

[11] The disclosure statement was developed by the Commission in cooperation with various international regulators and self-regulatory organizations who also have adopted the statement for use in their jurisdictions. The disclosure statement permits firms doing multinational business to use the same risk disclosure statement for foreign and U.S.-based business. The Commission adopted the disclosure statement on July 5, 1994. 59 FR 34376 (July 5, 1994).

is to be calculated. The calculation excludes the value of long options positions because such options, under current methodologies, are fully paid for and pose no financial risk to the FCM. The Commission, as suggested in the Notice of Proposed Rulemaking, is making technical amendments to these regulations in order to reflect the permissibility of a futures-style margining system for commodity options and to make clear that only the value of fully paid for long options may be excluded from the capital requirement formula. Specifically, the Commission is amending the definition of customer funds in Regulation 1.3(gg) and certain reporting requirements and financial requirements set forth in Regulations 1.12(b)(2), 1.17(a)(1)(i)(B), 1.17(e)(1)(ii), 1.17(h)(2)(vi)(C)(2), 1.17(h)(2)(vii)(A)(2), 1.17(h)(2)(vii)(B)(2), 1.17(h)(2)(viii)(A)(2), 1.17(h)(3)(ii)(B), and 1.17(h)(3)(v)(B).[12]

V. Conclusion

The Commission is repealing Regulation 33.4(a)(2), amending the option disclosure statement in Regulation 33.7(b) and implementing technical amendments to several financial regulations in order to permit the futures-style margining of commodity options. The repeal of Regulation 33.4(a)(2) is consistent with the Commission's ongoing commitment to implement regulatory reforms that reduce unnecessary burdens on the futures industry while also preserving important customer protections and market safeguards. In this regard, it has been seventeen years since the Commission authorized the first option pilot program. During that time, option trading volume has grown from less than 2 million transactions a year to over 100 million transactions a year. During this period of remarkable growth, the Commission, exchanges, FCMs and market participants have gained extensive experience on the operations of the option markets. In light of this experience and upon consideration of all the comments, the Commission believes that with adequate disclosure to public customers it is no longer necessary for the Commission to require option purchasers to pay the full option premium at the initiation of the transaction.

VI. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. § 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of those rules on small businesses. The rules discussed herein will affect contract markets, clearing organizations, FCMs and IBs. The Commission has established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA. Contract markets and FCMs have been determined not to be small entities under the RFA. 47 FR 18616 (April 30, 1982). Furthermore, the then Chairman of the Commission previously has certified on behalf of the Commission that comparable rules affecting clearing organizations do not have a significant economic impact on a substantial number of small entities. 51 FR 44866, 44868 (December 12, 1986).

With respect to IBs, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all IBs should be considered to be small entities and, if so, to analyze that economic impact on such entities at that time. The proposed rule amendments would not require any IB to alter its current method of doing business as FCMS have the responsibility of administering customer funds. Further, these rule amendments, as proposed, should impose no additional burden or requirements on IBs and, thus, if adopted would not have a significant economic impact on a substantial number of IBs.

Therefore, the Chairperson, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. § 605(b) that the action taken herein would not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995[13] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act.

While Rules 1.3, 1.12, and 1.17 do not effect the burden, the group of rules (3038–0024) of which Rules 1.3, 1.12, and 1.17 are a part have the following burden.

Average burden hours per response: 128.

Number of respondents: 3,148.

Frequency of responses: on occasion.

While Rule 33.7 does not effect the burden, the group of rules (3038–0007) of which Rule 33.7 is a part has the following burden.

Average burden hours per response: 50.57.

Number of respondents: 190,422.

Frequency of responses: on occasion.

Copies of the information collection submission to the Office of Management and Budget are available from the CFTC Clearance Officer, 1155 21st Street, N.W., Washington, D.C. 20581, (202) 418–5160.

List of Subjects

17 CFR Part 1

Commodity Futures, Reporting and recordkeeping requirements.

17 CFR Part 33

Commodity Futures, Domestic exchange-traded commodity option transactions, Consumer protection, Fraud.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1), 4b, 4c, and 8a thereof, 7 U.S.C. 2a, 6b, 6c, and 12a, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24.

2. Section 1.3 is amended to revise paragraph (gg)(2)(iv) to read as follows:

§ 1.3 Definitions

* * * * *

(gg) * * *

(2) * * *

(iv) Representing accruals (including, for purchasers of a commodity option for which the full premium has been paid, the market value of such commodity option) to an option customer.

* * * * *

3. Section 1.12 is amended by revising paragraph (b)(2) to read as follows:

[12] The Commission's Division of Trading and Markets previously has issued guidance on the proper accounting and segregation treatment of exchange-traded options subject to a stock-style margining system. *See, Financial and Segregation Interpretation No. 8—Proper Accounting, Segregation and Net Capital Treatment of Exchange Traded Option Transactions,* Comm. Fut. L. Rep. (CCH) ¶ 7118 (Division of Trading and Markets, August 12, 1982). The Commission may determine that it would be appropriate to revise this Interpretation if exchanges seek to implement futures-style margining.

[13] Pub. L. 104–13 (May 13, 1995).

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

* * * * *

(b) * * *

(2) 6 percent of the following amount: The customer funds required to be segregated pursuant to the Act and the regulations in this part and foreign futures or foreign options secured amount, less the market value of commodity options purchased by such customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid: Provided, however, That the deduction for each such customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts;

* * * * *

4. Section 1.17 is amended by revising paragraphs (a)(1)(i)(B), (e)(1)(ii), (h)(2)(vi)(C)(2), (h)(2)(vii)(A)(2), (h)(2)(vii)(B)(2), (h)(2)(viii)(A)(2), (h)(3)(ii)(B) and (h)(3)(v)(B) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

* * * * *

(a)(1)(i) * * *

(B) Four percent of the following amount: The customer funds required to be segregated pursuant to the Act and the regulations in this part and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid: Provided, however, That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts;

* * * * *

(e) * * *

(1) * * *

(ii) For a futures commission merchant or applicant therefor, 7 percent of the following amount: The customer funds required to be segregated pursuant to the Act and the regulations in this part and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid: Provided, however, That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts;

* * * * *

(h) * * *

(2) * * *

(vi) * * *

(C) * * *

(2) For a futures commission merchant or applicant therefor, 7 percent of the following amount: The customer funds required to be segregated pursuant to the Act and the regulations in this part and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid: Provided, however, That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts;

* * * * *

(vii) * * *

(A) * * *

(2) For a futures commission merchant or applicant therefor, 7 percent of the following amount: The customer funds required to be segregated pursuant to the Act and the regulations in this part and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid: Provided, however, That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts;

* * * * *

(B) * * *

(2) For a futures commission merchant or applicant therefor, 10 percent of the following amount: The customer funds required to be segregated pursuant to the Act and the regulations in this part and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid: Provided, however, That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts;

* * * * *

(viii) * * *

(A) * * *

(2) For a futures commission merchant or applicant therefor, 6 percent of the following amount: The customer funds required to be segregated pursuant to the Act and the regulations in this part and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid: Provided, however, That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts;

* * * * *

(3) * * *

(ii) * * *

(B) For a futures commission merchant or applicant therefor, 6 percent of the following amount: The customer funds required to be segregated pursuant to the Act and the regulations in this part and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid: Provided, however, That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts;

* * * * *

(v) * * *

(B) For a futures commission merchant or applicant therefor, 7 percent of the following amount: The customer funds required to be segregated pursuant to the Act and the regulations in this part and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid: Provided, however, That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts;

* * * * *

PART 33—REGULATION OF DOMESTIC EXCHANGE TRADED COMMODITY OPTION TRANSACTIONS

5. The authority citation for Part 33 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 12c, 13a, 13a–1, 13b, 19, and 21.

§ 33.4 [Amended]

6. Section 33.4 is amended by removing and reserving paragraph (a)(2).

7. The disclosure statement in paragraph (b) of § 33.7 is amended by revising the text preceding paragraph (1) and paragraphs (2)(v), (4) and (5) to read as follows:

§ 33.7 Disclosure.

* * * * *

(b) * * *

Options Disclosure Statement

BECAUSE OF THE VOLATILE NATURE OF THE COMMODITIES MARKETS, THE PURCHASE AND GRANTING OF COMMODITY OPTIONS INVOLVE A HIGH DEGREE OF RISK. COMMODITY OPTION TRANSACTIONS ARE NOT SUITABLE FOR MANY MEMBERS OF THE PUBLIC. SUCH TRANSACTIONS SHOULD BE ENTERED INTO ONLY BY PERSONS WHO HAVE READ AND UNDERSTOOD THIS DISCLOSURE STATEMENT AND WHO UNDERSTAND THE NATURE AND EXTENT OF THEIR RIGHTS AND OBLIGATIONS AND OF THE RISKS INVOLVED IN THE OPTION TRANSACTIONS COVERED BY THIS DISCLOSURE STATEMENT.

BOTH THE PURCHASER AND THE GRANTOR SHOULD KNOW WHETHER THE PARTICULAR OPTION IN WHICH THEY CONTEMPLATE TRADING IS AN OPTION WHICH, IF EXERCISED, RESULTS IN THE ESTABLISHMENT OF A FUTURES CONTRACT (AN ''OPTION ON A FUTURES CONTRACT'') OR RESULTS IN THE MAKING OR TAKING OF DELIVERY OF THE ACTUAL COMMODITY UNDERLYING THE OPTION (AN ''OPTION ON A PHYSICAL COMMODITY''). BOTH THE PURCHASER AND THE GRANTOR OF AN OPTION ON A PHYSICAL COMMODITY SHOULD BE AWARE THAT, IN CERTAIN CASES, THE DELIVERY OF THE ACTUAL COMMODITY UNDERLYING THE OPTION MAY NOT BE REQUIRED AND THAT, IF THE OPTION IS EXERCISED, THE OBLIGATIONS OF THE PURCHASER AND GRANTOR WILL BE SETTLED IN CASH.

BOTH THE PURCHASER AND THE GRANTOR SHOULD KNOW WHETHER THE PARTICULAR OPTION IN WHICH THEY CONTEMPLATE TRADING IS SUBJECT TO A ''STOCK-STYLE'' OR ''FUTURES-STYLE'' SYSTEM OF MARGINING. UNDER A STOCK-STYLE MARGINING SYSTEM, A PURCHASER IS REQUIRED TO PAY THE FULL PURCHASE PRICE OF THE OPTION AT THE INITIATION OF THE TRANSACTION. THE PURCHASER HAS NO FURTHER OBLIGATION ON THE OPTION POSITION. UNDER A FUTURES-STYLE MARGINING SYSTEM, THE PURCHASER DEPOSITS INITIAL MARGIN AND MAY BE REQUIRED TO DEPOSIT ADDITIONAL MARGIN IF THE MARKET MOVES AGAINST THE OPTION POSITION. THE PURCHASER'S TOTAL SETTLEMENT VARIATION MARGIN OBLIGATION OVER THE LIFE OF THE OPTION, HOWEVER, WILL NOT EXCEED THE ORIGINAL OPTION PREMIUM, ALTHOUGH SOME INDIVIDUAL PAYMENT OBLIGATIONS AND/OR RISK MARGIN REQUIREMENTS MAY AT TIMES EXCEED THE ORIGINAL OPTION PREMIUM. IF THE PURCHASER OR GRANTOR DOES NOT UNDERSTAND HOW OPTIONS ARE MARGINED UNDER A STOCK-STYLE OR FUTURES-STYLE MARGINING SYSTEM, HE OR SHE SHOULD REQUEST AN EXPLANATION FROM THE FUTURES COMMISSION MERCHANT (''FCM'') OR INTRODUCING BROKER (''IB'').

A PERSON SHOULD NOT PURCHASE ANY COMMODITY OPTION UNLESS HE OR SHE IS ABLE TO SUSTAIN A TOTAL LOSS OF THE PREMIUM AND TRANSACTION COSTS OF PURCHASING THE OPTION. A PERSON SHOULD NOT GRANT ANY COMMODITY OPTION UNLESS HE OR SHE IS ABLE TO MEET ADDITIONAL CALLS FOR MARGIN WHEN THE MARKET MOVES AGAINST HIS OR HER POSITION AND, IN SUCH CIRCUMSTANCES, TO SUSTAIN A VERY LARGE FINANCIAL LOSS.

A PERSON WHO PURCHASES AN OPTION SUBJECT TO STOCK-STYLE MARGINING SHOULD BE AWARE THAT, IN ORDER TO REALIZE ANY VALUE FROM THE OPTION, IT WILL BE NECESSARY EITHER TO OFFSET THE OPTION POSITION OR TO EXERCISE THE OPTION. OPTIONS SUBJECT TO FUTURES-STYLE MARGINING ARE MARKED TO MARKET, AND GAINS AND LOSSES ARE PAID AND COLLECTED DAILY. IF AN OPTION PURCHASER DOES NOT UNDERSTAND HOW TO OFFSET OR EXERCISE AN OPTION, THE PURCHASER SHOULD REQUEST AN EXPLANATION FROM THE FCM OR IB. CUSTOMERS SHOULD BE AWARE THAT IN A NUMBER OF CIRCUMSTANCES, SOME OF WHICH WILL BE DESCRIBED IN THIS DISCLOSURE STATEMENT, IT MAY BE DIFFICULT OR IMPOSSIBLE TO OFFSET AN EXISTING OPTION POSITION ON AN EXCHANGE.

THE GRANTOR OF AN OPTION SHOULD BE AWARE THAT, IN MOST CASES, A COMMODITY OPTION MAY BE EXERCISED AT ANY TIME FROM THE TIME IT IS GRANTED UNTIL IT EXPIRES. THE PURCHASER OF AN OPTION SHOULD BE AWARE THAT SOME OPTION CONTRACTS MAY PROVIDE ONLY A LIMITED PERIOD OF TIME FOR EXERCISE OF THE OPTION.

THE PURCHASER OF A PUT OR CALL SUBJECT TO STOCK-STYLE OR FUTURES-STYLE MARGINING IS SUBJECT TO THE RISK OF LOSING THE ENTIRE PURCHASE PRICE OF THE OPTION—THAT IS, THE PREMIUM CHARGED FOR THE OPTION PLUS ALL TRANSACTION COSTS.

THE COMMODITY FUTURES TRADING COMMISSION REQUIRES THAT ALL CUSTOMERS RECEIVE AND ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT BUT DOES NOT INTEND THIS STATEMENT AS A RECOMMENDATION OR ENDORSEMENT OF EXCHANGE-TRADED COMMODITY OPTIONS.

* * * * *

(2) * * *

(v) An explanation and understanding of the option margining system;

* * * * *

(4) Margin requirements. An individual should know and understand whether the option he or she is contemplating trading is subject to a stock-style or futures-style system of margining. Stock-style margining requires the purchaser to pay the full option premium at the time of purchase. The purchaser has no further financial obligations, and the risk of loss is limited to the purchase price and transaction costs. Futures-style margining requires the purchaser to pay initial margin only at the time of purchase. The option position is marked to market, and gains and losses are collected and paid daily. The purchaser's risk of loss is limited to the initial option premium and transaction costs.

An individual granting options under either a stock-style or futures-style system of margining should understand that he or she may be required to pay additional margin in the case of adverse market movements.

(5) Profit potential of an option position. An option customer should carefully calculate the price which the underlying futures contract or underlying physical commodity would have to reach for the option position to become profitable. Under a stock-style margining system, this price would include the amount by which the underlying futures contract or underlying physical commodity would have to rise above or fall below the strike price to cover the sum of the premium and all other costs incurred in entering into and exercising or closing (offsetting) the commodity option position. Under a future-style margining system, option positions would be marked to market, and gains and losses would be paid and collected daily, and an option position would become profitable once the variation margin collected exceeded the cost of entering the contract position.

Also, an option customer should be aware of the risk that the futures price prevailing at the opening of the next trading day may be substantially different from the futures price which prevailed when the option was exercised. Similarly, for options on physicals that are cash settled, the physicals price prevailing at the time the option is exercised may differ substantially from the cash settlement price that is determined at a later time. Thus, if a customer does not cover the position against the possibility of underlying commodity price change, the realized price upon option exercise may differ substantially from that which existed at the time of exercise.

* * * * *

Issued in Washington, D.C., on this 10th day of June, 1998, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–15977 Filed 6–15–98; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Amendment to Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission; Receipt and Disposition of Foreign Gifts and Decorations

AGENCY: Commodity Futures Trading Commission.

ACTION: Final amendment.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is amending a provision of its regulations, 17 CFR 140.735–4 (1998), which sets forth the responsibilities of Commission members and employees concerning the receipt and disposition of gifts and decorations from foreign governments. The Commission adopted this regulation in 1982 to comply with the Foreign Gifts and Decorations Act, 5 U.S.C. 7342 (1994). The amendment clarifies the fact that gifts of travel expenses in excess of minimal value must be reported to and approved by the CFTC's Executive Director in accordance with the procedures set forth in the Commission's regulation whereas the receipt of travel benefits or expenses for services rendered need not be reported. The Commission is publishing this amendment in final form without soliciting comments pursuant to 5 U.S.C. 553(b)(3) because it involves a rule of agency procedure and does not alter current requirements. Therefore, notice and public procedure would be unnecessary.

EFFECTIVE DATE: June 16, 1998.

FOR FURTHER INFORMATION CONTACT: George Wilder, Office of General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5120, or electronically at gwilder@cftc.gov.

SUPPLEMENTARY INFORMATION: The Commission amends its regulation concerning the receipt and disposition of foreign gifts and decorations to conform more clearly to the statutory provisions enacted by Congress. This amendment clarifies that an employee, which includes the spouse of a Commission member or employee, need not report his or her acceptance of travel benefits or expenses provided in exchange for services rendered. This situation is most likely to arise when the spouse of a Commission member or employee provides services to a foreign government or other organization described in Rule 140.735–4. In such circumstances, the acceptance of travel expenses will not trigger the reporting requirements of the Commission's regulation.

The Commission finds that this rule amendment relates solely to agency organization, procedure and practice. Therefore, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, generally requiring notice of proposed rulemaking and opportunity for public comment, are not applicable. The Commission further finds that, because the amendment does not alter current requirements and only affects Commission members and employees who will be notified by internal means, there is good cause to make this amendment effective upon publication in the **Federal Register**.

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611 (1994 and Supp. II (1996)), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. Section 3(a) of the RFA defines the term ''rule'' to mean ''any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title * * * for which the agency provides an opportunity for notice and public comment.'' 5 U.S.C. § 601(2). Since the amendment to the Commission's regulation was not effected pursuant to Section 553(b), it is not a ''rule'' as defined in the RFA, and the analysis and certification process required by that statue does not apply.

List of Subjects in 17 CFR Part 140

Organization and functions (Government agencies).

In consideration of the foregoing, the Commission amends Title 17, Part 140 of the Code of Federal Regulations as follows:

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

Subpart C—Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission

1. The authority citation for Part 140 continues to read as follows:

Authority: 7 U.S.C. 4a (f) and (j), 12a(5), and 13.

2. Section 140.735–4 is amended by revising paragraphs (b)(3) and (c)(5) introductory text to read as follows:

§ 140.735–4 Receipt and disposition of foreign gifts and decorations.

* * * * *

(b) * * *

* * * * *

(3) Accept gifts of travel or gifts of expenses for travel, such as transportation, food and lodging, from foreign governments, other than those authorized in paragraph (c)(5) of this section; or

* * * * *

(c) * * *

* * * * *

(5) Commission members and employees are authorized to accept from a foreign government gifts of travel or gifts of expenses for travel taking place entirely outside the United States, such as transportation, food and lodging, of more than minimal value if the acceptance is approved by the Executive Director, upon a finding that it is consistent with the interests of the Commission. Either prior to or within 30 days after accepting each gift of travel or gift of travel expenses pursuant to this paragraph, the Commission member or employee concerned shall file a statement with the Executive Director containing the following information:

* * * * *

Dated: June 5, 1998.

Issued by the Commission.

Jean A. Webb,

Secretary of the Commission, Commodity Futures Trading Commission.

[FR Doc. 98–15720 Filed 6–15–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 10

[Docket No. 98N–0361]

Administrative Practices and Procedures; Internal Review of Agency Decisions

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations governing the review of agency decisions by inserting a statement that sponsors, applicants, or manufacturers of drugs (including biologics) or devices may request review of a scientific controversy by an appropriate scientific advisory panel, or an advisory committee. This action is being taken to clarify the availability of review of scientific controversies by such advisory panels and committees.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule. If any significant adverse comment is received, FDA will withdraw the direct final rule and will follow its usual procedures for notice-and-comment rulemaking based on the companion proposed rule.

DATES: The regulation is effective October 29, 1998. Submit written comments by August 31, 1998. If a timely significant adverse comment is received, FDA will publish a document of significant adverse comment in the **Federal Register** by September 29, 1998. If no timely significant adverse comment is received, FDA will publish a document in the **Federal Register** by September 29, 1998, to confirm the effective date of October 29, 1998.

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: Suzanne M. O'Shea, Office of the Chief Mediator and Ombudsman (HF–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3390.

SUPPLEMENTARY INFORMATION:

I. Discussion

On November 21, 1997, President Clinton signed into law the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115). Section 404 of FDAMA amends the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*) by adding a new provision, Dispute Resolution (section 562 of the act (21 U.S.C. 360bbb-1)). Under the dispute resolution provision, FDA is to determine the existence of procedures for sponsors, applicants, and manufacturers of drugs (including biologics) or devices to request review of scientific controversies. Where such procedures do not exist, FDA is directed to issue a regulation establishing a procedure by which a sponsor, applicant, or manufacturer of a drug or device may request review of a scientific controversy, including review by an appropriate scientific advisory panel as described in section 505(n) of the act[1] (21 U.S.C. 355(n)), or an advisory committee as described in section 515(g)(2)(B) of the act (21 U.S.C. 360e(g)(2)(B)).

FDA procedures currently provide mechanisms for sponsors, applicants, or manufacturers of drugs and devices to request review of all scientific controversies. Agency regulations and policy statements contain numerous procedures for obtaining review of scientific controversies affecting regulated products, including some that provide for review by an FDA advisory panel or committee. Moreover, any interested person[2] may obtain review of any agency decision by raising the matter with the supervisor of the employee who made the decision. If the issue is not resolved at the supervisor's level, the interested person may request that the matter be reviewed at the next higher supervisory level. This process may continue through the agency's chain of command (§ 10.75 (21 CFR 10.75)).

Notwithstanding the existence of these dispute resolution provisions, FDA is amending § 10.75 in light of FDAMA, to clarify that sponsors, applicants, or manufacturers of a drug or device subject to the act, or a product covered by the Public Health Service Act (42 U.S.C. 262), may request review of scientific controversies by an appropriate scientific advisory committee. FDA recommends that sponsors, applicants, and manufacturers continue to use established mechanisms for obtaining review of scientific controversies prior to seeking review by an advisory panel or committee. FDA recognizes however, that in appropriate circumstances, review by such an advisory committee may provide FDA with useful advice and recommendations about how the agency may best resolve a controversy.

II. Rulemaking Procedures

FDA described its procedures for direct final rulemaking in the **Federal Register** of November 21, 1997 (62 FR 62466). This action is appropriate for direct final rulemaking because it is a noncontroversial amendment to FDA's regulations that is in accord with FDAMA. Furthermore, FDA anticipates no significant adverse comments. Consistent with FDA's procedures for direct final rulemaking, FDA will withdraw this direct final rule if it receives any significant adverse comment. If this direct final rule is withdrawn, FDA will consider all comments received to develop a final rule using the usual notice and comment rulemaking procedures, based on the companion proposed rule published in the proposed rules section of this issue of the **Federal Register**.

FDA is providing a period of 75 days for comment on this direct final rule, to run concurrently with the comment period for the companion proposed rule. This comment period begins on June 16, 1998, and ends on August 31, 1998. If FDA receives a significant adverse comment, the agency will publish a document of significant adverse comment in the **Federal Register** to withdraw the direct final rule by September 29, 1998. If FDA receives no significant adverse comment during the comment period, it will publish a document in the **Federal Register** by September 29, 1998, to confirm the October 29, 1998, effective date of this direct final rule.

A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. For example, a comment requesting inclusion of consumer representatives on an FDA advisory committee will not be considered a significant adverse comment because it is outside the scope of this rule. A comment suggesting a change in addition to that proposed by the rule would not be considered a significant adverse comment, unless, as explained by the comment, the rule would be ineffective without change.

III. Analysis of Impacts

A. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

B. Economic Impact

In accordance with Executive Order 12866, FDA has carefully analyzed the economic effect of this rule and has determined that it is not a major rule as defined by the Executive Order.

[1] FDA understands the term ''scientific advisory panel'' to mean a public advisory committee as discussed in 21 CFR part 14.

[2] An interested person, as defined in 21 CFR 10.3, is a person who submits a petition or comment or objection or otherwise asks to participate in an informal or formal administrative proceeding or court action. This definition of interested person includes a sponsor, applicant, or manufacturer of a drug or device.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this rule will have on small entities, including small businesses, and has determined that no significant economic impact on a substantial number of small entities will derive from this action.

IV. Paperwork Reduction Act of 1995

The direct final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Request for Comments

Interested persons may, on or before August 31, 1998, submit to the Dockets Management Branch (address above) written comments regarding this rule. 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. The comment period for the direct final rule runs concurrently with that of the companion proposed rule. Any comments received under the companion proposed rule will be considered as comments regarding this direct final rule. Likewise, any comment submitted under the direct final rule will be considered as comments to the companion proposed rule in the event the direct final rule is withdrawn.

List of Subjects in 21 CFR Part 10

Administrative practice and procedure, News media.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and authority delegated to the Commissioner of Food and Drugs, 21 CFR part 10 is amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

1. The authority citation for 21 CFR part 10 is revised to read as follows:

Authority: 5 U.S.C. 551–558, 701–706; 15 U.S.C. 1451–4161; 21 U.S.C. 141–149, 321–397, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

2. Section 10.75 is amended by adding a sentence at the end of paragraph (b) to read as follows:

§ 10.75 Internal agency review of decisions.

* * * * *

(b) * * * A sponsor, applicant, or manufacturer of a drug or device regulated under the act or the Public Health Service Act (42 U.S.C. 262), may request review of a scientific controversy by an appropriate scientific advisory panel as described in section 505(n) of the act, or an advisory committee as described in section 515(g)(2)(B) of the act.

* * * * *

Dated: June 4, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–15815 Filed 6–15–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 8771]

RIN 1545–AW29

Federal Employment Tax Deposits—De Minimis Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains temporary and final regulations relating to the deposit of Federal employment taxes. The regulations change the de minimis deposit rule for quarterly and annual return periods. The regulations affect taxpayers required to make deposits of Federal employment taxes. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective date:* These regulations are effective June 16, 1998.

Applicability date: For dates of applicability, see § 31.6302–1T(f)(4).

FOR FURTHER INFORMATION CONTACT: Vincent Surabian (202) 622–4940 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains amendments to 26 CFR part 31, Employment Taxes and Collection of Income Tax at Source. Section 31.6302–1(f)(4) provides that if the total amount of accumulated employment taxes for the quarter is less than $500 and the amount is fully deposited or remitted with a timely filed return for the quarter, the amount deposited or remitted will be deemed to be timely deposited.

The temporary regulations change the $500 threshold to $1,000. In addition, the regulations replace the term ''quarter'' with the term ''return period'' since some employment taxes are reported on an annual basis (Forms 943, 945, and CT–1) rather than quarterly (Form 941). Thus, a taxpayer that has accumulated employment taxes of less than $1,000 for a return period (quarterly or annual, as the case may be) does not have to make deposits but may remit its full liability with a timely filed return for the return period.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information: The principal author of these regulations is Vincent Surabian, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 is amended by adding an entry in numerical order to read as follows:

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

§ 31.6302–1T also issued under 26 U.S.C. 6302 (a) and (c). * * *

Par. 2. In § 31.6302–1, a new sentence is added at the end of paragraph (f)(4) to read as follows:

§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

* * * * *

(f) * * *

(4) *De Minimis rule.* * * * For guidance regarding de minimis amounts for quarterly return periods beginning on or after July 1, 1998, and annual return periods beginning on or after January 1, 1999, see § 31.6302–1T(f)(4).

* * * * *

Par. 3. Section 31.6302–1T is added to read as follows:

§ 31.6302–1T Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992 (temporary).

(a) through (f)(3). [Reserved] For further guidance, see § 31.6302–1(a) through (f)(3).

(f)(4) *De Minimis rule.* For quarterly return periods beginning on or after July 1, 1998, and annual return periods beginning on or after January 1, 1999, if the total amount of accumulated employment taxes for the return period is less than $1,000 and the amount is fully deposited or remitted with a timely filed return for the return period, the amount deposited or remitted will be deemed to have been timely deposited.

(f)(5) through (m). [Reserved] For further guidance, see § 31.6302–1(g) through (m).

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: June 1, 1998.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 98–15984 Filed 6–15–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–98–040]

RIN 2115–AE46

Special Local Regulations for Marine Events; Patapsco River, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements the special local regulations at 33 CFR 100.515 during the fireworks display to be held July 4, 1998, on the Patapsco River at Baltimore, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the fireworks display. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

DATES: 33 CFR 100.515 is effective from 9 p.m. to 10 p.m. on July 4, 1998.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R.L. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2674.

SUPPLEMENTARY INFORMATION: The City of Baltimore will sponsor a fireworks display on July 4, 1998 on the Patapsco River, Baltimore, Maryland. The fireworks display will be launched from a barge positioned within the regulated area. In order to ensure the safety of participants and transiting vessels, 33 CFR 100.515 will be in effect for the duration of the event. Under provisions of 33 CFR 100.515, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: May 29, 1998.

P.M. Stillman,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 98–15900 Filed 6–15–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–98–039]

RIN 2115–AE46

Special Local Regulations for Marine Events; Severn River, College Creek, and Weems Creek, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements the special local regulations at 33 CFR 100.518 during the fireworks display to be held July 4, 1998, on the Severn River at Annapolis, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the fireworks display. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

DATES: 33 CFR 100.518 is effective from 8 p.m. to 11 p.m. on July 4, 1998.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R. L. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2674.

SUPPLEMENTARY INFORMATION: The City of Annapolis will sponsor a fireworks display on July 4, 1998 on the Severn River, Annapolis, Maryland. The fireworks display will be launched from a barge positioned within the regulated area. In order to ensure the safety of spectators and transiting vessels, 33 CFR 100.518 will be in effect for the duration of the event. Under provisions of 33 CFR 100.518, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: May 29, 1998.

P.M. Stillman,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 98–15899 Filed 6–15–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–98–065]

RIN 2115–AE46

Special Local Regulation: Fireworks Displays Within the First Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This document provides notice of the dates and times of the special local regulations contained in 33 CFR 100.114, Fireworks Displays within the First Coast Guard District. All vessels will be restricted from entering the area of navigable water within a 500-

yard radius of the fireworks launch platform for each event listed in the table below. Implementation of these regulations is necessary to control vessel traffic within the regulated area to ensure the safety of spectators.

DATES: The regulations in 33 CFR 100.114 are effective from one hour before the scheduled start of the event until thirty minutes after the last firework is exploded for each event listed in the table below. The events are listed chronologically by month with their corresponding number listed in the special local regulation, 33 CFR 100.114.

ADDRESSES: Comments should be mailed to Commander (osr), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, MA 02110–3350, or may be hand delivered to Room 734 at the same address, between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Mark A. Cawthorn, Office of Search and Rescue branch, First Coast Guard District at (617) 223–8460.

SUPPLEMENTARY INFORMATION: This notice implements the special local regulations in 33 CFR 100.114 (62 FR 30988; June 6, 1997). All vessels are prohibited from entering a 500-yard radius of navigable water surrounding the launch platform used in each fireworks display listed below.

Table 1—Fireworks Displays

July

1. Boston Harborfest Fireworks

Date: July 2, 1998
Time: 9:30 p.m. to 10:30 p.m.
Location: Just Off Coast Guard Base, Boston Harbor, MA
Lat: 42°22′52″Long: 071°02′56″W (NAD 1983)

2. American Legion Post 83 Fireworks

Date: June 27, 1998
Time: 9 p.m. to 9:30 p.m.
Rain Date: June 28, 1998
Time: 9 p.m. to 9:30 p.m.
Location: Branford Point, Branford, CT
Lat: 41°21′N, Long: 072°05′20″W (NAD 1983)

3. Devon Yacht Club Fireworks

Date: July 4, 1998
Time: 9 p.m. to 10 p.m.
Location: Devon Yacht Club, Amagansett, NY
Lat: 40–59.5N, Long: 072–06.5W (NAD 1983)

4. Hempstead Fireworks

Date: July 5, 1998
Time: 9:15 p.m. to 10 p.m.
Location: Point Lookout, Hempstead, NY

7. Bangor Fireworks

Date: July 4, 1998
Time: 9:30 p.m. to 10 p.m.
Rain date: July 5, 1998
Time: 9:30 p.m. to 10 p.m.
Location: Bangor/Brewer waterfront, ME
Lat: 44–47.6N, Long: 068–11.8W (NAD 1983)

8. Bar Harbor Fireworks

Date: July 4, 1998
Time: 8:30 p.m. to 9:30 p.m.
Location: Bar Harbor/Bar Island, ME
Lat: 44–23.6N, Long: 068–11.8W (NAD 1983)

9. Stewarts 4th of July Fireworks Display

Date: July 4, 1998
Time: 9 p.m. to 9:30 p.m.
Location: Somes Sound, Northeast Harbor, ME
Lat: 44–18.3N, Long: 068–18.2W (NAD 1983)

10. Walsh's Fireworks

Date: July 3, 1998
Time: 8:30 p.m. to 9:30 p.m.
Location: Union River Bay, ME
Lat: 44–23.5N, Long: 068–27.2W (NAD 1983)

13. Fourth of July Celebration

Date: July 4, 1998
Time: 9 p.m. to 11 p.m.
Location: West Beach, Manchester Bay, Beverly Farms, MA
Lat: 42–33.515″N, Long: 070–48.292″W (NAD 1983)

14. Edgartown Fireworks

Date: July 4, 1998
Time: 9 p.m. to 9:30 p.m.
Location: Edgartown Harbor, Edgartown, MA
Lat: 41–23.25N, Long: 070–29.45W (NAD 1983)
Lat: 41–22.99N, Long: 070–29.43W (NAD 1983)

17. Marion Fireworks

Date: July 4, 1998
Time: 8 p.m. to 10 p.m.
Location: Silver Shell Beach, Marion, MA
Lat: 41–41.6N, Long: 070–45.5W (NAD 1983)

18. City of New Bedford Fireworks

Date: July 4, 1998
Time: 9 p.m. to 10:30 p.m.
Location: New Bedford Harbor, New Bedford, MA
Lat: 41–41N, Long. 070–40W (NAD 1983)

19. Onset Fireworks

Date: July 4, 1998
Time: 9 p.m. to 10 p.m.
Location: Onset Harbor, Onset, MA
Lat: 41–38N, Long: 071–55W (NAD 1983)

21. Wellfleet Fireworks

Date: July 4, 1998
Time: 8 p.m. to 11 p.m.
Rain date: July 11, 1998
Time: 8 p.m. to 11 p.m.
Location: Indian Neck Jetty, Wellfleet, MA
Lat: 41–55.5N, Long: 070–02.0 (NAD 1983)

24. Bristol 4th of July Fireworks

Date: July 4, 1998
Time: 9:30 p.m. to 10 p.m.
Location: Bristol Harbor, Bristol, RI
Lat: 41–39.8N, 071–17.0W (NAD 1983)

25. Oyster Harbor Club Fourth of July Festival

Date: July 4, 1998
Time: 6 p.m. to 10 p.m.
Rain date: July 5, 1998
Time 6 p.m. to 10 p.m.
Location: Tim's Cove, North Bay, Osterville, RI
Lat: 41–37.9N, Long: 070–24.0W (NAD 1983)

28. Fairfield Aerial Fireworks

Date: July 4, 1998
Time: 9 p.m. to 10:30 p.m.
Rain date: July 11, 1998
Time: 9 p.m. to 10:30 p.m.
Location: Jennings Beach, Long Island Sound, Fairfield, CT
Lat: 41–08′22″N, Long: 073–14′02″W (NAD 1983)

29. Subfest Fireworks

Date: July 2, 1998
Time: 9:30 p.m. to 9:40 p.m.
Rain date: July 3, 1998
Time: 9:30 p.m. to 9:40 p.m.
Location: Thames River, Groton, CT
Lat: 40–23′13″ N, Long: 072–05′15″ W (NAD 1983)

30. Middletown Fireworks

Date: July 4, 1998
Time: 9:15 p.m. to 9:45 p.m.
Rain date: July 5, 1998
Time: 9:15 p.m. to 9:45 p.m.
Location: Connecticut River, Middletown, CT
600 yards east of Harbor Park

31. Hartford Riverfest

Date: July 3, 1998
Time: 8 p.m. to 10 p.m.
Location: Connecticut River, Hartford, CT

South side of Chapter Oak Bridge to Great River Park

32. City of Norwalk Fireworks

Date: July 3, 1998
Time: 9:15 p.m. to 10:15 p.m.
Rain date: July 4, 1998
Time: 9:15 p.m. to 10:15 p.m.
Location: Calf Pasture Beach, Long Island Sound, Norwalk, CT
Lat: 41–04.50″ N, Lat: 073–23.22″ W (NAD 1983)

33. Norwich American Wharf Fireworks

Date: July 4, 1998
Time: 9 p.m. to 11 p.m.
Rain date: July 5, 1998
Time: 9 p.m. to 11 p.m.
Location: Norwich Harbor, Norwich, CT
Lat: 41–31′06″ N, Long: 072–04′46″ W (NAD 1983)

35. Stratford Fireworks

Date: July 3, 1998
Time: 9 p.m. to 10 p.m.
Location: Short Beach, Stratford, CT
Lat: 41–10.11″ N, Long: 073–06.19″ W (NAD 1983)

36. Westport P.A.L. Fireworks

Date: July 2, 1998
Time: 9:30 p.m. to 10:30 p.m.
Location: Compo Beach, Westport, CT

37. Bayville Crescent Club Fireworks

Date: July 20, 1998
Time: 9:15 p.m. to 10 p.m.
Rain date: July 21, 1998
Time: 9:15 p.m. to 10 p.m.
Location: Cooper Bluff, Cove Neck, NY
Lat: 40–54′6″ N, Long: 073–32′0″ W (NAD 1983)

40. Jones Beach State Park Fireworks

Date: July 4, 1998
Time: 9:30 p.m. to 9:55 p.m.
Location: Fishing Pier, Jones Beach State Park, Wantagh, NY
Lat: 40–35.7″ N, Long: 073–30.6″ W (NAD 1983)

47. Boys Harbor Fireworks Extravaganza

Date: July 18, 1998
Time: 9 p.m. to 10 p.m.
Location: Three Mile Harbor, East Hampton, NY
Lat: 41–15″ N, Long: 070–11.91″ W (NAD 1983)

August

4. Fall River Celebrates America Fireworks

Date: August 8, 1998
Time: 9:15 p.m. to 10:30 p.m.
Location: Taunton River, vicinity of buoy #17, Fall River, MA
Lat: 41–41.7″ N, Long: 071–10.0″ W (NAD 1983)

9. Salute to Summer

Date: September 5, 1998
Time: 8:30 p.m. to 10 p.m.
Location: Narragansett Bay, East Passage, off Coasters Harbor Island, Newport, RI
Lat: 41–25″ N, Long: 071–20″ W (NAD 1993)

Dated: June 4, 1998.

James D. Garrison,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 98–15898 Filed 6–15–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–98–045]

RIN 2115–AE46

Special Local Regulation: Newport-Bermuda Regatta, Narragansett Bay, Newport, RI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is issuing a temporary rule to change the effective dates for the special local regulations for this year's Newport-Bermuda Regatta. The Newport-Bermuda Regatta will be held on June 19, 1998. This event involves up to 120 ocean going sailboats departing the entrance to Narragansett Bay, Newport, RI, and racing to Bermuda, U.K. This regulation is necessary to control vessel traffic within the immediate vicinity of the event due to the confined nature to the event, thus providing for the safety of life and property on the affected navigable waters.

DATES: This rule is effective on June 19, 1998, from 11 a.m. to 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Mark A. Cawthorn, Assistant Chief, Search and Rescue Branch, First Coast Guard District, (617) 223–8460.

SUPPLEMENTARY INFORMATION:

Regulatory History

The special local regulation in 33 CFR 100.119 for the biennial Newport-Bermuda Regatta was published on June 24, 1996 at 61 FR 32332. The regulation's effective date does not allow automatic implementation of the rule each year. This regulation is necessary to suspend paragraph (c) of 33 CFR 100.119 and add paragraph (d) specifying the effective dates for this year's event. Good cause exists for providing for this regulation to become effective in less than 30 days after **Federal Register** publication. Publishing an NPRM would require a 30-day comment period and the final rule would not be effective before the scheduled event. The Coast Guard believes delaying the event in order to provide a 30-day delayed effective date would be contrary to the public interest given this event's local popularity.

Background and Purpose

The Newport-Bermuda regatta is a biennial sailboat race sponsored by Cruising Club of America. Participating sailboats will require favorable navigable conditions. A portion of the East Passage of Narragansett Bay, Newport, Rhode Island will be closed during the effective period. This regulated area is needed to protect life and property during the event. For further information and restrictions regarding this event see 33 CFR 100.119.

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. The Office of Management and Budget has exempted this temporary rule from review under that order. This temporary rule 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 policies and procedures of DOT, is unnecessary. The effect of this temporary rule will not be significant for several reasons: entry into the regulated area is restricted for a short duration; vessels may transit around the regulated area; and the extensive advance advisories that will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and have determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that under Figure 2–1, paragraph 34(h), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety; Navigation (water); Reporting and recordkeeping requirements; Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard proposes to temporarily amend 33 CFR Part 100 as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46 and 33 CFR 100.35.

2. From 11 a.m. to 3:30 p.m. on June 19, 1998 in § 100.119, paragraph (c) is suspended and a new paragraph (d) is added to read as follows:

§ 100.119 Newport-Bermuda Regatta, Narragansett Bay, Newport, RI.

* * * * *

(d) *Effective period.* This section is in effect on June 19, 1998, from 11 a.m. to 3:30 p.m.

Dated: May 29, 1998.

James D. Garrison,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 98–15897 Filed 6–15–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD11–97–002]

RIN 2115–AA98

Anchorage Regulation; San Francisco Bay, California

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard hereby revises the regulations for the existing explosive anchorage, Anchorage 14 within General Anchorage 9, in San Francisco Bay, California. This revision realigns Anchorage 14 in a true north-south direction amd moves it northerly to include deeper water. This will allow vessels with drafts of 38 feet or greater laden with explosives, to safety anchor, while minimizing potential overcrowding of General Anchorage 9. This anchorage amendment changes the position of Anchorage 14 to provide deeper water for explosive load activations while not tying up large areas of General Anchorage 9. The explosive limit of 3,000 tons net explosive weight (NEW) for Anchorage 14 will remain unchanged. A provision is added, however, to allow the Captain of the Port to provide specific permission to exceed the limit.

EFFECTIVE DATE: July 16, 1998.

ADDRESSES: U.S. Coast Guard Marine Safety Office, San Francisco Bay, Building 14, Coast Guard Island, Alameda, CA 94501–5100.

FOR FURTHER INFORMATION CONTACT: Lieutenant Andrew B. Cheney, Coast Guard Marine Safety Office, San Francisco Bay, California; telephone: (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory History

On May 5, 1997, the Coast Guard published a notice of proposed rulemaking for this regulation in the **Federal Register** (62 FR 24378). The Coast Guard received one letter commenting on the proposed rulemaking. The U.S. Fish and Wildlife Service wrote that the proposed realignment of Anchorage 14 in San Francisco Bay was reviewed and the action, as proposed, was not likely to adversely affect any listed species. No public hearing was requested, and none was held.

Background and Purpose

In the past, San Francisco Bay was a major explosive load out port due to the activities of the military facilities located or home-ported within the area. During periods of military conflict, San Francisco Bay was a primary port call for vessels and barges entering and departing the port laden with military ordnance. These vessels and barges conducting military ordnance outloads were easily accommodated by explosive Anchorage 12 and 14. In the past, the vessels conducting explosive outloads were smaller and handled less cargo than those vessels now contracted by Military Sealift Command to transport military ordnance. The smaller ships handling less explosive cargo, did not require as large of a minimum safe distance, as calculated by the DOD Ammunition and Explosive Safety Standards Manual (DOD 6055.9–STD, October 1992), as do the larger vessels, now hired to transport military ordnance. In addition to handling smaller explosive cargo loads, the drafts of the smaller vessels were much shallower than those of the larger ships now contracted to transport ordnance. Current local policy is to maintain a two-foot clearance under keel for vessels transiting the Bay. Since the water in the current Anchorage 14 is relatively shallow, anchoring a vessel of 38 feet draft or greater can be difficult, depending on the number of other vessels anchored in Anchorage 9 and 14. Using explosive Anchorage 12 as an alternate anchorage is suitable for the depth of the water, but is not satisfactory to meet the safety distance requirements from inhabited shore-side areas, as well as other vessels in General Anchorage 9. It, therefore, has periodically become necessary to create special anchorages for large deep draft vessels laden with explosives, in a location that might not be entirely within a charted explosive anchorage.

Additionally, the movement of Anchorage 14 would mitigate the burden on commercial vessels looking for safe anchorage in General Anchorage 9, and eliminates the need to establish special anchorages outside of established anchorages. This will also allow for more usable space in General Anchorage 9 at times when the explosive anchorage is activated.

An analysis of past anchorage activations indicates that the vessels currently being chartered for the carriage of DOD explosive cargo are approximately 26,400 gross tons or greater. Each vessel has carried a load of 5.8 million pounds or more, net explosive weight, and required at least 42 feet of water to adequately maintain a 2 foot under keel clearance safety factor. In its current location, explosive Anchorage 14 is so very limited in

depth of water that vessels with a draft greater than 38 feet find it difficult to anchor and remain within the designated anchorage. Existing Captain of the Port policy places further restriction on locations where lightering of tank vessels and bunkering of all commercial vessels can take place. COTP Advisory 4–95 allows lightering and bunkering to take place only in Anchorage 9. The current location of explosive Anchorages 12 and 14 does not always allow for the most effective use of space in General Anchorage 9, the only place for lightering and bunkering.

Discussion of Comments and Changes

The Coast Guard encouraged interested persons to participate in this rulemaking by submitting written data, views, or comments within 60 days after the date that the notice of proposed rulemaking was published in the **Federal Register**. The Coast Guard received only one comment during this period, and it took that comment into consideration in the promulgation of this final rule (see Regulatory History, above).

Discussion

The regulation moves the anchorage, as currently configured in size and shape, to a new position where the centers of the semicircular end boundaries are located, respectively, at latitude 37°42′37″ N., longitude 122°19′48″ W. and latitude 37°43′29″ N., longitude 122°19′48″ W (NAD 83). With this movement, Anchorage 14 will include deeper water, while maintaining an effective area of safety for vessels laden with explosives with a net explosive weight of 3,000 tons or greater. This regulation is designed to eliminate undue congestion and provide an effective area of safety in an area that can only accommodate a limited number of commercial vessels with drafts greater than 38 feet. Additionally, a provision is added specifically giving the Captain of the Port the authority to permit vessels to exceed the 3,000 ton explosives limit.

Regulatory Evaluation

This final 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 been exempted from review 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 policies and procedures of the DOT, is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard has considered whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses and not-for-profit organizations that are not dominant in their fields and (2) governmental jurisdictions with populations less than 50,000. The Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard has offered, and continues to offer, assistance to small entities in understanding this rule so that they can better evaluate its effects on them and fully participate in the rulemaking process.

Collection of Information

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

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this final rule and concluded that under Figure 2–1, paragraph 34(f), of Commandant Instruction M16475.1C it has no significant environmental impact and it is categorically excluded from further environmental documentation. The environmental analysis checklist and Categorical Exclusion Determination is available for inspection and copying in the docket to be maintained at the address listed in **ADDRESSES**.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends Subpart B of Part 110, Title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46; and 33 CFR 105–1(g).

2. In § 110.224, note f to table 110.224(d)(1) in paragraph (d) and Paragraph (e)(10) are revised to read as follows:

§ 110.224 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River and connecting waters, CA.

* * * * *

(d) * * *

TABLE 110.224(d)(1)

* * * * *

Notes:

* * * * *

f. The maximum total quantity of explosives that may be on board a vessel using this anchorage shall be limited to 3,000 tons unless otherwise authorized with the written permission of the Captain of the Port.

* * * * *

(e) * * *

(10) *Anchorage No. 14.* In San Francisco Bay east of Hunters Point an area 1,000 yards wide and 2,760 yards long, the end boundaries of which are semicircles, with a radii of 500 yards and center, respectively at latitude 37°42′37″ N., longitude 122°19′48″ W. and latitude 37°43′29″ N., longitude 122°19′48″ W. (NAD 83); and the side boundaries of which are parallel tangents joining the semicircles. A forbidden anchorage zone extends 667 yards out from the perimeter on each side.

* * * * *

Dated: May 26, 1998.

J.C. Card,

Vice Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 98–15966 Filed 6–15–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Savannah 98–010]

RIN 2115–AA97

Safety Zones; Savannah River, Savannah, GA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing six (6) temporary safety zones in the vicinity of the Savannah River and approaches during the Americas' Sail marine event to be held from July 2–6, 1998. These regulations are necessary to protect life and property on navigable waters because of the danger associated with the large number of expected participant and spectator craft within the narrow confines of the navigation channel.

DATES: This regulation is effective from 9 a.m. Eastern Daylight Time (EDT) on July 2, 1998, until 2 p.m. EDT on July 6, 1998.

FOR FURTHER INFORMATION CONTACT: LT Burt Lahn, Marine Safety Office Savannah at Tel: (912) 652–4353, between the hours of 0730 and 1600, Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION:

Regulatory History

The Coast Guard published a Notice of Proposed Rulemaking on April 30, 1998 (63 FR 23703). One comment was received during the comment period.

Discussion of Comments and Changes

One comment was received from a spill response organization stating that the Coast Guard needed to provide access through the safety zones for spill response organizations in case of a spill. The Coast Guard agrees, and will facilitate any such request from any spill response organization in the event of an oil spill.

Additionally, because of updated participant vessel arrival, transit, mooring and departure information, all the effective times for the safety zones have been shortened, with the exception of the safety zone on July 4, 1998, for the fireworks display.

Background Purpose

The events requiring these regulations will commence on July 2, 1998, when tall ships will begin arriving and anchoring in a pre-designated staging area offshore of Tybee Island, Georgia. On July 3, 1998, the tall ships will proceed in a pre-designated order into the Port of Savannah via the Savannah River, and will moor along the Savannah waterfront. During the period from July 3 to July 5, 1998, import activities will be held, including a fireworks display on the evening of July 4, 1998. On the morning of July 6, 1998, the vessels will depart the Port of Savannah, form up offshore, and the class A vessels (those greater that 150 feet) will commence racing to Long Island, New York.

Approximately 1,000 spectator craft are expected to participate in the Americas' Sail festivities. The Coast Guard is establishing the following six (6) safety zones at various times during the event: (1) A one square mile pre-arrival staging area offshore of Tybee Island, Georgia; (2) a safety zone from the entrance buoys, Savannah River to the Talmadge Bridge extending a width of 300 feet around the center of the channel for the inbound transit; (3) a safety zone from the south bank of the Savannah River to the center of the Savannah River Channel, from the Talmadge Bridge extending Eastward to position 32–04.45N, 081–04.45W; (4) a 300 foot safety zone around a fireworks staging area located on Hutchinson Island, in an approximate position of 32–05N, 081–05W; (5) a safety zone from the entrance buoys, Savannah River to the Talmadge Bridge extending a width of 300 feet around the center of the channel for the outbound transit, and; (6) a safety zone northeast of Tybee Island, Georgia, for the pre-race staging and the commencement of the offshore race.

The anticipated concentration of spectator and participant vessels associated with this event poses safety and security concerns for the safety and well being of the parading vessels and spectators. These regulations are intended to provide safety for the Americas' Sail participants and ensure safe navigation on the Savannah River and approaches by managing and controlling the traffic entering, exiting and traveling within the Savannah River waters. These safety zones are required to minimize the problems associated with large numbers of small craft within the confines of the narrow navigation channel on the Savannah River during the event.

The Coast Guard, assisted by State Law Enforcement patrol vessels, will be on scene to enforce the zones and monitor traffic. No persons or vessels will be allowed to enter or operate within these zones, except as may be authorized by the Captain of the Port.

The following are safety zones:

(1) The safety zone for the offshore staging/anchorage area for the tall ships will be in effect from 9 a.m. EDT on July 2, 1998, to 2 p.m. on July 3, 1998, and will encompass an area bounded by 32–00N, 080–45W, 32–01N, 080–45W, 32–01N, 080–46W, and 32–00N, 080–46W. During this time no vessel shall be allowed to enter this safety zone unless authorized by the Captain of the Port.

(2) The safety zone to allow the parade of tall ships into the city of Savannah will be in effect from 11 a.m. to 5 p.m. EDT on July 3, 1998, and will encompass the center 300 feet of the Savannah River channel from the entrance of Bloody Point Range to the Talmadge Bridge. Enforcement of this safety zone will allow spectator vessels adequate room on each side of the navigation channel to transit or observe the parade of ships. Vessels that cannot navigate outside of this safety zone and desire to depart the port of Savannah on July 3, 1998, must depart in time to clear the entrance of Tybee Island Range prior to 11 a.m. Vessels that cannot safely navigate outside of this safety zone and desire to enter the port of Savannah on July 3, 1998, must commence the inbound transit prior to 11 a.m. The Captain of the Port will allow vessel traffic to resume inbound transits utilizing the entire navigational channel when the last tall ship in the parade clears Longitude 081–02W. Vessels using the Intra-Coastal Waterway (ICW) will not be allowed to cross the Savannah River at the junction of Fields Cut once the parade commences.

Vessels will be allowed to resume transiting the ICW once the last tall ship in the parade clears the Savannah River and Fields Cut junction.

(3) The safety zone for the mooring of the vessels will be in effect from 2 p.m. until 5 p.m. EDT on July 3, 1998. The safety zone for the departure of the vessels will be in effect from 8 a.m. until 11 a.m. EDT on July 6, 1998. These zones will include all waters bounded from the south bank of the Savannah River to the center of the Savannah River Channel, from the Talmadge Bridge extending Eastward to position 32–04.45N, 081–04.45W. During these times no vessel shall be allowed to enter these safety zones unless authorized by the Captain of the Port.

(4) The safety zone for the fireworks display will be in effect from 9 p.m. to 11 p.m. EDT on July 4, 1998, and will encompass a 300 foot radius around the fireworks staging area located on Hutchinson Island, in approximate position 32–05N, 081–05W. During this time no vessel shall be allowed to enter

this safety zone unless authorized by the Captain of the Port.

(5) The safety zone to allow the parade of tall ships to depart the city of Savannah will be in effect from approximately 8 a.m. to 2 p.m. EDT on July 6, 1998, and will encompass the middle 300 feet of the Savannah River channel from the Talmadge Bridge to the entrance of Bloody Point Range. Vessels that cannot safely navigate outside of this safety zone and desire to depart the port of Savannah on July 6, 1998, would be required to begin the outbound transit in sufficient time to clear the Savannah Riverfront area prior to 8 a.m. Enforcement of this safety zone will allow spectator vessels adequate room on each side of the navigation channel to transit or observe the parade of ships. Vessels that cannot safely navigate outside of the safety zone and desire to enter the port of Savannah on July 6, 1998, would be required to clear the Savannah Riverfront area prior to 8 a.m. If unable to clear the Savannah Riverfront area by 8 a.m., these vessels would be required to start the inbound transit entrance after 2 p.m. This time may be earlier if the tall ships complete their outbound transit before 2 p.m. The Captain of the Port will allow vessel traffic to resume outbound transit utilizing the entire navigational channel when the last tall ship in the parade clears Longitude 080–51.00W. Vessels using the ICW will not be allowed to cross the Savannah River at the junction of Fields Cut once the lead tall ship in the parade approaches within (1) nautical mile of the area. Vessels will be allowed to resume transiting the ICW once the last tall ship in the parade clears the Savannah River and Field Cut junction.

(6) The safety zone for the pre-race staging for the tall ships will be in effect from 10 a.m. to 2 p.m. EDT on July 6, 1998, and will encompass an area bounded by 32–00.19N, 080–44.07W, 31–59.35N, 080–43.08W, 32–00.59N, 080–41.32W, and 32–01.43N, 080–44.28W. During this time no vessel shall be allowed to enter this safety zone unless authorized by the Captain of the Port.

The Captain of the Port will restrict vessel operations in the above safety zones. No persons or vessels will be allowed to enter or operate within the zones, except as may be authorized by the Captain of the Port, Savannah, Georgia. These regulations are issued pursuant to 33 U.S.C. 1231, as set out in the authority citation of Part 165.

In accordance with U.S.C. 553, good cause exists for making these regulations effective in less than 30 days after **Federal Register** publication. Delaying the effective date would be contrary to national safety interests since immediate action is needed to minimize potential danger to the public, as insufficient time remains after the 30 day comment period provided by the NPRM published on April 30, 1998, to allow for another 30 day delay after publication.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review 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 and procedures of DOT is unnecessary. These regulations will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this rule will not have a significant economic impact upon a substantial number of small entities because the regulations will only be in effect in limited areas for a total of four days.

Collection of Information

This rule contains 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 this temporary rule 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 action and has determined pursuant to Figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

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

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends Subpart C of part 165 of Title 33, Code of Federal Regulations, 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.T07–010 is added to read as follows:

§ 165.T07–010 Safety Zones; Savannah River and Approaches, Savannah, GA.

(a) *Locations:* The following areas are safety zones (all coordinates reference Datum: NAD 83):

(1) From 9 a.m. EDT on July 2, 1998, to 2 p.m. EDT on July 3, 1998, an area bounded by 32–00N, 080–45W, 32–01N, 080–45W, 32–01N, 080–46W, and 32–00N, 080–46W. During this time no vessel shall be allowed to enter this safety zone unless authorized by the Captain of the Port.

(2) From 11 a.m. to 5 p.m. EDT on July 3, 1998, the center 300 feet of the Savannah River navigational channel from the entrance of Bloody Point Range to the Talmadge Bridge. Vessels that cannot safely navigate outside of this safety zone and desire to depart the port of Savannah on July 3, 1998, will be required to begin the outbound transit in sufficient time to clear the entrance to Tybee Island Range prior to 11 a.m. Vessels that cannot safely navigate outside of this safety zone and desire to enter the port of Savannah on July 3, 1998, would be required to commence the inbound transit prior to 11 a.m. The Captain of the Port will allow vessel traffic to resume inbound transits utilizing the entire navigational channel when the last tall ship in the parade clears longitude 081–02W. Vessels using the ICW will not be allowed to cross the Savannah River at the junction of the Fields Cut once the parade commences. Vessels will be allowed to resume

transiting the ICW once the last tall ship in the parade clears the Savannah River and Fields Cut junction.

(3) From 2 p.m. until 5 p.m. EDT on July 3, 1998, and from 8 a.m. until 11 a.m. EDT on July 6, 1998, all waters bounded by the south bank of the Savannah River to the center of the Savannah River Channel, from the Talmadge Bridge to position 32–04.45, 081–04.45W. During these times no vessel shall be allowed to enter these safety zones unless authorized by the Captain of the Port.

(4) From 9 p.m. to 11 p.m. EDT on July 4, 1998, a 300 foot radius around a fireworks staging area in approximate position 32–05N, 081–05W. During this time no vessel shall be allowed to enter this safety zone unless authorized by the Captain of the Port.

(5) From 8 a.m. to 2 p.m. EDT on July 6, 1998, the center 300 feet of the Savannah River channel from the Talmadge Bridge to the entrance of Bloody Point Range. Vessels that cannot safely navigate outside of this safety zone and desire to depart the port of Savannah on July 6, 1998, would be required to begin the outbound transit in sufficient time to clear the Savannah Riverfront area prior to 8 a.m. Vessels that cannot safely navigate outside of this safety zone and desire to enter the port of Savannah on July 6, 1998, would be required to clear the Savannah Riverfront area prior to 8 a.m. If unable to clear the Savannah Riverfront area by 8 a.m., these vessels would be required to start the inbound transit after 2 p.m. The Captain of the Port will allow vessel traffic to resume outbound transits utilizing the entire navigational channel when the last tall ship in the parade clears longitude 080–51W. Vessels using the ICW will not be allowed to cross the Savannah River at the junction of the Fields Cut once the parade approaches within one (1) nautical mile of this area. Vessels will be allowed to resume transiting the ICW once the last tall ship in the parade clears the Savannah River and Fields Cut junction.

(6) From 10 a.m. to 2 p.m. EDT on July 6, 1998, an area bounded by 32–00.19N, 080–44.07W, 31–59.35N, 080–43.08W, 32–00.59N, 080–41.32W, and 32–01.43N, 080–42.28W. During this time no vessel shall be allowed to enter this safety zone unless authorized by the Captain of the Port.

Note: The regulations specified in paragraphs (a)(1) and (a)(6) apply only within the navigable waters of the United States. In the waters within the offshore staging area and pre-race staging area that are outside the navigable waters of the United States, the following nonobligatory guidelines apply.

(i) All unaffiliated Americas' Sail vessels should remain clear of the staging area and pre-race staging area and avoid interfering with any Americas' Sail participant or Coast Guard vessel. Interference with anchoring or race activities may constitute a safety hazard warranting cancellation or termination of all or part of the Americas' Sail activities by the Captain of the Port.

(ii) Any unauthorized entry into these zones by unaffiliated vessels constitutes a risk to the safety of marine traffic. Such entry will constitute a factor to be considered in determining whether a person has operated a vessel in a negligent manner in violation of 46 U.S.C. 2302.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into these safety zones is subject to the following requirements:

(1) These safety zones are closed to all non-participating vessels, except as may be permitted by the Captain of the Port or a representative of the Captain of the Port.

(2) The ''representative of the Captain of the Port'' is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Savannah, GA, to act on his behalf. The representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(3) Non-participating vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port or his representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone shall comply with all directions given them by the Captain of the Port or his representative.

(4) The Captain of the Port may be contacted by telephone via the Command Duty Officer at (912) 652–4353. Vessels assisting in the enforcement of the safety zone may be contacted on VHF–FM channel 16. Vessel operators may determine the restrictions in effect for the safety zone by coming alongside a Coast Guard vessel patrolling the perimeter of the safety zone.

(5) The Captain of the Port Savannah will issue a Marine Safety Information Broadcast Notice to Mariners to notify the maritime community of the safety zones and restrictions imposed.

(c) *Dates.* This section becomes effective at 9 a.m., Eastern Daylight Time (EDT) on July 2, 1998, and terminates at 2 p.m., EDT on July 6, 1998.

Dated: June 3, 1998.

R.E. Seebald,

Commander, U.S. Coast Guard, Captain of the Port, Savannah, Georgia.

[FR Doc. 98–15965 Filed 6–15–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–6106–8]

Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action amends, corrects errors, and clarifies regulatory text of the ''Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills,'' which was issued as a final rule and guideline on March 12, 1996.

EFFECTIVE DATE: This rule will become effective August 17, 1998 without further notice unless the Agency receives relevant adverse comment by July 16, 1998. Should the Agency receive such comments, it will publish a timely document withdrawing this rule.

ADDRESSES: Comments should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (MC–6102), Attn: Docket No. A–88–09/Category V–D, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The EPA request that a separate copy also be sent to the contact person listed below. Refer to **SUPPLEMENTARY INFORMATION** for information regarding electronic submittal of comments.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice and analyses performed in developing this rule, contact Ms. Michele Laur, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5256. For implementation issues, contact Mary Ann Warner, Program Review Group, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–1192. For information on the Landfill

Model, contact Susan Thorneloe through the internet at: thorneloe.susan@epamail.epa.gov. For information concerning applicability and rule determinations, contact the appropriate regional representative:

Region I

Greg Roscoe, Air Programs Compliance Branch Chief, U.S. EPA/ASO, Region I, JFK Federal Building, Boston, MA 02203, (617) 565–3221

Region II

Christine DeRosa, U.S. EPA, Region II, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–4022

Region III

James Topsale, U.S. EPA/3AP22, Region III, 841 Chestnut Building, Philadelphia, PA 10107, (215) 566–2190

Region IV

R. Douglas Neeley, Chief, Air and Radiation Technology Branch, U.S. EPA, Region IV, 61 Forsyth St., SW., Atlanta, GA 30303, (404) 562–9105

Region V

George T. Czerniak, Jr., Air Enforcement Branch Chief, U.S. EPA/5AE–26, Region V, 77 West Jackson Street, Chicago, IL 60604, (312) 353–2088

Region VI

John R. Hepola, Air Enforcement Branch Chief, U.S. EPA, Region VI, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733, (214) 655–7220

Region VII

Ward Burns, U.S. EPA/RME, Region VII, 726 Minnesota Avenue/ARTDAPCO, Kansas City, KS 66101–2728, (913) 551–7960

Region VIII

Vicki Stamper, U.S. EPA, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6445

Region IX

Patricia Bowlin, U.S. EPA/RM HAN/17211, Region IX, 75 Hawthorne Street/AIR–4, San Francisco, CA, (415) 744–1188

Region X

Catherine Woo, U.S. EPA, Region X, Office of Air Quality Planning and Standards-107, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–1814

SUPPLEMENTARY INFORMATION: A companion proposal to this final rule is being published in the proposed rules section of today's **Federal Register** and is identical to this direct final rule. Any comments on this direct final rule should address the companion proposal. The proposal provides information on addresses for submittal of comments. If relevant adverse comments are timely received, such comments will be addressed in a subsequent final rule based on the proposed rule. A document informing the public that the direct final rule did not take effect will be published. If no relevant adverse comments are timely filed on any provision of this direct final rule, then the entire direct final rule will become effective 60 days from today's **Federal Register** document and no further action will be taken on the companion proposal published today.

Background

On March 12, 1996 (60 FR 9918), the U.S. Environmental Protection Agency (EPA) promulgated in the **Federal Register** standards of performance for new sources (NSPS) for municipal solid waste landfills and emission guidelines for existing municipal solid waste landfills. These regulations and guidelines were promulgated as subparts WWW and Cc of 40 CFR part 60.

This document revises the wording of the applicability sections of subparts WWW and Cc and related definitions to clarify the intent regarding which landfills are subject to subpart WWW versus subpart Cc. This notice also corrects typographical and cross referencing errors. A few editorial modifications are also being made to clarify the intent of certain provisions and correct inconsistencies between different sections of subpart WWW. These changes do not significantly modify the requirements of the regulation.

I. Description of Changes

A. Definitions

The NSPS applies to landfills that commence construction, modification, or reconstruction on or after May 30, 1991. A definition of ''modification'' is being added. The definition is specific to landfills but is consistent with the intent of section 60.14 of the NSPS General Provisions. Application of the NSPS General Provisions to landfills is problematic due to the fact that a landfill is not a typical production or manufacturing facility for which the General Provisions originally were written. The following discussion demonstrates the considerations made to apply the NSPS General Provisions to landfills. This limited definition of modification is uniquely appropriate for landfills, and EPA does not believe at this time that such a rationale could be extended outside the landfill context.

As stated in 40 CFR 60.14(a), modifications are physical or operational changes to an existing facility that result in an increase in the emissions of any pollutant to which a standard applies. However, with respect to landfills, the concept of a physical or operational change leading to an increase in emissions is of limited application, since unlike more traditional sources of air pollution, increased emissions at landfills are based on the amount and character of waste placed in the landfill, rather than through physical or operational changes to equipment or production methods. Equipment at a landfill is essentially the landfill itself and while production can be roughly equated to the amount of waste placed in the landfill, total ''production'' for the entire life of the facility is controlled through the amount of design capacity specified in the permit. Although the amount and character of waste present at any given time may vary within the design capacity constraints set forth in the permit, emissions over the total life of the facility depend on the amount of waste a landfill can accept pursuant to its permitted design capacity. Accordingly, for landfills, it makes sense to consider only those physical or operational changes that increase the size of the landfill beyond its permitted capacity as modifications subjecting an existing facility to the NSPS. Therefore, if the design capacity of a landfill increases, a change leading to an increase in emissions is assumed to have occurred. For purposes of this NSPS, a landfill is considered modified and subject to the NSPS if its design capacity has been increased after May 30, 1991.

Operational changes at landfills, such as increasing the moisture content of the waste, increasing the physical compaction on the surface, changing the cover material or thickness of daily cover, and changing bailing or compaction practices, can typically be accomplished without a capital expenditure. Consequently, the landfill definition of modification does not include such operational changes. Existing landfills that make an operational change but do not increase the horizontal or vertical dimensions of the landfill continue to be subject to the emission guidelines rather than the NSPS. Therefore, for landfills, the only change which would constitute a modification is an increase in design capacity caused by an increase in the permitted horizontal or vertical dimensions of the landfill.

Reconstructions are unlikely for landfills. As specified in the NSPS General Provisions, reconstructions are ''the replacement of components of an existing facility [landfill] to such an extent that: the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new facility [landfill] * * *.'' The Agency knows of no situation where this would occur at a landfill.

The definition of ''design capacity'' is being amended to clarify that the design capacity is determined by the *most recent* permit issued by the State, local, or Tribal agency responsible for regulating the landfill plus any in-place waste not accounted for in that permit. This clarification addresses cases where a landfill may have multiple permits. It makes sense to use the most recent permitted design capacity to determine whether a landfill exceeds the design capacity exemption level. The words ''construction or operating'' permit have also been deleted and substituted with the word ''permit.'' The use of the term ''operating permit'' could be misinterpreted to mean a title V permit. The permit intended was the State, local, or Tribal agency permit that establishes the design capacity.

The definition of design capacity is also being clarified to state that a permit may express design capacity on a volumetric or a mass basis. The revised definition also states that the owner or operator may choose to convert the design capacity from volume to mass or from mass to volume, using a site-specific density, in order to demonstrate that the design capacity is less than 2.5 million Mg or 2.5 million m^3. If the density changes, the design capacity changes. Therefore, an owner or operator who converts from volume to mass or mass to volume must annually calculate the site-specific density. These revisions to the definition are clarifications that do not change the intent of the NSPS and emission guidelines as promulgated on March 12, 1996.

Under the NSPS and emission guidelines, design capacity is used to determine whether or not a landfill is below the design capacity cutoff. If the design capacity in the permit is below either 2.5 million megagrams (Mg) or 2.5 million cubic meters (m^3), the landfill is exempt (except for design capacity reporting requirements). A landfill with a volumetric permit may choose to calculate design capacity on a mass basis (or vice versa) based on a site-specific density. The initial design capacity report must provide supporting documentation of this calculation. If such a conversion is made, records must also be kept of the annual recalculation of the site-specific density and design capacity with supporting documentation.

For example, a landfill may have a permitted design capacity greater than 2.5 million m^3 by volume; but the landfill may have documented calculations showing that, based on the actual waste density, the design capacity is less than 2.5 million Mg by mass. Because the design capacity is less than 2.5 million Mg, the landfill is below the design capacity cutoff. If such a landfill changes its compaction practices such that the density of the waste placed in the landfill increases, the calculated design capacity could become greater than 2.5 million Mg, and the landfill would then need to submit an amended design capacity report. If the revised design capacity is over 2.5 million m^3 and 2.5 million Mg, the landfill must estimate emissions and must install controls if emissions are greater than or equal to 50 Mg/yr.

If an existing landfill makes an operational change (such as a change in compaction practices), this is not a ''modification'' (see the previous discussion on the definition of ''modification''). Such a landfill will continue to be subject to the emission guidelines rather than becoming subject to the NSPS. The emission guidelines require the landfill to report any increase in design capacity that results in a capacity equal to or greater than 2.5 million Mg and 2.5 million m^3. The control requirements of the emission guidelines will apply if the design capacity increases to over 2.5 million Mg and 2.5 million m^3 due to an operational change and not due to modification as defined by this rule.

The definition of ''closed landfill'' and wording in section 60.752(b) are being revised to delete references to section 258.60. This reference is not appropriate for all landfills because some landfills closed prior to the October 1993 effective date of part 258 and are not subject to part 258. Section 60.752(b)(2)(v)(A) is being revised for clarification to refer to the definition of ''closed landfill'' in section 60.751 instead of the requirements of section 258.60.

The definition of ''interior well'' is being revised to clarify that an interior well is located inside the perimeter of the landfilled waste.

The definition of ''radii of influence'' is being added parenthetically in section 60.759(a)(3)(ii) for clarification. This definition makes it clear that the radii of influence is the distance from the well center to a point in the landfill where the pressure gradient applied by the blower or compressor approaches zero.

B. Designation of Affected Facility

Section 60.750(a) of subpart WWW is being revised slightly to clarify which landfills are subject to the NSPS. The promulgated rule stated that ''the provisions of this subpart apply to each municipal solid waste landfill that commenced construction, reconstruction, or modification or began accepting waste on or after May 30, 1991. The words ''or began accepting waste'' have been deleted. This change makes the applicability consistent with both the definition of ''new source'' in section 111 of the Clean Air Act (CAA) and the applicability of the emission guidelines in section 60.32c of subpart Cc. As stated in section 60.32c(a), the emission guidelines apply to landfills that commenced construction, modification, or reconstruction before May 30, 1991. A landfill that commenced construction before May 30, 1991, but began accepting waste after May 1991 should be subject to the emission guidelines rather than the NSPS. The change being made accomplishes this objective and is consistent with the CAA. The definitions of ''commenced'' and ''construction'' are contained in section 60.2 of the NSPS General Provisions (subpart A). A definition for ''modification'' is being added to subpart WWW, and ''reconstruction'' is described in section 60.15 of the NSPS General Provisions.

Section 60.750(b) of subpart WWW is being revised to clarify that authority for test methods are retained by the Administrator and shall *not* be transferred to the State. This is consistent with EPA's historical position on test methods.

Under applicability, we are also clarifying that activities conducted as part of CERCLA remedial actions or RCRA corrective actions are not considered construction, modification, or reconstruction and would not make a landfill subject to the NSPS. This is consistent with the provisions that changes made to an existing landfill solely to comply with the emission guidelines do not make the landfill subject to the NSPS. It is also consistent with the exemption of facilities subject to a CERCLA remedial action from permitting requirements. This provision is being added to section 60.750 of subpart WWW as paragraph (c).

Regarding applicability and the design capacity exemption, the wording ''or'' in several places in section 60.752 has been changed to ''and'' to clarify that if a landfill design capacity is less

than either 2.5 million Mg *or* 2.5 million m^3, the landfill is exempt from all provisions except the design capacity report; whereas if the capacity is equal to or greater than 2.5 million Mg *and* 2.5 million m^3, the additional requirements of the rule apply. As previously discussed under the definition of design capacity, a landfill may calculate design capacity on either a mass or volume basis to determine if it qualifies for the design capacity exemption.

C. Compliance Dates

The compliance time in section 60.752(b)(2)(ii) is being revised to make it clear that landfills have 30 months to install a collection and control system once the landfill becomes affected (i.e., the annual report shows NMOC emissions equal to or greater than 50 Mg/yr). Section 60.752(b)(2)(ii) stated that a landfill has 18 months to install a collection and control system after submitting a design plan to the Administrator. Section 60.752(b)(2)(i) requires landfills to submit a design plan within 1 year of the annual report showing NMOC emissions equal to or greater than 50 Mg/yr. Therefore, the previous language in the rule would require landfills that submitted a design plan earlier than 1 year after becoming affected to install a collection and control system sooner than landfills that waited the full 1 year to submit the design plan. The intent was to allow landfills 30 months after the first report showing NMOC emissions equal to or greater than 50 Mg/yr to install controls.

Similarly, in the emission guidelines, section 60.36c(a) is revised to specify that installation of collection and control systems shall be accomplished within 30 months of the initial report showing NMOC emissions equal or exceed 50 Mg/yr rather than within 30 months of the effective date of the State rule. This is consistent with the timing in the NSPS, which allows 90 days to submit an initial report, and 30 months to install controls if the report shows that emissions equal or exceed 50 Mg/yr.

Section 60.755(b) is being revised to clarify that an affected landfill must install each well no later than 60 days after the date on which the initial solid waste has been in place (1) for five years or more if the area is active or (2) two years or more if the area is closed or at final grade. The only change is to specify ''no later than 60 days after'' instead of ''within 60 days.''

D. Clarification of Title V Permitting Requirements

The paragraphs on part 70 permitting requirements are being revised to refer to both part 70 and 71. In States with approved part 70 operating permit programs, sources will apply for part 70 permits; in States without approved part 70 permit programs, EPA will implement the federal operating permits program under part 71.

Section 502(a) of the Act requires title V operating permits for a number of sources, including, but not limited to, major sources and sources (including nonmajor sources) which are subject to standards or regulations under section 111 or 112. Section 502(a) also states that the Administrator may exempt source categories (in whole or in part) from permitting requirements if the Administrator determines that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories, but not major sources.

At promulgation of this NSPS and EG (61 FR 9905, March 12, 1996), landfills with a design capacity less than 2.5 million Mg in mass or 2.5 million m^3 in volume were exempted from part 70 operating permit requirements based on the above provisions. Although these landfills are required to submit a design capacity report under this NSPS and EG, no control is required for landfills of this size. As a result, EPA believes that it would be unnecessarily burdensome for landfills, which are not major sources and which have design capacities less than 2.5 million Mg or 2.5 million m^3, to apply for a title V permit when the NSPS or EG does not establish any emission limits or control requirements for such landfills.

If a MSW landfill is subject to title V permitting (40 CFR part 70 or part 71) as a result of this NSPS or EG standard (i.e., a source which meets or exceeds the design capacity of 2.5 million Mg and 2.5 million m^3) it is not subject to the requirement to apply for a title V permit until 90 days after the earlier of the following dates: (1) the effective date of this NSPS (March 12, 1996); (2) the effective date of EPA's approval of a state's 111(d) plan; or (3) the date of commenced construction, modification, or reconstruction for landfills that commence construction, modification, or reconstruction on or after March 12, 1996, even if the design capacity report is submitted prior to the relevant deadline. Sentences have been added to section 60.752 and section 60.32c(c) to clarify the date the landfill becomes subject to title V. These dates for triggering title V applicability are consistent with the dates that NSPS sources are required to file design capacity reports. To maintain consistency between NSPS sources and EG sources, EG sources will not become subject to the requirement to apply for a title V permit until 90 days after the effective date of EPA's approval of a state's 111(d) plan.

The permit provisions originally included as sentences within paragraphs (a) and (b) of section 60.752 have been moved to separate paragraphs (c) and (d) so that the detailed permit provisions are in one location. The wording has also been revised to clarify that landfills smaller than 2.5 million Mg or 2.5 million m^3 do not require a part 70 or 71 operating permit unless they are subject to part 70 or 71 for some other reason. A landfill of this size *could* be a major source, and, if so, would need to apply for a permit. This situation was discussed in the preamble to the promulgated rule (61 FR 9912, March 12, 1996). Also, a landfill of this size could be subject to title V for some other reason, e.g., subject to another NSPS or NESHAP.

Sources subject to the title V permitting program under parts 70 or 71 are required to file applications within 12 months after becoming subject to the program. Landfills which are subject to the title V permitting program as a result of being subject to this NSPS or EG are required to file title V applications within 12 months following the deadline to submit a design capacity report (which indicates that the landfill in question is equal to, or greater than, 2.5 million Mg and 2.5 million m^3). In that the designation of size in the report triggers title V applicability, EPA believes that it is appropriate that the deadline for filing this report initiates the 12 month time frame for submitting a title V application. As provided in section 503(c) of the Act, permitting authorities may establish earlier deadlines, prior to the 12 month deadline, for submitting title V applications. If more than one requirement causes a source to be subject to title V permitting, the time frame for filing a title V application will be triggered by the requirement which first caused the source to be subject to title V.

Section 60.752(d) (formerly the last sentence in section 60.752(b)) is being revised. This paragraph stated that after a landfill is closed and either never required a control system or has met the criteria for control system removal, a title V permit is no longer needed. The phrase ''if the landfill is not otherwise subject to the requirements of either part 70 or 71'' has been added. As previously discussed, if a landfill is a major source or is subject to title V for some other reason (e.g., subject to another NSPS or NESHAP), it will still require a permit. Other format changes to this paragraph

are to improve clarity and do not change the intent.

Subpart Cc is being amended by adding paragraphs (c) and (d) to section 60.32c. These paragraphs, which cover when existing MSW landfills require part 70 or 71 operating permits, were excluded from the promulgated emission guidelines through an oversight. Part 70 permit provisions were included in the NSPS, but the Emission Guidelines inadvertently did not reference this section of the NSPS. The inclusion of these paragraphs makes subpart Cc consistent with subpart WWW with respect to part 70 or 71 operating permits. Specifically, paragraph (c) clarifies that an existing landfill smaller than 2.5 million Mg or 2.5 million m^3 does not require a part 70 or 71 operating permit unless it is subject to part 70 or 71 for some other reason. Paragraph (c) also clarifies that an existing landfill equal to or greater than 2.5 million Mg and 2.5 million m^3 is subject to part 70 or 71 permitting requirements whether it is a major source or not. In addition, paragraph (d) clarifies that closed landfills that are only required to have title V permits due to 40 CFR part 60, subparts WWW or Cc and are not required to have a control system or meet the conditions for control system removal are not required to have part 70 or 71 operating permits, if they are not otherwise subject to title V permitting requirements. As with 40 CFR part 60, subpart WWW, under 40 CFR part 60, subpart Cc, the deadline for submitting a design capacity report initiates the time frame for submitting a title V application. Permitting authorities may, however, establish earlier dates by which applications are required from these title V sources.

E. Equations

Section 60.754(a)(1) is being revised to clarify that *both* the equation in section 60.754(a)(1)(i) and the equation in section 60.754(a)(1)(ii) may be used when the actual year-to-year solid waste acceptance rate is known for only part of the life of the landfill. This is the technically correct way to calculate emissions and was the intent of the rule.

Section 60.754(a)(1) is being amended by the addition of the methane generation rate constant (k) for geographical areas with low precipitation. A k value of 0.02 per year is provided for the tier 1 calculation for landfills located in geographical areas with a thirty year annual average precipitation of less than 25 inches, as measured at the nearest representative official meteorologic site. Landfills located in geographical areas with low precipitation experience slower decomposition of their waste than landfills located in geographical areas with moderate to high rainfall. Consequently, the gas production rate at landfills located in drier areas is reduced. Rather than burden these landfills with pursuing tier 3 Method 2E testing and analysis for a site-specific k value, it is reasonable to allow an alternative default k value. In reviewing the information used to estimate the impacts of the final rule (Docket A–88–09, Item IV–M–4), a k value of 0.02 per year for landfills that meet this description is a reasonably conservative value consistent with the intent of the tier 1 analysis.

Sections 60.754(a)(1)(i) and (ii) are also being revised to clarify that only documentation of the nature and amount of nondegradable waste needs to be maintained when subtracting the mass of nondegradable waste from the total mass of waste when calculating the NMOC emission rate. The previous language specified that the documentation provisions of section 60.758(d)(2) were to be followed; however, these provisions are related to segregated areas within the landfill excluded from collection pursuant to section 60.759(a)(3)(i) or (ii) because asbestos or other nondegradable wastes were disposed in those areas or because the area is nonproductive. For the purposes of estimating emissions, only documentation of the nature and amount of nondegradable waste needs to be maintained to justify the subtraction of the mass of nondegradable waste.

F. Test Methods and Procedures

Section 60.754(a)(4)(ii) is revised to clarify that the site-specific methane generation rate constant is calculated only once and that this value is to be used in all subsequent annual NMOC emission rate calculations.

Section 60.752(b)(2)(iii)(B) is being revised to clarify that the initial performance test required under section 60.8 must be completed no later than 180 days after the initial startup of the approved control system. The promulgated regulation already required under section 60.757(f) that the initial performance test report must be submitted within 180 days of start-up of the collection system. This is being reiterated in section 60.752(b)(2)(iii)(B) for clarification.

Section 60.759(a)(3)(ii), which required the use of the values of k and CNMOC determined by field testing, if performed to determine the N_{MOC} emission rate or radii of influence, is being revised to also refer to alternative means for determining k or C_{NMOC} allowed by section 60.754(a)(5). The reference to using L_o values from testing is deleted because it was incorrect. The tier procedures do not include testing for L_o. As previously mentioned, the definition of radii of influence is being added parenthetically for clarity.

G. Prevention of Significant Deterioration Determination

Section 60.754(c) is being revised to clarify that the intent of this provision was to establish the *method* by which prevention of significant deterioration determinations should be made, not to require a PSD determination. The original wording could have been misinterpreted to require PSD-related actions. PSD is a separate permit program that applies to new and modified sources. The PSD regulations, not this NSPS, establish whether a PSD determination is needed. New sources may be subject to PSD review.

In a July 1, 1994 guidance memorandum issued by the EPA (available on the Technology Transfer Network; see ''Pollution Control Projects (PCP) and New Source Review (NSR) Applicability'' from John S. Seitz, Director, OAQPS to EPA Regional Air Division Directors), the EPA provided guidance for permitting authorities on the approvability of PCP exclusions for source categories other than electric utilities. In the guidance, the EPA indicated that add-on controls and fuel switches to less polluting fuels meet the definition of a PCP and, provided certain safeguards are met, may qualify for an exclusion from major NSR. To be eligible to be excluded from otherwise applicable major NSR requirements, a PCP must, on balance, be ''environmentally beneficial,'' and the permitting authority must ensure that the project will not cause or contribute to a violation of a national ambient air quality standard (NAAQS) or PSD increment, or adversely affect visibility or other air quality related value (AQRV).

A potential exclusion available under PSD is discussed here for informational purposes. In the July 1, 1994 guidance memorandum, the EPA specifically identified the installation of controls pursuant to the NSPS and EG rules as an example of add-on controls that could be considered a PCP and an appropriate candidate for a case-by-case exclusion from major NSR. The EPA considers installation of controls pursuant to the NSPS and EG rules for the control of landfill gases a PCP because the controls are installed to comply with the NSPS and will reduce emissions of NMOC. The EPA also

considers the reduction of these pollutants to represent an environmental benefit. However, EPA recognizes that the incidental formation of nitrogen oxides and carbon monoxide due to the destruction of landfill gas will occur. Consistent with the 1994 guidance, the permitting authority should confirm that in each case that the resultant increase in nitrogen oxides and carbon monoxide would not cause or contribute to a violation of the NAAQS and PSD increment or adversely affect an AQRV.

Finally, the 1994 guidance did not void or create an exclusion from any applicable minor source preconstruction review requirements in an approved State Implementation Plan (SIP). Any minor NSR permitting requirements in a SIP would continue to apply, regardless of any exclusion from major NSR that might be approved for a source under the PCP exclusion policy.

H. Monitoring

Section 60.756(a) is being revised to clarify that a temperature measuring device does not need to be permanently installed at each wellhead. It is common for wellheads to have an access port for temperature measurements so that a temperature measuring device can be shared across wellheads for the monthly temperature monitoring requirement. As long as the temperature is monitored monthly, the intent of the regulation is met.

Section 60.756(b)(2) is also being revised to clarify that the device for monitoring gas flow need only record the flow or bypass, not necessarily measure the rate at which gas is flowing to the control device.

I. Compliance Provisions

Section 60.755(a)(3) is being revised to allow an alternative timeline to be proposed for correcting an exceedance in collection header pressure at each well. Consistent with section 60.755(c)(4)(v), a sentence is being added to sections 60.755(a)(3) and 60.755(a)(5) to allow an alternate timeline to be proposed to the Administrator for correcting an exceedance. This revision makes the sections consistent. Depending on the remedy selected to correct the problem, a different timeline may be needed, but any timeline extending more than 120 days must be approved by the regulatory agency.

Section 60.755(c)(1) is being revised slightly to indicate that surface monitoring of methane shall be performed along the entire perimeter of the collection area and along a pattern that traverses the landfill at 30-meter intervals. This change makes the wording consistent with other sections of the rule (e.g., section 60.753(d)).

J. Recordkeeping and Reporting

Sections 60.757(a)(1) and (b)(1)(i) are being revised to clarify that subject landfills that commenced construction, modification, or reconstruction after May 30, 1991 (date of proposal) but before the date of promulgation had until June 10, 1996 (90 days from the promulgation date) to submit an initial design capacity report and an initial NMOC emission rate report to the Administrator. The previous language was not clear as to when landfills that commenced construction, modification, or reconstruction between proposal and promulgation would be required to submit an initial design capacity report or NMOC emission rate report. However, it is obvious that the reports could not be required prior to promulgation of the regulation. Therefore, instead of submitting the reports 90 days after commencing construction, landfills that were constructed before promulgation have 90 days after the promulgation date to submit the reports.

Also paragraphs (a)(1)(i) and (ii) in the promulgated rule were somewhat repetitive and contradictory. Paragraph (a)(1)(iii) reflected an unrealistic scenario in that this date would always occur later than the date in paragraphs (a)(1)(i) and (ii). For this reason, the previous paragraph (a)(1)(iii) was unnecessary and confusing. Therefore, that paragraph has been deleted, and paragraphs (a)(1)(i) and (ii) have been revised to state that the report is due on June 10, 1996 or within 90 days after the date of commencement of construction, modification, or reconstruction, depending on when the construction, modification, or reconstruction commenced.

The wording of section 60.757(a)(2)(ii) is being revised to require calculation of design capacity submitted as part of the design capacity report to include ''relevant parameters'' rather than the specific list of parameters in the promulgated rule. Some of the previously listed parameters (e.g., compaction practices) would not apply to landfills that calculate design capacity on a volumetric rather than mass basis. Other parameters that were not listed will be needed to perform the calculation in some cases.

The wording of section 60.757(a)(3), which requires amended design capacity reports, is being revised for clarity and consistency with the definitions of modification and design capacity discussed under I.A. It also clarifies that a report is required only if capacity increases above 2.5 million Mg and 2.5 million m^3. This was the original intent, but the original wording was confusing.

Several paragraphs in section 60.758 are being revised to clarify that the recordkeeping requirements in paragraphs (b), (c), (d), and (e) do not apply if an alternative to the operational standards, test methods, procedures, compliance measures, monitoring, or reporting provisions has been submitted with the design plan and approved by the Administrator.

II. Cross-Referencing and Typographical Errors

Errors in cross-referencing one section to another within subpart WWW are being corrected. Typographical errors are also being corrected.

III. Corrections to Promulgation Preamble

Tables 3 and 5 in the promulgation preamble contained typographical errors. The units for the small size cutoff (column 1) are stated to be in millions of megagrams (millions Mg); however, the values presented are actually in megagrams. These tables are corrected and provided below for clarification.

TABLE 3.—ALTERNATIVE DESIGN CAPACITY EXEMPTION LEVEL OPTIONS FOR THE EMISSION GUIDELINES [a b]

Small size cutoff (mg)	Number landfills affected	Annual [c] NMOC emission reduction (Mg/yr)	Annual [d] methane emission reduction (Mg/yr)	Annual cost (million $/yr)	NMOC average cost eff. ($/Mg)	NMOC incremental cost eff. ($/Mg)
Baseline [e]	.....	.....	.....	.....	.....	.....
3,000,000	273	73,356	3,220,000	84	1,145	1,145
2,500,000	312	77,600	3,370,000	89	1,147	1,178
1,000,000	572	97,600	3,990,000	119	1,219	1,500

TABLE 3.—ALTERNATIVE DESIGN CAPACITY EXEMPTION LEVEL OPTIONS FOR THE EMISSION GUIDELINES [a] [b]—Continued

Small size cutoff (mg)	Number landfills affected	Annual [c] NMOC emission reduction (Mg/yr)	Annual [d] methane emission reduction (Mg/yr)	Annual cost (million $/yr)	NMOC average cost eff. ($/Mg)	NMOC incremental cost eff. ($/Mg)
No cutoff [f]	7,299	142,000	8,270,000	719	5,063	13,514

[a] Emission rate cutoff level of 50 Mg NMOC/yr.
[b] All values are fifth year annualized.
[c] NMOC emission reductions are from a baseline of 145,000 Mg NMOC/yr.
[d] Methane emission reductions are from a baseline of 8,400,000 Mg methane/yr.
[e] In the absence of an emission guidelines.
[f] No emission rate cutoff and no design capacity exemption level.

TABLE 5.—ALTERNATIVE DESIGN CAPACITY EXEMPTION LEVEL OPTIONS FOR THE NEW SOURCE PERFORMANCE STANDARDS [a] [b]

Small size cutoff (mg)	Number landfills affected	Annual [c] NMOC emission reduction (Mg/yr)	Annual [d] methane emission reduction (Mg/yr)	Annual [e] cost (million $/yr)	MNOC average cost eff. ($/Mg)	MNOC [f] incremental cost eff. ($/Mg)
Baseline [g]	.....	.....	.....	.....	.....	.....
3,000,000	41	4,900	193,000	4	816	NA
2,500,000	43	4,900	193,000	4	816	NA
1,000,000	89	4,900	193,000	4	816	NA
No cutoff [h]	872	13,115	881,000	81	6,176	NA

[a] Emission rate cutoff level of 50 Mg NMOC/yr.
[b] All values are fifth year annualized.
[c] NMOC emission reductions are from a baseline of 13,400 Mg NMOC/yr.
[d] Methane emission reductions are from a baseline of 899,000 Mg methane/yr.
[e] Due to rounding off to the nearest million dollar, cost values do not appear to change for each option. However, actual costs are slightly less for a less stringent option.
[f] Because the annual cost does not change enough to show a different cost from one option to the next, incremental cost effectiveness values are not applicable.
[g] In the absence of a standard.
[h] No emission rate cutoff and no design capacity exemption level.

IV. Judicial Review

Under section 307(b)(1) of the CAA, judicial review of the actions taken by this final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b)(2) of the CAA, the requirements that are subject to today's document may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

V. Administrative

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated NSPS were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 1557.03) may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740.

Today's changes to the NSPS should have no impact on the information collection burden estimates made previously. The changes consist of new definitions and clarifications of requirements; not additional requirements. Consequently, the ICR has not been revised.

B. Executive Order 12866 Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this action is not ''significant'' because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

C. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule. EPA has also determined that this direct final rule amendment will not have a significant economic impact on a substantial number of small entities. Today's action clarifies the applicability of control requirements in the Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills and does not include any

provisions that create a burden for any of the regulated entities.

The changes in today's action do not increase the stringency of the rule or add additional control requirements. Nor is the scope of the rule changed so as to bring any entities not previously subject to the rule within its scope or coverage. Today's action does not alter control, monitoring, recordkeeping, or reporting requirements of the promulgated rule.

D. Submission to Congress

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Executive Order 12875 and Unfunded Mandates Reform Act

Under the executive order EPA must consult with representatives of affected State, local, and Tribal governments. Under the unfunded mandates reform act, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or Tribal governments, or to the private sector, will be $100 million or more per year. The EPA held consultations and prepared such a statement at the time of promulgation of subpart Cc and WWW (61 FR 9913, March 12, 1996). Today's changes consist of new definitions and clarifications and do not impose costs on government entities or the private sector. Consequently, a new unfunded mandates statement has not been prepared.

F. Children's Health Protection

This direct final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety that may disproportionately affect children.

List of Subjects in 40 CFR Part 60

Environmental protection, Municipal solid waste landfills, Air pollution control.

Dated: May 28, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter 1, part 60 of the Code of Federal Regulations is amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continued to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7429, and 7601.

Subpart Cc—[Amended]

2. Amend § 60.32c by adding paragraphs (c) and (d) to read as follows:

§ 60.32c Designated facilities.

* * * * *

(c) For purposes of obtaining an operating permit under title V of the Act, the owner or operator of a MSW landfill subject to this subpart with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not subject to the requirement to obtain an operating permit for the landfill under part 70 or 71 of this chapter, unless the landfill is otherwise subject to either part 70 or 71. For purposes of submitting a timely application for an operating permit under part 70 or 71, the owner or operator of a MSW landfill subject to this subpart with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters on the effective date of EPA approval of the State's program under section 111(d) of the Act, and not otherwise subject to either part 70 or 71, becomes subject to the requirements of §§ 70.5(a)(1)(i) or 71.5(a)(1)(i) of this chapter 90 days after the effective date of such 111(d) program approval, even if the design capacity report is submitted earlier.

(d) When a MSW landfill subject to this subpart is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit under part 70 or 71 of this chapter for the landfill if the landfill is not otherwise subject to the requirements of either part 70 or 71 and if either of the following conditions are met.

(1) The landfill was never subject to the requirement for a control system under § 60.33c(c) of this subpart; or

(2) The owner or operator meets the conditions for control system removal specified in § 60.752(b)(2)(v) of subpart WWW.

3. Amend § 60.33c by removing in paragraph (a)(2) the phrase ''2.5 million megagrams or 2.5 million cubic meters'' and adding, in its place ''2.5 million megagrams and 2.5 million cubic meters.''

4. Amend § 60.36c by revising paragraph (a) to read as follows:

§ 60.36c Compliance times.

(a) Except as provided for under paragraph (b) of this section, planning, awarding of contracts, and installation of MSW landfill air emission collection and control equipment capable of meeting the emission guidelines established under § 60.33c shall be accomplished within 30 months after the date the initial NMOC emission rate report shows NMOC emissions equal or exceed 50 megagrams per year.

* * * * *

Subpart WWW

5. Amend § 60.750 as follows:

a. In paragraph (a), remove the words ''or began accepting waste''.

b. In paragraph (b), remove the word ''None'' and add, in its place ''§ 60.754(a)(5)''.

c. Add paragraph (c) to read as follows:

§ 60.750 Applicability, designation of affected facility, and delegation of authority.

* * * * *

(c) Activities required by or conducted pursuant to a CERCLA, RCRA, or State remedial action are not considered construction, reconstruction, or modification for purposes of this subpart.

6. Amend § 60.751 as follows:

a. Remove the last sentence in the definition of ''closed landfill.''

b. Revise the definitions of ''controlled landfill,'' ''design capacity,'' and ''interior well'' and add a definition of ''modification'' to read as follows:

§ 60.751 Definitions.

* * * * *

Controlled landfill means any landfill at which collection and control systems are required under this subpart as a result of the nonmethane organic compounds emission rate. The landfill is considered controlled at the time a collection and control system design plan is submitted in compliance with § 60.752(b)(2)(i).

Design capacity means the maximum amount of solid waste a landfill can accept, as indicated in terms of volume or mass in the most recent permit issued by the State, local, or Tribal agency responsible for regulating the landfill, plus any in-place waste not accounted for in the most recent permit. If the owner or operator chooses to convert the design capacity from volume to

mass or from mass to volume to demonstrate its design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, the calculation must include a site specific density, which must be recalculated annually.

* * * * *

Interior well means any well or similar collection component located inside the perimeter of the landfill waste. A perimeter well located outside the landfilled waste is not an interior well.

* * * * *

Modification means an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity as of May 30, 1991.

7. Amend § 60.752 by revising paragraph (a), the introductory text of paragraph (b), paragraphs (b)(2)(ii), (b)(2)(iii)(B), and (b)(2)(v)(A), and adding paragraphs (c) and (d) to read as follows:

§ 60.752 Standards for air emissions from municipal solid waste landfills.

(a) Each owner or operator of an MSW landfill having a design capacity less than 2.5 million megagrams by mass or 2.5 million cubic meters by volume shall submit an initial design capacity report to the Administrator as provided in § 60.757(a). The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. Any density conversions shall be documented and submitted with the report. Submittal of the initial design capacity report shall fulfill the requirements of this subpart except as provided for in paragraphs (a)(1) and (a)(2) of this section.

(1) The owner or operator shall submit to the Administrator an amended design capacity report, as provided for in § 60.757(a)(3).

(2) When an increase in the maximum design capacity of a landfill exempted from the provisions of § 60.752(b) through § 60.759 of this subpart on the basis of the design capacity exemption in paragraph (a) of this section results in a revised maximum design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, the owner or operator shall comply with the provision of paragraph (b) of this section.

(b) Each owner or operator of an MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, shall either comply with paragraph (b)(2) of this section or calculate an NMOC emission rate for the landfill using the procedures specified in § 60.754. The NMOC emission rate shall be recalculated annually, except as provided in § 60.757(b)(1)(ii) of this subpart. The owner or operator of an MSW landfill subject to this subpart with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters is subject to part 70 or 71 permitting requirements.

(1) * * *

(2) * * *

(ii) Install a collection and control system that captures the gas generated within the landfill as required by paragraphs (b)(2)(ii)(A) or (B) and (b)(2)(iii) of this section within 30 months after the first annual report in which the emission rate equals or exceeds 50 megagrams per year, unless Tier 2 or Tier 3 sampling demonstrates that the emission rate is less than 50 megagrams per year, as specified in § 60.757(c)(1) or (2).

* * * * *

(iii) * * *

(A) * * *

(B) A control system designed and operated to reduce NMOC by 98 weight-percent, or, when an enclosed combustion device is used for control, to either reduce NMOC by 98 weight percent or reduce the outlet NMOC concentration to less than 20 parts per million by volume, dry basis as hexane at 3 percent oxygen. The reduction efficiency or parts per million by volume shall be established by an initial performance test to be completed no later than 180 days after the initial startup of the approved control system using the test methods specified in § 60.754(d).

* * * * *

(v) * * *

(A) The landfill shall be a closed landfill as defined in § 60.751 of this subpart. A closure report shall be submitted to the Administrator as provided in § 60.757(d);

* * * * *

(c) For purposes of obtaining an operating permit under title V of the Act, the owner or operator of a MSW landfill subject to this subpart with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not subject to the requirement to obtain an operating permit for the landfill under part 70 or 71 of this chapter, unless the landfill is otherwise subject to either part 70 or 71. For purposes of submitting a timely application for an operating permit under part 70 or 71, the owner or operator of a MSW landfill subject to this subpart with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters, and not otherwise subject to either part 70 or 71, becomes subject to the requirements of §§ 70.5(a)(1)(i) or 71.5(a)(1)(i) of this chapter, regardless of when the design capacity report is actually submitted, no later than:

(1) June 10, 1996 for MSW landfills that commenced construction, modification, or reconstruction on or after May 30, 1991 but before March 12, 1996;

(2) Ninety days after the date of commenced construction, modification, or reconstruction for MSW landfills that commence construction, modification, or reconstruction on or after March 12, 1996.

(d) When a MSW landfill subject to this subpart is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit under part 70 or 71 of this chapter for the landfill if the landfill is not otherwise subject to the requirements of either part 70 or 71 and if either of the following conditions are met:

(1) The landfill was never subject to the requirement for a control system under paragraph (b)(2) of this section; or

(2) The owner or operator meets the conditions for control system removal specified in paragraph (b)(2)(v) of this section.

8. Amend § 60.753 by revising the introductory text of § 60.753 and the second sentence of paragraph (d) and the first sentence of paragraph (g) to read as follows:

§ 60.753 Operational standards for collection and control systems.

Each owner or operator of an MSW landfill with a gas collection and control system used to comply with the provisions of § 60.752(b)(2)(ii) of this subpart shall: * * *

(d) * * * To determine if this level is exceeded, the owner or operator shall conduct surface testing around the perimeter of the collection area and along a pattern that traverses the landfill at 30 meter intervals and where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover. * * *

* * * * *

(g) If monitoring demonstrates that the operational requirements in paragraphs (b), (c), or (d) of this section are not met, corrective action shall be taken as specified in § 60.755(a)(3) through (5) or § 60.755(c) of this subpart. * * *

9. Amend § 60.754 as follows:

a. In the last sentences of paragraph (a)(1)(i) and (a)(1)(ii) remove the phrase ''if the documentation provisions of § 60.758(d)(2) are followed'' and add, in

its place, ''if documentation of the nature and amount of such wastes is maintained'';

b. In paragraph (a)(4)(ii) remove the last sentence and add in its place, ''The calculation of the methane generation rate constant is performed only once, and the value obtained from this test shall be used in all subsequent annual NMOC emission rate calculations.'';

c. In paragraphs (a)(5) and (b)(3) remove the phrase ''as provided in § 60.752(b)(2)(i)(B)'';

d. In paragraph (d), remove the words ''Method 25'' and add, in its place ''Method 25C'';

e. Revise the introductory text of paragraph (a)(1) and revise paragraph (c) to read as follows:

§ 60.754 Test methods and procedures.

(a)(1) The landfill owner or operator shall calculate the NMOC emission rate using either the equation provided in paragraph (a)(1)(i) of this section or the equation provided in paragraph (a)(1)(ii) of this section. Both equations may be used if the actual year-to-year solid waste acceptance rate is known, as specified in paragraph (a)(1)(i), for part of the life of the landfill and the actual year-to-year solid waste acceptance rate is unknown, as specified in paragraph (a)(1)(ii), for part of the life of the landfill. The values to be used in both equations are 0.05 per year for k, 170 cubic meters per megagram for L_O, and 4,000 parts per million by volume as hexane for the C_{NMOC}. For landfills located in geographical areas with a thirty year annual average precipitation of less than 25 inches, as measured at the nearest representative official meteorologic site, the k value to be used is 0.02 per year.

* * * * *

(c) When calculating emissions for PSD purposes, the owner or operator of each MSW landfill subject to the provisions of this subpart shall estimate the NMOC emission rate for comparison to the PSD major source and significance levels in §§ 51.166 or 52.21 of this chapter using AP–42 or other approved measurement procedures.

* * * * *

10. Amend § 60.755 as follows:

a. In paragraphs (a)(3) and (a)(5), add a sentence at the end of each paragraph reading ''An alternative timeline for correcting the exceedance may be submitted to the Administrator for approval.'';

b. Revise paragraph (a)(4) to read as follows:

§ 60.755 Compliance provisions.

(a) * * *

(4) Owners or operators are not required to expand the system as required in paragraph (a)(3) of this section during the first 180 days after gas collection system startup.

* * * * *

c. In paragraph (b) introductory text, in the last sentence, remove the phrase ''within 60 days of the date in which'' and add in its place, ''no later than 60 days after the date on which'';

d. In paragraph (c)(1), delete the phrase ''and along a serpentine pattern spaced 30 meters apart (or a site-specific established spacing)'' and add in its place, ''and along a pattern that traverses the landfill at 30 meter intervals (or a site-specific established spacing)''.

11. Amend § 60.756 as follows:

a. In paragraph (a) introductory text, remove the phrase ''or other temperature measuring device'' and add, in its place, ''other temperature measuring device, or an access port for temperature measurements'';

b. In paragraph (b)(1), remove the phrase ''an accuracy of'' and add in its place, ''a minimum accuracy of'';

c. In paragraph (b)(2), introductory text, remove the phrase ''A gas flow rate measuring device that provides a measurement of gas flow'' and add, in its place, ''A device that records flow'';

12. Amend § 60.757 by revising paragraphs (a)(1), (a)(2), (a)(3), (b)(1)(i) and (g) introductory text to read as follows:

§ 60.757 Reporting requirements.

* * * * *

(a) * * *

(1) The initial design capacity report shall fulfill the requirements of the notification of the date construction is commenced as required by § 60.7(a)(1) and shall be submitted no later than:

(i) June 10, 1996, for landfills that commenced construction, modification, or reconstruction on or after May 30, 1991 but before March 12, 1996 or

(ii) Ninety days after the date of commenced construction, modification, or reconstruction for landfills that commence construction, modification, or reconstruction on or after March 12, 1996.

(2) The initial design capacity report shall contain the following information:

(i) A map or plot of the landfill, providing the size and location of the landfill, and identifying all areas where solid waste may be landfilled according to the permit issued by the State, local, or tribal agency responsible for regulating the landfill.

(ii) The maximum design capacity of the landfill. Where the maximum design capacity is specified in the permit issued by the State, local, or tribal agency responsible for regulating the landfill, a copy of the permit specifying the maximum design capacity may be submitted as part of the report. If the maximum design capacity of the landfill is not specified in the permit, the maximum design capacity shall be calculated using good engineering practices. The calculations shall be provided, along with the relevant parameters as part of the report. The State, Tribal, local agency or Administrator may request other reasonable information as may be necessary to verify the maximum design capacity of the landfill.

(3) An amended design capacity report shall be submitted to the Administrator providing notification of an increase in the design capacity of the landfill, within 90 days of an increase in the maximum design capacity of the landfill to or above 2.5 million megagrams and 2.5 million cubic meters. This increase in design capacity may result from an increase in the permitted volume of the landfill or an increase in the density as documented in the annual recalculation required in § 60.758(f).

(b) * * *

(1) * * *

(i) The initial NMOC emission rate report may be combined with the initial design capacity report required in paragraph (a) of this section and shall be submitted no later than indicated in paragraphs (b)(1)(i)(A) and (B) of this section. Subsequent NMOC emission rate reports shall be submitted annually thereafter, except as provided for in paragraphs (b)(1)(ii) and (b)(3) of this section.

(A) June 10, 1996, for landfills that commenced construction, modification, or reconstruction on or after May 30, 1991, but before March 12, 1996, or

(B) Ninety days after the date of commenced construction, modification, or reconstruction for landfills that commence construction, modification, or reconstruction on or after March 12, 1996.

* * * * *

(g) Each owner or operator seeking to comply with § 60.752(b)(2)(iii) shall include the following information with the initial performance test report required under § 60.8:

* * * * *

13. Amend § 60.758 as follows:

a. Remove the introductory text;

b. At the beginning of paragraphs (a), (b) introductory text, (c) introductory text, (d) introductory text, and (e), add the phrase ''Except as provided in § 60.752(b)(2)(i)(B),'';

c. In paragraph (a), remove the phrase ''on-site records of the maximum design capacity'' and add, in its place ''on-site records of the design capacity report which triggered § 60.752(b)'';

d. Add paragraph (f) to read as follows:

§ 60.758 Recordkeeping Requirements.

* * * * *

(f) Landfill owners or operators who convert design capacity from volume to mass or mass to volume to demonstrate that landfill design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, as provided in the definition of ''design capacity'', shall keep readily accessible, on-site records of the annual recalculation of site-specific density, design capacity, and the supporting documentation. Off-site records may be maintained if they are retrievable within 4 hours. Either paper copy or electronic formats are acceptable.

14. Amend § 60.759 as follows:

a. In paragraph (a)(3)(iii), remove the sentence ''The values for k, L_O, and $C_{NM}OC$ determined in field testing shall be used, if field testing has been performed in determining the NMOC emission rate or the radii of influence.'' and add, in its place, the sentence ''The values for k and $C_{NM}OC$ determined in field testing shall be used, if field testing has been performed in determining the NMOC emission rate or the radii of influence (the distance from the well center to a point in the landfill where the pressure gradient applied by the blower or compressor approaches zero).''

b. In paragraph (a)(3)(iii), remove the sentence ''If field testing has not been performed, the default values for k, L_O, and $C_{NM}OC$ provided in § 60.754(a)(1) shall be used'' and add, in its place, the sentence ''If field testing has not been performed, the default values for k, L_O and $C_{NM}OC$ provided in § 60.754(a)(1) or the alternative values from § 60.754(a)(5) shall be used.

[FR Doc. 98–15007 Filed 6–15–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185 and 186

[OPP–300663; FRL–5793–5]

RIN 2070–AB78

Quizalofop-p ethyl ester; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of quizalofop-p ethyl ester [ethyl (*R*)-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxyl] propanoate), and its acid metabolite quizalofop-p [(*R*)-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxyl]propionate) and the *S* enantiomers of the ester and the acid, all expressed as quizalofop-p ethyl ester in or on canola seed, canola meal, peppermint tops and spearmint tops. DuPont Agricultural Products requested the tolerances for canola and the Interregional Research Project Number 4 (IR-4) requested the tolerances for peppermint and spearmint. These tolerances were requested under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170).

DATES: This regulation is effective June 16, 1998. Objections and requests for hearings must be received by EPA on or before August 17, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300663], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300663], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300663]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-7610; e-mail: jackson.sidney@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** published on October 29, 1997 (62 FR 56176 (mint)) (FRL–5749–7) and December 17, 1997, 62 FR 66080 (canola)) (FRL–5758–3), EPA, issued notices pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of pesticide petitions (PP) 6E4652 and 5F4545 for tolerances by the IR-4 and DuPont Agricultural Products, Wilmington, Delaware. These notices included a summary of the petitions prepared by DuPont Agricultural Products, Wilmington, Delaware, the registrant. There were no comments received in response to these notices of filing.

The petitions requested that 40 CFR 180.441 be amended by establishing tolerances for combined residues of the herbicide quizalofop-p ethyl ester [ethyl (*R*)-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxyl] propanoate), and its acid metabolite quizalofop-p [(*R*)-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxyl] propionate) and the *S* enantiomers of the ester and the acid, all expressed as quizalofop-p ethyl ester, in or on canola seed at 1.0 part per million (ppm), canola meal at 1.5 ppm, and peppermint tops and spearmint tops at 2.0 ppm. .

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and

children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute,'' ''short-term,'' ''intermediate term,'' and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by

pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup was not regionally based.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of quizalofop-p ethyl ester and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for combined residues of quizalofop-p-ethyl ester on canola seed at 1.0 ppm, canola meal at 1.5 ppm, and peppermint tops and spearmint tops at 2.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by quizalofop-p ethyl ester are discussed below.

1. *Acute toxicity*. Acute toxicology studies include: acute oral toxicity (lethal dose) (LD_{50}s) at 1,480 and 1,670 milligrams (mg)/kilogram (kg) for female and male rats, respectively); eye irritation (not an eye irritant); dermal toxicity (LD_{50} > 5,000 mg/kg in rats); inhalation toxicity (lethal concentration) (LC_{50} = 5.8 mg/liter(L)in rats); and dermal irritation (not a dermal sensitizer).

2. *Genotoxicity*. Quizalofop ethyl was negative in the following genotoxicity tests: bacterial gene mutation assays (Ames assay); chromosomal aberration assays in Chinese hamster ovary (CHO) cells; unscheduled DNA synthesis; and combinant assays and reversion assay in *Salmonella*.

3. *Reproductive and developmental toxicity*. A developmental toxicity study in rats administered dosage levels of 0, 30, 100, and 300 mg/kg/day. The maternal toxicity NOEL was 30 mg/kg/day and a developmental toxicity NOEL was greater than 300 mg/kg/day, highest dose tested (HDT). The maternal NOEL was based on reduced food consumption and body weight, and increased liver weights. There were no developmental effects observed.

A developmental toxicity study in rabbits administered dosage levels of 0, 7, 20, and 60 mg/kg/day with no developmental effects noted at 60 mg/kg/day (HDT). The maternal toxicity NOEL was established at 20 mg/kg/day based on decreased food consumption and body weight at 60/mg/kg/day (HDT).

In a two-generation reproductive toxicity study, Sprague-Dawley rats were fed diets containing quizalofop-p-ethyl at 0, 25, 100, or 400 ppm (0, 1.25, 5.0, or 20 mg/kg/day respectively). The parental NOEL was 100 ppm (5.0 mg/kg/day) and the lowest-observed effect level (LOEL) was 400 ppm (20 mg/kg/day), based on decreased body weights in males of both generations. The developmental NOEL for effects on the offspring was 25 ppm (1.25 mg/kg/day) and the offspring developmental LOEL was 100 ppm (5.0 mg/kg/day), based on increased incidence of eosinophilic changes in the livers of F2 weanling. In addition, at 400 ppm (20 mg/kg/day), reductions in litter size, survival, body weights, and spleen weight were seen in offspring.

4. *Subchronic toxicity*. A 90-day study was conducted in rats fed diets containing 0, 40, 128, 1,280 ppm (or approximately 0, 2, 6.4 and 64 mg/kg/day, respectively). The NOEL was 2 mg/kg/day. This was based on increased liver weights at 6.4 mg/kg.

A 90-day feeding study in mice was conducted with diets that contained 0, 100, 316 or 1,000 ppm (or approximately 0, 15, 47.4, and 150 mg/kg/day, respectively). The NOEL was < 15 mg/kg/day (lowest dose tested) based on increased liver weights and reversible histopathological effects in the liver at the lowest dose tested.

5. *Chronic toxicity*. An 18-month carcinogenicity study was conducted in CD-1 mice fed diets containing 0, 2, 10, 80 or 320 ppm (or approximately 0, 0.3, 1.5, 12, and 48 mg/kg/day, respectively). There were no carcinogenic effects observed under the conditions of the study at levels up to and including 12 mg/kg/day. A marginal increase in the incidence of hepatocellular tumors was observed at 48 mg/kg/day, the highest dose tested (HDT) which exceeded the maximum tolerated dose (MTD).

A 2-year chronic toxicity/carcinogenicity study was conducted in rats fed diets containing 0, 25, 100 or 400 ppm (or 0, 0.9, 3.7, and 15.5 mg/kg/day for males and 0, 1.1, 4.6, and 18.6 mg/kg/day for females, respectively). There were no carcinogenic effects observed under the conditions of the study at levels up to and including 18.6 g/kg/day (HDT). The systemic NOEL was 0.9 mg/kg/day based on altered red cell parameters and slight/minimal centrilobuler enlargement of the liver at 3.7 mg/kg/day.

A 1-year feeding study was conducted in dogs fed diets containing 0, 25, 100 or 400 ppm (or approximately 0, 0.625, 2.5, or 10 mg/kg/day, respectively). The NOEL was greater than 10 mg/kg/day, the lowest dose tested (LDT).

B. Toxicological Endpoints

1. *Acute toxicity*. There were no effects observed in oral toxicity studies that could be attributable to a single dose (exposure). Therefore, a dose and an endpoint have not been identified for this risk assessment. This risk assessment is not required. .

2. *Short - and intermediate - term toxicity*. In a 21-day dermal toxicity study, New Zealand White rabbits (5/sex/dose) received 15 repeated dermal applications (aqueous paste) of quizalofop-p-ethyl ester at doses of 0, 125, 600 or 2,000 mg/kg/day, 6 hours/day, 5 days/week over a 21-day period. There was no dermal or systemic toxicity. The NOEL was 2,000 mg/kg/day. In addition, no maternal or developmental toxicity was observed following in utero exposures in rats and rabbits. These risk assessments are not required.

3. *Chronic toxicity*. EPA has established the RfD for quizalofop-p ethyl ester at 0.009 mg/kg/day. This RfD is based on the 2-year feeding study in rats. Groups of male and female Sprague-Dawley rats (50/sex/dose) were fed diets containing quizalofop-p-ethyl ester at 0, 25, 100 or 400 ppm for 104 weeks. For chronic toxicity, the NOEL

was 25 ppm (0.9 mg/kg/day) and the LOEL was 100 ppm based on the occurrence of generalized hepatocyte enlargement in female rats and red blood cell destruction in males. In addition, there was generalized hepatocyte enlargement and red blood cell destruction in both sexes at 400 ppm.

RfD = 0.9 mg/kg/day (NOEL) = 0.009 mg/kg/day 100 (UF).

4. *Carcinogenicity*. OPP's Health Effects Division, Carcinogenicity Peer Review Committee (CPRC) has evaluated the rat and mouse cancer studies for quizalofop-p ethyl ester along with other relevant short-term toxicity, mutagenicity studies, and structure-activity relationships. The CPRC has classified quizalofop-p ethyl as a Group D carcinogen (not classifiable as to human cancer potential). The Group D classification is based on an approximate doubling in the incidence of mice liver tumors between controls and the high dose. This finding was not considered strong enough to warrant the classification of a Category C (possible human carcinogen): the increase was of marginal statistical significance, occurred at high dose which exceeded the MTD, and occurred in a study in which the concurrent control for liver tumors was somewhat low as compared to the historical controls, while the high dose control group was at the upper end of previous historical control groups. No new cancer studies are required for quizalofop-p ethyl ester at this time.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.441) for the combined residues of quizalofop-p ethyl ester and its acid metabolite quizalofop-p and the *S* enantiomers of the ester and the acid, all expressed as quizalofop-p ethyl ester in or on a variety of raw agricultural commodities. Tolerances are established for cottonseed at 0.1 ppm, lentils at 0.05 ppm. Time-limited tolerances are established for sugarbeet roots at 0.1 ppm, sugarbeet tops at 0.5 ppm, legume vegetables crop group at 0.25 ppm, and foliage of legume vegetables (except soybeans) at 3.0 ppm. Risk assessments were conducted by EPA to assess dietary exposures and risks from quizalofop-p ethyl ester as follows:

i. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. There are no acute toxicological concerns for quizalofop-p ethyl ester.

ii. *Chronic exposure and risk*. In conducting this chronic dietary risk assessment, EPA has made very conservative assumptions -- 100% of mint, canola, and all other commodities having quizalofop-p-ethyl ester tolerances will contain the regulable residues and those residues will be at the level of the tolerance. Thus, in making a safety determination for these tolerances, EPA is taking into account this conservative exposure assessment. The Dietary Risk Evaluation System (DRES) was used for the chronic dietary exposure analysis. The analysis evaluates individual food consumption as reported by respondents in the USDA 1977-78 Nationwide Food Consumption Survey (NFCS) and accumulates exposure to the chemical for each commodity. Regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Review of these regional data allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency.

Existing tolerances and this rule for canola and mint result in a TMRC of 5.40×10^{-4} mg/kg/day for the U.S. general population (48 States), which represents 6.0% of the RfD. The use on canola will add a TMRC of 7.7×10^{-5} mg/kg/day, which represents 0.9% of the RfD for the U.S. population. The use on mint will add a TMRC of 2×10^{-6} mg/kg/day, which represents 0.016% of the RfD. Existing tolerances and this rule result in a TMRC of 1.7×10^{-3} mg/kg/day for the highest exposed population subgroup (non-nursing infants <1 year old), which represents 19%. These tolerances for canola and mint will not contribute to the dietary burden of this population subgroup. Based on the risk estimates calculated, chronic dietary exposure does not exceed EPA's level of concern.

2. *From drinking water*— i. *Acute exposure and risk*. There are no acute toxicological concerns for quizalofop-p ethyl ester.

ii. *Chronic exposure and risk*. Drinking water levels of concern (DWLOC) were calculated for chronic dietary exposure. To calculate the DWLOC, chronic dietary food exposure (from DRES analysis) was subtracted from the RfD. DWLOC were then calculated using default bodyweights and drinking water consumption figures. For adults, the estimate was based on a body weight of 60 kg (female)/70 kg(female) and consumption of 2 liters of water per day. For children, a body weight of 10 kg and a consumption of 1 liter of water per day were used. The DWLOC are calculated at 296 parts per billion (ppb) for the U.S. population, 256 ppb for females (13+ years old, not pregnant or nursing) and 73 ppb for infants and children. Agency estimates for quizalofop-p ethyl ester contamination is 8 ppb for surface water and 0.15 ppb for groundwater. These levels are significantly less than levels of concern to EPA.

3. *From non-dietary exposure*. Quizalofop-p ethyl ester is not registered for residential use sites.

4. *Cumulative exposure to substances with common mechanism of toxicity*. Quizalofop-p ethyl is a member of the oxyphenoxy acid ester class of pesticides. Other members of this class include fluazifop-butyl, diclofop-methyl, fenoxaprop-ethyl, and haloxyfop-methyl.

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information

in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether quizalofop-p ethyl ester has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, quizalofop-p ethyl ester does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that quizalofop-p ethyl ester has a common mechanism of toxicity with other substances.

5. *Endocrine disruption*. EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect....''

The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk*. There are no acute toxicological concerns for quizalofop-p ethyl ester.

2. *Chronic risk*. Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to quizalofop-p ethyl ester from food will utilize 6.0% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants <1 year old at 19% of the RfD. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to quizalofop-p ethyl ester in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to quizalofop-p ethyl ester residues.

E. Aggregate Cancer Risk for U.S. Population

The Agency has classified quizlopfop-p ethyl as a Category D chemical (not classifiable as to human cancer potential) based on results of rat and mouse cancer studies along with other relevant short-term toxicity, mutagenicity studies, and structure-activity relationships. The Group D classification is based on an approximate doubling in the incidence of mice liver tumors between controls and the high dose. This finding was not considered strong enough to warrant the classification of a Category C (possible human carcinogen): the increase was of marginal statistical significance, occurred at high dose which exceeded the MTD, and occurred in a study in which the concurrent control for liver tumors was somewhat low as compared to the historical controls, while the high dose control group was at the upper end of previous historical control groups. Based on results of the above adequate studies and the Category D classification, the Agency believes that any cancer risk posed by quizalofop-p ethyl is negligible and there is reasonable certainty that no harm will result from exposure to residue of quizalofop-p ethyl.

F. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general*. In assessing the potential for additional sensitivity of infants and children to residues of quizalofop-p ethyl ester, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies*. Developmental toxicity studies showed no increased sensitivity in fetuses as compared to maternal animals following in utero exposures in rats and rabbits.

iii. *Reproductive toxicity study*. In a two generation reproductive toxicity study, rats were fed diets of 0, 1.25, 5.0 or 20 mg/kg/day of quizalofop-p ethyl. The parental NOEL was 5.0 mg/kg/day and the LOEL was 20 mg/kg/day, based on decreased body weights in males of both generations. The developmental NOEL for effects on the offspring was 1.25 mg/kg/day and the offspring developmental LOEL was 5.0 mg/kg/day, based on increased incidence of eosinophilic changes in the livers of F2 weanling. In addition, at 20 mg/kg/day, reductions in litter size, survival, body weights, and spleen weight were seen in the offspring.

iv. *Pre- and post-natal sensitivity*. The histopathology data for F2 weanlings in the two-generation reproductive toxicity study suggested an increased sensitivity to the offspring. In that study, an increase in the incidence of eosinophilic changes in the liver were noted in the F2 weanlings, and the offspring NOEL was less than the parental systemic NOEL. However, the significance of these observations in the two-generation reproductive toxicity study is rendered questionable due to: (a) The changes in the weanling livers were not well characterized; (b) the biological significance of this endpoint was not known; (c) the precise dose of test substance to 21-day old weanlings cannot be determined with any accuracy, but it is likely to exceed that of the adults; (d) this endpoint

(eosinophilic changes), in adults, would not be considered appropriate for use in regulation of a chemical because of the questionable biological significance of this effect; and, (e) previous toxicological studies show the liver as the target organ in rats. No particular significance to the offspring is attributed to the liver effects.

v. *Conclusion*. The database is complete and the weight of the evidence reveals no special susceptibility to developmental toxicity. Therefore, EPA has determined that reliable data support use of the standard 100-fold safety factor. An additional ten-fold safety factor is not necessary to protect the safety of infants and children.

2. *Acute aggregate risk*. There are no acute toxicological concerns for quizalofop-p ethyl ester.

3. *Chronic aggregate risk*. Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to quizalofop-p ethyl ester from food will utilize 19% of the RfD for the highest exposed population subgroup (non-nursing infants <1 year old). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Because there are no indoor or outdoor residential uses for quizalofop-p ethyl, and the estimates of quizalofop-p ethyl chronic residues in drinking water are much less (estimated at 8.08 ppb) than the 73 ppb concern level, aggregate (food, water, and residential) chronic exposure for infants, children, and adults will not exceed the Agency's level of concern. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to quizalofop-p ethyl ester residues.

4. *Short- or intermediate-term risk*. Because no toxicological endpoints have been identified for short-, intermediate-, and/or chronic-term dermal or inhalation exposures, the Agency believes there is reasonable certainty that no harm will result from exposure to quizalofop-p ethyl due to approved tolerances.

III. Other Considerations

A. Metabolism In Plants and Animals

The Agency has previously concluded that the nature of the quizalofop-p ethyl residue in plants is adequately understood. The residues of concern are quizalofop-p ethyl ester and its acid metabolite, quizalofop-p, and the *S* enantiomers of both the ester and the acid, all expressed as quizalofop-p (40 CFR 180.441(c)). In animals, the residues of concern are slightly different and include quizalofop ethyl, quizalofop methyl, and quizalofop acid, all expressed as quizalofop-ethyl (40 CFR 180.441(b)).

B. Analytical Enforcement Methodology

An adequate enforcement method for determination of quizalofop-p-ethyl and related regulated residues is available in PAM II.

C. Magnitude of Residues

The maximum residues detected on fresh mint foliage at the proposed labeled level of DuPont's product, Assure, of 0.2 pounds(lbs) active ingredient(ai) per acre (1x) applied 30 days before harvest were 0.22, 0.46, and 1.0 ppm for Indiana, Oregon and Washington, respectively. The largest residue found on fresh mint foliage, 2.6 ppm, was detected in a Washington sample treated with 0.4 lbs. per acre (2x) 29 days before harvest, twice the maximum yearly rate allowed. At the Level of Quantitation (LOQ) of 0.05 ppm, there were no detectable residues in the mint oil, either at the proposed label rate of 0.2 lbs. ai/acre(A), or at the exaggerated rate of 0.4 lbs. ai/A, indicating that quizalofop-p ethyl and its acid metabolite are not concentrated during the oil distillation process. Adequate residue data were provided to support a tolerance of 2.0 ppm for mint. There are no livestock feedstuffs associated with mint.

Adequate residue data were provided to support proposed tolerances canola seed and canola meal. Processing data provided for canola seed indicated concentration in canola meal. Based on the concentration factor of 2.3x and the highest average field trial (HAFT) residue level of 0.65 ppm for canola seed, a tolerance at 1.5 ppm for canola meal is considered adequate.

Results of a ruminant feeding study lead to the conclusion that the established quizalofop and quizalofop-p ethyl tolerance in milk, and in fat, meat, and meat by-products of cattle, goats, hogs, horse, and sheep are adequate and need not be increased from the additional use on canola. Additionally, the established tolerances of quizalofop and quizalofop-p ethyl in eggs, and in fat, meat, and meat by-products of poultry are adequate and need not be changed from the additional use on canola.

D. International Residue Limits

There are no Codex, Canadian, or Mexican Maximum Residue Limits (MRLs) for quizalofop-p ethyl residues in/on mint. Since there are no Mexican or Codex MRLs/tolerances for quizalofop-p-ethyl in/on canola seed, compatibility is not a problem at this time. Compatibility cannot be achieved with the Canadian negligible residue types limit at 0.1 ppm as the U.S. use pattern had findings of real residues above 0.1 ppm. Additionally, the Canadian MRL is in terms of parent only, thus the tolerance expressions are not compatible.

E. Rotational Crop Restrictions

Available data support a 120 day plant back interval.

IV. Conclusion

Therefore, tolerances are established for combined residues of quizalofop-p ethyl ester [ethyl (*R*)-(2[4-((6-chloroquinoxalin-2-yl)oxy)phenoxyl]-propanoate), and its acid metabolite quizalofop-p [*R*-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxyl)propionate and the *S* enantiomers of the ester and the acid, all expressed as quizalofop-p ethyl ester in or on canola seed at 1.0 ppm, canola meal at 1.5 ppm, and peppermint tops and spearmint tops at 2.0 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by August 17, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a

statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300663] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

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

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: May 28, 1998.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. Section 180.441 is revised to read as follows:

§ 180.441 Quizalofop ethyl; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of the herbicide quizalofop (2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy]propanoic acid) and quizalofop ethyl (ethyl-2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy]propanoate), all expressed as quizalofop ethyl, in or on the following agricultural commodities:

Commodity	Parts per million
Soybean flour	0.5
Soybean hulls	0.02
Soybean meal	0.5
Soybean soapstock	1.0
Soybeans	0.05

(2) Tolerances are established for the combined residues of the herbicide quizalofop (2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy]propanoic acid), quizalop-ethyl (ethyl-2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy]propanoate), and quizalofop-methyl (methyl 2-[4-(6-chloroquinoxalin-2-yl-oxy)phenoxy]propanoate, all expressed as quizalofop ethyl, as follows:

Commodity	Parts per million
Cattle, fat	0.05
Cattle, meat	0.02
Cattle, mbyp	0.05
Eggs	0.02
Goats, fat	0.05
Goats, meat	0.02
Goats, mbyp	0.05
Hogs, fat	0.05
Hogs, meat	0.02
Hogs, mbyp	0.05
Horses, fat	0.05
Horses, meat	0.02
Horses, mbyp	0.05
Milk	0.01
Milk, fat	0.05
Poultry, fat	0.05
Poultry, meat	0.02
Poultry, mbyp	0.05
Sheep, fat	0.05
Sheep, meat	0.02
Sheep, mbyp	0.05

(3) Tolerances are established for the combined residues of the herbicide quizalofop-p ethyl ester [ethyl (*R*)-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoate], and its acid metabolite quizalofop-p [*R*-(2-(4-((6-quinoxalin-2-yl)oxy)phenoxy)propanoic acid], and the *S* enantiomers of both the ester and the acid, all expressed as quizalofop-p-ethyl ester, in or on the following raw agricultural commodities;

Commodity	Parts per million
Canola, meal	1.5
Canola, seed	1.0
Cottonseed	0.1
Lentils	0.05
Peppermint, tops	2.0
Spearmint, tops	2.0

(4) Time limited tolerances to expire on June 14, 1999 are established for the combined residues of the herbicide quizalofop-p ethyl ester (ethyl (*R*)-(2-(4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoate) and it acid metabolite quizalofop-p [*R*-(2-(4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoic acid), and the *S* enantiomers of both the ester and the acid, all expressed as quizalofop-p-ethyl ester in or on the following raw agricultural commodities:

Commodities	Parts per million
Foliage of legume vegetables (except soybeans)	3.0
Legume vegetables (succulent or dried) group	0.25
Sugarbeet molasses	0.2
Sugarbeet, root	0.1
Sugarbeet, top	0.5

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

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of the herbicide quizalofop-*p* ethyl ester [ethyl (*R*)-2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy] propionate], its acid metabolite quizalofop-*p* [*R*-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy]) propanoic acid], and the *S* enantiomers of both the ester and the acid, all expressed as quizalofop-*p* ethyl ester, in or the raw agricultural commodities, as follows:

Commodity	Parts per million
Pineapple	0.1

(d) *Indirect or inadvertent residues.* [Reserved]

PART 185— [AMENDED]

3. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.5250 [Removed]

b. Section § 185.5250 is removed.

PART 186— [AMENDED]

4. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 342, 348, and 701.

§ 186.5250 [Removed]

b. Section § 186.5250 is removed.

[FR Doc. 98–15746 Filed 6–15–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6111–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Southern Shipbuilding Corporation Superfund site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 announces the deletion of the Southern Shipbuilding Corporation Superfund Site (the ''Site'') from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is codified at Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300. EPA in consultation with the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ), has determined that no further response is appropriate since all federally funded actions specified in the Record of Decision for Operable Units One (1) and Two (2) have been implemented. Consequently, the Site is hereby deleted from the NPL.

EFFECTIVE DATE: June 16, 1998.

ADDRESSES: Comprehensive information on the Site has been compiled in a public deletion docket which may be reviewed and copied during normal business hours at the following Southern Shipbuilding Corporation Superfund Site information repositories:

U.S. EPA Region 6 Library (12th Floor), 1445 Ross Avenue, Dallas, Texas 75202–2733, 1–800–533–3508.

St. Tammany Parish Public Library, Slidell Branch, 555 Robert Blvd., Slidell, Louisiana 70450, (504) 643–4120.

FOR FURTHER INFORMATION CONTACT:

Mr. Mark A. Hansen, Remedial Project Manager (6SF–LT), U.S. Environmental Protection Agency, Region 6 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–7548

or

Mr. Duane Wilson, Louisiana Department of Environmental Quality, 7290 Bluebonnet Road, Baton Rouge, Louisiana 70809, (504) 765–0487.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is the Southern Shipbuilding Corporation Superfund Site, Slidell, St. Tammany Parish, Louisiana (EPA Site Spill No. 066Z; CERCLIS No. LAD008149015). A Notice of Intent to Delete (NOID) was published on March 31, 1998 (63 FR 15346). The closing date for public comment on the NOID was April 30, 1998. EPA received no public comments and therefore, no Responsiveness Summary was prepared.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and

it maintains the NPL as the list of those sites. As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant such action. Deletion of the site from the NPL does not affect responsible party liability or impede EPA efforts to recover costs associated with response efforts.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, as that term is defined in 5 U.S.C. 804(3).

Lists of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 4, 1998.

Myron O. Knudson,

Acting Regional Administrator, Region 6.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757; 3 CFR 1991 Comp. P 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B to Part 300 [Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site ''Southern Shipbuilding, Slidell, Louisiana.''

[FR Doc. 98–15949 Filed 6–15–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067–AC85

National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: The Federal Insurance Administration is revising the effective date of the Financial Assistance/Subsidy Arrangement (''the Arrangement'') to October 1, 1998. The Arrangement governs the duties and obligations of insurers that participate in the Write Your Own (WYO) Program of the National Flood Insurance Program (NFIP) and also sets forth the responsibilities of the Government to provide financial and technical assistance to these insurers.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Edward T. Pasterick, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, 202–646–3443, (facsimile) 202–646–3445, (email) Edward.Pasterick@fema.gov.

SUPPLEMENTARY INFORMATION: On July 24, 1997, FEMA published in the **Federal Register**, 62 FR 39908, a final rule amending the regulations of the National Flood Insurance Program (NFIP) to include the revised Financial Assistance/Subsidy Arrangement for 1997–1998 governing the duties and obligations of insurers participating in the Write Your Own (WYO) Program of the National Flood Insurance Program (NFIP). The 1997–1998 Arrangement ends September 30, 1998. Except for the new effective date of October 1, 1998, the Arrangement for 1998–1999 is unchanged from last year's version.

Any private insurance company participating under the current 1997–1998 Arrangement will be sent, during July 1998, a copy of the offer for 1998–1999 together with related materials and submission instructions. Any private insurance company not currently participating in the WYO program but wishing to consider FEMA's Arrangement offer for 1998–1999, may do so by requesting a copy of the offer by writing: Federal Emergency Management Agency, ATTN: Federal Insurance Administrator, WYO Program, Washington, DC 20472.

National Environmental Policy Act

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

Executive Order 12898, Environmental Justice

The socioeconomic conditions to this rule were reviewed and a finding was made that no disproportionately high and adverse effect on minority or low income populations would result from this final rule.

Executive Order 12866, Regulatory Planning and Review

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

Paperwork Reduction Act

This rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 62

Claims, Flood insurance.

Accordingly, 44 CFR part 62 is amended as follows:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

1. The authority citation for Part 62 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 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

Appendix A to Part 62 [Amended]

2. The *Effective Date* of Appendix A of part 62 is revised to read as follows:

Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement

* * * * *

Effective Date: October 1, 1998.

* * * * *

Dated: June 9, 1998.

Jo Ann Howard,

Administrator, Federal Insurance Administration.

[FR Doc. 98–15962 Filed 6–15–98; 8:45 am]

BILLING CODE 6718–03–P

NATIONAL SCIENCE FOUNDATION

45 CFR Part 672

Antarctic Conservation Act of 1978, Civil Monetary Penalties

AGENCY: National Science Foundation.

ACTION: Final rule with a request for comments.

SUMMARY: The National Science Foundation (NSF) is revising its inflation adjustments of civil monetary penalties that may be imposed for inadvertent and deliberate violations of the Antarctic Conservation Act of 1978 because a procedural error prevented the original adjustments from taking effect.

DATES: This rule is effective July 16, 1998.

Comments, however, are welcome at any time and will be considered in making future revisions.

ADDRESSES: All comments should be addressed to: John Chester, Assistant General Counsel, Office of the General Counsel, Room 1265, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: John Chester on (703) 306–1060 (voice) and (703) 306–0149 (facsimile)—those are not toll-free numbers—or by electronic mail as jchester@nsf.gov through INTERNET.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (104 Stat. 890; 28 U.S.C. 2461 note) as amended by the Debt Collection Improvement Act of 1996 (section 31001(s)(1) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104–134, approved 4/26/96) directs each Federal agency to adjust, by regulation, each civil monetary penalty provided by law within the jurisdiction of that agency to compensate for the effects of inflation. The only civil monetary penalties within the jurisdiction of the National Science Foundation are those imposed for violations of the Antarctic Conservation Act of 1978 (16 U.S.C. 2401 *et seq.*). On November 20, 1996 NSF published an amendment to its rules governing enforcement of that law adding a new section setting out the penalties for inadvertent and deliberate violations and adjusting those penalties for inflation as provided in the Debt Collection Improvement Act. Unfortunately, NSF did not submit that amendment to the Congress and Comptroller General as required by section 801(a) of title 5 of the United States Code and therefore it did not take effect. This rule, which will be submitted to Congress and GAO as soon as it is published, replaces the 1996 one.

Because section 31001(s)(2) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 provides that the first adjustment of a civil monetary penalty made pursuant to its amendment to the Debt Collection Improvement Act ''may not exceed 10 percent of such penalty'', the Foundation is adjusting these penalties in two steps: a 10 percent increase effective on August 1, 1998 and an increase to the full amount called for in the amended Debt Collection Improvement Act on August 1, 1999. The latter adjustment takes into account inflation through June 1997, rather than June 1995 as in the 1996 adjustment. Future adjustments will be made at least once every four years as called for in the amended Debt Collection Improvement Act.

Because this action merely makes adjustments required by statute, public comments were not solicited prior to its issuance.

Required determinations

Executive Order 12612—Federalism

This final rule will not have a substantial effect on the States, on the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Executive Order 12866—Regulatory Planning and Review

I have determined, under the criteria set forth in Executive Order 12866, that this rule is not a significant regulatory action requiring review by the Office of Information and Regulatory Affairs.

Executive Order 12988—Civil Justice Reform

I have reviewed this rule in light of section 3 of Executive Order 12988 and certify for the National Science Foundation that this rule meets the applicable standards provided in section 3(a) and 3(b)(2) of that order.

Regulatory Flexibility Act

I certify, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995

There are no new information collection requirements in this final rule.

Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year and therefore preparation of a statement is not required by section 202(a) Unfunded Mandates Reform Act of 1995 [2 U.S.C. 1532(a)].

List of Subjects in 45 CFR Part 672

Administrative practice and procedure, Antarctica.

For the reasons set out in the preamble and under the authority of 28 U.S.C. 2461 note, 45 CFR Part 672 is amended as follows:

PART 672—ENFORCEMENT AND HEARING PROCEDURES; TOURISM GUIDELINES

1. The authority citation for Part 672 continues to read as follows:

Authority: 16 U.S.C. 2401 *et seq.*, 28 U.S.C. 2461 note.

2. Revise § 672.24 to read as follows:

§ 672.24 Maximum civil monetary penalties for unintentional and intentional violations.

(a) For violations occurring before August 1, 1998, the maximum civil penalty that may be assessed under § § 672.20(b) and 672.23(a) is set by the statute at $5,000 for unintentional violations and $10,000 for intentional violations.

(b) For violations occurring between August 1, 1998 and July 31, 1999, the maximum civil penalty is adjusted under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) to $5,500 for unintentional violations and $11,000 for intentional violations.

(c) For violations occurring after July 31, 1999, the maximum civil penalty is adjusted under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) to $12,000 for unintentional violations and $25,000 for intentional violations.

Dated: June 11, 1998.

Lawrence Rudolph,

General Counsel, National Science Foundation.

[FR Doc. 98–15951 Filed 6–15–98; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804, 1806, 1807, 1809, 1822, 1833, 1842, 1852, 1871, and 1872

NASA FAR Supplement; Miscellaneous Changes

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

ACTION: Final rule.

SUMMARY: This rule amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal and administrative matters.

EFFECTIVE DATE: June 16, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas O'Toole, (202) 358–0478; e-mail: thomas.otoole@.hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

Background

This rule makes miscellaneous administrative corrections to the NFS, most of which are corrections of section numbers and NASA office references. Other more significant administrative changes are: (1) 1807.7000 (new URL for Consolidated Contracting Initiative (CCI)); (2) 1842.1203–70 (removal of reference to Appendix E of the NASA/DOD Agreement for Contract Administration and Contract Audit Services); and (3) 1852.242–72 (elimination of the dependencies for the two Alternate Clauses).

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1804, 1806, 1807, 1809, 1822, 1833, 1842, 1852, 1871, and 1872

Government procurement.

Deidre A. Lee,

Associate Administrator for Procurement.

Accordingly, 48 CFR Chapter 18 is amended as follows.

1. The authority citation for 48 CFR Parts 1804, 1806, 1807, 1809, 1822, 1833, 1842, 1852, 1871, and 1872 continues to read as follows:

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

PART 1804—ADMINISTRATIVE MATTERS

1804.601 [Amended]

2. In section 1804.601, ''(Code HC)'' is revised to read ''(Code HS)''.

1804.602 [Amended]

3. In section 1804.602, paragraph (d), ''Code HC'' is revised to read ''Code HS''.

1804.670–3 [Amended]

4. In section 1804.670–3, paragraph (b), ''Code HC'' is revised to read ''Code HS''.

1804.671 [Amended]

5. In section 1804.671, ''(Code FET)'' is revised to read ''(Code FE)''.

1804.7102 [Amended]

6. In section 1804.7102, in paragraph (g), ''(Code HC)'' is revised to read ''(Code HS)''.

PART 1806—COMPETITION REQUIREMENTS

1806.302–470 [Amended]

7. In section 1806.302–470, add the word ''and'' at the end of paragraph (a).

PART 1807—ACQUISITION PLANNING

1807.7000 [Amended]

8. In section 1807.7000, the url site ''http://msfcinfo.msfc.nasa.gov/cci/first.html'' is revised to read ''http://ec.msfc.nasa.gov/hq/cci/first.html''.

PART 1809—CONTRACTOR QUALIFICATIONS

1809.404 [Amended]

9. In section 1809.404, paragraph (c), ''(Code HS)'' is revised to read ''(Code HK)'', and in paragraph (d)(1), ''Code HS'' is revised to read ''Code HK'' in both instances.

1809.405 [Amended]

10. In section 1809.405, ''(Code HS)'' is revised to read ''(Code HK)''.

1809.408 [Amended]

11. In section 1809.408, paragraphs (a)(2)(A) and (B), ''(Code HS)'' is revised to read ''(HK)''.

1809.470–1 [Amended]

12. In the introductory text to section 1809.470–1, ''(Code HS)'' is revised to read ''(Code HK)''.

1809.470–3 [Amended]

13. In section 1809.470–3, ''(Code HS)'' is revised to read ''(Code HK)''.

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

1822.400–70 [Amended]

14. Section 1822.400–70 is revised to read as follows:

1822.400–70 Contacts with the Department of Labor.

All contacts with the Department of Labor required by FAR subpart 22.4, except for wage determinations, shall be conducted through the Headquarters Contractor Industrial Relations Office (Code JLR). Contracting officers shall submit all pertinent information to Code JLR in support of Code JLR for contacts. For wage determinations, contracting officers shall submit all requests directly to Goddard Space Flight Center, Contractor Industrial Relations Office—GSFC, Code 201, Greenbelt, Maryland 20771 (GSFC).

1822.404–3 [Amended]

15. In section 1822.404–3, ''Code JLR'' is revised to read ''GSFC''.

1822.406–8 [Amended]

16. In section 1822.404–8, paragraph (a), the phrase ''his/her'' is revised to read ''their''.

1822.1008–7 [Amended]

17. Section 1822.1008–7 is revised to read as follows:

1822.1008–7 Required time of submission of notice.

(a) Contracting officers shall submit the notices to Goddard Space Flight Center, Contract Industrial Relations Office—GSFC, Code 201, Greenbelt, Maryland 20771 (GSFC) at least 70 days before initiating the associated contract actions.

(b) When the circumstances in FAR 22.1008–7(b) apply, contracting officers shall submit the required notices to GSFC at least 40 days before initiating the associated contract actions.

(c) Contracting officers shall contact GSFC before initiating any action when the circumstances in FAR 22.1008–7(c) and (d) apply.

1822.13 [Amended]

18. In subpart 1822.13, the title ''Special Disabled and Vietnam Era Veterans'' is revised to read ''Disabled Veterans and Veterans of the Vietnam Era''.

PART 1833—PROTESTS, DISPUTES, AND APPEALS

1833.104 [Amended]

19. In section 1833.104, paragraph ''(a)(3)(iii)'' is redesignated as ''(a)(3)(iv)''.

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

1842.1203 [Amended]

20. In section 1842.1203, paragraph ''(f)'' is redesignated as ''(h)'' and the phrase ''paragraphs (b) and (f)'' in the heading is revised to read ''paragraphs (b) and (h)''.

1842.1203–70 [Amended]

21. In section 1842.1203–70, paragraph (a) is revised to read as follows:

1842.1203–70 DOD processing of novation and change-of-name agreements on behalf of NASA.

(a) Copies of novation and change-of-name agreements executed by DOD on behalf of NASA are maintained by the Headquarters Office of Procurement (Code HS).

* * * * *

1842.7001 [Amended]

22. In section 1842.7001, paragraph (c), the phrase ''Alternate I is used and'' is removed.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.215–78 [Amended]

23. In paragraph (a) of the clause, the phrase ''(see FAR 15.704)'' is removed.

1852.235–70 [Amended]

24. In section 1852.235–70, the clause date and paragraph (d) are revised to read as follows:

1852.235–70 Center for AeroSpace Information.

* * * * *

Center for Aerospace Information

(June 1998)

* * * * *

(d) When the contract requires the delivery of reports or data to CASI, a reproducible copy and a printed or reproduced copy of such reports or data shall be concurrently submitted to: Center for AeroSpace Information (CASI), Attn: Accessioning Department, Parkway Center, 7121 Standard Drive, Hanover, Maryland 21076–1320.

25. In clause 1852.242–72, the introductory text to Alternate II is revised to read as follows:

1852.242–72 Observance of Legal Holidays.

* * * * *

Alternate II

September 1989

As prescribed in 1842.7001(c), add the following as paragraphs (e) and (f) if Alternate I is used, or as paragraphs (c) and (d) if Alternate I is not used.

* * * * *

1852.245–71 [Amended]

26. In section 1852.245–71, the date ''(JULY 1997)'' is revised to read ''(June 1998)'', and in paragaph (a), the phrase ''Installation Provided'' is revised to read ''Installation-Accountable''.

1852.245–79 [Amended]

27. In the introductory text to section 1852.245–79, the reference ''1845.106–70(j)'' is revised to read ''1845.106–70(i)''.

PART 1872—ACQUISITIONS OF INVESTIGATIONS

1872.33 [Amended]

28. In section 1872.303, paragraphs (b) and (c), the phrase ''Office of Acquisition'' is revised to read ''Office of Procurement''.

[FR Doc. 98–15892 Filed 6–15–98; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 980429110–8110–01; I.D. 060298B]

Fisheries off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Closures and Reopenings From the U.S.-Canada Border To Cape Falcon, Oregon

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

ACTION: Closures and reopenings.

SUMMARY: NMFS announces that the commercial salmon fishery in the area from the U.S.-Canada border to Cape Falcon, Oregon, was closed at midnight, May 12, 1998, and then reopened on May 20 through May 23, and again reopened on June 2 through June 4, 1998, with each vessel allowed to possess, land, and deliver no more than 75 salmon for the open period of May 20 through May 23, and no more than 50 salmon for the open period of June 2 through June 4. This action was necessary to conform to the 1998 management measures and was intended to ensure conservation of chinook salmon as well as maximize the harvest of chinook salmon without exceeding the ocean share allocated to the commercial fishery in this area.

DATES: Closure effective 2400 hours local time, May 12, 1998, through 2400 hours local time, May 19, 1998. First reopening effective 0001 hours local time, May 20, 1998, through 2400 hours local time, May 23, 1998, after which time the season remains closed under terms of the 1998 management measures. Second reopening effective 0001 hours local time, June 2, 1998, through 2400 hours local time, June 4, 1998, after which time the season remains closed under terms of the 1998 management measures. Comments will be accepted through June 30, 1998.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Regional Administrator, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., Building 1, Seattle, WA 98115–0070. Information relevant to this document is available for public review during business hours at the office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR 660.409(a)(1) state that when a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Administrator to be reached on or by a certain date, NMFS will, by an inseason action issued under 50 CFR 660.411, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

In the 1998 management measures for ocean salmon fisheries (63 FR 24973, May 6, 1998), NMFS announced that the commercial fishery in the area between the U.S.-Canada border to Cape Falcon, Oregon, would open on May 1 and continue through June 15 or attainment of the 6,500 chinook salmon quota, whichever occurred first. Following the closure of this fishery, vessels must land and deliver the salmon within 48 hours of the closure.

The best available information on May 11 indicated that the catch and effort data and projections supported closure of the commercial fishery in this area at midnight, May 12. The projected catch was under the 6,500 chinook salmon quota, but was close enough that

all parties agreed to use a conservative approach. This conservative approach concluded that adding another day of fishing to capture the estimated 200 to 300 chinook salmon remaining in the quota was not warranted because of the potential for fishing above the 6,500 quota. Therefore, the fishery was closed at midnight, May 12.

After the closure, the updated catch and effort data and projections were re-analyzed, and the estimated number of chinook salmon caught was 5,600, with 900 chinook salmon left in the season's quota. The higher number of chinook salmon left in the quota was due to harsh weather conditions on May 11 and 12, which limited the catch of fish. Therefore, the 900 chinook salmon left in the quota allowed for the season to reopen on May 20 through May 23, with each vessel allowed to possess, land, and deliver no more than 75 salmon for the open period.

After the first reopening, the updated catch and effort data and projections were re-analyzed, and the estimated number of chinook salmon caught was 5,940, with 560 chinook salmon left in the season's quota. The higher number of chinook salmon left in the quota was due to harsh weather conditions on May 20 through May 23, which limited the catch of fish. Therefore, the 560 chinook salmon left in the quota allowed for the season to reopen on June 2 through June 4, with each vessel allowed to possess, land, and deliver no more than 50 salmon for the open period.

Reopenings of the fishery are authorized by 50 CFR 660.409(a)(2). The Regional Administrator consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fish and Wildlife, and the Oregon Department of Fish and Wildlife to ensure that these actions are consistent with Council policy and state regulations. The States of Washington and Oregon manage the commercial fishery in state waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishermen of these actions was given prior to 2400 hours local time, May 12, 1998, for the initial closure; prior to 0001 hours local time, May 20, 1998, for the first reopening; and prior to 0001 hours local time, June 2, 1998, for the second reopening by telephone hotline number 206–526–6667 and 800–662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to manage the fishery to achieve but not exceed the quota, NMFS has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. This notice does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 9, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–15995 Filed 6–15–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297–8054–02; I.D. 061198A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the second seasonal apportionment of pollock total allowable catch (TAC) in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 12, 1998, until 1200 hrs, A.l.t., September 1, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Pearson, 907–486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The pollock TAC in Statistical Area 630 was established by the Final 1998 Harvest Specifications of Groundfish for the GOA (63 FR 12027, March 12, 1998) as 39,315 metric tons (mt) for the entire 1998 fishing year. In accordance with § 679.20 (a)(5)(ii)(B), the second seasonal apportionment of pollock TAC in Statistical Area 630 is 14,040 mt.

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the second seasonal apportionment of pollock TAC in Statistical Area 630 will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 13,540 mt and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

Maximum retainable bycatch amounts can be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the second seasonal TAC limitations and other restrictions on the fisheries established in the Final 1998 Harvest Specifications for Groundfish for the GOA as amended (63 FR 12027, March 12, 1998). It must be implemented immediately to prevent overharvesting the second seasonal apportionment of pollock TAC in Statistical Area 630 of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 11, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–15996 Filed 6–11–98; 4:06 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 115
Tuesday, June 16, 1998

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.

FEDERAL RESERVE SYSTEM

12 CFR Part 250

[Miscellaneous Interpretations; Docket R–1016]

Applicability of Section 23A of the Federal Reserve Act to Loans and Extensions of Credit Made by a Member Bank to a Third Party

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 23A of the Federal Reserve Act restricts the ability of a member bank to fund its affiliates through direct investments, loans, or certain other transactions (covered transactions). Section 23A deems transactions between a member bank and a nonaffiliated third party as covered transactions between the bank and its affiliate to the extent that proceeds of the transactions are used for the benefit of or transferred to the affiliate. The Board is proposing to grant two exemptions from section 23A for certain loans and extensions of credit made by an insured depository institution to customers that use the proceeds to purchase certain securities from or through the depository institution's registered broker-dealer affiliate. The first exemption would apply when the affiliate is acting solely as a broker or riskless principal in the securities transaction. The second exemption would apply when the extension of credit is made pursuant to a pre-existing line of credit that was not established for the purpose of buying securities from or through an affiliate. The Board proposes to grant these exemptions from section 23A to permit customers to gain more flexible use of the services of insured depository institutions and their registered broker-dealer affiliates, while still ensuring that the credit transactions are conducted in a manner that is consistent with safe and sound banking practices.

DATES: Comments must be submitted on or before July 21, 1998.

ADDRESSES: Comments, which should refer to Docket No. R–1016, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in Room MP–500 between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in section 261.12 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Thomas M. Corsi, Senior Counsel (202/452–3275), Pamela G. Nardolilli, Senior Counsel (202/452–3289), or Satish M. Kini, Senior Attorney (202/452–3818), Legal Division; or Molly S. Wassom, Deputy Associate Director, Banking Supervision and Regulation (202/452–2305), Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Diane Jenkins (202/452–3254).

SUPPLEMENTARY INFORMATION:

Background

Restrictions of Section 23A

Section 23A of the Federal Reserve Act, originally enacted as part of the Banking Act of 1933, is designed to prevent the misuse of a member bank's resources through ''non-arm's length'' transactions with its affiliates.[1] To achieve this purpose, section 23A establishes both quantitative limits and qualitative restrictions on transactions by a member bank with its affiliates. The statute places limits on ''covered transactions'' between a member bank and any single affiliate to no more than 10 percent of the bank's capital and surplus and limits aggregate covered transactions with all affiliates to no more than 20 percent of the bank's capital and surplus.[2] Covered transactions include extensions of credit, investments, and certain other transactions that expose the member bank to risk. Section 23A also requires that credit exposures to an affiliate be secured by collateral, the amount of which is statutorily defined.[3]

In addition to regulating direct transactions between a bank and its affiliates, section 23A deems any transaction between a member bank and any person to be a transaction between a member bank and an affiliate to the extent that the proceeds of the transaction are ''used for the benefit of, or transferred to,'' that affiliate.[4] This provision of the statute, commonly referred to as the ''attribution rule,'' is designed to prevent an evasion of the quantitative limits and collateral requirements of section 23A through the use of a third party that serves as a conduit for the flow of funds from the bank to its affiliates.[5]

Both the Board and Board staff have taken the position that, by means of the attribution rule, section 23A applies to loans made by a bank to a third party, where the proceeds of the loans are used to purchase various types of assets from the bank's affiliate.[6] In transactions in which a bank provides funds to a borrower to finance the purchase of assets from an affiliate of the bank, the Board and its staff have been concerned that the affiliate's need for cash or need

[1] 12 U.S.C. 371c. Although section 23A originally applied only to member banks, Congress has since applied the section to insured nonmember banks and savings associations in the same manner as it applies to member banks. *See* 12 U.S.C. 1828(j); 12 U.S.C. 1468.

[2] ''Capital and surplus'' has been defined by the Board as tier 1 and tier 2 capital plus the balance of an institution's allowance for loan and lease losses not included in tier 2 capital. 12 CFR 250.242.

[3] 12 U.S.C. 371c(c).

[4] 12 U.S.C. 371c(a)(2). Section 23A defines an affiliate to include ''any company that controls the member bank and any other company that is controlled by the company that controls the member bank.'' 12 U.S.C. 371c(b)(1).

[5] *See A Discussion of Amendments to Section 23A of the Federal Reserve Act Proposed by the Board of Governors of the Federal Reserve System* 36 n.1 (September 1981) (attached as an appendix to correspondence from Chairman Paul Volcker to the Chairman and Ranking Members of the House and Senate Committees on Banking, Housing and Urban Affairs, October 2, 1981).

[6] *See, e.g.,* Letter from J. Virgil Mattingly, General Counsel of the Board, to Ms. Charla Jackson (August 26, 1996) (crop-production loan to farmer who leases farm land from a bank's affiliate is covered by section 23A); F.R.R.S. ¶ 3–1146.5 (bank loan to finance a prospective purchaser's acquisition of an affiliate covered by section 23A); F.R.R.S. ¶ 3–1167.3 (bank loan to finance the purchase of shares issued by an affiliate deemed a covered transaction subject to section 23A).

to sell assets may improperly influence the bank's decision to extend credit.

Section 23A also gives the Board broad authority to grant exemptions from the statute's restrictions. Specifically, the statute permits the Board to exempt transactions or relationships, by regulation or by order, if such exemptions are ''in the public interest and consistent with the purposes of this section.'' [7]

Section 20 Operating Standards and Application of Section 23A

In August 1997, the Board revised the prudential limitations governing the activities of section 20 subsidiaries of bank holding companies and adopted Operating Standards to replace the existing firewalls.[8] One of the firewalls had prohibited a bank holding company and its subsidiaries (other than the underwriting subsidiary) from knowingly extending credit to customers to purchase (a) a bank-ineligible security underwritten by a section 20 subsidiary during the period of the underwriting or for 30 days thereafter, or (b) a bank-ineligible security in which the section 20 subsidiary makes a market.

In place of this firewall, the Board adopted Operating Standard # 6, which prohibits a bank from knowingly extending credit to a customer to purchase bank-ineligible securities that a section 20 subsidiary is underwriting or has underwritten within the past 30 days. The Operating Standard, however, allows an extension of credit to be made by a bank to a customer to purchase securities from a section 20 affiliate during the underwriting period, pursuant to a pre-existing line of credit not entered into in contemplation of the purchase of affiliate-underwritten securities. Operating Standard #6 does not otherwise prohibit a bank from lending to a customer to purchase securities from a section 20 affiliate.

At the same time that it adopted the Operating Standards, the Board affirmed that section 23A would apply to the types of credit transactions that Operating Standard #6 does not prohibit to the extent that the proceeds of the transactions would be used for the benefit of, or transferred to, an affiliate. Several commenters on the Board's proposal to adopt the Operating Standards raised concerns about the compliance and economic burdens associated with applying section 23A to the extensions of credit now permitted under Operating Standard #6.[9] The commenters argued that these burdens would cause banks to avoid making the types of loans permitted by the new Operating Standard, thereby minimizing the practical effect of eliminating the firewall. In response, the Board stated that it would consider whether an exemption from section 23A for those transactions to which the Operating Standard does not apply would be appropriate.

Proposal

The Board is proposing to grant two exemptions from the quantitative limitations and collateral restrictions of section 23A for certain loans and extensions of credit made by an insured depository institution, the proceeds of which are used to buy securities from a registered broker-dealer affiliate of the depository institution. The first proposed exemption from section 23A would apply when an insured depository institution lends to its customers for the purpose of purchasing third-party securities through a registered broker-dealer affiliate that is acting solely as broker (but not as principal) in the securities transaction with the customer or as riskless principal in the transaction with the customer.[10] In such circumstances, the customer would be purchasing securities through the depository institution's affiliated broker-dealer, which would be acting only on an agency or agency-equivalent basis, and the seller of the securities would be required to be a nonaffiliated third-party. The exemption would be applicable even if the broker-dealer affiliate of the insured depository institution retained part of the loan proceeds as a brokerage commission or, in the case of a riskless principal transaction, a mark-up for effecting the securities transaction.

The second proposed exemption would apply to extensions of credit that are made pursuant to a pre-existing line of credit, the proceeds of which are used to purchase securities from or through an affiliate that is a registered-broker dealer. Under the proposed exemption, the extensions of credit must be made by an insured depository institution pursuant to a pre-existing line of credit that (1) was not entered into in contemplation of the purchase of securities from or through an affiliate, and (2) is either unrestricted or the extension of credit is clearly consistent with any restrictions imposed. (For example, if the customer had a pre-existing line of credit limited to purchases of rated securities from an unaffiliated party, then the exemption would not apply to an extension of credit used to purchase unrated securities from or through an affiliate.) In determining whether the line of credit is truly pre-existing, examiners will consider the timing of the line of credit, the conditions imposed on the line of credit, and whether the line of credit has been used for purposes other than the purchase of securities from an affiliate.

The Board believes that the two proposed exemptions from the restrictions of section 23A are consistent with the purposes of the Federal Reserve Act. The exemptions would pose minimal risk to insured depository institutions. Under the first exemption, there is negligible risk that loans made would be used as a source of funding from an insured depository institution to its affiliates. The exemption may be used only when the depository institution's broker-dealer affiliate acts as a broker or riskless principal in a securities transaction. Accordingly, the securities being sold through the registered broker-dealer would not be carried in the inventory of the broker-dealer or an affiliate, and the loan proceeds, which would be initially transferred to the affiliate to purchase the securities, would be transferred in turn to the seller of the securities, which also would not be an affiliate of the insured depository institution.

The second exemption also presents little opportunity for a depository institution to benefit its affiliates. In circumstances in which there is a pre-existing line of credit that has been established for a purpose other than buying securities from or through an affiliate, there is little risk that the

[7] 12 U.S.C. 371c(e)(2).

[8] *See* 62 FR 45295, 45307 (1997) (codified at 12 CFR 225.200). Section 20 subsidiaries are companies that underwrite and deal in, to a limited extent, bank-ineligible securities. A bank-ineligible security is a security in which a member bank may not underwrite or deal.

[9] For example, commenters noted that a bank making a loan for the purchase of securities from its section 20 affiliate would need to monitor (1) whether the stocks being purchased by its customers were issues in which its section 20 affiliate was making a market, (2) the appropriate amount of collateral, (3) the length of time the collateral would need to be posted, and (4) whether there was room for the loan under the bank's section 23A quantitative limit on covered transactions.

[10] ''Riskless principal'' is the term used in the securities business to refer to a transaction in which a broker-dealer, after receiving an order to buy (or sell) a security for a customer, purchases (or sells) the security for its own account to offset a contemporaneous sale to (or purchase from) the customer. A broker-dealer acting as a riskless principal is not obligated to buy (or sell) a security for its customer until after the broker-dealer executes the offsetting purchase (or sale) for its own account. *See, e.g.*, 12 CFR 225.28(b)(7)(ii); *The Bank of New York Company, Inc.*, 82 Fed. Res. Bull. 748 (1996). Accordingly, riskless principal transaction are an alternative means for executing buy or sell orders on behalf of customers in a manner equivalent to an agency transaction.

depository institution either will be using a credit transaction to direct money to its affiliates in violation of section 23A or will ease its credit standards to benefit its affiliate.

The Board also believes that the proposed exemptions from section 23A are consistent with the public interest. The two exemptions would provide greater convenience to customers to gain more flexible use of the services of insured depository institutions and their registered broker-dealer affiliates, while still ensuring that the safety and soundness concerns of section 23A are met. In addition, the exemption that applies to pre-existing lines of credit would alleviate the compliance burdens associated with applying section 23A to extensions of credit that were not made in contemplation of a purchase of securities from a depository institution's section 20 affiliate.

Regulatory Flexibility Act Analysis

The Board certifies that adoption of this proposal is not expected to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Many small bank holding companies do not have registered broker-dealer affiliates. Many small banking organizations, therefore, would not be affected by the proposed rule.

In addition, the proposed rule would create an exemption from section 23A of the Federal Reserve Act for bank holding companies and insured depository institutions that have registered broker-dealer affiliates. Accordingly, the proposal may be expected to alleviate (rather than increase) compliance for affected small bank holding companies and their affiliates.

Paperwork Reduction Act

The Board has determined that the proposed rules do not involve the collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

List of Subjects in 12 CFR Part 250

Federal Reserve System.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 250 as follows:

PART 250—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 continues to read as follows:

Authority: 12 U.S.C. 78, 248(i) and 371c(e).

2. Section 250.244 is added to read as follows:

§ 250.244 Exemption from section 23A of the Federal Reserve Act for certain loans and extensions of credit made by an insured depository institution to a third party to purchase securities from an affiliate.

(a) Section 23A of the Federal Reserve Act (12 U.S.C. 371c) shall not apply to a loan or extension of credit by an insured depository institution to any person other than an affiliate if—

(1) The terms of the loan or extension of credit are consistent with safe and sound banking practices; and

(2) The proceeds of the loan or extension of credit are used to purchase securities through an affiliate that is a broker-dealer registered with the Securities and Exchange Commission, where

(i) The affiliate is acting solely as broker (but not as principal) in the securities transaction or as riskless principal in the securities transaction; and

(ii) The securities are not issued or sold by companies that are affiliates of the insured depository institution.

(b) This grant of exemption is applicable to a loan or extension of credit even if a portion of the proceeds are used by a borrower to pay brokerage commissions or, in the case of riskless principal transactions, mark-ups to the affiliate.

3. Section 250.245 is added to read as follows:

§ 250.245 Exemption from section 23A of the Federal Reserve Act for certain extensions of credit by an insured depository institution to a third party made pursuant to a pre-existing line of credit.

Section 23A of the Federal Reserve Act (12 U.S.C. 371c) shall not apply to an extension of credit by an insured depository institution to any person other than an affiliate if—

(a) The proceeds of the extension of credit are used to purchase securities from or through an affiliate that is a registered broker-dealer; and

(b) The extension of credit is made pursuant to, and consistent with any conditions imposed in, a pre-existing line of credit that was not established in contemplation of the purchase of securities from or through an affiliate.

By order of the Board of Governors of the Federal Reserve System, June 10, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–15934 Filed 6–15–98; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 250

[Miscellaneous Interpretations; Docket R–1015]

Applicability of Section 23A of the Federal Reserve Act to the Purchase of Securities From Certain Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 23A of the Federal Reserve Act restricts the ability of a member bank to fund its affiliates through asset purchases, loans, or certain other transactions (covered transactions). The Board is proposing to expand the types of asset purchases that are eligible for the exemption in section 23A(d)(6), which permits asset purchases where the assets have a readily identifiable and publicly available market quotation. This proposal would expand the ability of an insured depository institution to purchase securities from its registered broker-dealer affiliates, while still ensuring that the transactions are conducted in a manner that is consistent with safe and sound banking practices.

DATES: Comments must be submitted on or before July 21, 1998.

ADDRESSES: Comments, which should refer to Docket No. R–1015, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in Room MP–500 between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in § 261.12 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Pamela G. Nardolilli, Senior Counsel (202/452–3289) or Satish M. Kini, Senior Attorney (202/452–3818), Legal Division; or Molly S. Wassom, Deputy Associate Director, Banking Supervision and Regulation (202/452–2305), Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device of the Deaf (TDD), Diane Jenkins (202/452–3254).

SUPPLEMENTARY INFORMATION:

Background

Restrictions of Section 23A

Section 23A of the Federal Reserve Act, originally enacted as part of the Banking Act of 1933, is designed to prevent the misuse of a member bank's resources through ''non-arm's length'' transactions with its affiliates.[1] Section 23A limits covered transactions between a member bank and its subsidiaries and an affiliate to 10 percent of the institution's capital stock and surplus, and limits the aggregate amount of all transactions between a member bank and its subsidiaries and all of its affiliates to 20 percent of capital stock and surplus. The purchase of assets by a bank from its affiliates, including assets subject to repurchase, is included in the definition of covered transactions and is subject to the statute's quantitative limitation.

Section 23A also contains several exemptions from the statute's quantitative and collateral limitations. One exemption is contained in section 23A(d)(6), which exempts from the statute's quantitative limits, a purchase of an asset that has ''a readily identifiable and publicly available market quotation'' ((d)(6) exemption).[2] In addition, section 23A gives the Board broad authority to issue regulations and orders as may be necessary to administer and carry out the purposes of section 23A.[3]

In the past, institutions have been advised that the (d)(6) exemption was available for the purchase of assets, the price of which were recorded in widely disseminated publications that were readily available to the general public. Such assets included obligations of the United States, securities traded on exchanges, foreign exchange, certain mutual share funds, and precious metals. Other marketable assets could not meet this standard, however.

Proposal

The Board has received several requests from organizations (Petitioners) regarding the interpretation of the (d)(6) exemption. These requests were prompted, in part, by the Board's removal of the section 20 firewalls, which had prohibited many transactions between an insured depository institution and its affiliated section 20 subsidiary. Several Petitioners have stated that, although the removal of the firewall was welcomed, section 23A continues to limit certain transactions with their section 20 subsidiaries. Petitioners argue that certain prohibited transactions do not raise significant safety and soundness issues and impedes the efficient operations of the insured depository institution and the section 20 affiliate. In particular, Petitioners were concerned about the ability of the insured depository institution to purchase securities under the (d)(6) exemption because of the narrow reading that had been imposed on the exemption, which prevented the purchase of otherwise marketable assets.

In light of technological and market changes and to address concerns of the Petitioners, the Board is proposing to expand the kind of assets that may be eligible for the (d)(6) exemption to include other securities that, although not so widely traded as to warrant publication of their activity in publications of general circulation, are actively traded and whose price can be obtained from independent reliable sources, if the securities are purchased from a registered broker-dealer. The Board is proposing that this test can be met for certain assets that are treated as having a ''ready market,'' as defined by the Securities and Exchange Commission (SEC), and where such assets are purchased at publicly available market quotations from a registered broker-dealer.[4]

This ''ready market'' definition ensures that a ready, competitive market exists for that asset. In addition, the marketability of the asset meets a standard already used by registered broker-dealers and that is monitored by the SEC. Under the SEC net capital requirements, a registered broker-dealer must deduct 100 percent of the carrying value of securities and certain other assets if there is not a ''ready market'' for the asset. The purpose of the ready market test is to identify securities with a liquid market to ensure that a broker-dealer can liquidate a security and receive its value. The type of securities that meet this definition include obligations of the United States, including agency-issued securities, as well as many asset-backed, corporate debt, and sovereign debt securities.

In addition to meeting the ''ready market'' standard, the Board proposes that any security that is purchased as exempt under (d)(6) receive an investment grade rating from a nationally recognized statistical rating organization (NRSRO). Ratings that are stated by an NRSRO to be ''under review'' for a possible downgrade to below investment grade would not be viewed as ''investment grade for meeting this requirement.''

In addition to requiring that a security have a ready market, the Board believes that the price of each security must be established from sources other than the purchasing bank and its affiliates. Thus, in addition to demonstrating that the security has a ready market and is rated by an NRSRO, the Board believes that the bank must be able to demonstrate that the price paid by the bank for the security was a competitive price that examiners can verify.

Securities that meet the ''ready market'' standard may not always be verifiable through a widely disseminated news source, however. Accordingly, the Board proposes to allow alternative reliable pricing sources, such as electronic services from real-time financial networks that provide indicative data to determine that the price that the bank pays is on market terms. Such pricing services could be used to qualify a bank's purchase from a registered broker-dealer under the (d)(6) exemption so long as the bank is able to obtain a quote on the *exact* security it wishes to purchase. In the alternative, if a security was so thinly traded that a quote from a ''screen'' or other similar source was not available, the Board is proposing to adopt a standard that an insured depository institution could purchase the security as an exempt transaction if the insured depository institution obtained at least two *actual* independent dealer quotes for the particular security from unaffiliated registered broker-dealers, which must be based, in part, on the amount of the security that the bank proposes to purchase. The insured depository institution could purchase the security from the registered broker-dealer at a price no higher than the average of the prices obtained from the unaffiliated broker-dealers. To assist examiners in verifying the price paid, documentation for (d)(6) transactions must be maintained in the insured depository institution's file for five years.

The Board's proposal would not allow, however, an insured depository

[1] By its terms, section 23A only applies to member banks. The Federal Deposit Insurance Act extended the coverage of section 23A to all FDIC-insured nonmember banks. 12 U.S.C. 1828(j). The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 applies section 23A to FDIC-insured savings associations. 12 U.S.C. 1468.

[2] 12 U.S.C. 371c(d)(6). Although such asset purchases are exempt from the quantitative restrictions of section 23A, the (d)(6) exemption requires the bank's purchase be consistent with safe and sound banking practices. 12 U.S.C. 371c(a)(4).

[3] 12 U.S.C. 371c(e)(1).

[4] 17 CFR 240.15c3–1(c)(11)(i). The SEC defines a ready market as including a recognized established securities market in which there exists independent *bona fide* offers to buy and sell so that a price reasonably related to the last sales price or current *bona fide* competitive bid and offer quotations can be determined for a particular security almost instantaneously and where payment will be received in settlement of a sale at such price within a relatively short time conforming to trade custom.

institution to purchase certain securities under the (d)(6) exemption even if the proposed criteria are met. The proposed interpretations would prohibit the purchase under the (d)(6) exemption of any securities issued by an affiliate, which would include the capital stock of an affiliate, asset-backed securities issued by an affiliate, of shares of mutual funds advised by the bank or an affiliate, unless those instruments are obligations of the United States or fully guaranteed by the United States or its agencies as to principal and interest. The Board believes that safety and soundness requires restrictions on an insured depository institution's ability to purchase an affiliate's securities to help prevent the unlimited funding of its affiliates, and the restriction is consistent with other provisions of section 23A, which limit the insured depository institution's ability to lend to an affiliate or accept the affiliate's securities as collateral.[5]

In addition, bank-ineligible securities that are underwritten by an affiliate would not qualify for the (d)(6) exemption during the period of the underwriting or for 30 days thereafter. This restriction is similar to Operating Standard 6 that the Board has imposed on section 20 subsidiaries, which prohibits an insured depository institution from extending credit to a customer secured by, or for the purpose of purchasing, any bank-ineligible security that a section 20 affiliate is underwriting or has underwritten within the past 30 days.[6] The Board believes that the market value of securities may be uncertain during the underwriting period and that the conflicts of interest that may arise during the underwriting period cause enough concern to require this limitation. Banks, of course, could continue to buy nonexempt securities from an affiliate subject to the quantitative limits of section 23A and could buy such securities from unaffiliated parties without any section 23A limit, so long as the purchase was otherwise authorized by law. In addition, this interpretation of (d)(6) does not interfere with the ability of an insured depository institution to purchase assets from affiliates other than the registered broker-dealer so long as the price of such assets are recorded in widely disseminated publications that are readily available to the general public.

The Board understands that these criteria are more restrictive than the criteria proposed by some Petitioners in their request for the Board's review of the (d)(6) exemption. For example, it has been proposed that if the bank cannot obtain a quote on the exact security, the bank should be able to rely on quotes for ''comparable securities''—securities with the same rating and other similar characteristics—to determine the correct price and to permit the bank to exclude the purchase from its quantitative limits. The purchase of such securities, which would be without any type of quantitative limit if purchased as a (d)(6) exempt asset, would raise significant safety and soundness concerns, however, because it would be difficult for examiners to verify compliance with the (d)(6) exemption requirement that the price paid was determined by reference to a competitive market for the security.

Although the Board believes that the expansion of the types of assets that are eligible for the (d)(6) exemption is warranted, the Board believes it is prudent to limit expansion at this time. The Board, as part of its review of the public comments on this proposal, will consider other suggested pricing mechanisms if such mechanisms can meet the statutory standards.

Regulatory Flexibility Act Analysis

The Board certifies that adoption of this proposal is not expected to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most small bank holding companies and insured depository institutions do not have registered broker-dealer affiliates. For this reason, small bank holding companies would not be affected by the proposed rule.

In addition, the proposed rule would expand the type of transactions that an insured depository institution may engage in with its affiliate. Accordingly, the proposal does not impose more burdensome requirements on depository institutions, their holding companies, and their affiliates than are currently applicable.

Paperwork Reduction Act

The Board has determined that the proposal does not involve the collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

List of Subjects in 12 CFR Part 250

Federal Reserve System.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 250 as follows:

PART 250—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 continues to read as follows:

Authority: 12 U.S.C. 78, 248(i) and 371c(e).

2. Section 250.246 is added to read as follows:

§ 250.246 Applicability of section 23A of the Federal Reserve Act to the purchase of securities by an insured depository institution.

The purchase of securities by an insured depository institution from an affiliate that is a broker-dealer is exempt under section 23A(d)(6) of the Federal Reserve Act (12 U.S.C. 317 c(d)(6)) if:

(a) The broker-dealer is registered with the Securities and Exchange Commission;

(b) The securities have a ''ready market,'' as defined by 17 CFR 240.15c3–1(c)(11)(i);

(c) The securities have received an investment grade rating from a nationally recognized statistical rating organization (NRSRO), and a NRSRO has not stated that the rating is under review for a possible downgrade to below investment grade;

(d) The securities are not purchased during an underwriting or within 30 days of an underwriting if an affiliate is an underwriter of the security;

(e) The price paid for the security can be verified by

(1) A widely disseminated news source;

(2) An electronic service that provides indicative data from real-time financial networks; or

(3) Two or more actual independent dealer quotes on the exact security to be purchased, where the price paid is no higher than the average of the price quotes obtained from the unaffiliated broker-dealers;

(f) The securities are not issued by an affiliate, unless the securities are obligations of the United States or fully guaranteed by the United States or its agencies as to principal and interest.

By order of the Board of Governors of the Federal Reserve System, June 10, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–15933 Filed 6–15–98; 8:45 am]

BILLING CODE 6210–01–P

[5] For example, if the restriction on the purchase of an affiliate's securities is not imposed, an insured depository institution could purchase the debt securities of an affiliate without limit, but a collateralized loan to the affiliate would be limited to 10 percent of the institution's capital and surplus.

[6] Amendments to Restrictions in the Board's Section 20 Orders number 6, 62 F.R. 45295, 45307 (1997) (to be codified at 12 CFR 225.200). A bank-ineligible security is a security that a member bank may not deal in or underwrite.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–70–AD]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to certain de Havilland Model DHC–8–100, –200, and –300 series airplanes, that currently requires modification of the attitude and heading reference systems (AHRS). That AD was prompted by a report of loss of power to both AHRS's during flight due to a faulty terminal block to which the signal ground for the AHRS's is connected. The actions specified by that AD are intended to prevent simultaneous power loss to both AHRS's, which could result in reduced controllability of the airplane. This action would reduce the applicability of the existing AD.

DATES: Comments must be received by July 16, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–70–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Luciano Castracane, Aerospace Engineer, Systems and Equipment Branch, ANE–172, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7535; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–70–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–70–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 19, 1997, the FAA issued AD 97–20–10, amendment 39–10147 (62 FR 50861, September 29, 1997), applicable to certain de Havilland Model DHC–8–100, –200, and –300 series airplanes, to require modification of the attitude and heading reference systems (AHRS). That action was prompted by a report of loss of power to both AHRS's during flight due to a faulty terminal block to which the signal ground for the AHRS's are connected. The requirements of that AD are intended to prevent simultaneous power loss to both AHRS's, which could result in reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since issuance of that AD, the Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, has issued Canadian airworthiness directive CF–97–01R2, dated August 13, 1997. This revision supersedes Canadian airworthiness directive CF–97–01R1, dated February 3, 1997, which was referenced in AD 97–20–10 as the parallel Canadian airworthiness directive for AD 97–20–10. The only change effected by CF–97–01R2 is to reduce the list of affected airplanes to serial numbers 3 through 472 inclusive. The effectivity listing of CF–97–01R2 limits accomplishment of the modification of the AHRS to those airplanes on which the modification was not accomplished in production.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCA has kept the FAA informed of the situation described above. The FAA has examined the findings of the TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would revise AD 97–20–10 to continue to require modification of the AHRS. The proposed AD also would reduce the applicability of that AD to airplanes having serial numbers 3 through 472 inclusive.

Cost Impact

The FAA estimates that 167 de Havilland Model DHC–8–100, –200, and –300 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $10 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $41,750, or $250 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10147 (62 FR 50861, September 29, 1997), and by adding a new airworthiness directive (AD), to read as follows:

De Havilland, Inc.: Docket 98–NM–70–AD. Revises AD 97–20–10, Amendment 39–10147.

Applicability: Model DHC–8–100, –200, and –300 series airplanes, serial numbers 3 through 472 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent simultaneous power loss to both attitude and heading reference systems (AHRS), which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 400 hours time-in-service after November 3, 1997 (the effective date of AD 97–20–10, amendment 39–10147), modify the AHRS's, in accordance with Bombardier Alert Service Bulletin S.B. A8–34–117, Revision 'C', dated February 14, 1997.

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

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

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

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–97–01R2, dated August 13, 1997.

Issued in Renton, Washington, on June 9, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15885 Filed 6–15–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 10

[Docket No. 98N–0361]

Administrative Practices and Procedures; Internal Agency Review of Decisions; Companion Document to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the regulations governing the review of agency decisions by inserting a statement that sponsors, applicants, or manufacturers of drugs (including biologics) or devices may request review of a scientific controversy by an appropriate scientific advisory panel, or an advisory committee. The agency is taking this action to clarify the availability of review of scientific controversies by such advisory panels or committees. This proposed rule is a companion document to a direct final rule published elsewhere in this issue of the **Federal Register**. If FDA receives any significant adverse comment, the direct final rule will be withdrawn, and the comments will be considered in the development of a final rule using usual notice and comment rulemaking based on this proposed rule.

DATES: Comments must be received on or before August 31, 1998.

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: Suzanne M. O'Shea, Office of the Chief Mediator and Ombudsman (HF–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3390.

SUPPLEMENTARY INFORMATION:

I. Discussion

On November 21, 1997, President Clinton signed into law the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115). Section 404 of FDAMA amends the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*) by adding a new provision, Dispute Resolution (section 562 of the act (21 U.S.C. 360bbb-1)). Under the dispute resolution provision, FDA is to determine the existence of procedures

for sponsors, applicants, and manufacturers of drugs (including biologics) or devices to request review of scientific controversies. Where such procedures do not exist, FDA is directed to issue a regulation establishing a procedure by which a sponsor, applicant, or manufacturer of a drug or device may request review of a scientific controversy, including review by an appropriate scientific advisory panel as described in section 505(n) of the act[1] (21 U.S.C. 355(n)), or an advisory committee as described in section 515(g)(2)(B) of the act (21 U.S.C. 360e(g)(2)(B)).

FDA procedures currently provide mechanisms for sponsors, applicants, or manufacturers of drugs and devices to request review of all scientific controversies. Agency regulations and policy statements contain numerous procedures for obtaining review of scientific controversies affecting regulated products, including some that provide for review by an FDA advisory panel or committee. Moreover, any interested person[2] may obtain review of any agency decision by raising the matter with the supervisor of the employee who made the decision. If the issue is not resolved at the supervisor's level, the interested person may request that the matter be reviewed at the next higher supervisory level. This process may continue through the agency's chain of command (§ 10.75 (21 CFR 10.75)).

Notwithstanding the existence of these dispute resolution mechanisms, FDA intends to amend § 10.75 in light of FDAMA, to clarify that sponsors, applicants, or manufacturers of a drug or device subject to the act, or a product covered by the Public Health Service Act (42 U.S.C. 262), may request review of scientific controversies by an appropriate scientific advisory committee. If this rule is adopted, FDA would recommend that sponsors, applicants, and manufacturers continue to use established mechanisms for obtaining review of scientific controversies prior to seeking review by an advisory committee. FDA recognizes however, that in appropriate circumstances, review by such an advisory panel or committee may provide FDA with useful advice and recommendations about how the agency may best resolve a controversy.

[1] FDA understands the term ''scientific advisory panel'' to mean a public advisory committee as discussed in 21 CFR part 14.

[2] An interested person, as defined in 21 CFR 10.3, is a person who submits a petition or comment or objection or otherwise asks to participate in an informal or formal administrative proceeding or court action. This definition of interested person includes a sponsor, applicant, or manufacturer of a drug or device.

II. Rulemaking Procedures

In the final rules section of this issue of the **Federal Register**, FDA is announcing the adoption of this amendment through direct final rulemaking procedures. FDA described its procedures for direct final rulemaking in the **Federal Register** of November 21, 1997 (62 FR 62466). This action is appropriate for direct final rulemaking because it is a noncontroversial amendment to FDA's regulations that is in accord with FDAMA. Furthermore, FDA anticipates no significant adverse comments. Consistent with FDA's procedures for direct final rulemaking, FDA will withdraw the direct final rule if it receives any significant adverse comment. If the direct final rule is withdrawn, FDA will consider all comments received to develop a final rule using the usual notice and comment rulemaking procedures based on this proposed rule.

FDA is providing a 75-day period for comment on this companion proposed rule, to run concurrently with the comment period for the direct final rule. This comment period begins on June 16, 1998, and ends on August 31, 1998. If FDA receives any significant adverse comment within the comment period, it intends to publish a document in the **Federal Register** to withdraw the direct final rule by September 29, 1998. If the direct final rule is withdrawn, FDA will follow its usual procedures for notice-and-comment rulemaking based on this proposed rule. If FDA does not receive any significant adverse comment, the agency will take no further action on this proposed rule. In that event, FDA will publish a document in the **Federal Register** by September 29, 1998, to confirm the October 29, 1998, effective date of the direct final rule. For additional information, see the direct final rule published in the final rules section of this issue of the **Federal Register**.

III. Analysis of Impacts

A. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

B. Economic Impact

In accordance with Executive Order 12866, FDA has carefully analyzed the economic effects of this rule and has determined that it is not a major rule as defined by the Executive Order.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this rule will have on small entities, including small businesses, and has determined that no significant economic impact on a substantial number of small entities will derive from this action.

IV. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Request for Comments

Interested persons may, on or before August 31, 1998, submit to the Dockets Management Branch (address above) written comments regarding this companion proposed rule, which will also be considered as comments on the direct final rule. 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.

List of Subjects in 21 CFR Part 10

Administrative practice and procedure, News media.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 10 be amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

1. The authority citation for 21 CFR part 10 is revised to read as follows:

Authority: 5 U.S.C. 551–558, 701–706; 15 U.S.C. 1451–4161; 21 U.S.C. 141–149, 321–397, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

2. Section 10.75 is amended by adding a sentence at the end of paragraph (b) to read as follows:

§ 10.75 Internal agency review of decisions.

* * * * *

(b) * * * A sponsor, applicant, or manufacturer of a drug or device regulated under the act or the Public

Health Service Act (42 U.S.C. 262), may request review of a scientific controversy by an appropriate scientific advisory panel as described in section 505(n) of the act, or an advisory committee as described in section 515(g)(2)(B) of the act.

* * * * *

Dated: June 4, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–15814 Filed 6–15–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG–110403–98]

RIN 1545–AW28

Federal Employment Tax Deposits—De Minimis Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the deposits of Federal employment taxes. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by September 14, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–110403–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–110403–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning submissions, Michael Slaughter, (202) 622–7180; concerning the regulations, Vincent Surabian, (202) 622–4940 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Employment Tax and Collection of Income Tax at Source Regulations (26 CFR part 31) relating to section 6302. The temporary regulations change the de minimis rule for the deposit of Federal employment taxes. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information: The principal author of these regulations is Vincent Surabian, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

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

Par. 2. In § 31.6302–1, paragraph (f)(4) is revised to read as follows:

§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

* * * * *

(f) * * *

(4) [The text of proposed § 31.6302–1(f)(4) is the same as the text of § 31.6302–1T(f)(4)].

* * * * *

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–15985 Filed 6–15–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CCD 08–98–018]

RIN 2115–AE46

Special Local Regulations; Eighth Coast Guard District Annual Marine Events

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise Table 1 to 33 CFR 100.801, the list of annual marine events that occur within the Eighth Coast Guard District. This proposed revision will also result the Eighth Coast Guard District's absorption of the territories previously encompassed by Second the Coast Guard District.

DATES: Comments must be received on or before August 17, 1998.

ADDRESSES: Comments should be mailed to Commander (dl), Eighth Coast Guard District, 501 Magazine Street, New Orleans, LA 70130–3396. The comments will be available for inspection and copying at the District Legal Office, Room 1311, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA. Office hours are

between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Project Attorney, Lieutenant Commander Jim Wilson at Commander (dl), Eighth Coast Guard District, 501 Magazine Street, New Orleans, LA 70130–3396, (504) 589–6188.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and address, identify this rulemaking [CGD 08–98–018] and the specific section of this proposal to which each comment applies, and give a reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclosure a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. The Coast Guard many change this proposed rule in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Attorney at the address under **ADDRESSES**. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a notice in the **Federal Register.**

Background and Purpose

This rulemaking will update the existing list of annual marine events in the Eighth Coast Guard District. This revision will also reflect the Eighth Coast Guard District's absorption of the territories previously encompassed by the Second Coast Guard District.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. 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 proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The economic impact is not significant because this proposed rule serves only to update an already existing list of marine events and does not change the process for reviewing such occurrences.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned, operated, and not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The segment of the listed waterways regulated is the minimum necessary to assure the safety of life and property on or adjacent to navigable waters. These regulations are relatively brief in duration and will only affect marine traffic. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. If, however, you think your business or organization qualifies as a small entity and this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think your business qualifies and in what way and to what degree this proposed rule will economically affect it.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard encourages small businesses to participate in this rulemaking. The Coast Guard will assist small entities in understanding this proposed rule so that they can better evaluate the rule's effect on them. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, contact Project Attorney, Lieutenant Commander Jim Wilson at Commander (dl), Eighth Coast Guard District, 501 Magazine Street, New Orleans, LA 70130–3396, (504) 589–6188.

Collection of Information

No information is collected under this proposed rule. This rule complies with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

Federalism Implications

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard is proposed to revise its list of recurring marine events. The listing itself will not affect the environment. When an event application is received, the Coast Guard will conduct an environmental analysis for the event. Under figure 2–1 paragraph (34)(h) of with Coast Guard Commandant Instruction M16475.1C, this proposed revision is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

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

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposed to amend part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46; and 33 CFR 100.35.

§ 100.201 [Removed]

2. Remove § 100.201.

3. Section 100.801 is amended by revising Table 1 to read as follows:

§ 100.80 Annual Marine Events in the Eighth Coast Guard District.

* * * * *

Table 1

Group Upper Mississippi River

Fair St. Louis
Sponsor: Fair St. Louis Committee
Date: 3 Days—1st Week in July
Regulated Area: Upper Mississippi River miles 179.2–180

Fourth of July River Front Blast
Sponsor: Alton Exposition Commission
Date: 1 Day—1st Week in July
Regulated Area: River Front Park, Upper Mississippi River miles 202.5–203.5, Alton, IL

Busch Beer Drag Boat Classic
Sponsor: St. Louis Drag Boat Association
Date: 2 Days—1st or 2nd Week of September

Regulated Area: Kaskaskia River miles 28–29, New Athens, IL
The Great Steamboat Race
Sponsor: Delta Queen Steamboat Company
Date: 1 Day—4th of July
Regulated Area: Upper Mississippi River miles 173.6–179.2, St. Louis, MO
Riverfest Power Boat Grand Prix
Sponsor: Twin City Power Boat Association
Date: 1 Day—2nd Saturday in June
Regulated Area: Upper Mississippi River miles 980–981, Little Falls, MN
Oak Ridge Sprints—Rowing Race
Sponsor: Oak Ridge Rowing Association
Date: 3 Days—3rd Weekend in July
Regulated Area: Clinch River miles 49.8–51.1
W.A.M.S.O. Ball Fireworks
Sponsor: St. Paul Parks and Recreation
Date: 1 Day—1st or 2nd Saturday in June
Regulated Area: Upper Mississippi River miles 839.1–839.7, St. Paul, MN
Winona Downtown Arts & River Festival
Sponsor: Winona Downtown Cooperative
Date: 2 Days—2nd or 3rd Weekend in June
Regulated Area: Upper Mississippi River miles 725–726, Winona, MN
La Crosse Riverfest
Sponsor: Riverfest Inc.
Date: 5 Days—Last Week of June or 1st Week of July
Regulated Area: Upper Mississippi River miles 698–699, La Crosse, WI
Steamboat days
Sponsor: Winona Area Jaycees
Date: 3 Days—1st Weekend in July
Regulated Area: Upper Mississippi River miles 725–726, Winona, MN
Independence Day Celebration
Sponsor: Marquette American Legion
Date: 2 Days—1st Week in July
Regulated Area: Upper Mississippi River miles 634.5–634.7, Marquette, IA
City of Redwing 4th of July Fireworks
Sponsor: City of Redwing
Date: 1 Day—4th of July
Regulated Area: Upper Mississippi River miles 790–791, Red Wing, MN
City of Minneapolis 4th of July Fireworks
Sponsor: City of Minneapolis
Date: 1 Day—4th of July
Regulated Area: Upper Mississippi River miles 854.7—855.8, Minneapolis, MN
Celebrate the Bridge Regatta
Sponsor: Minneapolis Rowing Club
Date: 1 Day—2nd or 3rd Saturday in July
Regulated Area: Upper Mississippi River miles 849.8–850.4, Minneapolis, MN
Hastings Rivertown Days
Sponsor: Hastings Chamber of Commerce
Date: 3 Days—3rd Weekend in July
Regulated Area: Upper Mississippi River miles 813–815.2, Hastings, MN
Lumberjack Days Festival
Sponsor: St. Croix Events and/or City of Stillwater
Date: 4 Days—3rd or 4th Weekend in July
Regulated Area: Lower St. Croix River miles 22.9–23.5, Stillwater, MN
Minneapolis Aquatennial
Sponsor: Minneapolis Aquatennial Association
Date: 9 Days—3rd Weekend through 4th Weekend in July
Regulated Area: Upper Mississippi River miles 854.7–856.2, Minneapolis, MN
Big Splash Festival
Sponsor: City of Prairie du Chien and Lentzkow Racing
Date: 4 Days—3rd Weekend of July
Regulated Area: Upper Mississippi River miles 634.5–636, Prairie du Chien, WI
River City Days
Sponsor: Red Wing Chamber of Commerce
Date: 2 Days—1st or 2nd Weekend in August
Regulated Area: Upper Mississippi River miles 790–792, Red Wing, MN
River Feast
Sponsor: Capital City Partnership d.b.a. River Feast
Date: 1 Day—3rd or 4th Saturday in July
Regulated Area: Upper Mississippi River miles 839–839.8, St. Paul, MN
Riverboat Days
Sponsor: City of Yankton, Twin City Power Boat Association, WNAX Radio
Date: 3 Days—3rd Weekend in August
Regulated Area: Missouri River miles 805–806, Yankton, SD
Labor Day Celebration
Sponsor: City of McGregor Chamber of Commerce
Date: 4 Days—Last Weekend in August
Regulated Area: Upper Mississippi River miles 633–634, McGregor, IA
Minnesota Orchestra on the Mississippi Fireworks Show
Sponsor: City of St. Paul Parks and Recreation
Date: 1 Day—1st or 2nd Saturday in September
Regulated Area: Upper Mississippi River miles 839.1–839.7, St. Paul, MN

Group Ohio Valley

TRRA Scholastic Sprint
Sponsor: Three Rivers Rowing Association
Date: 1 Day—1st Sunday in May
Regulated Area: Allegheny River PA miles 2–4
Albert Gallatin Regatta
Sponsor: Point Marion Rotary Club
Date: 2 Days—Saturday & Sunday of Memorial Day Weekend
Regulated Area: Monongahela River miles 89.9–90.8
Blessing of the Fleet
Sponsor: Pittsburgh Safe Boating Committee
Date: 1 Day—2nd or 3rd Sunday in June
Regulated Area: Allegheny River miles 0.0–0.2
Saint Brendan Cup Rowing Race
Sponsor: Pittsburgh Irish Rowing Club
Date: 1 Day—2nd or 3rd Saturday in June
Regulated Area: Ohio River miles 7–9
Lottie McAlice Rowing Race
Sponsor: Three Rivers Rowing Association
Date: 2 Days—Saturday & Sunday Near July 15
Regulated Area: Allegheny River miles 2–3
Oakmont Regatta
Sponsor: Oakmont Yacht Club
Date: 2 Days—Last Saturday and Sunday in July
Regulated Area: Allegheny River miles 11.8–12.3
City of Pittsburgh Light Up Night Fireworks
Sponsor: Citiparks
Date: 1 Day—1st Friday in November
Regulated Area: Ohio River miles 0.0–0.2
City of Pittsburgh July 4th Celebration
Sponsor: APR Events Group
Date: 1 Day—4th of July
Regulated Area: Ohio River miles 77–78
Steubenville Regatta Rumble On The River
Sponsor: Steubenville Regatta And Racing Association, Inc.
Date: 3 Days—Friday, Saturday & Sunday nearest August 15
Regulated Area: Ohio River miles 65–67
Pittsburgh Three Rivers Regatta
Sponsor: Pittsburgh Three Rivers Regatta, Inc.
Date: 7 Days—End of July or Beginning of August
Regulated Area: One mile around

point at confluence of Allegheny River miles 0.0–0.1, Monongahela River miles 0.0–0.1, and Ohio River miles 0.0–0.1

Armstrong County Regatta
Sponsor: Three Rivers Outbound Racing Association
Date: 2 Days—Saturday & Sunday nearest August 15
Regulated Area: Allegheny River miles 43.8–45.7

Beaver County Riverfest
Sponsor: Beaver County Chamber of Commerce
Date: 3 Days—Friday, Saturday & Sunday nearest August 15
Regulated Area: Ohio River miles 25.1–25.8, Beaver River miles 0.1–0.3

Head of The Ohio
Sponsor: Pittsburgh Mercy Foundation
Date: 1 Day—1st Saturday in October
Regulated Area: Allegheny River miles 0.0–3.3

River Heritage Days Regatta And Powerboat Races
Sponsor: River Heritage Days Committee
Date: 2 Days—Saturday & Sunday—2nd or 3rd Weekend in June
Regulated Area: Ohio River miles 127.6–128.5, New Martinsville, WV

Point Pleasant Sternwheel Regatta
Sponsor: City of Point Pleasant
Date: 3 Days—Last Weekend in June
Regulated Area: Ohio River miles 260–261, Kanawha River miles 0.0–0.5, Point Pleasant, WV

St. Albans Riverfest
Sponsor: St. Albans Riverfest, Inc.
Date: 2 Days—1st Weekend in July
Regulated Area: Kanawha River miles 46–47, St. Albans, WV

Summer Motion Festival Tri-State Fireworks
Sponsor: Tri-State Fair and Regatta Committee
Date: 1 Day—4th of July
Regulated Area: Ohio River miles 322.4–322.6, Ashland, KY

Parkersburg Homecoming Festival
Sponsor: Parkersburg Homecoming Festival
Date: 2 Days—3rd Weekend in August
Regulated Area: Ohio River miles 184–185, Parkersburg, WV

Charleston Sternwheel Regatta
Sponsor: Charleston Festival Commission
Date: 4 Days—The 2 Weekends before Labor Day
Regulated Area: Kanawha River miles 57–59, Charleston, WV

Ohio River Sternwheel Festival
Sponsor: Ohio River Sternwheel Festival Commission
Date: 2 Days—1st or 2nd Weekend in September
Regulated Area: Ohio River miles 170–180, Marietta, OH

Thunder Over Louisville
Sponsor: Thunder Over Louisville
Date: 1 Day—3rd Saturday in April
Regulated Area: Ohio River miles 602–605, Louisville, KY

Kentucky Derby Festival Great Steamboat Race
Sponsor: Kentucky Derby Festival/Belle of Louisville Operating Board
Date: 1 Day—Last Week in April or First Week in May
Regulated Area: Ohio river 597–604, Louisville, KY

Thunder On the Ohio
Sponsor: Evansville Freedom Festival
Date: 3 Days—Last Weekend in June
Regulated Area: Ohio River miles 792–793, Evansville, KY

Augusta Sternwheel Days
Sponsor: City of Augusta/Sternwheel Days Committee
Date: 1 Day—Last Saturday in June
Regulated Area: Ohio River miles 426–429, Augusta, KY

Indiana Governor's Cup
Sponsor: Madison Regatta Inc.
Date: 3 Days—1st Weekend in July
Regulated Area: Ohio River miles 557–558, Madison, KY

Kentucky Drag Boat Association Inc.: Drag Boat Races
Sponsor: Kentucky Drag Boat Association Inc.
Date: 3 Days—End of August
Regulated Area: Green River miles 70–71.5, Livermore, KY

WEBN/Toyota Fireworks
Sponsor: WEBN
Date: 1 Day—Sunday before Labor Day
Regulated Area: Ohio River 469.2–470.5, Cincinnati, OH

Ducks On The Ohio
Sponsor: Goodwill Industries, Inc.
Date: 1 Day—2nd or 3rd Weekend in September
Regulated Area: Ohio River miles 792–793, Evansville, KY

Head of Licking Regatta
Sponsor: Kendle
Date: 1 Day—Last Saturday in September
Regulated Area: Licking River miles 0.0–3.5, Newport, KY

Fleur De Lis Regatta
Sponsor: City of Louisville
Date: 2 Days—Last Weekend in September
Regulated Area: Ohio river miles 602–604

Eskimo Escapades—Water Ski Race
Sponsor: Skiers of Knoxville, TN
Date: 1 Day—2nd Saturday in January
Regulated Area: Tennessee River miles 648–649

Tom White Invitational—Rowing
Sponsor: Oak Ridge Rowing Association
Date: 1 Day—2nd or 3rd Saturday in March
Regulated Area: Clinch River miles 49.8–51.1

Oak Ridge Scholastics—Rowing Shells
Sponsor: Oak Ridge Rowing Association
Date: 1 Day—4th Saturday in April
Regulated Area: Clinch River miles 49.8–50.8

Blessing of the Fleet—Parade of Boats
Sponsor: Jonathan Aurora Action Committee
Date: 1 Day—2nd or 3rd Weekend in May
Regulated Area: Tennessee River miles 42–43

Annual Boat Review—Marine Parade
Sponsor: Chattanooga Marine Trade Association
Date: 1 Day—1st Saturday in May
Regulated Area: Tennessee River miles 471–478

Festival On the Lake—Rowing Race
Sponsor: Oak Ridge Rowing Association
Date: 2 Days—4th Weekend in June
Regulated Area: Clinch River miles 50.3–50.8

Riverbend Festival—Concerts and Fireworks
Sponsor: Friends of the Festival
Date: 4 Days—1st & 2nd Weekend in June
Regulated Area: Tennessee River miles 463.4–464.5

Tennessee State Knee Board Tournament—Water Ski
Sponsor: Team Carolina
Date: 1 Day—2nd Saturday in June
Regulated Area: Tennessee River miles 615.8–616.2

Annual Superman Celebration—Fireworks
Sponsor: Metro Chamber
Date: 1 Day—2nd Saturday in June
Regulated Area: Ohio river miles 942–943

Chattanooga Dam Triathlon—Lake Swim
Sponsor: Chattanooga Track Club
Date: 1 Day—4th Sunday in June
Regulated Area: Tennessee River miles 471–471.5

Fitness System's Lock Triathlon—Lake Swim
Sponsor: Greater Knoxville Triathlon Club
Date: 1 Day—4th Weekend in July
Regulated Area: Clinch River miles 22–23

Paducah Summer Festival—Fireworks
Sponsor: Paducah Promotions
Date: 1 Day—4th Weekend In July
Regulated Area: Ohio River miles 934–935

Independence Day Celebration—Fireworks

Sponsor: Paducah Parks Department
Date: 1 Day—4th of July
Regulated Area: Ohio River miles 935.5–936

Rocketman Triathlon—Lake Swim
Sponsor: Spring City Triathletes
Date: 1 Day—2nd or 3rd Saturday in July
Regulated Area: Tennessee River miles 324–324.5

Independence Day Celebration—Boat Parade and Fireworks
Sponsor: Metropolitan Board of Parks and Recreation
Date: 1 Day—4th of July
Regulated Area: Cumberland River miles 190–191

4th of July Celebration—Fireworks
Sponsor: Players Riverboat Casino
Date: 1 Day—3rd or 4th of July
Regulated Area: Ohio River miles 943–944

My 102 Booms Day—Fireworks
Sponsor: WMYU Radio
Date: 1 Day—1st Weekend in September
Regulated Area: Tennessee River miles 645–649

Fall Color Cruise—Marine Parade
Sponsor: Alhambra Shrine
Date: 2 Days—3rd and 4th Saturdays in October
Regulated Area: Tennessee River miles 425–471

Chattanooga Head Race—Rowing Race
Sponsor: Look Out Rowing Club
Date: 1 Day—2nd Saturday in October
Regulated Area: Tennessee River miles 464–467

Head of Tennessee Regatta
Sponsor: Knoxville Rowing Association
Date: 1 Day—2nd Saturday in October
Regulated Area: Tennessee River miles 641.5–645

Christmas on the River—Marine Parade
Sponsor: Chattanooga Downtown Partnership
Date: 1 Day—Last Weekend in November or 1st Weekend in December
Regulated Area: Tennessee River miles 464–649

Cross River Swim Paducah Summerfest
Sponsor: Paducah Tourist & Convention Commission
Date: 1 Day—3rd Saturday in July
Regulated Area: Ohio River miles 934.5–936

UT Coaches Regatta—Rowing Race
Sponsor: Oak Ridge Rowing Association
Date: 1 Day–2nd or 3rd Saturday in May
Regulated Area: Clinch River miles 49.8–51.1

Southeast Intercollegiate Rowing Championships—Rowing Race
Sponsor: Oak Ridge Rowing Association
Date: 2 Days—3rd Weekend in April
Regulated Area: Clinch River miles 49.8–51.1

NCAA Regional Championships—Rowing Race
Sponsor: Oak Ridge Rowing Association
Date: 1 Day—2nd or 3rd Saturday in May
Regulated Area: Clinch River miles 49.8–51.1

Oak Ridge Sprints—Rowing Race
Sponsor: Oak Ridge Rowing Association
Date: 3 Days—3rd Weekend in July
Regulated Area: Clinch River miles 49.8–51.1

Group Lower Mississippi River

Memphis in May Canoe & Kayak Race
Sponsor: Outdoors, Inc.
Date: 1 Day—1st or 2nd Saturday in May
Regulated Area: Lower Mississippi River miles 735.5–738.5, Memphis, TN

Duckin' Down the River Rubber Duck Race
Sponsor: Young Women's Community Guild
Date: 1 Day—1st or 2nd Saturday in May
Regulated Area: Arkansas River miles 308.2–308.6, Fort Smith, AR

Memphis in May Sunset Symphony Fireworks Display
Sponsor: Memphis in May International Festival, Inc.
Date: 1 Day—Saturday before Memorial Day
Regulated Area: Lower Mississippi River miles 735–736, Memphis, TN

Riverfest, Little Rock Arkansas
Sponsor: Riverfest, Inc.
Date: 1 Day—Sunday before Memorial Day
Regulated Area: Arkansas River miles 118.8–119.5, Main Street Bridge, Little Rock, AR

Riverfest Fireworks Display
Sponsor: Old Fort Riverfest Committee
Date: 1 Day—2nd or 3rd Saturday in June
Regulated Area: Arkansas River miles 297–298, Fort Smith, AR

Star Spangled Celebration
Sponsor: WMC Stations
Date: 1 Day—4th of July
Regulated Area: Lower Mississippi River miles 735.5–736.5, Mud Island, Memphis, TN

Pops on the River Fireworks Display
Sponsor: Arkansas Democrat-Gazette
Date: 1 Day—4th of July
Regulated Area: Arkansas River miles 118.8–119.5, Main Street Bridge, Little Rock, AR

Meat on the River Barbecue Cook-Off Fireworks Display
Sponsor: Meat on the Mississippi
Date: 1 Day—1st Friday or Saturday in August
Regulated Area: Lower Mississippi River miles 847–849, Caruthersville, MO

Budweiser/Jesse Brent Memorial Boat Racing Association
Sponsor: Budweiser/Jesse Brent Memorial Boat Racing Association
Date: Sunday before Labor Day
Regulated Area: Lake Ferguson, Lower Mississippi River miles 522–537, Greenville, MS

Arkansas National Drag Boat Races
Sponsor: Mid-South Drag Boat Association
Date: 2 Days—Saturday and Sunday before Labor Day
Regulated Area: Lake Langhofer, Arkansas River miles 71–71.5, Pine Bluff, AR

Group Mobile

Air Sea Rescue
Sponsor: Gulf Coast Shows
Date: 1st or 2nd Weekend in February
Regulated Area: Mobile River ½ mile upriver and ½ mile down river from the Mobile Convention Center

Annual Labor Day Fireworks
Sponsor: City of Destin, FL
Date: Day of or Day before Labor Day
Regulated Area: Destin Pass Between and Including Buoys 8 & 9

Bass Tournament Weigh-In
Sponsor: Gulf Coast Shows
Date: 2 Days—3rd or 4th Weekend in February
Regulated Area: Mobile River ½ mile upriver and ½ mile down river from the Mobile Convention Center

Blessing of the Fleet—Biloxi, MS
Sponsor: St. Michael's Catholic Church
Date: 1 Day—1st or 2nd Sunday in May
Regulated Area: Entire Biloxi Channel

Blessing of the Fleet—Bayou La Batre, AL
Sponsor: St. Margaret Church
Date: 1 Day—2nd or 4rd Sunday in May
Regulated Area: Entire Bayou La Batre

Flag Day Parade
Sponsor: Warrior River Boating Association
Date: 1 Day—July 5th
Regulated Area: Warrior River Bankhead Lake River miles 368.4–386.4

Independence Day Fireworks, Destin, FL
Sponsor: City of Destin
Date: 1 Day—4th of July
Regulated Area: Destin Eastpass between and including Buoys 8 & 9

Independence Day Fireworks, Gulf Shores, AL
Sponsor: City of Gulf Shores
Date: 1 Day—4th of July
Regulated Area: 500 yard radius around fireworks platform adjacent to Main Pavilion at Gulf Shore Public Beach
Independence Day Fireworks, Panama City, FL
Sponsor: US Navy MWR NSWCCSS CP21
Date: 1 Day—4th of July
Regulated Area: 500 yard radius around fireworks platform adjacent to Hathaway Bridge in St. Andrews Bay, Panama City, FL
Water Ski Demonstrations
Sponsor: Gulf Coast Shows
Date: 2 Days—3rd or 4th Weekend in February
Regulated Area: Mobile River ½ mile upriver and ½ mile down river from the Mobile Convention Center
Independence Day Fireworks, Niceville & Valparaiso, FL
Sponsor: Niceville-Valparaiso Bay Chamber of Commerce
Date: 1 Day—4th of July
Regulated Area: Entire Boggy Bayou, Valparaiso, FL
Christmas Afloat, Tuscaloosa, AL
Sponsor: Tuscaloosa Christmas Afloat, Inc.
Date: 1 Day—2nd or 3rd Weekend in December
Regulated Area: Warrior River miles 338–341

Group New Orleans

The Blessing of the Fleet and Fireworks Display, Morgan City, LA
Sponsor: LA Shrimp and Petroleum Festival and Fair Assoc., Inc.
Date: 1 day—Sunday of Labor Day Weekend
Regulated Area: Berwick Bay From Junction of the Lower Atchafalaya River at Morgan City, LA to Berwick Locks Buoy 1 (LLNR 18445)
July Fourth Fireworks Display
Sponsor: City of Morgan City, LA
Date: 1 Day—4th of July
Regulated Area: Gulf Intracoastal Waterway Between mile Markers 95 and 97 and North to Railroad Bridge
Blessing of The Fleet
Sponsor: Our Lady of Prompt Succor Catholic Church, Golden Meadow, LA
Date: 1 Day—2nd Saturday in May
Regulated Area: Bayou Lafourche in Downtown Golden Meadow Area
Annual Patterson Pirogue Race, Patterson, LA
Sponsor: Rotary Club of Patterson
Date: 1 Day—4th of July
Regulated Area: Lower Atchafalaya River—Jennings Bridge to 1 mile South of Jennings Bridge
USS KIDD Star Spangled Celebration, Baton Rouge, LA
Sponsor: USS KIDD and Nautical Center
Date: 1 Day—4th of July
Regulated Area: Mississippi River miles 229.4–229.6
Uncle Sam Jam Fireworks, Alexandria, LA
Sponsor: Champion Broadcasting of Alexandria
Date: 1 Day—4th of July
Regulated Area: Red River, Alexandria, LA
Monroe Jaycees Fireworks, Monroe, LA
Sponsor: Monroe Jaycees
Date: 1 Day—4th of July
Regulated Area: Ouachita River, at the Parish Court House
Boomtown Casino Fireworks, Harvey, LA
Sponsor: Boomtown Casino
Date: 1 Day—4th of July
Regulated Area: Harvey Canal, Harvey, LA
Kenner Fireworks, Kenner, LA
Sponsor: City of Kenner
Date: 1 Day—4th of July
Regulated Area: 500 yard radius around fireworks platform in Lake Pontchartrain at Williams Blvd.
Bally's Casino Fireworks, New Orleans, LA
Sponsor: Bally's Casino
Date: 1 Day—4th of July
Regulated Area: 500 yard radius around fireworks platform in Lake Pontchartrain, ¼ miles North of Bally's Casino
Riverfront Marketing Fireworks, New Orleans, LA
Sponsor: Riverfront Marketing Group
Date: 1 Day—4th of July
Regulated Area: 500 yard radius around fireworks platform adjacent to Woldenburg Park in Mississippi River
Riverfront Marketing Fireworks, New Orleans
Sponsor: Jax Brewery
Date: 1 Day—December 31
Regulated Area: 500 yard radius around fireworks platform in Mississippi River adjacent to Woldenburg Park
Riverfront Marketing Fireworks, New Orleans
Sponsor: Riverfront Marketing Group
Date: 1 Day—Lundi Gras Day
Regulated Area: 500 yard radius around fireworks platform in Mississippi River adjacent to Algiers Point
Annual Hogdown Fireworks, Mandeville, LA
Sponsor: Mr. R.C. Lunn
Date: 1 Day—4th of July
Regulated Area: 500 yard radius around fireworks platform adjacent to intersection of Tangipahoa River and Lake Pontchartrain

Group Galveston

Neches River Festival, Beaumont, TX
Sponsor: Neches River Festival, Inc.
Date: 2 Days—3rd Weekend in April
Regulated Area: Neches River from Collier's Ferry Landing to Lawson's Crossing at the end of Pine St.
Contraband Days Fireworks Display, Lake Charles, La.
Sponsor: Contraband Days Festivities, Inc.
Date: 1 Day—1st Saturday of May
Regulated Area: 500 foot radius from the fireworks barge in Lake Charles anchored at approximate position 30–13′54″N 093–13′42″W
Neches River 4th of July Celebration, Beaumont, Texas
Sponsor: City of Beaumont
Date: 1 Day—4th of July
Regulated Area: River Front Park, Beaumont, TX—All waters of the Neches River, bank to bank, from the Trinity Industries Dry Dock to the northeast corner of the Port of Beaumont's dock No. 5
Christmas on the Neches River, Port Neches Park
Sponsor: Port Neches Chamber of Commerce
Date: 1 Day—1st Saturday in December
Regulated Area: Waters adjacent to Neches River Front Park, Port Neches, TX
Clear Lake Fireworks Display, Clear Lake, Houston, TX
Sponsor: Clear Lake Chamber of Commerce
Date: 1 Day—4th of July
Regulated Area: Rectangle extending 500 feet East, 500 feet West; 1000 feet North, and 1000 feet South around fireworks barge at Light #19 on Clear Lake
Sylvan Beach Fireworks Display, Sylvan Beach, Houston, TX
Sponsor: City of LaPorte
Date: 1 Day—Last of June or Early July
Regulated Area: Rectangle Extending 250 feet East, 250 feet West; 1000 feet North, and 1000 feet South, around fireworks barge at Sylvan Beach

Group Corpus Christi

Bayfest Fireworks Display
Sponsor: Bayfest, Inc.
Date: 2 Days—3rd Friday & Saturday in September
Regulated Area: Bayfront, All Waters inside Corpus Christi Marina Levee, Corpus Christi Bay
Great Tugboat Challenge
Sponsor: Bayfest Inc.

Date: 2 Days—3rd Friday & Saturday in September
Regulated Area: Bayfront, All Waters inside Corpus Christi Marina Levee, Corpus Christi Bay

Buccaneer Days Fireworks Display
Sponsor: Buccaneer Commission, Inc.
Date: 1 Day—Last Friday in April or First Friday in May
Regulated Area: Bayfront, All Waters inside Corpus Christi Marina Levee, Corpus Christi Bay

Corpus Christi 4th of July Fireworks Display
Sponsor: City of Corpus Christi
Date: 1 Day—4th of July
Regulated Area: Bayfront, All Waters inside Corpus Christi Marina Levee, Corpus Christi Bay

Harbor Lights
Sponsor: City of Corpus Christi
Date: 1 Day—1st Saturday in December
Regulated Area: Bayfront, All Waters inside Corpus Christi Marina Levee, Corpus Christi Bay.

Dated: June 1, 1998.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 98–15901 Filed 6–15–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[USCG–98–3423]

RIN 2115–AF55

Implementation of the National Invasive Species Act of 1996 (NISA)

AGENCY: Coast Guard, DOT.

ACTION: Reopening of comment period.

SUMMARY: In response to public requests, the Coast Guard is reopening the comment period on its proposed rule to control the invasion of aquatic nuisance species (ANS). The comment period will extend until August 8, 1998, and give the public more time to submit views on the issues raised in the notice of proposed rulemaking (NPRM) published in the **Federal Register** on April 10, 1998 (63 FR 17782).

DATES: Comments on the NPRM must reach the Coast Guard on or before August 8, 1998.

ADDRESSES: You may mail written comments to the Docket Management Facility [USCG–98–3423], U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. You may also E-mail comments using the Marine Safety and Environmental Protection Regulations Web Page at http://www.uscg.mil/hq/g-m/regs/reghome.htm. You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 726 17th Street, NW., Washington, DC 20593, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for the rulemaking. Comments will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may electronically access the public docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For information on the public docket, contact Carol Kelley, Coast Guard Dockets Team Leader, or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, telephone 202–366–9329. For information on the NPRM provisions contact LT Larry Greene or LT Mary Pat McKeown, Project Managers, U.S. Coast Guard Headquarters, Office of Operating and Environmental Standards (G–MSO), telephone 202–267–0500.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to submit written data, views, or arguments. If you submit comments, you should include your name and address, identify the NPRM [USCG–98–3423] and the specific section or question in the document to which your comments apply, and give the reason for each comment. Please submit one copy of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the DOT Docket Management Facility at the address under **ADDRESSES**. If you want us to acknowledge receiving your comments, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change the proposed rule in view of the comments.

Dated: June 10, 1998.

Howard L. Hime,

Acting Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 98–15963 Filed 6–15–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[USCG–1998–3423]

RIN 2115–AF55

Implementation of the National Invasive Species Act of 1996 (NISA)

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects the proposed rule published in the **Federal Register** issue of Friday, April 10, 1998, regarding the implementation of the National Invasive Species Act of 1996 (NISA).

FOR FURTHER INFORMATION CONTACT: Lieutenant Larry Greene, Project Manager, U.S. Coast Guard Headquarters, Office of Response (G–MOR), telephone 202–267–0500.

Corrections

In proposed rule document 98–3423, beginning on page 17782, in the issue of Friday, April 10, 1998, make the following corrections:

1. On page 17782, in line 5 of the agency headings, ''RIN 2115–AD98'' should read ''RIN 2115–AF55''.

2. In the section ''Background and Purpose'', on page 17784, in the first column, in line 3 of the bullet ''Asian clam.'', ''that'' should read ''than''.

3. On the same page, in the same section, in line 14 of the first paragraph under the sub-heading ''U.S. Legislation'', ''1983. (58 FR 18334 of April 8, 1993 and 33 CFR part 151, subpart C.)'' should read ''1993 (58 FR 18334 of April 8, 1993 and 33 CFR part 151, subpart C).''

4. On the same page, in the same section, in line 19 of the first paragraph under the sub-heading ''U.S. Legislation'', ''ecosystem. (59 FR 31959 of June 21, 1994).'' should read ''ecosystem (59 FR 31959 of June 21, 1994).''

§ 151.1502 [Corrected]

5. On page 17788, in line 1 of § 151.1502(d), ''Use the table'' should read ''Use table''.

§ 151.1518 [Corrected]

6. On page 17790, in the introductory paragraph of § 151.1518, ''inquires'' should read ''inquiries''.

Subpart C to Part 151 [Corrected]

7. In the appendix to subpart C of part 151, on page 17791, in line 16 of the second column, ''were taken? (i.e., transfer of water to a land based holding facility or other approved treatment).'' should read ''were taken (i.e., transfer of water to a land based holding facility or other approved treatment)?''.

8. In the appendix to subpart C of part 151, on page 17791, in line 10 of the third column, ''subject to this section'' should read ''subject to subpart C''.

Dated: June 10, 1998.

Howard L. Hime,

Acting Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 98–15964 Filed 6–15–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 05–98–038]

RIN 2115–AA97

Safety Zone: Atlantic Intracoastal Waterway, Vicinity of Marine Corps Base Camp Lejeune, NC

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone in the Atlantic Intracoastal Waterway (AICW) adjacent to Marine Corps Base (MCB) Camp Lejeune, North Carolina which encompasses the navigable waters of the AICW and connecting waters between Cedar Point and Bear Creek. THe safety zone will improve vessel safety and permit maximum safe nonmilitary use of the AICW during times of military training involving the firing of live ammunition.

DATES: Comments must be received on or before September 14, 1998.

ADDRESSES: Comments may be mailed to Commanding Officer, U.S. Coast Guard Marine Safety Office Wilmington, 272 North Front Street, Suite 500, Wilmington, NC 28401–3907 or may be delivered to Suite 500 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (910) 815–4895. Comments will become part of the docket for this rulemaking and will be available for inspection or copying in Suite 500, Marine Safety Office Wilmington.

FOR FURTHER INFORMATION CONTACT: LT D.C. Brown, USCG, Project Officer, c/o Commanding Officer, U.S. Coast Guard Marine Safety Office Wilmington, 272 North Front Street, Wilmington, North Carolina 28401–3907, phone: 1–(800) 325–4956 or (910) 815–4895 ext. 108.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses and identify this rulemaking (CGD 05–98–038). Commenters should also identify the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped self addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period, and may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Marine Safety Office Wilmington at the location under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentation will aid this rulemaking, a public hearing will be held at a time and place announced in a **Federal Register** notice.

Background and Purpose

Military personnel fire live ammunition on training ranges at Marine Corps Base (MCB) Camp Lejeune. During these live firing exercises, projectiles sometimes travel across the Atlantic Intracoastal Waterway (AICW) and into the Atlantic Ocean. Firing live ammunition across the AICW creates a hazardous condition to vessels that may be near the impact area of the projectiles. Army Corps of Engineers (ACOE) regulations in 33 CFR 334.440 designate certain coastal and connecting waters in the vicinity of Camp Lejeune as either danger zones or restricted areas.

The ACOE regulations at 33 CFR 334.440(e)(2)(ii) prohibit vessels from entering the waters between the south bank of Bear Creek and the north bank of the north connecting channel between the AICW and Browns Inlet at all times. 33 CFR 334.440(e)(2)(iii) prohibits vessels from passing through the north connecting channel and the south connecting channel in the area between the AICW and Browns Inlet to the Atlantic Ocean during times of military use, including live firing and bombing. These ACOE regulations do not preclude vessels from transiting the AICW. The ACOE regulation at 33 CFR 334.440(e)(2)(i) permits vessels to proceed through the area of the AICW between Bear Creek and the Onslow Beach Bridge without stopping except in cases of extreme emergencies.

Notwithstanding the ACOE regulations in 33 CFR 334.440(e)(2)(i), however, the Coast Guard may, in the interest of public safety, restrict vessel movement through the AICW by establishing a safety zone. The Coast Guard's current method of controlling vessel traffic through the AICW during live firing exercises is by establishing temporary safety zones that restrict access to portions of the AICW during live firing exercises. This proposed rule would establish a permanent safety zone that will enhance safety for mariners and still accommodate necessary military training. The permanent regulation will also more adequately notify mariners about the existence and location of the safety zone, which has been established in the past by frequent temporary rules of short duration.

The Marine Corps' firing range training schedule is not extensive. Generally, mariners will not experience extended periods (over 12 consecutive hours) of activity on the ranges. Firing ranges are used an average of two days every month. Encountering more than two consecutive days of range activity would be unusual. Generally, MCB Camp Lejeune provides the Coast Guard 2 or 3 weeks notice of its intent to conduct firing exercises.

This proposal was developed by the Coast Guard based on discussions with the Marine Corps, local towboat operators, fishermen, and recreational boaters. Based on those discussions, the Coast Guard believes this proposal is the best method of enhancing public safety, allowing maximum access through the AICW, and facilitating military training aboard the Marine Corps Base.

Discussion of Proposed Rule

The proposed safety zone would include a 9 nautical mile section of the AICW. Specifically, the proposed safety zone would include the waters of the AICW and connecting waters, from

Bogue Sound—New River Light 58 (LLNR 39210) at approximate position 34°37′57″ North, 077°12′18″ West, and continuing in the AICW southwest to Bogue Sound—New River Daybeacon 70 (LLNR 39290) at approximate position 34°33′ 07″ North, 077°20′ 30″ West.

Red warning flags or red warning lights will be displayed on towers located at both ends of the safety zone (Bear Creek and Cedar Point) whenever firing exercises are in progress. The flags or lights will be displayed by 8 a.m. on the day of the firing exercise, and will be removed at the end of the firing exercise. Vessels from the U.S. Navy will sweep the entire safety zone and give an ''all clear'' to Marine Corps range control prior to commencing fire. Navy safety vessels will also sweep the area used for firing and will report to range control prior to resuming fire on any even hour period. The Coast Guard or U.S. Navy will patrol each end of the safety zone area to inform mariners of a particular firing exercise.

Although the safety zone covers an area of nine nautical miles, actual firing exercises normally take place within a 2 nautical mile area which does not change during a particular live firing exercise. The location of the 2 nautical mile area within the 9 mile safety zone may vary from exercise to exercise, however. While the safety zone is activated during the live fire exercises, permission may be granted to transit in non-firing areas of the safety zone. Consequently, even though the proposed safety zone would extend for 9 nautical miles, the Coast Guard would publish in the Local Notice to Mariners and announce in a Broadcast Notice to Mariners, the location within the safety zone of the two nautical mile area that the live firing exercise will occupy which would be subject to transit restrictions, and which portions of the safety zone not affected by the live firing exercise that the COTP has given advance permission to transit.

Also, during a live firing exercise, the Marines only fire ordnance during alternating hours. Thus, there would be alternating one hour periods of closure and opening of this 2 nautical mile area for vessel transits. For example, during a 12-hour firing exercise, there would be alternate one hour periods of closure and opening for vessel transits (i.e., 1 hour of closure, one hour of opening, and so on). All vessels would be prohibited from entering the two nautical mile firing area during one-hour periods beginning at the start of even-numbered hours, local time. During odd-numbered hours, local time, vessels would be permitted to pass through the firing area as long as the vessel would be able to exit the firing area before the beginning of the next even-numbered hour. For example, if the firing area in the AICW were closed between 8 a.m. and 9 a.m., then from 9 a.m. to 10 a.m. vessel traffic may transit, and shall completely clear the area. At 10 a.m. the firing area in the AICW would again be closed to vessel traffic for the next hour, and so on.

The specific times that the safety zone will be activated would be announced in a Broadcast Notice to Mariners, and published in a Notice to Mariners when practical. Because the live-firing schedule is not extensive, and because general permission may be granted to transit all but 2 nautical miles of the safety zone when activated, the Coast Guard expects the impact of this proposed rule on commercial and recreational traffic to be minimal.

To summarize, the Coast Guard is proposing to establish a 9 nautical mile safety zone in the AICW. The Coast Guard may grant general permission to transit the non-hazardous parts of the safety zone while it is in effect. Additionally, vessels would be permitted to transit the live-firing area of the safety zone during specified hours.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. 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 proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The Coast Guard does not expect extensive activation of this proposed safety zone. Furthermore, general permission to enter the non-hazardous parts of the safety zone may be granted, and the rest of the safety zone would be open to traffic during specified hours. Therefore, the Coast Guard expects the impact on routine navigation to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 623). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under figure 2–1, paragraph (34)(g) of COMDTINST M16475.1C, this proposed rule is categorically excluded from further environmental documentation. This proposed rule establishes a permanent safety zone in the area of live weapons firing exercises at Marine Corps Base Camp Lejeune. It does not allow any new or additional activity in the safety zone, but merely establishes regulations to provide for the safety of mariners transiting the area of the firing exercises. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

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

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

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

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

2. A new § 165.514 is added to read as follows:

§ 165.514 Safety Zone: Atlantic Intracoastal Waterway and connecting waters, vicinity of Marine Corps Base Camp Lejeune, North Carolina.

(a) *Location*. The following area is a safety zone: All waters of the Atlantic

Intracoastal Waterway (AICW) and connecting waters, from Bogue Sound—New River Light 58 (LLNR 39210) at approximate position 34°37′57″ North, 077°12′18″ West, and continuing in the AICW southwest to Bogue Sound—New River Daybeacon 70 (LLNR 39290) at approximate position 34°33′07″ North, 077°20′30″ West. All coordinates reference Datum: NAD 1983.

(b) Notwithstanding the provisions of 33 CFR 334.440(e)(2)(i), no vessel may enter the safety zone described in paragraph (a) of this section while weapons firing exercises are in progress, except as provided in paragraph (c) of this section or unless permitted by the Captain of the Port (COTP) Wilmington.

(1) Red warning flags or red warning lights will be displayed on towers located at both ends of the safety zone (Bear Creek and Cedar Point) while firing exercises are in progress. The flags or lights will be displayed by 8 a.m. on days where firing exercises are scheduled, and will be removed at the end of the firing exercise.

(2) A Coast Guard of U.S. Navy vessel will patrol each end of the safety zone to ensure the public is aware that firing exercises are in progress and that the firing area is clear of vessel traffic before weapons are fired.

(c)(1) The COTP Wilmington will announce the specific times and locations of firing exercises by Broadcast Notice to Mariners and Local Notice to Mariners. Normally, weapons firing for each firing exercise is limited to a two nautical mile portion of the safety zone. The COTP may issue general permission to transit all or specified parts of the safety zone outside of the actual firing area or if firing is temporarily stopped. This general permission will be announced in a Local Notice to Mariners and Broadcast Notice to Mariners.

(2) Weapons firing will be suspended and vessels permitted to transit the specified two nautical mile firing area for a one-hour period beginning at the start of each odd-numbered hour local time (e.g., 9 a.m.; 1 p.m.). A vessel may not enter the specified firing area unless it will be able to complete its transit of the firing area before firing exercises are scheduled to re-start at the beginning of the next even-numbered hour.

(d) U.S. Navy safety vessels may be contacted on VHF marine band radio channels 13 (156.65 Mhz) and 16 (156.8 Mhz). The Captain of the Port may be contacted at the Marine Safety Office, Wilmington, NC by telephone at 1–(800) 325–4956 or (910) 815–4895.

Dated: June 1, 1998.

Roger T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 98–15896 Filed 6–15–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–6106–7]

Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to amend, correct, and clarify regulatory text of the ''Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills,'' which was issued as a final rule on March 12, 1996. These revisions add definitions, clarify regulatory text, and correct typographical and cross referencing errors and inconsistencies. Because these revisions do not change the intent of the NSPS and emission guidelines, the Agency does not anticipate receiving adverse comments. Consequently the revisions are also being issued as a direct final rule in the final rules section of this **Federal Register**. If no relevant adverse comments are timely received, no further action will be taken with respect to this proposal and the direct final rule will become final on the date provided in that action.

DATES: Comments. Comments must be received on or before July 16, 1998, unless a hearing is requested by June 26, 1998. If a hearing is requested, written comments must be received by July 31, 1998.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than June 26, 1998. If a public hearing is held, it will take place on July 1, 1998, beginning at 10:00 a.m. at the address below.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (MC–6102), Attention Docket Number A–88–09/Category V–D, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below. Refer to **SUPPLEMENTARY INFORMATION** for information regarding electronic submittal of comments.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina or at an alternate site nearby. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. JoLynn Collins, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5671.

Docket. Docket No. A–88–09, containing the supporting information for the original new source performance standards (NSPS) and this action, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center (Mail Code-6102), 401 M Street SW, Washington DC 20460, or by calling (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor, central mall). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice and analyses performed on developing this rule, contact Ms. Michele Laur, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5256. For implementation issues, contact Mary Ann Warner, Program Review Group, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–1192. For information on the landfill model, contact Susan Thorneloe through the internet at: thorneloe.susan@epamail.epa.gov. For information concerning applicability and rule determinations, contact the appropriate regional representative:

Region I: Greg Roscoe, Air Programs Compliance Branch Chief, U.S. EPA/ASO, Region I, JFK Federal Building, Boston, MA 02203, (617) 565–3221

Region II: Christine DeRosa, U.S. EPA Region II, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–4022

Region III: James Topsale, U.S. EPA/3AP22 Region III, 841 Chestnut Building, Philadelphia, PA 10107, (215) 566–2190

Region IV: R. Douglas Neeley, Chief, Air and Radiation, Technology Branch, U.S. EPA Region IV, 61 Forsyth St.,

SW, Atlanta, GA 30303, (404) 562–9105

Region V: George T. Czerniak, Jr., Air Enforcement Branch Chief, U.S. EPA/5AE–26 Region V, 77 West Jackson Street, Chicago, IL 60604, (312) 353–2088

Region VI: John R. Hepola, Air Enforcement Branch Chief, U.S. EPA Region VI, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733, (214) 655–7220

Region VII: Ward Burns, U.S. EPA/RME, Region VII, 726 Minnesota Avenue/ARTDAPCO, Kansas City, KS 66101–2728, (913) 551–7960

Region VIII: Vicki Stamper, U.S. EPA, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6445

Region IX: Patricia Bowlin, U.S. EPA/RM HAN/17211, Region IX, 75 Hawthorne Street/AIR–4, San Francisco, CA, (415) 744–1188

Region X: Catherine Woo, U.S. EPA, Region X, Office of Air Quality Planning and Standards-107, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION: If no relevant adverse comments are timely received on these proposed amendments, no further activity is contemplated in relation to this proposed rule, and the companion direct final rule in the final rules section of this **Federal Register** will automatically become effective on the date specified in that final rule. If relevant adverse comments are received on this proposal, a timely document informing the public that the direct final rule is withdrawn will be published, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. Because the Agency will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

For further supplemental information, the detailed rationale, and the specific amendments being proposed, see the information provided in the direct final rule in the final rules section of this **Federal Register**.

Electronic Submittal of Comments

Comments and data may also be submitted electronically to A-and-R-Docket@epamail.epa.gov. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

Comments and data will also be accepted on disks in WordPerfect® 5.1 or 6.1 file format or ASCII file format. All comments and data for this proposal, whether in paper form or in electronic forms such as through e-mail or on disk, must be identified by the docket number A–88–09 Category V–d.

Administrative

A. Executive Order 12866 Review

Under Executive Order 12866 Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The EPA considered the 1996 promulgated standards to be significant and the rules were reviewed by OMB (see 61 FR 9913). The amendments proposed today do not result in any additional control requirements. Therefore, this regulatory action is considered ''not significant'' under Executive Order 12866.

B. Small Business Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies 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 small governmental jurisdictions. During the 1996 rulemaking, EPA estimated that no small entities would be affected by the promulgated standards and guidelines and, therefore, a regulatory flexibility analysis was not required (see 61 FR 9918). The proposed rule amendments do not establish any new requirements or create additional burden for any regulated entities. The changes in today's action do not increase the stringency of the rule or add additional control requirements. Nor is the scope of the rule changed so as to bring any entities not previously subject to the rule within its scope or coverage. Today's action does not alter control, monitoring, recordkeeping, or reporting requirements of the promulgated rule. Therefore, pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the amendments to the guidelines and standards will not have a significant impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

C. Executive Order 12875 and Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments, or to the private sector will be $100 million or more in any one year. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule.

An unfunded mandates statement was prepared and published in the 1996 promulgation notice (see 61 FR 9913–9918).

The EPA has determined that these amendments do not include any new Federal mandate. Therefore, the requirements of the Unfunded Mandates Act do not apply to this proposed rule.

D. Children's Health Protection

This proposed rule is not subject to E.O. 13045, entitled, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Municipal solid waste landfills.

Dated: May 28, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–15008 Filed 6–15–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 142

[HCFA–0047–P]

RIN 0938–AI59

Health Insurance Reform: National Standard Employer Identifier

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes a standard for a national employer identifier and requirements concerning its use by health plans, health care clearinghouses, and health care providers. The health plans, health care clearinghouses, and

health care providers would use the identifier, among other uses, in connection with certain electronic transactions.

The use of this identifier would improve the Medicare and Medicaid programs, and other Federal health programs and private health programs, and the effectiveness and efficiency of the health care industry in general, by simplifying the administration of the system and enabling the efficient electronic transmission of certain health information. It would implement some of the requirements of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on August 17, 1998.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–0047–P, P.O. Box 26676, Baltimore, MD 21207–0519.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments may also be submitted electronically to the following e-mail address: employer@osaspe.dhhs.gov. For e-mail and comment procedures, see the beginning of **SUPPLEMENTARY INFORMATION.** For information on ordering copies of the **Federal Register** containing this document and on electronic access, see the beginning of **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mary Emerson, (410) 786–7065.

SUPPLEMENTARY INFORMATION:

E-mail Comments, Procedures, Availability of Copies, and Electronic Access: E-mail comments should include the full name, postal address, and affiliation (if applicable) of the sender and must be submitted to the referenced address to be considered. All comments should be incorporated in the e-mail message because we may not be able to access attachments. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–0047–P and the specific section or sections of the proposed rule. Both electronic and written comments received by the time and date indicated above will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890). Electronic and legible written comments will also be posted, along with this proposed rule, at the following web site: http://aspe.os.dhhs.gov/admnsimp/.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web http://www.access.gpo.gov/nara, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

I. Background

[Please label written and e-mailed comments about this section with the subject: Background.]

When claims are filed, employer information is used by health plans to identify the employer of the participant in the health plan and to develop coordination of benefits information.

Employers may transmit information to health plans when enrolling or disenrolling an employee as a participant in a health plan. Employers, health care providers, and health plans may need to identify the source or receiver of eligibility or benefit information. Although the source or receiver is usually a health plan, it could be an employer. Employers, health care providers, and health plans may need to identify the employer when making or keeping track of health plan premium payments or contributions relating to an employee. In all cases where information about the employer is transmitted electronically, it would be beneficial to identify the employer using a standard identifier.

A. Legislation

The Congress included provisions to address the need for a standard identifier and other administrative simplification issues in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, which was enacted on August 21, 1996. Through subtitle F of title II of that law, the Congress added to title XI of the Social Security Act a new part C, entitled ''Administrative Simplification.'' (Public Law 104–191 affects several titles in the United States Code. Hereafter, we refer to the Social Security Act as the Act; we refer to the other laws cited in this document by their names.) The purpose of this part is to improve the Medicare and Medicaid programs in particular and the efficiency and effectiveness of the health care system in general by encouraging the development of a health information system through the establishment of standards and requirements to facilitate the electronic transmission of certain health information.

Part C of title XI consists of sections 1171 through 1179 of the Act. These sections define various terms and impose several requirements on HHS, health plans, health care clearinghouses, and certain health care providers concerning electronic transmission of health information.

The first section, section 1171 of the Act, establishes definitions for purposes of part C of title XI for the following terms: code set, health care clearinghouse, health care provider, health information, health plan, individually identifiable health information, standard, and standard setting organization.

Section 1172 of the Act makes any standard adopted under part C applicable to (1) all health plans, (2) all health care clearinghouses, and (3) any health care providers that transmit any health information in electronic form in connection with the transactions referred to in section 1173(a)(1) of the Act.

This section also contains requirements concerning standard setting.

- The Secretary may adopt a standard developed, adopted, or modified by a standard setting organization (that is, an organization accredited by the American National Standards Institute (ANSI)) that has consulted with the National Uniform Billing Committee (NUBC), the National Uniform Claim Committee (NUCC), the Workgroup on Electronic Data Interchange (WEDI), and the American Dental Association (ADA).
- The Secretary may also adopt a standard other than one established by a standard setting organization, if the different standard will reduce costs for health care providers and health plans, the different standard is promulgated through negotiated rulemaking procedures, and the Secretary consults with each of the above-named groups.
- If no standard has been adopted by any standard setting organization, the Secretary is to rely on the recommendations of the National Committee on Vital and Health Statistics (NCVHS) and consult with each of the above-named groups.

In complying with the requirements of part C of title XI, the Secretary must rely on the recommendations of the NCVHS, consult with appropriate State, Federal, and private agencies or organizations, and publish the recommendations of the NCVHS in the **Federal Register**.

Paragraph (a) of section 1173 of the Act requires that the Secretary adopt standards for financial and administrative transactions, and data elements for those transactions, to enable health information to be exchanged electronically. Standards are required for the following transactions: health claims, health encounter information, health claims attachments, health plan enrollments and disenrollments, health plan eligibility, health care payment and remittance advice, health plan premium payments, first report of injury, health claim status, and referral certification and authorization. In addition, the Secretary is required to adopt standards for any other financial and administrative transactions that are determined to be appropriate by the Secretary.

Paragraph (b) of section 1173 of the Act requires the Secretary to adopt standards for unique health identifiers for all individuals, employers, health plans, and health care providers and requires further that the adopted standards specify for what purposes unique health identifiers may be used.

Paragraphs (c) through (f) of section 1173 of the Act require the Secretary to establish standards for code sets for each data element for each health care transaction listed above, security standards for health care information systems, standards for electronic signatures (established together with the Secretary of Commerce), and standards for the transmission of data elements needed for the coordination of benefits and sequential processing of claims. Compliance with electronic signature standards will be deemed to satisfy both State and Federal requirements for written signatures with respect to the transactions listed in paragraph (a) of section 1173 of the Act.

In section 1174 of the Act, the Secretary is required to adopt standards for all of the above transactions, except claims attachments, within 18 months of enactment. The standards for claims attachments must be adopted within 30 months. Generally, after a standard is established it cannot be changed during the first year except for changes that are necessary to permit compliance with the standard. Modifications to any of these standards may be made after the first year, but not more frequently than once every 12 months. The Secretary must also ensure that procedures exist for the routine maintenance, testing, enhancement, and expansion of code sets and that there are crosswalks from prior versions.

Section 1175 of the Act prohibits health plans from refusing to process or delaying the processing of a transaction that is presented in standard format. The Act's requirements are not limited to health plans; however, each person to whom a standard or implementation specification applies is required to comply with the standard within 24 months (or 36 months for small health plans) of its adoption. A health plan or other entity may, of course, comply voluntarily before the effective date. Entities may comply by using a health care clearinghouse to transmit or receive the standard transactions. Compliance with modifications and implementation specifications to standards must be accomplished by a date designated by the Secretary. This date may not be earlier than 180 days after the notice of change.

Section 1176 of the Act establishes a civil monetary penalty for violation of the provisions in part C of title XI of the Act, subject to several limitations. The Secretary is required by statute to impose penalties of not more than $100 per violation on any person who fails to comply with a standard, except that the total amount imposed on any one person in each calendar year may not exceed $25,000 for violations of one requirement. The procedural provisions in section 1128A of the Act, ''Civil Monetary Penalties,'' are applicable.

Section 1177 of the Act establishes penalties for a knowing misuse of unique health identifiers and individually identifiable health information: (1) A fine of not more than $50,000 and/or imprisonment of not more than 1 year; (2) if misuse is ''under false pretenses,'' a fine of not more than $100,000 and/or imprisonment of not more than 5 years; and (3) if misuse is with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, a fine of not more than $250,000 and/or imprisonment of not more than 10 years.

Under section 1178 of the Act, the provisions of part C of title XI of the Act, as well as any standards established under them, supersede any State law that is contrary to them. However, the Secretary may, for statutorily specified reasons, waive this provision.

Finally, section 1179 of the Act makes the above provisions inapplicable to financial institutions or anyone acting on behalf of a financial institution when ''authorizing, processing, clearing, settling, billing, transferring, reconciling, or collecting payments for a financial institution.'' Although the provisions of the law are inapplicable to financial institutions when they are carrying out the listed financial functions, the provisions are applicable to financial institutions when they perform the functions of health care clearinghouses.

Concerning this last provision, the conference report, in its discussion on section 1178, states:

> The conferees do not intend to exclude the activities of financial institutions or their contractors from compliance with the standards adopted under this part if such activities would be subject to this part. However, conferees intend that this part does not apply to use or disclosure of information when an individual utilizes a payment system to make a payment for, or related to, health plan premiums or health care. For example, the exchange of information between participants in a credit card system in connection with processing a credit card payment for health care would not be covered by this part. Similarly sending a checking account statement to an account holder who uses a credit or debit card to pay for health care services, would not be covered by this part. However, this part does apply if a company clears health care claims, the health care claims activities remain subject to the requirements of this part.'') (H.R. Rep. No. 736, 104th Cong., 2nd Sess. (1996) reprinted in 1996 U.S.C.C.A.N. 264, 265)

B. Process for Developing National Standards

The Secretary has formulated a 5-part strategy for developing and implementing the standards mandated under Part C of title XI of the Act:

1. To ensure necessary interagency coordination and required interaction with other Federal departments and the private sector, establish interdepartmental implementation teams to identify and assess potential standards for adoption. The subject matter of the teams includes claims/encounters, identifiers, enrollment/eligibility, systems security, and medical coding/classification. Another team addresses cross-cutting issues and coordinates the subject matter teams. The teams consult with external groups such as the NCVHS' Workgroup on Data Standards, WEDI, ANSI's Healthcare Informatics Standards Board, the NUCC, the NUBC, and the ADA. The teams are charged with developing regulations and other necessary documents and making recommendations for the various standards to the HHS' Data Council through its Committee on Health Data Standards. (The HHS Data Council is the focal point for consideration of data policy issues. It reports directly to the Secretary and advises the Secretary on data standards and privacy issues.)

2. Develop recommendations for standards to be adopted.

3. Publish proposed rules in the **Federal Register** describing the standards. Each proposed rule provides the public with a 60-day comment period.

4. Analyze public comments and publish the final rules in the **Federal Register**.

5. Distribute standards and coordinate preparation and distribution of implementation guides.

This strategy affords many opportunities for involvement of interested and affected parties in standards development and adoption:

- Participate with standards development organizations.
- Provide written input to the NCVHS.
- Provide written input to the Secretary of HHS.
- Provide testimony at NCVHS' public meetings.
- Comment on the proposed rules for each of the proposed standards.
- Invite HHS staff to meetings with public and private sector organizations or meet directly with senior HHS staff involved in the implementation process.

The implementation teams charged with reviewing standards for designation as required national standards under the statute have defined, with significant input from the health care industry, a set of principles for guiding choices for the standards to be adopted by the Secretary. These principles are based on direct specifications in HIPAA and the purpose of the law, principles that support the regulatory philosophy set forth in Executive Order 12866 and the Paperwork Reduction Act of 1995. To be designated as an HIPAA standard, each standard should:

1. Improve the efficiency and effectiveness of the health care system by leading to cost reductions for or improvements in benefits from electronic health care transactions.

2. Meet the needs of the health data standards user community, particularly health care providers, health plans, and health care clearinghouses.

3. Be consistent and uniform with the other HIPAA standards—their data element definitions and codes and their privacy and security requirements—and, secondarily, with other private and public sector health data standards.

4. Have low additional development and implementation costs relative to the benefits of using the standard.

5. Be supported by an ANSI-accredited standards developing organization or other private or public organization that will ensure continuity and efficient updating of the standard over time.

6. Have timely development, testing, implementation, and updating procedures to achieve administrative simplification benefits faster.

7. Be technologically independent of the computer platforms and transmission protocols used in electronic transactions, except when they are explicitly part of the standard.

8. Be precise and unambiguous, but as simple as possible.

9. Keep data collection and paperwork burdens on users as low as is feasible.

10. Incorporate flexibility to adapt more easily to changes in the health care infrastructure (such as new services, organizations, and provider types) and information technology.

A master data dictionary providing for common data definitions across the standards selected for implementation under HIPAA will be developed and maintained. We intend for the data element definitions to be precise, unambiguous, and consistently applied. The transaction-specific reports and general reports from the master data dictionary will be readily available to the public. At a minimum, the information presented will include data element names, definitions, and appropriate references to the transactions where they are used.

This proposed rule would establish the standard health care employer identifier. We anticipate publishing several regulations documents altogether to promulgate the various standards required under the HIPAA. The other proposed regulations cover security standards, the transactions specified in the Act, and the other three identifiers.

II. Provisions of the Proposed Regulations

[Please label written and e-mailed comments about this section with the subject: Provisions.]

In this proposed rule, we propose a standard employer identifier and requirements concerning its implementation. This rule would establish requirements that health plans, health care clearinghouses, and health care providers would have to meet to comply with the statutory requirement to use a unique employer identifier in electronic transactions.

We propose to add a new part to title 45 of the Code of Federal Regulations for health plans, health care providers, and health care clearinghouses in general. The new part would be part 142 of title 45 and would be titled ''Administrative Requirements.'' Subpart F would contain provisions specific to the employer identifier.

A. Applicability

Section 262 of HIPAA applies to any health plans, any health care clearinghouses, and any health care provider that transmits any health information in electronic form in connection with transactions referred to in section 1173(a)(1) of the Act. Our proposed rules (at 45 CFR 142.102) would apply to the health plans and health care clearinghouses as well, but we would clarify the statutory language in our regulations for health care providers: we would have the regulations apply to any health care provider only when electronically transmitting any of the transactions to which section 1173(a)(1) of the Act refers.

Electronic transmissions would include transmissions using all media, even when the transmission is physically moved from one location to another using magnetic tape, disk, or CD media. Transmissions over the Internet (wide-open), Extranet (using Internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, and private networks are all

included. Telephone voice response and ''faxback'' systems would not be included. The ''HTML'' interaction between a server and a browser by which the elements of a transaction are solicited from a user would not be included, but once assembled into a transaction by the server, transmission of the full transaction to another corporate entity, such as a health plan, would be required to comply.

Our regulations would apply to health care clearinghouses when transmitting transactions to, and receiving transactions from, a health care provider or health plan that transmits and receives standard transactions (as defined under ''transaction'') and at all times when transmitting to or receiving electronic transactions from another health care clearinghouse. The law would apply to each health care provider when transmitting or receiving any electronic transaction.

The law applies to health plans for all transactions.

Section 142.104 would contain the following provisions (from section 1175 of the Act):

If a person desires to conduct a transaction (as defined in § 142.103) with a health plan as a standard transaction, the following apply:

(1) The health plan may not refuse to conduct the transaction as a standard transaction.

(2) The health plan may not delay the transaction or otherwise adversely affect, or attempt to adversely affect, the person or the transaction on the ground that the transaction is a standard transaction.

(3) The information transmitted and received in connection with the transaction must be in the form of standard data elements of health information.

As a further requirement, we would require that a health plan that conducts transactions through an agent assure that the agent meets all the requirements of part 142 that apply to the health plan.

Section 142.105 would state that a person or other entity may meet the requirements of § 142.104 by either—

(1) Transmitting and receiving standard data elements, or

(2) Submitting nonstandard data elements to a health care clearinghouse for processing into standard data elements and transmission by the health care clearinghouse and receiving standard data elements through the clearinghouse.

Health care clearinghouses would be able to accept nonstandard transactions for the sole purpose of translating them into standard transactions for sending customers and would be able to accept standard transactions and translate them into nonstandard formats for receiving customers. We would state in § 142.105 that the transmission of nonstandard transactions, under contract, between a health plan or a health care provider and a health care clearinghouse would not violate the law.

Transmissions within a corporate entity would not be required to comply with the standards. For example, a hospital that is wholly owned by a managed care company would not have to use the standards to pass encounter information back to the home office, but it would have to use the standard claims transaction to submit a claim to another health plan.

Although there are situations in which the use of the standards is not required (for example, health care providers may continue to submit paper claims and employers are not required to use any of the standard transactions), we stress that a standard may be used voluntarily in any situation in which it is not required.

B. Definitions

Section 1171 of the Act defines several terms and our proposed rules would, for the most part, simply restate the law. The terms that we are defining in this proposed rule follow:

1. Code Set

We would define ''code set'' as section 1171(1) of the Act does: ''code set'' means any set of codes used for encoding data elements, such as tables of terms, medical concepts, medical diagnostic codes, or medical procedure codes.

2. Employer

We would define ''employer'' as 26 U.S.C. 3401(d) does: ''employer'' means the person for whom an individual performs or performed any service, of whatever nature, as the employee of that person or organization, except that:

a. If the person for whom the individual performs or performed the services does not have control of the payment of wages for those services, the term ''employer'' means the person having control of the payment of those wages; and

b. In the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term ''employer'' means that person.

3. Health Care Clearinghouse

We would define ''health care clearinghouse'' as section 1171(2) of the Act does, but we are adding a further, clarifying sentence. The statute defines a ''health care clearinghouse'' as a public or private entity that processes or facilitates the processing of nonstandard data elements of health information into standard data elements. We would further explain that such an entity is one that currently receives health care transactions from health care providers and other entities, translates the data from a given format into one acceptable to the intended recipient and forwards the processed transaction to appropriate health plans and other clearinghouses, as necessary, for further action.

There are currently a number of private clearinghouses that perform these functions for health care providers. For purposes of this rule, we would consider billing services, repricing companies, community health management information systems or community health information systems, value-added networks, and switches performing these functions to be health care clearinghouses.

4. Health Care Provider

As defined by section 1171(3) of the Act, a ''health care provider'' is a provider of services as defined in section 1861(u) of the Act, a provider of medical or other health services as defined in section 1861(s) of the Act, and any other person who furnishes health care services or supplies. Our regulations would define ''health care provider'' as the statute does and clarify that the definition of a health care provider is limited to those entities that furnish, or bill and are paid for, health care services in the normal course of business.

For a more detailed discussion of the definition of health care provider, we refer the reader to our proposed rule, HCFA–0045-P, Standard Health Care Provider Identifier, published on May 7, 1998 (63 FR 25320).

5. Health Information

''Health information,'' as defined in section 1171 of the Act, means any information, whether oral or recorded in any form or medium, that—

- Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and
- Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

We propose the same definition for our regulations.

6. Health Plan

We propose that a ''health plan'' be defined essentially as section 1171 of the Act defines it. Section 1171 of the Act cross refers to definitions in section 2791 of the Public Health Service Act (as added by Public Law 104–191, 42 U.S.C. 300gg–91); we would incorporate those definitions as currently stated into our proposed definitions for the convenience of the public. We note that many of these terms are defined in other statutes, such as the Employee Retirement Income Security Act of 1974 (ERISA), Public Law 93–406, 29 U.S.C. 1002(7) and the Public Health Service Act. Our definitions are based on the roles of plans in conducting administrative transactions, and any differences should not be construed to affect other statutes.

For purposes of implementing the provisions of administrative simplification, a ''health plan'' would be an individual or group health plan that provides, or pays the cost of, medical care. This definition includes, but is not limited to, the 13 types of plans listed in the statute. On the other hand, plans such as property and casualty insurance plans and workers compensation plans, which may pay health care costs in the course of administering nonhealth care benefits, are not considered to be health plans in the proposed definition of health plan. Of course, these plans may voluntarily adopt these standards for their own business needs. At some future time, the Congress may choose to expressly include some or all of these plans in the list of health plans that must comply with the standards.

Health plans often carry out their business functions through agents, such as plan administrators (including third party administrators), entities that are under ''administrative services only'' (ASO) contracts, claims processors, and fiscal agents. These agents may or may not be health plans in their own right; for example, a health plan may act as another health plan's agent as another line of business. As stated earlier, a health plan that conducts HIPAA transactions through an agent is required to assure that the agent meets all HIPAA requirements that apply to the plan itself.

''Health plan'' includes the following, singly or in combination:

a. ''Group health plan'' (as currently defined by section 2791(a) of the Public Health Service Act). A group health plan is a plan that has 50 or more participants (as the term ''participant'' is currently defined by section 3(7) of ERISA) or is administered by an entity other than the employer that established and maintains the plan. This definition includes both insured and self-insured plans. We define ''participant'' separately below.

Section 2791(a)(1) of the Public Health Service Act defines ''group health plan'' as an employee welfare benefit plan (as currently defined in section 3(1) of ERISA) to the extent that the plan provides medical care, including items and services paid for as medical care, to employees or their dependents directly or through insurance, or otherwise.

It should be noted that group health plans that have fewer than 50 participants and that are administered by the employer would be excluded from this definition and would not be subject to the administrative simplification provisions of HIPAA.

b. ''Health insurance issuer'' (as currently defined by section 2791(b) of the Public Health Service Act).

Section 2791(b)(2) of the Public Health Service Act currently defines a ''health insurance issuer'' as an insurance company, insurance service, or insurance organization that is licensed to engage in the business of insurance in a State and is subject to State law that regulates insurance.

c. ''Health maintenance organization'' (as currently defined by section 2791(b) of the Public Health Service Act).

Section 2791(b) of the Public Health Service Act currently defines a ''health maintenance organization'' as a Federally qualified health maintenance organization, an organization recognized as such under State law, or a similar organization regulated for solvency under State law in the same manner and to the same extent as such a health maintenance organization. These organizations may include preferred provider organizations, provider sponsored organizations, independent practice associations, competitive medical plans, exclusive provider organizations, and foundations for medical care.

d. Part A or Part B of the Medicare program (title XVIII of the Act).

e. The Medicaid program (title XIX of the Act).

f. A ''Medicare supplemental policy'' as defined under section 1882(g)(1) of the Act.

Section 1882(g)(1) of the Act defines a ''Medicare supplemental policy'' as a health insurance policy that a private entity offers a Medicare beneficiary to provide payment for expenses incurred for services and items that are not reimbursed by Medicare because of deductible, coinsurance, or other limitations under Medicare. The statutory definition of a Medicare supplemental policy excludes a number of plans that are generally considered to be Medicare supplemental plans, such as health plans for employees and former employees and for members and former members of trade associations and unions. A number of these health plans may be included under the definitions of ''group health plan'' or ''health insurance issuer'', as defined in a. and b. above.

g. A ''long-term care policy,'' including a nursing home fixed-indemnity policy. A ''long-term care policy'' is considered to be a health plan regardless of how comprehensive it is. We recognize the long-term care insurance segment of the industry is largely unautomated and we welcome comments regarding the impact of HIPAA on the long-term care segment.

h. An employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of two or more employers. This includes plans and other arrangements that are referred to as multiple employer welfare arrangements (''MEWAs'') as defined in section 3(40) of ERISA.

i. The health care program for active military personnel under title 10 of the United States Code.

j. The veterans health care program under chapter 17 of title 38 of the United States Code.

This health plan primarily furnishes medical care through hospitals and clinics administered by the Department of Veterans Affairs for veterans with a service-connected disability that is compensable. Veterans with non-service-connected disabilities (and no other health benefit plan) may receive health care under this health plan to the extent resources and facilities are available.

k. The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), as defined in 10 U.S.C. 1072(4).

CHAMPUS primarily covers services furnished by civilian medical providers to dependents of active duty members of the uniformed services and retirees and their dependents under age 65.

l. The Indian Health Service program under the Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*).

This program furnishes services, generally through its own health care providers, primarily to persons who are eligible to receive services because they are of American Indian or Alaskan Native descent.

m. The Federal Employees Health Benefits Program under 5 U.S.C. chapter 89.

This program consists of health insurance plans offered to active and retired Federal employees and their dependents. Depending on the health plan, the services may be furnished on a fee-for-service basis or through a health maintenance organization.

(**Note:** Although section 1171(5)(M) of the Act refers to the ''Federal Employees Health Benefit Plan,'' this and any other rules adopting administrative simplification standards will use the correct name, the Federal Employees Health Benefits Program. One health plan does not cover all Federal employees; there are over 350 health plans that provide health benefits coverage to Federal employees, retirees, and their eligible family members. Therefore, we will use the correct name, the Federal Employees Health Benefits Program, to make clear that the administrative simplification standards apply to all health plans that participate in the Program.)

n. Any other individual or group health plan, or combination thereof, that provides or pays for the cost of medical care.

We would include a fourteenth category of health plan in addition to those specifically named in HIPAA, as there are health plans that do not readily fit into the other categories but whose major purpose is providing health benefits. The Secretary would determine which of these plans are health plans for purposes of title II of HIPAA. This category would include the Medicare Plus Choice plans that will become available as a result of section 1855 of the Act as amended by section 4001 of the Balanced Budget Act of 1997 (Public Law 105–33) to the extent that these health plans do not fall under any other category.

7. Medical Care

''Medical care,'' which is used in the definition of health plan, would be defined as current section 2791 of the Public Health Service Act defines it: the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any body structure or function of the body; amounts paid for transportation primarily for and essential to these items; and amounts paid for insurance covering the items and the transportation specified in this definition.

8. Participant

We would define the term ''participant'' as section 3(7) of ERISA currently defines it: a ''participant'' is any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan that covers employees of such an employer or members of such an organization, or whose beneficiaries may be eligible to receive any of these benefits. An ''employee'' would include an individual who is treated as an employee under section 401(c)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 401(c)(1)).

9. Small Health Plan

We would define a ''small health plan'' as a group health plan or individual health plan with fewer than 50 participants.

The HIPAA does not define a ''small health plan'' but instead leaves the definition to be determined by the Secretary. The Conference Report suggests that the appropriate definition of a ''small health plan'' is found in current section 2791(a) of the Public Health Service Act, which is a group health plan with fewer than 50 participants. We would also define small individual health plans as those with fewer than 50 participants.

10. Standard

Section 1171 of the Act defines ''standard,'' when used with reference to a data element of health information or a transaction referred to in section 1173(a)(1) of the Act, as any such data element or transaction that meets each of the standards and implementation specifications adopted or established by the Secretary with respect to the data element or transaction under sections 1172 through 1174 of the Act.

Under our definition, a standard would be a set of rules for a set of codes, data elements, transactions, or identifiers promulgated either by an organization accredited by the American National Standards Institute or HHS for the electronic transmission of health information.

11. Transaction

''Transaction'' would mean the exchange of information between two parties to carry out financial and administrative activities related to health care. A transaction would be any of the transactions listed in section 1173(a)(2) of the Act and any determined appropriate by the Secretary in accordance with section 1173(a)(1)(B) of the Act. We present them below in the order in which we propose to list them in the regulations text to thisdocument and in the regulations document for proposed standards for these transactions that we will publish later.

A ''transaction'' would mean any of the following:

a. Health claims or equivalent encounter information. This transaction may be used to submit health care claim billing information, encounter information, or both, from health care providers to health plans, either directly or via intermediary billers and claims clearinghouses.

b. Health care payment and remittance advice. This transaction may be used by a health plan to make a payment to a financial institution for a health care provider (sending payment only), to send an explanation of benefits or a remittance advice directly to a health care provider (sending data only), or to make payment and send an explanation of benefits remittance advice to a health care provider via a financial institution (sending both payment and data).

c. Coordination of benefits. This transaction can be used to transmit health care claims and billing payment information between health plans with different payment responsibilities where coordination of benefits is required or between health plans and regulatory agencies to monitor the rendering, billing, and/or payment of health care services within a specific health care/insurance industry segment.

In addition to the nine electronic transactions specified in section 1173(a)(2) of the Act, section 1173(f) directs the Secretary to adopt standards for transferring standard data elements among health plans for coordination of benefits and sequential processing of claims. This particular provision does not state that these should be standards for electronic transfer of standard data elements among health plans. However, we believe that the Congress, when writing this provision, intended for these standards to apply to the electronic form of transactions for coordination of benefits and sequential processing of claims. The Congress expressed its intent on these matters generally in section 1173(a)(1)(B), where the Secretary is directed to adopt ''other financial and administrative transactions . . . consistent with the goals of improving the operation of the health care system and reducing administrative costs''. Adoption of a standard for electronic transmission of standard data elements among health plans for coordination of benefits and sequential processing of claims would serve these goals expressed by the Congress.

d. Health claim status. This transaction may be used by health care providers and recipients of health care products or services (or their authorized agents) to request the status of a health care claim or encounter from a health plan.

e. Enrollment and disenrollment in a health plan. This transaction may be used to establish communication between the sponsor of a health benefit and the health plan. It provides enrollment data, such as subscriber and dependents, employer information, and primary care health care provider information. The sponsor is the backer of the coverage, benefit, or product. A sponsor can be an employer, union, government agency, association, or insurance company. The health plan refers to an entity that pays claims, administers the insurance product or benefit, or both.

f. Eligibility for a health plan. This transaction may be used to inquire about the eligibility, coverage, or benefits associated with a benefit plan, employer, plan sponsor, subscriber, or a dependent under the subscriber's policy. It also can be used to communicate information about or changes to eligibility, coverage, or benefits from information sources (such as insurers, sponsors, and health plans) to information receivers (such as physicians, hospitals, third party administrators, and government agencies).

g. Health plan premium payments. This transaction may be used by, for example, employers, employees, unions, and associations to make and keep track of payments of health plan premiums to their health insurers. This transaction may also be used by a health care provider, acting as liaison for the beneficiary, to make payment to a health insurer for coinsurance, copayments, and deductibles.

h. Referral certification and authorization. This transaction may be used to transmit health care service referral information between primary care health care providers, health care providers furnishing services, and health plans. It can also be used to obtain authorization for certain health care services from a health plan.

i. First report of injury. This transaction may be used to report information pertaining to an injury, illness, or incident to entities interested in the information for statistical, legal, claims, and risk management processing requirements.

j. Health claims attachments. This transaction may be used to transmit health care service information, such as subscriber, patient, demographic, diagnosis, or treatment data for the purpose of a request for review, certification, notification, or reporting the outcome of a health care services review.

k. Other transactions as the Secretary may prescribe by regulation. Under section 1173(a)(1)(B) of the Act, the Secretary shall adopt standards, and data elements for those standards, for other financial and administrative transactions deemed appropriate by the Secretary. These transactions would be consistent with the goals of improving the operation of the health care system and reducing administrative costs.

C. Effective Dates—General

In general, any given standard would be effective 24 months after the effective date (36 months for small health plans) of the final rule for that standard. Because there are other standards to be established than those in this proposed rule, we specify the date for a given standard under the subpart for that standard.

If HHS adopts a modification to an implementation specification or a standard, the implementation date of the modification would be no earlier than the 180th day following the adoption of the modification. HHS would determine the actual date, taking into account the time needed to comply due to the nature and extent of the modification. HHS would be able to extend the time for compliance for small health plans. This provision would be at § 142.106.

The law does not address scheduling of implementation of the standards; it gives only a date by which all concerned must comply. As a result, any of the health plans, health care clearinghouses, and health care providers may implement a given standard earlier than the date specified in the subpart created for that standard. We realize that this may create some problems temporarily, as early implementers would have to be able to continue using old standards until the new ones must, by law, be in place.

At the WEDI Healthcare Leadership Summit held on August 15, 1997, it was recommended that health care providers not be required to use any of the standards during the first year after the adoption of the standard. However, willing trading partners could implement any or all of the standards by mutual agreement at any time during the 2-year implementation phase (3-year implementation phase for small health plans). In addition, it was recommended that a health plan give its health care providers at least 6 months notice before requiring them to use a given standard.

We welcome comments specifically on early implementation as to the extent to which it would cause problems and how any problems might be alleviated.

D. Employer Identifier Standard

[Please label written and e-mailed comments about this section with the subject: EIN STANDARD.]

Section 142.602, Employer identifier standard, would contain the employer identifier standard. There is no recognized standard for employer identification as defined in the law. That is, there is no standard that has been developed, adopted, or modified by a standard setting organization after consultation with the National Uniform Billing Committee, the National Uniform Claim Committee, WEDI, and the American Dental Association. Therefore, we would designate a new standard.

We are proposing as the standard the employer identification number (EIN), which is assigned by the Internal Revenue Service (IRS), Department of the Treasury.

The EIN is defined in 26 CFR 301.7701–12. We would define ''Employer identification number'' (EIN) as 26 CFR 301.7701–12 does: ''Employer identification number'' is the taxpayer identifying number of an individual or other person (whether or not an employer) that is assigned pursuant to 26 U.S.C. 6011(b) or corresponding provisions of prior law, or pursuant to 26 U.S.C. 6109, and in which nine digits are separated by a hyphen, as follows: 00-0000000.

1. Selection Criteria

The implementation team used the criteria described in section I.B., Process for Developing National Standards, to evaluate the EIN as a candidate for the employer identifier standard.

Criteria #1, #2, #4, and #6—The team found that the EIN met these criteria in that it is a nationally defined and assigned employer identifier and is the most widely used employer identifier in the United States.

Criteria #3 and #5—The team found that the EIN met these criteria in that it is an identifier that is already in use in the Accredited Standards Committee (ASC) X12N Insurance Subcommittee electronic transactions that require an employer identifier, including the transactions used for the Health Claim, Enrollment and Disenrollment in a Health Plan, Eligibility for a Health Plan, and Health Plan Premium Payment.

Criterion #7—The team found that the EIN met criterion #7 in that it is technologically independent of

computer platforms and transmission protocols.

Criterion #8—The team found that the EIN met criterion #8 in that it is a relatively short identifier that would fit into many existing formats.

Criterion #9—The team found that the EIN met criterion #9 in that it is an identifier already assigned to each employer for tax identification purposes. Its adoption as a standard would not result in additional data collection or paperwork burdens on users.

Criterion #10—The team found that the EIN met criterion #10 in that it is flexible enough to identify any employer, regardless of services, organization, or provider type.

2. Other Identifiers

We initially considered whether the PAYERID, the 9 position numeric identifier developed by HCFA as the unique identifier for health plans, could be used as the employer identifier. Since all employers are already enumerated by EIN, an entirely new employer identifier would require everyone to convert to a new identifier in addition to the EIN, which would still be used. Another key drawback to the use of the PAYERID as the employer identifier is the fact that the PAYERID numbering scheme does not have sufficient numbers available to enumerate all health plans and all employers. In addition, PAYERID's data capabilities were developed based on the data requirements for health plans, which are not the same as those for employers. Based on these limitations, the team believed that the PAYERID would not meet criteria #1, #2, #4, #9, and #10 and would not be acceptable as a candidate for the employer identifier.

The EIN is the most widely used employer identifier in the claim, enrollment and disenrollment for a health plan, eligibility for a health plan and health plan premium payment transactions. The D–U–N–S number and the D–U–N–S+4 number, maintained by Dun & Bradstreet, are sometimes used to identify business entities including employers in these transactions (primarily in premium payment transactions), but the EIN is used to a far greater extent than any other identifier to identify the employer of a participant. Since the D–U–N–S and D–U–N–S+4 numbers were not widely used in the claim, the enrollment and disenrollment in a health plan, and the eligibility for a health plan transactions, the team believed that these numbers did not meet criteria #1, #2, #4, and #9 and were less appropriate than the EIN as candidates for the employer identifier.

Because of the widespread use of the EIN to identify the employer in health transactions, we selected the EIN as the national employer identifier standard for use in those electronic health transactions that require an employer identifier.

Since the IRS is responsible for issuing the EIN, we consulted with the IRS on the legality and feasibility of using the EIN as the standard employer identifier for electronic health transactions. On September 11, 1997, we forwarded our request for IRS concurrence, and on January 16, 1998, IRS concurred.

Although the EIN is not confidential, some employers may not wish to supply the EIN because it is their tax identifying number. We welcome comments on this issue and on any other possible problems that the use of the EIN would cause for employers or others who would need to obtain and use the EIN in their electronic health transactions.

E. Requirements

[Please label written and e-mailed comments about this section with the subject: Requirements]

We note that the law does not bind employers to use the standard. However, providers, health plans, and health care clearinghouses are bound to use the standard in electronic health transactions. Any individual or other entity that needs to know an employer's EIN for use in electronic health transactions would obtain it directly from the employer. The EIN is not considered confidential and it may be freely used and exchanged by employers and others.

1. Health Plans

In § 142.604, Requirements: Health plans, we would require health plans to accept the EIN on all electronic transactions and transmit the EIN on all electronic transactions that require an employer identifier. Federal agencies and States may place additional requirements on their health plans.

2. Health care clearinghouses

We would require in § 142.606 that each health care clearinghouse use the EIN on all electronic transactions that require an employer identifier.

3. Health care providers

In § 142.608, Requirements: Health care providers, we would require each health care provider to use the EIN on all transactions, wherever required, that are electronically transmitted.

4. Employers

In § 142.610, Requirements: Employers, we would require each employer to disclose its EIN, when requested, to any entity that conducts standard electronic transactions that require that employer's identifier.

We believe the authority to require employers to disclose their EINs to entities that are required to use these numbers in electronic health care transactions is implicit in the statutory directive to the Secretary to adopt an employer identification number for use in the health care system. We note that we have been unable to identify any reason for an employer to refuse to furnish the number to an entity that conducts electronic health care transactions since the EIN, unlike the social security number, is not information about a person. We note too that access to the EIN does not give access to specific tax information.

F. Effective Dates of the Employer Identifier

Health plans would be required to comply with our requirements as follows:

1. Each health plan that is not a small health plan would have to comply with the requirements of §§ 142.104 and 142.604 no later than 24 months after publication of the final rule.

2. Each small health plan would have to comply with the requirements of §§ 142.104 and 142.604 no later than 36 months after the date of publication of the final rule.

3. If HHS adopts a modification to a standard or implementation specification, the implementation date of the modification would be no earlier than the 180th day following the adoption of the modification. HHS would determine the actual date, taking into account the time needed to comply due to the nature and extent of the modification. HHS would be able to extend the time for compliance for small health plans.

Failure to comply with standards may well result in monetary penalties. The Secretary is required by statute to impose penalties of not more than $100 per violation on any person who fails to comply with a standard, except that the total amount imposed on any one person in each calendar year may not exceed $25,000 for violations of one requirement. We will propose enforcement procedures in a future **Federal Register** document once the industry has more experience with using the standards.

III. Implementation of the Employer Identification Standard

[Please label written and e-mailed comments about this section with the subject: Implementation]

A. Obtaining an EIN

The Internal Revenue Service maintains the process for assigning EINs. A business can obtain an EIN by submitting, to the Internal Revenue Service, Internal Revenue Service Form SS–4, Application for Employer Identification Number. Any business that pays wages to one or more employees is required to have an EIN as its tax identifying number. A sole proprietor who has no employees and who files no excise or pension tax returns is the only business person who does not need to have an EIN as the tax identifying number. We believe that there would be few, if any, employers that would not have an EIN for tax identifying purposes.

The EIN is currently the employer identifier in most widespread use in the health claim, the enrollment and disenrollment in a health plan, the eligibility for a health plan, and the health plan premium payment transactions. If they conduct administrative health transactions electronically, health care providers, health care clearinghouses, and health plans would have to obtain and use the EIN on all electronic transactions that require an employer identifier. Employers are not required by subtitle F of HIPAA to use the EIN or conduct standard electronic health transactions. However, we believe that many employers will find that it will be to their advantage and will choose to do so.

B. Organizations with Multiple EINs

We are aware that some organizations have more than one EIN. We seek comment from the public on whether it is important, in order to avoid confusion and achieve administrative simplification, that one of these EINs be used consistently in health transactions. If use of one EIN is desirable, how should it be chosen?

C. Approved Uses

Two years after adoption of this standard (3 years for small health plans) the EIN must be used as the employer identifier in the health-related financial and administrative transactions identified in section 1173(a) that require an employer identifier. The approved uses of the EIN are detailed in 26 U.S.C. 6109 (i.e., income tax purposes and for purposes of implementing certain provisions of the Food Stamp Act of 1977 and the Federal Crop Insurance Act). It may not be used in any activity otherwise prohibited by law. The use of the EIN for the purposes specified in this proposed rule is covered under the current approved uses for the EIN.

Examples of approved uses included in this proposed rule are:

- Health care providers submitting health claims to health plans electronically would use the EIN to identify the employers of the participants in the health plan.
- Employers would use their EINs to identify themselves in electronic transactions making health plan premium payments to health plans on behalf of their employees.
- Employers and health care providers would use the EIN to identify the employer as the source or receiver of information about eligibility.
- Employers would use their EINs to identify themselves in electronic transactions to enroll or disenroll their employees in a health plan.

IV. New and Revised Standards

[Please label written and e-mailed comments about this section with the subject: Revisions.]

To encourage innovation and promote development, we intend to develop a process that would allow an organization to request a revision or replacement to any adopted standard or standards.

An organization could request a revision or replacement to an adopted standard by requesting a waiver from the Secretary of Health and Human Services to test a revised or new standard. The organization must, at a minimum, demonstrate that the revised or new standard offers an improvement over the adopted standard. If the organization presents sufficient documentation that supports testing of a revised or new standard, we want to be able to grant the organization a temporary waiver to test while remaining in compliance with the law. The waiver would be applicable to standards that could change over time; for example, transaction standards. We do not intend to establish a process that would allow an organization to avoid using any adopted standard.

We would welcome comments on the following: (1) How we should establish this process, (2) the length of time a proposed standard should be tested before we decide whether to adopt it, (3) whether we should solicit public comments before implementing a change in a standard, and (4) other issues and recommendations we should consider in developing this process.

Following is one possible process:

- Any organization that wishes to revise or replace an adopted standard must submit its waiver request to an HHS evaluation committee (not currently established or defined). The organization must do the following for each standard it wishes to revise or replace:
  + Provide a detailed explanation, no more than 10 pages in length, of how the revision or replacement would be a clear improvement over the current standard in terms of the principles listed in section I.B., *Process for developing national standards*, of this preamble.
  + Provide specifications and technical capabilities on the revised or new standard, including any additional system requirements.
  + An explanation, no more than 5 pages in length, of how the organization intends to test the standard.
- The committee's evaluation would, at a minimum, be based on the following:
  + A cost-benefit analysis.
  + An assessment of whether the proposed revision or replacement demonstrates a clear improvement to an existing standard.
  + The extent and length of time of the waiver.
- The evaluation committee would inform the organization requesting the waiver within 30 working days of the committee's decision on the waiver request. If the committee decides to grant a waiver, the notification may include the following:
  + Committee comments such as the following:
    – The length of time for which the waiver applies if it differs from the waiver request.
    – The sites the committee believes are appropriate for testing if they differ from the waiver request.
    – Any pertinent information regarding the conditions of an approved waiver.
- Any organization that receives a waiver would be required to submit a report containing the results of the study, no later than 3 months after the study is completed.
- The committee would evaluate the report and determine whether the benefits of the proposed revision or new standard significantly outweigh the disadvantages of implementing it and make a recommendation to the Secretary.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and

solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Section 142.604 Requirements: Health plans

Health plans would be required to accept the EIN on all electronic transactions and transmit the EIN on all electronic transmissions that require an employer identifier.

Section 3142.608 Requirements: Health care providers

Each health care provider would be required to obtain and use the EIN of the employer on all electronically transmitted standard transactions that require it.

Section 142.610 Requirements: Employers.

Each employer would have to disclose its EIN, when requested, to any entity that conducts standard electronic transactions that require that employer's identifier.

Discussion

The emerging and increasing use of health care EDI standards and transactions raises the issue of the applicability of the PRA. The question arises whether a regulation that adopts an EDI standard used to exchange certain information constitutes an information collection subject to the PRA. However, for the purpose of soliciting useful public comment we provide the following burden estimates.

In particular, the initial burden on the estimated 4 million health plans and 1.2 million health care providers to modify their current computer systems software would be 2 hours/$60 per entity, for a total burden of 10.4 million hours/$312 million. While this burden estimate may appear low, on average, we believe it to be accurate. This is based on the assumption that these and the other burden calculations associated with HIPAA administrative simplification systems modifications may overlap and is also based on the overwhelming extent to which the EIN is already in use in the health care community. This average also takes into consideration that (1) this standard may not be used by several of the entities included in the estimate, (2) this standard may already be in use by several of the entities included in the estimate, (3) modifications may be performed in an aggregate manner during the course of routine business and/or, (4) modifications may be made by contractors, such as practice management vendors, in a single effort for a multitude of affected entities.

We invite public comment on the issues discussed above. If you comment on these information collection and recordkeeping requirements, please e-mail comments to JBurke1@hcfa.gov (Attn:HCFA–0047) or mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850 Attn: John Burke HCFA–0047, HCFA Reports Clearance Officer

And,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VII. Impact Analysis

As the effect of any one standard is affected by the implementation of other standards, it can be misleading to discuss the impact of one standard by itself. Therefore, we did an impact analysis on the total effect of all the standards in the proposed rule concerning the national provider identifier (HCFA–0045–P), which can be found at 63 FR 25320.

We intend to publish in each proposed rule an impact analysis that is specific to the standard or standards proposed in that rule, but the impact analysis will assess only the relative cost impact of implementing a given standard. As stated in the general impact analysis in HCFA–0045–P, we do not intend to associate costs and savings to specific standards.

Although we cannot determine the specific economic impact of the standard being proposed in this rule (and individually each standard may not have a significant impact), the overall impact analysis makes clear that, collectively, all the standards will have a significant impact of over $100 million on the economy. Also, while each standard may not have a significant impact on a substantial number of small entities, the combined effects of all the proposed standards may have a significant effect on a substantial number of small entities. Therefore, the following impact analysis should be read in conjunction with the overall impact analysis.

Unfunded Mandates

This proposed rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. As discussed in the combined impact analysis to which we refer above (see 63 FR 25320), HHS estimates that implementation of the standards will require the expenditure of more than $100 million by the private sector. Therefore, the rule establishes a Federal private sector mandate and is a significant regulatory action within the meaning of section 202 of UMRA (2 U.S.C. 1532). HHS has included this statement to address the anticipated effects of the proposed rules pursuant to section 202.

These standards also apply to State and local governments in their roles as health plans or health care providers. Thus, the proposed rules impose unfunded mandates on these entities. While we do not have sufficient information to provide estimates of these impacts, several State Medicaid agencies have estimated that it would cost $1 million per State or territory to implement all of the HIPAA standards. However, the costs that these standards impose on these entities are well below the UMRA section threshold that will require additional analysis and consultation; the Congressional Budget Office analysis stated that ''States are already in the forefront in administering the Medicaid program electronically; the only costs—which should not be significant—would involve bringing the software and computer systems for the

Medicaid programs into compliance with the new standards.''

The anticipated benefits and costs of this proposed standard, and other issues raised in section 202 of the UMRA, are addressed in the analysis below and in the combined impact analysis. In addition, pursuant to section 205 of the UMRA (2 U.S.C. 1535), having considered a reasonable number of alternatives as outlined in the preamble to this rule and in the following analysis, HHS has concluded that the rule is the most cost-effective alternative for implementation of HHS's statutory objective of administrative simplification.

Executive Order 12866

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

Specific Impact of Employer Identifier

This is the portion of the impact analysis that relates specifically to the standard that is the subject of this regulation—the employer identifier. This section describes specific impacts that relate to the employer identifier. However, as we indicated in the introduction to this impact analysis, we do not intend to associate costs and savings to specific standards.

1. Affected Entities

a. Health Care Providers

Health care providers that conduct electronic transactions with health plans would have to obtain and use the EIN to identify the employer in those electronic transactions that require an employer identifier. In most cases health care providers currently obtain and use the EIN of the employer in those transactions that require an employer identifier. Any negative impact on health care providers generally would be related to the initial implementation period for providers that currently use an identifier other than the EIN to identify the employer in electronic transactions. They would incur implementation costs for converting systems from other employer identifiers to the EIN. Some health care providers would incur those costs directly and others would incur them in the form of fee increases from billing agents and health care clearinghouses.

b. Health Care Plans

Health care plans that engage in electronic commerce would have to modify their systems to use the EIN if they do not currently use the EIN to identify the employer in electronic transactions that require an employer identifier. In most cases health care plans currently obtain and use the EIN of the employer in those transactions that require an employer identifier. The conversion for health plans currently using an employer identifier other than the EIN would have a one-time cost impact.

c. Health Care Clearinghouses

Health care clearinghouses would have to modify their systems to transmit the EIN if they do not currently use the EIN to identify the employer in electronic transactions that require an employer identifier. In most cases health care clearinghouses currently obtain and use the EIN of the employer in those transactions that require an employer identifier. The conversion for health care clearinghouses currently using an employer identifier other than the EIN would have a one-time cost impact.

d. Employers

Each employer would have to disclose its EIN, when requested, to any entity that conducts standard electronic transactions that require the employer's identifier. Entities that conduct electronic transactions that require an employer identifier commonly obtain that identifier from the employer as a normal business practice. This practice would not change. Any impact on employers would be the one-time impact to disclose the EIN to entities that have previously used a different identifier for that individual.

2. Effects of Various Options

a. Guiding Principles for Standard Selection

The implementation teams charged with designating standards under the statute have defined, with significant input from the health care industry, a set of common criteria for evaluating potential standards. These criteria are based on direct specifications in the HIPAA, the purpose of the law, and principles that support the regulatory philosophy set forth in Executive Order 12866 of September 30, 1993, and the Paperwork Reduction Act of 1995. In order to be designated as a standard, a proposed standard should:

- Improve the efficiency and effectiveness of the health care system by leading to cost reductions for or improvements in benefits from electronic HIPAA health care transactions. This principle supports the regulatory goals of cost-effectiveness and avoidance of burden.
- Meet the needs of the health data standards user community, particularly health care providers, health plans, and health care clearinghouses. This principle supports the regulatory goal of cost-effectiveness.
- Be consistent and uniform with the other HIPAA standards—their data element definitions and codes and their privacy and security requirements—and, secondarily, with other private and public sector health data standards. This principle supports the regulatory goals of consistency and avoidance of incompatibility, and it establishes a performance objective for the standard.
- Have low additional development and implementation costs relative to the benefits of using the standard. This principle supports the regulatory goals of cost-effectiveness and avoidance of burden.
- Be supported by an ANSI-accredited standards developing organization or other private or public organization that will ensure continuity and efficient updating of the standard over time. This principle supports the regulatory goal of predictability.
- Have timely development, testing, implementation, and updating procedures to achieve administrative simplification benefits faster. This principle establishes a performance objective for the standard.
- Be technologically independent of the computer platforms and transmission protocols used in HIPAA health transactions, except when it is explicitly part of the standard. This principle establishes a performance objective for the standard and supports the regulatory goal of flexibility.
- Be precise and unambiguous, but as simple as possible. This principle supports the regulatory goals of predictability and simplicity.
- Keep data collection and paperwork burdens on users as low as is feasible. This principle supports the regulatory goals of cost-effectiveness and avoidance of duplication and burden.
- Incorporate flexibility to adapt more easily to changes in the health care infrastructure (such as new services, organizations, and provider types) and information technology. This principle supports the regulatory goals of flexibility and encouragement of innovation.

We assessed the various options for an employer identifier against the principles listed above, with the overall goal of achieving the maximum benefit for the least cost. We found that the EIN met all the principles. No other candidate employer identifier is in widespread use. No other candidate met a majority of the principles, especially those principles supporting the regulatory goal of cost-effectiveness. We are assessing the costs and benefits of

the EIN, but we did not assess the costs and benefits of other identifier options, because they did not meet the guiding principles.

b. Need to Convert

All health care providers, health plans, and health care clearinghouses that do not currently use the EIN to identify the employer in electronic health transactions that require an employer identifier would have to convert. Because the EIN is currently in widespread use as an employer identifier throughout the industry, adopting the EIN would not require conversion for most health care providers, health plans or health care clearinghouses. The selection of the EIN imposes a far smaller burden on the industry than any nonselected option and presents significant advantages in terms of cost-effectiveness, universality, and flexibility.

c. Complexity of Conversion

The EIN does not contain embedded intelligence. For those providers, health plans, and health care clearinghouses that must convert to use the EIN, the complexity of the conversion would be significantly affected by the degree to which their processing systems currently rely on intelligent employer identifiers. Converting from one unintelligent identifier to another is less complex than modifying software logic to obtain needed information from other data elements. However, the use of an unintelligent identifier like the EIN is required in order to meet the guiding principle of assuring flexibility.

In general, the shorter the identifier, the easier it is to implement. It is more likely that a shorter identifier, such as the EIN, would fit into existing data formats.

The selection of the EIN does not impose a greater burden on the industry in terms of the complexity of conversion than the nonselected options.

List of Subjects in 45 CFR Part 142

Administrative practice and procedure, Health facilities, Health insurance, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

Accordingly, 45 CFR subtitle A, subchapter B, would be amended by adding Part 142 to read as follows:

Note to Reader: This proposed rule is one of several proposed rules that are being published to implement the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996. We propose to establish a new 45 CFR Part 142. Proposed Subpart A—General Provisions is exactly the same in each rule unless we have added new sections or definitions to incorporate additional general information. The subparts that follow relate to the specific provisions announced separately in each proposed rule. When we publish the first final rule, each subsequent final rule will revise or add to the text that is set out in the first final rule.

PART 142—ADMINISTRATIVE REQUIREMENTS

Subpart A—General Provisions

Sec.
142.101 Statutory basis and purpose.
142.102 Applicability.
142.103 Definitions.
142.104 General requirements for health plans.
142.105 Compliance using a health care clearinghouse.
142.106 Effective date of a modification to a standard or implementation specification.

Subparts B—E [Reserved]

Subpart F—National Employer Identifier Standard

142.602 National employer identifier standard.
142.604 Requirements: Health plans.
142.606 Requirements: Health care clearinghouses.
142.608 Requirements: Health care providers.
142.610 Requirements: Employers.
142.612 Effective dates of the initial implementation of the national employer identifier standard.

Authority: Sections 1173 and 1175 of the Social Security Act (42 U.S.C. 1320d–2 and 1320d–4). 4

Subpart A—General Provisions

§ 142.101 Statutory basis and purpose.

Sections 1171 through 1179 of the Social Security Act, as added by section 262 of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191, 110 Stat. 2021), require HHS to adopt national standards for the electronic exchange of health information in the health care system. The purpose of these sections is to promote administrative simplification.

§ 142.102 Applicability.

(a) The standards adopted or designated under this part apply, in whole or in part, to the following:

(1) A health plan.

(2) A health care clearinghouse when doing the following:

(i) Transmitting a standard transaction (as defined in § 142.103) to a health care provider or health plan.

(ii) Receiving a standard transaction from a health care provider or health plan.

(iii) Transmitting and receiving the standard transactions when interacting with another health care clearinghouse.

(3) A health care provider when transmitting an electronic transaction as defined in § 142.103.

(b) Means of compliance are stated in greater detail in § 142.105.

§ 142.103 Definitions.

For purposes of this part, the following definitions apply:

Code set means any set of codes used for encoding data elements, such as tables of terms, medical concepts, medical diagnostic codes, or medical procedure codes.

Employer means the following:

(1) The entity for whom an individual performs or performed any service, of whatever nature, as the employee of that entity except that:

(i) If the entity for whom the individual performs or performed the services does not have control of the payment of wages for those services, the term ''employer'' means the entity having control of the payment of the wages; and

(ii) In the case of an entity paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term ''employer'' means that entity.

(2) Any entity acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan and includes a group or association of employers acting for an employer in that capacity.

Health care clearinghouse means a public or private entity that processes or facilitates the processing of nonstandard data elements of health information into standard data elements. The entity receives health care transactions from health care providers, health plans, other entities, or other clearinghouses, translates the data from a given format into one acceptable to the intended recipient, and forwards the processed transaction to the appropriate recipient. Billing services, repricing companies, community health management information systems, community health information systems, and ''value-added'' networks and switches that perform these functions are considered to be health care clearinghouses for purposes of this part.

Health care provider means a provider of services as defined in section 1861(u) of the Social Security Act, 42 U.S.C. 1395x, a provider of medical or other health services as defined in section 1861(s) of the Social Security Act, 42 U.S.C. 1395x, and any other person who furnishes or bills and is paid for health care services or

supplies in the normal course of business.

Health information means any information, whether oral or recorded in any form or medium, that—

(1) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

Health plan means an individual or group plan that provides, or pays the cost of, medical care. Health plan includes the following, singly or in combination:

(1) Group health plan. Group health plan is an employee welfare benefit plan (as currently defined in section 3(1) of the Employee Retirement Income and Security Act of 1974, 29 U.S.C. 1002(1)), including insured and self-insured plans, to the extent that the plan provides medical care, including items and services paid for as medical care, to employees or their dependents directly or through insurance, or otherwise, and—

(i) Has 50 or more participants; or

(ii) Is administered by an entity other than the employer that established and maintains the plan.

(2) Health insurance issuer. A health insurance issuer is an insurance company, insurance service, or insurance organization that is licensed to engage in the business of insurance in a State and is subject to State law that regulates insurance.

(3) Health maintenance organization. A health maintenance organization is a Federally qualified health maintenance organization, an organization recognized as a health maintenance organization under State law, or a similar organization regulated for solvency under State law in the same manner and to the same extent as such a health maintenance organization.

(4) Part A or Part B of the Medicare program under title XVIII of the Social Security Act.

(5) The Medicaid program under title XIX of the Social Security Act.

(6) A Medicare supplemental policy (as defined in section 1882(g)(1) of the Social Security Act, 42 U.S.C. 1395ss).

(7) A long-term care policy, including a nursing home fixed-indemnity policy.

(8) An employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of two or more employers.

(9) The health care program for active military personnel under title 10 of the United States Code.

(10) The veterans health care program under 38 U.S.C. chapter 17.

(11) The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), as defined in 10 U.S.C. 1072(4).

(12) The Indian Health Service program under the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

(13) The Federal Employees Health Benefits Program under 5 U.S.C. chapter 89.

(14) Any other individual or group health plan, or combination thereof, that provides or pays for the cost of medical care.

Medical care means the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any body structure or function of the body; amounts paid for transportation primarily for and essential to these items; and amounts paid for insurance covering the items and the transportation specified in this definition.

Participant means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan that covers employees of that employer or members of such an organization, or whose beneficiaries may be eligible to receive any of these benefits. ''Employee'' includes an individual who is treated as an employee under section 401(c)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 401(c)(1)).

Small health plan means a group health plan or an individual health plan with fewer than 50 participants.

Standard means a set of rules for a set of codes, data elements, transactions, or identifiers promulgated either by an organization accredited by the American National Standards Institute or HHS for the electronic transmission of health information.

Transaction means the exchange of information between two parties to carry out the financial and administrative activities related to health care. It includes the following:

(1) Health claims or equivalent encounter information.

(2) Health care payment and remittance advice.

(3) Coordination of benefits.

(4) Health claims status.

(5) Enrollment and disenrollment in a health plan.

(6) Eligibility for a health plan.

(7) Health plan premium payments.

(8) Referral certification and authorization.

(9) First report of injury.

(10) Health claims attachments.

(11) Other transactions as the Secretary may prescribe by regulation.

§ 142.104 General requirements for health plans.

If a person conducts a transaction (as defined in § 142.103) with a health plan as a standard transaction, the following apply:

(a) The health plan may not refuse to conduct the transaction as a standard transaction.

(b) The health plan may not delay the transaction or otherwise adversely affect, or attempt to adversely affect, the person or the transaction on the ground that the transaction is a standard transaction.

(c) The health information transmitted and received in connection with the transaction must be in the form of standard data elements of health information.

(d) A health plan that conducts transactions through an agent must assure that the agent meets all the requirements of this part that apply to the health plan.

§ 142.105 Compliance using a health care clearinghouse.

(a) Any person or other entity subject to the requirements of this part may meet the requirements to accept and transmit standard transactions by either—

(1) Transmitting and receiving standard data elements; or

(2) Submitting nonstandard data elements to a health care clearinghouse for processing into standard data elements and transmission by the health care clearinghouse and receiving standard data elements through the health care clearinghouse.

(b) The transmission, under contract, of nonstandard data elements between a health plan or a health care provider and its agent health care clearinghouse is not a violation of the requirements of this part.

§ 142.106 Effective date of a modification to a standard or implementation specification.

HHS may modify a standard or implementation specification after the first year in which HHS requires the standard or implementation specification to be used, but not more frequently than once every 12 months. If HHS adopts a modification to a standard or implementation specification, the implementation date

of the modified standard or implementation specification may be no earlier than 180 days following the adoption of the modification. HHS determines the actual date, taking into account the time needed to comply due to the nature and extent of the modification. HHS may extend the time for compliance for small health plans.

Subparts B–E [Reserved]

Subpart F—National Employer Identifier Standard

§ 142.602 National employer identifier standard.

The employer identifier standard that must be used under this subpart is the employer identification number (EIN), which is the taxpayer identifying number of an individual or other entity (whether or not an employer) that is assigned pursuant to 26 U.S.C. 6011(b), or corresponding provisions of prior law, or pursuant to 26 U.S.C. 6109, and in which nine digits are separated by a hyphen, as follows: 00–0000000. The EIN is assigned by the Internal Revenue Service, U.S. Department of the Treasury.

§ 142.604 Requirements: Health plans.

Each health plan must accept and transmit the national employer identifier of any employer that must be identified by the national employer identifier in any standard transaction.

§ 142.606 Requirements: Health care clearinghouses.

Each health care clearinghouse must use the national employer identifier of any employer that must be identified by the national employer identifier in any standard transaction.

§ 142.608 Requirements: Health care providers.

Each health care provider must use the national employer identifier wherever required on all transactions the health care provider transmits electronically.

§ 142.610 Requirements: Employers.

Each employer must disclose its EIN, when requested, to any entity that conducts standard electronic transactions that require that employer's identifier.

§ 142.612 Effective dates of the initial implementation of the national employer identifier standard.

(a) *Health plans.* (1) Each health plan that is not a small health plan must comply with the requirements of §§ 142.104 and 142.604 by [24 months after the effective date of the final rule in the **Federal Register**].

(2) Each small health plan must comply with the requirements of §§ 142.104 and 142.604 by [36 months after the effective date of the final rule in the **Federal Register**].

(b) *Health care clearinghouses and health care providers.* Each health care clearinghouse and health care provider must begin using the standard specified in § 142.602 by [24 months after the effective date of the final rule in the **Federal Register**].

Dated: April 17, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–15782 Filed 6–15–98; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–67; FCC 98–90]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On May 14, 1998, the Commission adopted a Notice of Proposed Rulemaking (NPRM) regarding telecommunications relay services (TRS) and speech-to-speech (STS) relay services, for persons with hearing and speech disabilities. We believe that our proposed rule amendments will enhance the quality of TRS, and broaden the potential universe of TRS users. The proposals set forth in the NPRM are intended to further promote access to telecommunications for the millions of persons with disabilities who might otherwise be foreclosed from participation in our increasingly telecommunications and information-oriented society. Rules proposed in the NPRM would require that, within two years of the publication in the **Federal Register** of a Report and Order in this proceeding, common carriers providing voice transmission service must ensure that nationwide STS relay services are available to users with speech disabilities throughout their service area. Rules proposed in the NPRM also would amend the Commission's current mandatory minimum standards for TRS service to improve the effectiveness of these rules and their application to TRS service.

DATES: Written comments are due on or before July 20, 1998. Reply comments are due on or before September 14, 1998. Written comments by the public on the proposed information collections are due July 20, 1998.

ADDRESSES: Office of the Secretary, Room 222, Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Kris Monteith, 202/418–1098 (Voice), 202/418–0484 (TTY), 202/418–2345 (FAX), kmonteit@fcc.gov, Network Services Division, Common Carrier Bureau. For additional information concerning the information collections contained in this NPRM contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in the matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, (CC Docket No. 98–67, adopted May 14, 1998, and released May 20, 1998). The full text of the NPRM is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, Room 239, 1919 M Street, N.W., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc., 2100 M Street, N.W., Suite 140, Washington D.C. 20037, 202/857–3800. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before August 17, 1998.

Paperwork Reduction Act of 1995

This NPRM contains proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are August 17, 1998.

Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection.

OMB Approval Number: 3060–0463.

Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities—CC Docket No. 98–67.

Form No.: N/A.

Type of Review: Revision.

Proposed information collection	Number of respondents	Estimated time per response (hours)	Total annual burden
Proposed 64.604(b)(2)	31	*1	11,315
Proposed 64.605(b)(2)	52	1	52
Proposed 64.605(f)	52	40	2,080

*Based on 365 hours per respondent per year.

Total Annual Burden: 13,447 hours (proposed collections only)

Respondents: Business or other for-profit.

Estimated Costs per Respondent: $0.

Needs and Uses: The information collections proposed in this NPRM are needed to ensure compliance with the Commission's mandatory minimum standards for telecommunications relay services and will address concerns from TRS users that state TRS programs are not providing sufficient information to consumers on their complaint and grievance options.

Synopsis of Notice of Proposed Rulemaking

1. The NPRM is based upon the record developed in Telecommunications Relay Services, the Americans with Disabilities Act of 1990, and the Telecommunications Act of 1996, Notice of Inquiry, CC Docket No. 90–571, 12 FCC Rcd 1152 (1997). The NPRM tentatively concludes that two forms of improved relay services, Video Relay Interpreting (VRI) and speech-to-speech relay service (STS), are ''telecommunications relay services'' (TRS) within the meaning of Title IV of the ADA (47 U.S.C. 225) and that the definition of ''TRS'' should be expanded to encompass these services. VRI allows persons with hearing disabilities to access the telephone network through the use of sign language interpreters and desktop personal computer video conferencing software. STS uses specially trained ''communications assistants'' (CAs) that serve as call facilitators for persons with speech disabilities. The tentative conclusion that these services fall within the scope of ''TRS'' under Title IV of the ADA will allow TRS providers to recover the costs of these improved TRS services from the intrastate jurisdiction or from the interstate TRS Fund, as appropriate.

2. The NPRM proposes that STS become a mandatory TRS feature two (2) years after the effective date of final rules in this proceeding. STS services provide access to the telephone network for people with severe speech disabilities, a population that is still largely excluded from the telephone network and that is not served by traditional TTY-based TRS. The NPRM, however, does not propose to require that VRI services become mandatory at this time, because of the high costs of the service, an inadequate supply of qualified interpreters to provide the service on a nationwide basis, and the need for further technical development of the service. Allowing TRS providers to recover the costs of voluntarily provided VRI service, however, will provide incentives for TRS providers to continue to develop and test this service.

3. The NPRM does not propose to require multilingual relay services (MRS) at this time, as some commenters suggested, although MRS is a covered TRS under Title IV of the ADA. Because language needs and population demographics vary widely from state to state, the NPRM tentatively concludes that the decision whether or not to mandate MRS should remain with the state TRS program administrators.

4. The NPRM also seeks comment on issues concerning access to emergency services through TRS, because a number of commenters assert that there are inconsistencies among the states as to how these ''critical'' TRS calls are handled. Finally, the NPRM does not propose to require access to enhanced services through TRS, in light of Congressional language stating that Title IV was not intended to provide access to enhanced services. The NPRM proposes, however, to encourage the voluntary provision of access to enhanced services by, for example, allowing CAs to alert the TRS user to the presence of recorded messages that cannot be relayed in a verbatim, effective manner, and giving the TRS user the option of having the CA summarize the message or listen for specific information.

5. The NPRM proposes a number of rule changes and clarifications intended to improve the ''functional equivalency'' of TRS service. First, the NPRM proposes to amend the rule requiring that 85% of all TRS calls be answered in 10 seconds or less (47 CFR 64.604(b)(2)) to require that: (1) calls be ''answered'' by a CA prepared to place the TRS call, and not answered by an auto-answer system and placed on hold; (2) the 85–10 calculation be performed on at least a daily basis; and (3) the 10-second time period begin to run when the TRS call reaches the TRS provider's network. Second, the NPRM proposes to require that a CA answering and placing a TRS call stay with that call for at least ten (10) minutes before an in-call transfer can take place. This proposal should minimize the frequency of TRS call disruptions that currently occur when CAs change shifts in the middle of ongoing TRS calls. Finally, the NPRM does not propose to require a minimum typing speed for CAs or other such CA standards at this time, because of concern that such a regulation could shrink the labor pool of potential CAs, a labor pool already subject to high turnover and attrition rates.

6. Consistent with the overall policy goal of the Telecommunications Act of 1996 to introduce competition into telecommunications markets, the NPRM seeks comment on several competitive issues surrounding TRS. First, the NPRM seeks comment on the issue of ''multivendoring,'' the practice of allowing several TRS vendors to compete directly for consumers in a state for their intrastate TRS calling needs (the vast majority of states currently rely on a single-provider TRS mechanism, where one provider obtains exclusive rights to deliver intrastate TRS

service for a period of time). The NPRM seeks comment on jurisdictional and cost-recovery issues regarding multivendoring. Second, the NPRM seeks comment on the use of TRS caller profile data collected by TRS providers. Specifically, the NPRM seeks to identify whether this data is the property of, and transferable to the state TRS program, or whether it is proprietary to the TRS provider, who does not have to surrender this data to its competitors in the event it no longer is the incumbent TRS provider for that state.

7. To increase the effectiveness of the Commission's certification process, the NPRM proposes that certified state programs shall be required to notify the Commission of substantive changes to their state TRS program within sixty (60) days of the effective date of the change, and to file documentation demonstrating that the state TRS program remains in compliance with the Commission's mandatory minimum standards. This proposal is intended to remedy a gap in current Commission rules where, once a five-year certification is obtained from the Commission, certified state TRS programs are not required to update their certification file regardless of whether or not substantive changes occur in their programs during the five-year certification period. Also, the NPRM proposes to amend the Commission's certification rules to require that, as a condition of certification, a state TRS program must demonstrate that its program makes available to TRS users informational materials on state and Commission complaint procedures. This proposal would address a concern from TRS users that state programs are not providing sufficient information to consumers on their complaint and grievance options. Finally, the NPRM seeks comment on whether the Commission should adopt specific guidelines that can be used to assess whether a state TRS program provides ''adequate procedures and remedies for enforcing the requirements of the state program,'' pursuant to 47 U.S.C. 225(f)(2)(B).

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a).

A. Need for, and Objectives of, the Proposed Rules

The NPRM is based upon the record developed in Telecommunications Relay Services, the Americans with Disabilities Act of 1990, and the Telecommunications Act of 1996, *Notice of Inquiry,* CC Docket No. 90–571, 12 FCC Rcd 1152 (1997). The goal of this proceeding is to consider ways in which TRS can be improved, both to better serve current TRS users and to ensure that TRS serves the broadest possible population of persons with hearing and speech disabilities, consistent with Congress' direction at 47 U.S.C. 225(d)(2) to the Commission to ensure that its regulations encourage the use of existing technology and do not discourage or impair the development of improved technology. Specifically, the NPRM proposes to require nationwide speech-to-speech (STS) service for persons with severe speech disabilities as a mandatory TRS feature within two years of publication of final rules in this proceeding, and requests comment on this proposal. The NPRM also proposes a number of rule amendments based upon the comments submitted by parties in the Notice of Inquiry, and seeks comment on those proposals. The overall intent of these proposed rules is to improve the effectiveness of TRS service and the Commission's oversight of TRS, and to clear up ambiguities surrounding several of the Commission's current TRS rules.

B. Legal Basis

Authority for actions proposed in this *Notice* may be found in: Sections 1, 4(i) and (j), 201–205, 218 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(i), 151(j), 201–205, 218 and 225.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' *Id.* A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Small Business Act, 15 U.S.C. 632 (1996).

TRS Providers. Neither the Commission nor the SBA has developed a definition of small entity specifically applicable to providers of telecommunications relay services (TRS). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. *Id.* The SBA defines such establishments to be small businesses when they have no more than 1,500 employees. 13 CFR 121.201, Standard Industrial Classification (SIC) code 4813. According to our most recent data, there are 12 interstate TRS providers, and these consist of interexchange carriers, local exchange carriers, and state-managed entities. We do not have data specifying the number of these providers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and we are thus unable at this time to estimate with greater precision the number of TRS providers that would qualify as small business concerns under the SBA's definition. We note, however, that these providers include large interexchange carriers and incumbent local exchange carriers. Consequently, we estimate that there are fewer than 12 small TRS providers that may be affected by the proposed rules, if adopted. We seek comment generally on our analysis identifying TRS providers, and specifically on whether we should conclude, for Regulatory Flexibility Act purposes, that any TRS providers are small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This NPRM proposes the following information collection: that states be

required to notify the Commission of substantive changes in their state TRS program within 60 days of the effective date of the change and to file documentation demonstrating that the state TRS program remains in compliance with the Commission's mandatory minimum standards. The information collection generally would be performed by a state official familiar with the state's telecommunications relay program; it would have no impact on large or small entities. The Commission estimates that the costs of compliance with this information collection will be minimal.

E. Significant Alternatives Minimizing Impact on Small Entities and Consistent With Stated Objectives

The proposals in the NPRM, and the comments the Commission seeks regarding them, are part of the Commission's analysis of its role with respect to the implementation and operation of nationwide TRS for persons with hearing and speech disabilities. The guiding principal shaping these proposals is Congress' direction to the Commission to ensure that TRS keeps pace with advancing technology and that the Commission's rules do not discourage the implementation of technological advances or improvements. The majority of TRS service is provided by large interexchange carriers and incumbent local exchange carriers, and we believe that the number of small entities impacted by these proposals would be potentially very small. With respect to proposed amendments to the Commission's rules governing TRS, by statute, common carriers providing voice transmission services who are subject to the TRS rules, including small entities, may comply with their obligations individually, through designees, through a competitively selected vendor, or in concert with other carriers. 47 U.S.C. 225(c). For this reason, the Commission expects that the proposed rule amendments will have a minimal impact on small entities. Moreover, the NPRM does not propose any reporting requirements applicable to small entities. We tentatively conclude that our proposals in the NPRM would impose minimum burdens on small entities. We encourage comment on this tentative conclusion.

F. Federal Rules That Duplicate, Overlap, or Conflict With Proposed Rules

None.

List of Subjects in 47 CFR Part 64

Communications common carriers, disabilities, telephone, telecommunications relay service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–15719 Filed 6–15–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 385 and 390

[FHWA Docket No. FHWA–98–3947]

RIN 2125–AD49

Federal Motor Carrier Safety Regulations; General; Commercial Motor Vehicle Marking

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA is proposing to amend its regulations concerning the marking of commercial motor vehicles (CMVs) and the submission of the Motor Carrier Identification Report (Form MCS–150) that new motor carriers must submit to the FHWA. The FHWA is proposing to eliminate the marking regulations of the former Interstate Commerce Commission (ICC), and require that motor carriers replace the vehicle markings specified by those requirements with markings that conform to the requirements of 49 CFR 390.21. The agency is proposing to amend its current marking requirements to require that CMVs be marked with the legal name of the business entity that owns or controls the motor carrier operation, or the ''doing business as'' (DBA) name, and the city and State for the principal place of business as they appear on the Form MCS–150. Motor carriers would be allowed two years to comply with the proposed marking requirement to affix the USDOT number to both sides of their CMVs and five years to comply with the additional requirements to add the address of the principal place of business, and the legal name or DBA name to their CMVs. The FHWA is also proposing to move the regulations that require motor carriers to submit the Form MCS–150 from 49 CFR part 385 to part 390, and to amend the regulations to require that all new interstate motor carriers submit a Form MCS–150 to the FHWA before (rather than within 90 days after) commencing operations. The FHWA solicits public comment from interested persons on this action, including responses to the information collection requirements set forth in this document.

DATES: Written comments must be received on or before August 17, 1998.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10:00 a.m. and 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Forjan, Office of Motor Carrier Research and Standards, (202) 366–4001, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 1992, the FHWA published a final rule (57 FR 3142) which required interstate motor carriers to mark their interstate CMVs with specific information, including the USDOT number (see 49 CFR 390.21) . The final rule, however, provided an exception for ICC authorized for-hire motor carriers that complied with the marking requirements formerly in 49 CFR part 1058, now redesignated as 49 CFR 390.401, 390.403, 390.405, and 390.407 (61 FR 54706, 54710, October 21, 1996). The ICC Termination Act of 1995 (ICCTA) (Pub. L. 104–88, 109 Stat. 803) was enacted on December 29, 1995, and became effective on January 1, 1996. The ICCTA abolished the ICC, amended subtitle IV of title 49, United States Code, reformed the economic regulation of transportation, and transferred the assets, personnel, and many of the duties and functions of the ICC to the Secretary of Transportation (Secretary). In response to this action, the FHWA is proposing to: (1) eliminate the marking requirements at 49 CFR 390.401, 390.403, 390.405, and 390.407, Identification of Vehicles; and (2) require all motor carriers operating CMVs in interstate commerce, including those motor carriers formerly authorized by the ICC, to meet the vehicle marking requirements at 49 CFR 390.21. The

FHWA believes it is important that CMVs be properly marked so that the public has an effective means to identify motor carriers operating in an unsafe manner. Such markings will assist State officials conducting roadside inspections and accident investigations in attributing important safety data to the correct motor carrier.

Use of the Motor Carrier Identification Number

The FHWA regulates the safety aspects of interstate motor carrier operations. All motor carriers must file a motor carrier identification report (Form MCS–150) with the FHWA within 90 days after beginning interstate operations. Shortly after the receipt of a completed Form MCS–150, the FHWA assigns a USDOT number to the motor carrier and notifies it of the number assigned.

The Motor Carrier Management Information System (MCMIS) is a computerized information system containing comprehensive safety performance data on individual interstate motor carriers. These data are supplied by State and Federal motor carrier safety personnel and the motor carriers themselves. The data are maintained on a central mainframe computer and are available for use by States, Federal agencies, the motor carrier industry, insurance companies, and others.

All safety performance data on each motor carrier are linked to the USDOT number. This includes roadside inspection data, accident data, including safety and compliance review information. The USDOT number is used to link data together to produce summaries or reports on specific motor carriers. These data are often used to establish priorities for motor carrier educational and enforcement activities by both Federal and State agencies. Thus, one of the ultimate goals of the MCMIS is to receive adequate and reliable safety performance data on each individual carrier to support overall trends and evaluate program effectiveness.

It is extremely difficult, however, to produce an accurate report of a motor carrier's safety performance without the use of a unique identifying data element for that motor carrier. The identity of the motor carrier cannot always be determined from the data recorded on the roadside inspection report. For example, many motor carriers in the United States and Canada have the same or similar names. In addition, many motor carriers have regional and terminal offices separate from their principal place of business. Yet, any of these addresses is currently acceptable under § 390.21(b)(2). Likewise, use of multiple names and addresses by motor carriers makes it difficult for the FHWA to match roadside inspection data with a specific motor carrier in the MCMIS. During calendar year 1996, 212,712 of the 1,479,259 roadside inspections could not be matched to the correct motor carrier. Excessive resources are expended in an attempt to resolve this continuing ''non-match'' problem. Accordingly, the FHWA is proposing this action to better identify and match safety performance data with the correct motor carrier.

Legal Name or Trade Name

The FHWA proposes to require a motor carrier to mark both sides of each self-propelled CMV it operates with the legal name or the name under which the carrier does business (DBA name), as that name is shown on the Form MCS–150. The current marking requirement in § 390.21(b)(1) allows the motor carrier to use its ''name or trade name,'' but does not require that name to be the same name as the motor carrier listed on its Form MCS–150. The MCMIS only contains the legal name and a single trade (DBA) name and, therefore, is limited in its ability to correctly match inspection reports with motor carriers. This proposed change is intended to improve identification methods so that States can assign performance data to the correct motor carrier. This action will help alleviate the ''non-match'' problem that currently exists.

A reliable means of correctly identifying motor carriers is critical, given: (1) the trend toward ''automated roadside inspections''; (2) ''electronic clearance'' technologies being explored through the Intelligent Transportation System (ITS) program (formerly known as the Intelligent Vehicle-Highway Systems program), under authority granted by the Intelligent Vehicle-Highway Systems Act of 1991 (IVHS) (secs. 6051–6059 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240, 105 Stat. 1914, 2189–2195); (3) the increasing costs of conducting roadside inspections; (4) the FHWA's growing reliance on ''performance data''; and (5) the need for more efficient methods of evaluating the safety fitness of motor carriers.

The FHWA believes that the number of motor carriers affected by this change will be relatively small. The precise number cannot, however, be determined from existing databases. Motor carriers with multiple trade names would be permitted to decide upon a DBA name with which to mark their CMVs and to notify the FHWA by submitting a revised Form MCS–150. The FHWA does not want to impose additional financial hardship upon the motor carriers. Therefore, the USDOT number would not need to be marked on existing CMVs until two years after the publication of the rule and the motor carrier would have five years from the publication of the rule to affix the legal name or DBA name on both sides of their CMVs.

Principal Place of Business Address Required on CMVs

The FHWA also proposes to remove the language in § 390.21(b)(2) that allows a motor carrier to mark its CMVs by displaying the address where the vehicle is customarily based. The FHWA would require a motor carrier to mark its CMVs only with the address of its principal place of business. A single address, like the single name discussed in the previous section, would significantly increase the ability of enforcement personnel at an accident scene, or a roadside inspection, to properly identify the motor carrier and ensure that data collected is assigned to the proper motor carrier. This new requirement would apply to the entire fleet, including those CMVs located at a terminal office. The motor carrier would have five years from the effective date of the rule to affix the address of the principal place of business on both sides of their CMVs.

New Carriers Required to File MCS–150 Before Commencing Operations

The FHWA is proposing to amend the requirement under which new motor carriers must file the Form MCS–150. The current requirement allows a new motor carrier to file Form MCS–150 within 90 days after beginning operations. The proposed change would require all new motor carriers to file Form MCS–150 before commencing operations. The FHWA has streamlined the process for filing the Form MCS–150 by making it available on the Internet. Motor carriers calling for the Form MCS–150 may access the Internet through the DOT WEB page at: ''HTTP://WWW.FHWA.DOT.GOV/OMC/OMCHOME.HTML''. Motor carriers can download the Form MCS–150, complete it, and submit it by mail. Carriers may also obtain copies of the form from the FHWA Regional Offices listed in § 390.27.

Proposed Implementation Plan

The FHWA recognizes that the time it would take a motor carrier to bring a large fleet into compliance with a new vehicle marking rule may be significant.

Under this proposal, all CMVs that are part of a motor carrier's existing fleet on the effective date of this rule, and which are marked currently with an ICC MC number, would have two years to come into compliance with the proposed marking requirements as they apply to the USDOT number. When the ICC was terminated, most for-hire carriers removed the ICC acronym from their CMVs. The FHWA now issues only the MC number to the for-hire carriers. Thus, the former ICC MC number will be referred to only as the ''MC'' number in this document. A motor carrier would not be required to remove the MC number when it affixes the USDOT number, but may do so if it wishes. All CMVs added to a motor carrier fleet after the effective date of a final rule would be required to meet all of the marking requirements, including marking CMVs with the legal name or the name under which it does business (DBA name), as that name is shown on the Form MCS–150, and marking CMVs only with the address of its principal place of business.

The FHWA believes that two years would be a sufficient period of time for the motor carrier to meet the proposed marking requirements for adding the USDOT number, and five years to affix the address of the principal place of business, and the legal name or DBA name on both sides of their CMVs, without creating either an administrative or economic hardship for motor carriers.

Motor Carrier Identification Report (Section 385.21), Failure to Report (Section 385.23), and Form MCS–150, Motor Carrier Identification Report (Appendix to Part 385)

The FHWA proposes to remove §§ 385.21 and 385.23 and combine the requirements of those two sections into a new § 390.19, Motor Carrier Identification Report. Form MCS–150, which is now an appendix to part 385, would be redesignated as an appendix to part 390. This proposed change would place the Form MCS–150 and the CMV marking requirements in the same part of the Federal Motor Carrier Safety Regulations (FMCSRs). The items proposed in this NPRM may change the information required to be on the MCS–150 (e.g., references to the ICC). The FHWA will make the appropriate changes after a review of the docket comments and the existing supply of MCS–150s in stock is depleted.

States Encouraged To Require USDOT Numbers for Intrastate Motor Carriers

The FHWA intends to allow and encourage the States to issue USDOT numbers to intrastate motor carriers. Currently, USDOT numbers are issued only by the FHWA to motor carriers engaged in interstate commerce. In the interest of uniformity and positive identification of all motor carriers engaged in commerce, the FHWA encourages the States to require their intrastate motor carriers to file Form MCS–150, or a similar form, with an appropriate State office. Upon receipt of the completed document, the States would record the information, assign the motor carrier a USDOT number from the FHWA database, and notify the motor carrier of its new number. If the States are willing to accept this responsibility, they would also need to require intrastate motor carriers to mark their CMVs with the USDOT number, and company name and address, in the same manner as proposed in this document.

The FHWA program initiatives have been directed toward uniform safety regulations for the motor carrier industry. The desire for uniformity was also expressed by much of the motor carrier industry via docket submissions, public hearings, and nominal group process meetings conducted as part of the public outreach portion of the FHWA's Zero Base Review of the FMCSRs. Having the various States and other government agencies use the USDOT number nationwide as the single motor carrier identifier would be a major step in achieving uniformity. The USDOT number could also serve as a motor carrier's designated identifier for the base-State programs mandated by the ISTEA. Since September 30, 1996, States may collect motor carrier fuel tax and registration fees only through base-State agreements, such as the International Registration Plan (IRP) and the International Fuel Tax Agreement (IFTA).

The Motor Carrier Safety Assistance Program (MCSAP) has increased its emphasis on traffic enforcement for CMVs over the last several years. These enforcement activities are performed by State enforcement officials and local officers who may not be familiar with motor carrier operations. Having the USDOT number as the single identifier for all motor carriers would ensure that the information collected at the roadside would be maintained in the correct motor carrier file.

The Commercial Vehicle Operations (CVO) component of the ITS program is another area where adoption of the USDOT number by States would enhance uniformity. The following are specific examples of ITS/CVO technology:

(1) electronic clearance of State and international borders by drivers and CMVs which are both legal and safe; (2) faster and more effective automated roadside inspections of commercial motor vehicles; (3) on-board safety devices to monitor driver alertness, vehicle defects, or other problems while the vehicle is in motion, and if necessary to notify the driver, carrier, and possibly enforcement personnel; (4) electronic purchase of credentials, and automated mileage and fuel reporting and auditing; (5) real-time communications between drivers, dispatchers, and intermodal transportation providers with information on congestion and routing options; and (6) hazardous materials (HM) incident notification which would provide HM response teams with timely and accurate information on cargo compartment contents, enabling them to react properly in emergency situations. An integrated information system capable of handling functions such as these is critically dependent upon a unique identifying number. The FHWA believes that the USDOT number can meet these needs.

Mexican and Canadian Carriers Also Subject to CMV Marking Requirements

Mexico-based motor carriers who are presently operating under an MX number, and Canadian motor carriers operating under an MC number will also be required to meet all the CMV marking requirements proposed in this rule when operating in the United States.

Transportation Lawyers Association Petitions for Rulemaking

The Transportation Lawyers Association (TLA) filed a petition on March 2, 1994, requesting that the FHWA initiate a rulemaking to require motor carriers to file a Form MCS–150 biennially and within 20 days following a change of its name, control, ownership, or its principal place of business. The TLA also recommended that the FHWA amend its Form MCS–150 to include blocks for motor carrier revenue, mileage, and accident data.

On August 26, 1996, the FHWA published an advance notice of proposed rulemaking (ANPRM), Motor Carrier Replacement Information/Registration System [61 FR 43816] . That notice was published in response to 49 U.S.C. 13908, enacted by section 103 of the ICCTA, which requires the Secretary to initiate a rulemaking proceeding to replace the current Department of Transportation identification number system, the single State registration system (49 U.S.C.

14504), the registration and licensing system (49 U.S.C. 13901–13905), and the financial responsibility information system with a single, on-line Federal system. The review and improvement of these information systems (49 U.S.C. 13906) will benefit the motor carrier industry, the States, the Federal government, and the public. In that ANPRM, the FHWA requested public comment from interested persons and responses to specific questions, several of which address issues raised by the TLA petition: Should the FHWA retain the USDOT identification number system as is? Who should be included as contributors to and users of this system? How could the system be improved? Should Forms MCS–150, MCS–90 and MCS–82 be retained, modified or eliminated? Do they capture only the necessary information? Should the information on Form MCS–150 be updated periodically? If so, at what intervals? Because the rulemaking to implement 49 U.S.C.13908 is much broader than the TLA request, the FHWA has decided neither to grant nor deny the petition, but rather to file it as a docket comment to the August 26, 1996, ANPRM. The FHWA encourages the TLA to participate actively in the future course of that rulemaking proceeding.

Commercial Vehicle Safety Alliance Petitions for Regulatory Changes

The Commercial Vehicle Safety Alliance (CVSA) and the Steering Committee of the Commercial Vehicle Information System (CVIS) jointly petitioned the FHWA, on July 13, 1994, for a number of regulatory changes pertaining to marking requirements. The petitioners asked the FHWA to require all motor carriers to mark their vehicles with the USDOT number. As already discussed, the FHWA is proposing to eliminate the current rule which allows for-hire motor carriers operating under authority formerly issued by the ICC to mark their vehicles in accordance with 49 CFR 390.401, 390.403, 390.405, and 390.407 (Identification of Vehicles) in lieu of obtaining a USDOT number.

When drivers, vehicles, and even motor carriers are operating under lease to other motor carriers, it is sometimes difficult for enforcement personnel to decide who is responsible for regulatory compliance. The CVSA and the CVIS Steering Committee, therefore, asked the FHWA to require the USDOT number of the party responsible for safety be listed on appropriate documents carried in each vehicle. The motor carrier (lessee) is always responsible for its employees under § 390.11. Petitioners suggested that the lease itself could be marked with the USDOT number, but marking the driver's record of duty status would give the same information with minimal changes in current procedures. Petitioners also recommended that the FHWA ask the ICC (which has been abolished pursuant to the ICCTA) to amend: (1) 49 CFR part 1058 (now 49 CFR part 390, subpart D) to require all motor carriers regulated by the ICC to obtain and display a USDOT number; and (2) part 1057 (now 49 CFR part 376, Lease and Interchange of Vehicles), to require the inclusion of the USDOT number on all lease documents.

Finally, the CVSA and the CVIS Steering Committee asked the FHWA to make the requirements of § 390.21 applicable in some way to all intrastate motor carriers.

The FHWA replied by letter on September 7, 1994, that it would not rule on the petition, but would simply allow the Office of Motor Carriers to proceed with this rulemaking, which began some months before the CVSA and the CVIS Steering Committee approached the agency. The FHWA believes this NPRM addresses the concerns expressed by the petitioners. The proposed rule would require all motor carriers subject to the FMCSRs, including those motor carriers formerly regulated by the ICC, to comply with the CMV marking requirements set forth in § 390.21. However, the FHWA has no direct authority to impose marking requirements on intrastate motor carriers. As stated previously, the agency will actively encourage the States to issue all intrastate motor carriers USDOT numbers which will serve as the single national identifier. The petitioners' request that the FHWA require the USDOT number of the party responsible for safety be listed on appropriate documents is not addressed in this rulemaking, because that issue will be the subject of a subsequent rulemaking.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated in the **DATES** section will be considered and will be available for examination in the docket room indicated in the **ADDRESSES** section. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment period closing date. Interested persons should examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This document proposes to amend part 390 to require that all CMVs that are part of a motor carrier's existing fleet on the effective date of this rule and which are marked currently with MC numbers, also mark those vehicles with their assigned USDOT number and correct name and address (city and state) if necessary. Motor carriers would be given two years from the date this rule becomes effective to affix the USDOT number to the vehicles in their existing fleet. Motor carriers would have five years from the date this rule becomes effective to affix the address of the principal place of business, and the legal name or DBA name on both sides of their CMVs, as shown on the Motor Carrier Identification Report, Form MCS–150. Motor carriers would not be required to remove the MC numbers from vehicles in their existing fleet, but would be prohibited from displaying the MC numbers on new vehicles entering the fleet. All CMVs added to a motor carrier's fleet after the effective date of a final rule in this proceeding would be required to meet all the proposed marking requirements prior to the vehicles being put into service.

The FHWA has determined that this document is a significant regulatory action under Executive Order 12866 and is significant under the DOT's regulatory policies and procedures. A regulatory evaluation was prepared, and has been placed in the docket. This evaluation shows that this proposed rule would cost carriers approximately $10.7 million spread over a five-year phase-in period. The discounted cost, based on a 7 percent discounted rate, would be $9.2 million.

The benefits of this rule, although significant, are difficult to quantify. The primary benefit would be an improvement in the FHWA's ability to identify problem carriers and to take action to reduce the potential for harm from these carriers. The action taken would depend upon the severity of the problem. Dangerous or unsafe carriers, such as those with a consistently high out-of-service (OOS) rate or a greater than expected number of accidents, could be forced to discontinue operations. Carriers with less severe problems could be targeted for educational and other enforcement actions. While FHWA programs cannot entirely eliminate the threat from unsafe carriers, we believe that the combination of educational and

enforcement programs can reduce the negligent behavior that leads to many accidents. The extreme action of closing a carrier would eliminate the dangerous behavior of risky carriers entirely. Given the relatively modest cost of this proposal, only a small number of accidents would have to be deterred to make it cost beneficial. The DOT uses a threshold value per fatality deterred of approximately $2.7 million. Thus, the benefits of this proposal would exceed the costs if four fatalities were deterred over five years. Other combinations of crashes avoided (fatality, injury and property-damage-only) could also drive the benefits of this proposal above its costs, with the precise figures depending on the severity of the non-fatality accidents. The FHWA believes that this proposal could lead to the prevention of a small number of accidents, and thus could prove cost beneficial. The 1996 National Highway Traffic Safety Administration (NHTSA) data shows large truck crashes resulted in 130,000 injuries and 5,126 fatalities. The NHTSA statistics also show that 296,000 heavy trucks were involved in crashes resulting on property damage.

The FHWA programs not only improve the safety of carriers visited, they also serve as a deterrent to other companies. In order for this deterrent effect to work, other carriers must see that carriers which do not comply with the safety regulations are visited and, if necessary, subjected to enforcement actions. If unsafe carriers are not visited, there is little incentive for carriers to improve their safety standards. By enhancing the FHWA's ability to identify and visit unsafe carriers, this regulation will increase the deterrent effect of the FHWA's safety programs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency has evaluated the effects of this rule on small entities. The economic impacts of this rule are discussed more fully in the regulatory flexibility analysis, a copy of which is in the docket. This rule would require all former ICC motor common and contract carriers to mark their CMVs with a ''USDOT Number'' and the city and State in which the motor carrier maintains its principal place of business.

The FHWA estimates that approximately 725,000 vehicles are operated by carriers regulated by the former ICC, and that 10% of these vehicles already display both ICC and DOT numbers and 50% have proper name and address identification. The cost to properly mark the remaining vehicles (those not yet in compliance) depends on the carrier's fleet size and what marking is required. A large carrier can apply a new DOT number for $4 per vehicle, while it would cost a small carrier $41 to change the DOT number, name, and address. This proposal would cost carriers approximately $10.7 million, which would be spread over the 5 year phase-in period. At a 7% discount rate, the discounted cost would be $9.2 million.

The benefits of this rule, while important, are difficult to quantify. The primary benefit will be that the FHWA will be better able to identify unsafe carriers and to take remedial action to make them safer. A secondary benefit is that the enhanced FHWA safety programs resulting from this rule will act as a deterrent to other carriers, by discouraging them from engaging in unsafe practices.

In order to minimize the cost of this rule, the FHWA is proposing a two-year phase-in period for marking of the USDOT number and a five-year phase-in period to meet all additional marking requirements. This should give carriers with small fleets (and others) ample time to comply without disrupting their operations.

The FHWA believes that the cost of marking each CMV will be modest. Therefore, under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. The FHWA welcomes comments, information, and data on these potential impacts.

Executive Order 12612 (Federalism Assessment)

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

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined at 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit records, or provide information to a third party. The FHWA has determined that this proposal contains new collection of information requirements for purposes of the PRA. The new information collection requirements in this proposal are a result of the enactment of the ICCTA which abolished the ICC, and transferred many of the duties and functions of the ICC to the Secretary. In response to this action, the FHWA is proposing to eliminate the marking requirements of the former ICC and require all motor carriers operating CMVs in interstate commerce, including those motor carriers formerly authorized by the ICC, to meet the vehicle marking requirements at 49 CFR 390.21. The FHWA believes it is important that CMVs be properly marked so that the public has an effective means to identify motor carriers operating in an unsafe manner. Such markings will assist State officials conducting roadside inspections and accident investigations in attributing important safety data to the correct motor carrier.

Prior to the ICC's elimination, carriers regulated by the former ICC had to display their MC number on both sides of their power units. The FHWA currently permits carriers regulated by the former ICC to display their MC number in lieu of the DOT number. This has led to difficulties in tracking carriers' performance, so that the FHWA is not able to identify problem carriers accurately and expeditiously.

This NPRM would require carriers regulated by the former ICC to display a USDOT number on all of their vehicles. Vehicles would also have to display the owner's legal name or DBA name and the city and State of their principal place of business as designated on their completed MCS–150. If a motor carrier is using a name for its business that is not one of the two names on its current MCS–150, the motor carrier would be required to submit an updated MCS–150, to the FHWA, within 90 days from the effective date of this rule indicating a change. Existing vehicles would be required to be marked with a USDOT number within 2 years of promulgation of the rule, and they would have 5 years to meet the name and address requirements. New vehicles would have to meet these requirements immediately after the effective date of a final rule.

The information collection requirements contained in Form MCS–150 have been approved by the OMB under the provisions of the PRA and assigned the control number of 2125–0544 which expires on January 31, 2000. Because this action contains new activities for motor carriers to file the MCS–150, the FHWA is required to resubmit this proposed collection of information, as revised, to OMB for review and approval. Accordingly, the FHWA seeks public comment on the proposed information collection requirement in this action.

Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to: (1) whether the collection of information is necessary for the performance of the functions of the FHWA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 385

Highway safety, Highways and roads, Motor carriers, Motor vehicle safety.

49 CFR Part 390

Highway safety, Highway and roads, Motor carriers, Motor vehicle identification and marking, Reporting and recordkeeping requirements.

Issued on: June 9, 1998.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 49, Code of Federal Regulations, chapter III, parts 385 and 390, as follows:

PART 385—SAFETY FITNESS PROCEDURES

1. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 104, 504, 521(b)(5)(A), 5113, 31136, 31144 and 31502; 49 CFR 1.48.

§§ 385.21 and 385.23 [Removed]

2. Sections 385.21 and 385.23 are removed.

Appendix A to Part 385, Form MCS–150, Motor Carrier Identification Report [Redesignated]

3. In chapter III, appendix A to part 385, Form MCS–150, Motor Carrier Identification Report, is redesignated as appendix A to part 390, and appendix A to part 385 is reserved.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

General [Amended]

4. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, 31504; and sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); and 49 CFR 1.48.

§ 390.19 [Redesignated as § 390.17]

5. Section 390.19 is redesignated as § 390.17.

6. A new § 390.19 is added to subpart B to read as follows:

§ 390.19 Motor carrier identification report.

(a) All motor carriers conducting operations in interstate commerce shall file a Motor Carrier Identification Report, Form MCS–150, before commencing operations.

(b) The Motor Carrier Identification Report, Form MCS–150, is available from all FHWA region and division motor carrier offices nationwide and from the FHWA Office of Motor Carrier Information Analysis, 400 Seventh Street, SW., Washington, D.C. 20590.

(c) The completed Motor Carrier Identification Report, Form MCS–150, shall be filed with the FHWA, Office of Motor Carrier Information Analysis, 400 Seventh Street, SW., Washington, DC 20590.

(d) Only the legal name or a single trade name of the motor carrier operating the self-propelled commercial motor vehicle, as listed on the motor carrier identification report (Form MCS–150) and submitted in accordance with this section, may be used. If the business name currently being used by the motor carrier is not the legal name or a single trade name, a revised Form MCS–150 must be submitted within 90 days from the effective date of this rule to the FHWA indicating a change.

(e) A motor carrier that fails to file a Motor Carrier Identification Report, Form MCS–150, or furnishes misleading information or makes false statements upon Form MCS–150, is subject to the penalties prescribed in 49 U.S.C. 522(b).

(f) Upon receipt and processing of the Motor Carrier Identification Report, Form MCS–150, the FHWA will issue the motor carrier an identification number (USDOT number). The motor carrier must display the number on every self-propelled Commercial motor vehicle, as defined in § 390.5 of this part, along with the additional information required by § 390.21.

(Approved by the Office of Management and Budget under control number 2125–0544)

7. Section 390.21 is revised, to read as follows:

§ 390.21 Marking of commercial motor vehicles.

(a) *General.* Every self-propelled commercial motor vehicle, as defined in § 390.5 of this part, subject to subchapter B of this chapter must be marked as specified in paragraphs (b), (c), and (d) of this section.

(b) *Nature of marking.* The marking must display the following information:

(1) The legal name or a single trade name of the motor carrier operating the self-propelled commercial motor vehicle, as listed on the motor carrier identification report (Form MCS–150) and submitted in accordance with § 390.19.

(2) The city or community and State [name abbreviated], in which the carrier maintains its principal place of business.

(3) The motor carrier identification number issued by the FHWA, preceded by the letters ''USDOT'.

(4) If the name of any person other than the operating carrier appears on the commercial motor vehicle operated under its own power, either alone or in combination, the name of the operating carrier shall be followed by the information required by paragraphs (b)(1), (2), and (3) of this section, and be preceded by the words ''operated by.''

(5) Other identifying information may be displayed on the vehicle if it is not inconsistent with the information required by this paragraph.

(6) Each motor carrier shall meet the following requirements pertaining to its operation:

(i) All commercial motor vehicles that are part of a motor carrier's existing fleet on (*the effective date of the final rule*) and which are marked with an ICC MC number shall come into compliance with paragraph (b)(3) of this section within two years.

(ii) All commercial motor vehicles that are part of a motor carrier's existing fleet on (*the effective date of the final rule*) and which are not marked with the address of the principal place of business, and the legal name or DBA name on both sides of their CMVs, as shown on the Motor Carrier Identification Report, Form MCS–150, shall come into compliance with paragraphs (b)(1) and (2) of this section within five years.

(iii) All commercial motor vehicles added to a motor carrier's fleet on or after (*the effective date of the final rule*) shall meet the requirements of this section before being put into service.

(c) *Size, shape, location, and color of marking.* The marking must—

(1) Appear on both sides of the self-propelled commercial motor vehicle;

(2) Be in letters that contrast sharply in color with the background on which the letters are placed;

(3) Be readily legible, during daylight hours, from a distance of 50 feet while the commercial motor vehicle is stationary; and

(4) Be kept and maintained in a manner that retains the legibility required by paragraph (c)(3) of this section.

(d) *Construction and durability.* The marking may be painted on the commercial motor vehicle or may consist of a removable device, if that device meets the identification and legibility requirements of paragraph (c) of this section, and such marking shall be maintained as required by paragraph (c)(4) of this section.

(e) *Rented commercial motor vehicles.* A motor carrier operating a self-propelled commercial motor vehicle under a rental agreement having a term not in excess of 30 calendar days meets the requirements of this section if:

(1) The commercial motor vehicle is marked in accordance with the provisions of paragraphs (b) through (d) of this section; or

(2) The commercial motor vehicle is marked as set forth below:

(i) The name or trade name of the lessor is displayed in accordance with paragraphs (c) and (d) of this section;

(ii) The city or community and State (name abbreviated) in which the lessor maintains its principal place of business or in which the commercial motor vehicle is customarily based is displayed in accordance with paragraphs (c) and (d) of this section;

(iii) The lessor's identification number preceded by the letters ''USDOT'' is displayed in accordance with paragraphs (c) and (d) of this section; and

(iv) The rental agreement entered into by the lessor and the renting motor carrier conspicuously contains the following information:

(A) The name and complete physical address of the principal place of business of the renting motor carrier;

(B) The identification number issued the renting motor carrier by the Federal Highway Administration, preceded by the letters ''USDOT,'' if the motor carrier has been issued such a number. In lieu of the identification number required in this paragraph, the following may be shown in the rental agreement:

(*1*) Information which indicates whether the motor carrier is engaged in ''interstate'' or ''intrastate'' commerce; and

(*2*) Information which indicates whether the renting motor carrier is transporting hazardous materials in the rented commercial motor vehicle;

(C) The sentence: ''This lessor cooperates with all Federal, State, and local law enforcement officials nationwide to provide the identity of customers who operate this rental commercial motor vehicle''; and

(v) The rental agreement entered into by the lessor and the renting motor carrier is carried on the rental commercial motor vehicle during the full term of the rental agreement. See the leasing regulations at 49 CFR 376 (formerly 49 CFR 1057) for information that should be included in all leasing documents.

§§ 390.401, 390.403, 390.405, and 390.407 [Removed]

8. Part 390, subpart D, consisting of §§ 390.401, 390.403, 390.405, and 390.407, is removed in its entirety.

[FR Doc. 98–15881 Filed 6–15–98; 8:45 am]

BILLING CODE 4910–22–P

Notices

Federal Register
Vol. 63, No. 115
Tuesday, June 16, 1998

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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Friday, June 26, 1998. The meeting will be held in the Ballroom, second floor, Gadsby's Tavern Museum, 134 North Royal Street, Alexandria, Virginia, beginning at 9:00 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. Section 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor, a Mayor; a Native Hawaiian; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome
II. Chairman's Report
III. Implementing the New Section 106 Regulations
  1. Proposed Action Plan for Training and Guidance-Report and discussion
  2. Addressing the Needs of Special Constituencies—Discussion and action
  3. Defining the Council's Role in the Section 106 Process-Discussion and action
IV Executive Director's Report
  A. Significant Section 106 Cases—Report and discussion
  B. Legislation in the 105th Congress—Report and discussion
V. New Business
VI. Adjourn.

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, D.C., 202–606–8503, at least seven (7) days prior to the meeting.

For further information contact: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: June 11, 1998.

John M. Fowler,

Executive Director.

[FR Doc. 98–15930 Filed 6–15–98; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–98–14]

National Advisory Committee for Tobacco Inspection Services; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting.

Name: National Advisory Committee for Tobacco Inspection Services.

Date: July 1, 1998.

Time: 9 a.m.

Place: United States Department of Agriculture (USDA), 300 12th Street S.W., Room 524 Cotton Annex Building, Washington, D.C. 20250.

Purpose: To elect officers, review regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*) and to discuss the level of tobacco inspection services currently provided to producers by AMS. The Committee will recommend the desired level of services to be provided to producers by AMS and an appropriate fee structure to fund the recommended services for the 1998–99 selling season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090–6456, (202) 205–0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: June 12, 1998.

John P. Duncan III,

Deputy Administrator, Tobacco Programs.

[FR Doc. 98–16093 Filed 6–15–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Tammany Creek Supplemental Watershed Protection Project, Nez Perce County, Idaho

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Luana E. Kiger, State Conservationist, Natural Resources Conservation Service, 9173 W. Barnes Dr., Suite C, Boise, Idaho 83709–1555, telephone (208) 378–5700.

NOTICE: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tammany Creek Supplemental Watershed Protection Project, Nez Perce County, Idaho.

The Plan/Environmental Assessment of this federally assisted action indicated that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Luana E. Kiger, State Conservationist, has determined that the preparation and review of an environmental impact statement was not needed for this project.

The Tammany Creek Supplemental Watershed Protection Project consists of a system of land treatment measures designed to protect the resource base, reduce off-site sediment and associated nutrients and bacteria, improve the

quality of ground water, and waters entering the Snake River. Planned treatment practices include: buffer strip, channel vegetation, critical area planting, diversion, dike, fencing, filter strip, fish stream improvement, grade stabilization structure, heavy use area protection, livestock exclusion, nutrient management, pasture and hayland planting, pesticide disposal system, pest management, pond, proper grazing use, recordkeeping, reservoir tillage, riparian (floodplain) easement, sediment basin, septic system testing, slot tillage, soil testing, stockwater development, steambank and shoreline protection, stream channel stabilization, structure for water control, subsoiling, water and sediment control basin, waterway, waste storage pond, waste storage system, well testing, wetland development and restoration, wildlife upland habitat management and wildlife wetland habitat management.

The Notice of Finding of No Significant Impact (FONS) has been forwarded to the Environmental Protection Agency. The basic data developed during the plan/environmental assessment are on file and may be reviewed by contacting Ms. Luana E. Kiger. The FONSI has been sent to various Federal, State, and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address stated on the previous page.

No administrative action on the proposal will be initiated until 30 days after the date of this publication in the **Federal Register**.

Dated: June 10 1998.

Luana E. Kiger,

State Conservationist.

(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)

[FR Doc. 98–15923 Filed 6–15–98; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Montana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on August 4, 1998, at the Days Inn, 1321 North 7th Avenue, Bozeman, Montana 59715. The purpose of the meeting is to provide orientation for new Advisory Committee members and discuss the summary on Indian education issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 8, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–15861 Filed 6–15–98; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 5:00 p.m. and adjourn at 8:30 p.m. on July 8, 1998, at the Office of Dr. Dorothy Zimmering, 12 Chapin Road, Barrington, Rhode Island 02906. The Committee will 1) review and discuss a preliminary summary of the transcript of its consultation held February 9, 1998, on the topic, ''An Examination of the Impact of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 on Legal Immigrants in Rhode Island,'' and 2) make plans for future events.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Olga Noguera, 401–464–2130, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 9, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–15862 Filed 6–15–98; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–836]

Polyvinyl Alcohol From Japan: Notice of Amendment of Preliminary Results of Changed Circumstances Antidumping Duty Review and Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amendment of preliminary results of changed circumstances antidumping duty review and intent to revoke order in part.

SUMMARY: On April 30, 1998, the Department of Commerce (''the Department'') published a notice of initiation of a changed circumstances antidumping duty review and preliminary results of the review with intent to revoke, in part, the antidumping duty order on polyvinyl alcohol from Japan, the scope of which included polyvinyl alcohol for use as a pharmaceutical excipient or for use in the manufacture of film coating systems which are components of a drug or dietary supplement (63 FR 23722, April 30, 1998). The Department has determined that it should clarify its description of the type of polyvinyl alcohol that is subject to the proposed revocation. In order to accommodate this clarification, the Department is affording parties an additional opportunity to comment (*see* Public Comment section below).

EFFECTIVE DATE: June 16, 1998.

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 regulations at 19 CFR Part 351 (62 FR 27296, May 19, 1997).

FOR FURTHER INFORMATION CONTACT: Brian Ledgerwood or Sunkyu Kim, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and

Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–3836 or (202) 482–2613, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 14, 1996, the Department published in the **Federal Register** (61 FR 24286) an antidumping duty order on polyvinyl alcohol (''PVA'') from Japan. On March 12, 1998, Colorcon, Inc. (''Colorcon'') requested that the Department conduct a changed circumstances review and revoke, in part, the antidumping duty order with respect to PVA from Japan for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement. Colorcon included in its request a statement from the petitioner dated October 30, 1997, expressing (i) no objection to a changed circumstances review, and (ii) no further interest in maintaining the antidumping duty order with respect to PVA imported from Japan for use in the manner described above.

On April 30, 1998, the Department published a notice of initiation of a changed circumstances antidumping duty review and preliminary results of the review with intent to revoke, in part, the antidumping duty order on PVA from Japan. In that notice, we stated that we intend to revoke in part, the antidumping duty order as it relates to ''imports of PVA for use as a pharmaceutical excipient or for use in the manufacture of film coating systems which are components of a drug or dietary supplement'' (63 FR 23722, April 30, 1998). Subsequently, it came to the Department's attention that our description of the type of PVA subject to the proposed revocation did not accurately reflect the description contained in the petitioner's expression of no further interest. In particular, the Department's description of the product subject to revocation did not include PVA ''for use in the manufacture of an excipient.'' As a result, we are amending our preliminary results published on April 30, 1998, to clarify our description of the type of PVA subject to the proposed revocation.

Scope of Review

The product covered by this review is PVA. PVA is a dry, white to cream-colored, water-soluble synthetic polymer. Excluded from this review are PVAs covalently bonded with acetoacetylate, carboxylic acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, and PVAs covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent. PVA in fiber form is not included in the scope of this review.

The merchandise under review is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Amended Preliminary Results of Changed Circumstances Review and Intent To Revoke Order in Part

Pursuant to section 751(d) of the Act, the Department may partially revoke an antidumping duty order based on a review under section 751(b) of the Act (*i.e.*, a ''changed circumstances'' review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request containing information concerning changed circumstances sufficient to warrant a review.

Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances review under 19 CFR 351.216, and may revoke an order in whole (or in part) if it determines that the producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the order, in whole or in part. The affirmative statement of no interest by the petitioner covered PVA from Japan for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement. In the preliminary results issued on April 30, 1998 (63 FR 23722) we inadvertently excluded from our description of the product subject to revocation, PVA ''for use in the manufacture of an excipient.'' Therefore, we are hereby notifying the public of our intent to revoke, in part, the antidumping duty order as it relates to imports of PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement.

Because of the error in the original description of the products covered by this changed circumstances review, we are affording the parties an additional opportunity to comment (*see* Public Comment section below). Suspension of liquidation will be extended accordingly.

If final revocation, in part, occurs, we intend to instruct the Customs Service to end, effective on the date of publication in the **Federal Register** of the final notice of partial revocation, the suspension of liquidation and to refund any estimated antidumping duties collected for all unliquidated entries of the above-described PVA not subject to final results of an administrative review. We will also instruct the Customs Service to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this changed circumstances review.

Public Comment

Interested parties may submit case briefs and/or written comments no later than 10 days after the date of publication of these results. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 17 days after the date of publication of these amended preliminary results. The Department will issue its final results no later than 45 days after it has issued its amended preliminary results if all parties agree to our preliminary results.

The preliminary results in this review and notice are in accordance with section 751(b) of the Act (19 U.S.C. 1675(b)), and 19 CFR 351.216, 351.221, and 351.222.

Dated: June 6, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–15875 Filed 6–15–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–824]

Polyvinyl Alcohol From Taiwan: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On February 9, 1998, the Department of Commerce published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on polyvinyl alcohol from Taiwan. The review covers two manufacturers/exporters of the subject merchandise to the United States, Chang Chun

Petrochemical and E.I. duPont de Nemours & Co. The period of review is May 15, 1996, through April 30, 1997.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received and the correction of certain clerical and computer programming errors, we have changed our results from those presented in our preliminary results, as described below in the comment section of this notice. The final results are listed below in the section ''Final Results of Review.''

EFFECTIVE DATE: June 16, 1998.

FOR FURTHER INFORMATION CONTACT: Everett Kelly at (202) 482–4194, or Sunkyu Kim at (202) 482–2613, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to 19 CFR Part 353 (April 1, 1997). Although the Department's new regulations, codified at 19 CFR Part 351, 62 FR 27296 (May 19, 1997) (''*Final Regulations*''), do not govern this review, citations to those regulations are provided, where appropriate, as a statement of current departmental practice.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1998, the Department of Commerce (''the Department'') published in the **Federal Register** its preliminary results of the 1996–1997 administrative review of the antidumping duty order on polyvinyl alcohol from Taiwan (63 FR 6526) (''*Preliminary Results*''). We gave interested parties an opportunity to comment on our preliminary results. Air Products and Chemicals Inc. (''the petitioner''), E.I. du Pont de Nemours & Co. (''DuPont''), Chang Chun Petrochemical Co., Ltd. (''Chang Chun''), and Perry Chemical Corporation (''Perry'') submitted case briefs on March 11, 1998, and rebuttal briefs on March 18, 1998. Pursuant to a timely request from the petitioner, we held a public hearing on March 25, 1998. On April 23, 1998, the Department requested Chang Chun to provide supplemental information concerning its sales to the United States which were used in our preliminary results calculation (*see* ''Treatment of Sales of Tolled Merchandise'' section below for further discussion). Chang Chun provided this data on April 30, 1998. Additionally, Chang Chun provided data on additional shipments made during the POR which were not included in our preliminary results (*see* Memorandum to File from Everett Kelly, Case Analyst, dated May 20, 1998). In May 1998, the Department verified the data provided by Chang Chun (*see* Verification Report dated May 28, 1998).

On May 11, 1998, the petitioner filed a submission objecting to certain information provided by Chang Chun in its April 30, 1998, submission. Chang Chun submitted its response to the petitioner's comments on May 22, 1998 (*see* Comment 7 for Chang Chun for further discussion).

The Department has now completed this administrative review, in accordance with section 751(a) of the Act.

Scope of Review

The product covered by this review is polyvinyl alcohol (''PVA''). PVA is a dry, white to cream-colored, water-soluble synthetic polymer. Excluded from this review are PVAs covalently bonded with acetoacetylate, carboxylic acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, and PVAs covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent. PVA in fiber form is not included in the scope of this review.

The merchandise under review is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Treatment of Sales of Tolled Merchandise

As discussed in the *Preliminary Results* of this proceeding, DuPont and Perry sold in the U.S. and third-country markets subject merchandise tolled by the Taiwan producer, Chang Chun. Both DuPont and Perry claim that they are the manufacturer of the tolled merchandise under the Department's newly articulated treatment of tollers and subcontractors in tolling arrangements (*see* 19 CFR 351.401(h) (62 FR 27926) (May 19, 1997)). Accordingly, each company claims that it is entitled to its own dumping rate.

In our preliminary results, we determined that, based on the evidence on the record, DuPont is the manufacturer of the tolled merchandise, and therefore the appropriate respondent. With respect to Perry, based upon a review of the arrangement between Perry and Chang Chun, we preliminarily determined that Perry is not the manufacturer of PVA it imported into the United States during the POR.

For the final results, we continue to treat DuPont as the manufacturer/exporter of PVA produced under a tolling arrangement with Chang Chun (*see* Comment 1 for DuPont). With respect to Perry, we continue to find that Perry is not a manufacturer of the subject merchandise. As in the preliminary results, we are treating Perry as an importer and U.S. reseller of the subject merchandise (*see* Comment 1 for Chang Chun).

As a result of our preliminary decision that Chang Chun was the producer of the PVA sold to Perry, certain information was not on the record of this review, which required us to substitute missing data in the *Preliminary Results*. Initially, Chang Chun had reported a small number of EP sales to Perry which were not produced under the agreement with Perry. Included in that reporting were all the expenses associated with those sales, *i.e.*, movement expenses from Chang Chun's factory to the port of entry in the United States, and selling expenses including credit and bank charges. We also had a larger number of transactions originally reported by Perry, which were sales from Chang Chun to Perry produced pursuant to the agreement. In the *Preliminary Results*, we used both the sales reported by Chang Chun and those reported by Perry to calculate the EP for Chang Chun (*see Calculation Memorandum for the Preliminary Results for Chang Chun Petrochemical Co., Ltd.*, dated February 2, 1998 (''Preliminary Calculation Memorandum'').

Although Perry reported its expenses associated with selling the PVA at issue to unaffiliated customers in the United States, we did not have Chang Chun's selling expenses on the record for those sales. However, because all of the sales were made to Perry and were all shipped by Chang Chun on the same delivery terms, we used the movement and selling expenses associated with the sales reported by Chang Chun in its U.S. sales listing submitted on August 22, 1997, as a reasonable substitute for the missing expense data for the sales originally reported by Perry.

Furthermore, having determined that the Perry-reported transactions are sales by Chang Chun, we lacked appropriate, verified sales dates, shipment dates or the entry dates. As a result, in our *Preliminary Results,* from information on the record, we estimated the sales dates and shipment dates (*see* ''Preliminary Calculation Memorandum for Chang Chun'').

For these *Final Results* we gathered additional information from Chang Chun, which we verified, so that our review of Chang Chun's EP sales encompassed all sales shipped during the POR (*see* Comment 7 for Chang Chun). Additionally, we obtained and verified the prices Chang Chun's affiliate charged Perry, through an intermediary trading company, for the major input, VAM, during the POR. With this new data, we were able to properly construct Chang Chun's U.S. price to Perry for the PVA transactions covered by this review by combining the VAM prices with the prices Chang Chun charged Perry for converting the VAM into PVA (*see* Comment 2 for Chang Chun).

Normal Value Comparisons

To determine whether sales of the subject merchandise by the respondents to the United States were made at below normal value, we compared, where appropriate, the export price (''EP'') and constructed export price (''CEP'') to the normal value (''NV'') as described below. In accordance with section 777A(d)(2) of the Act, we compared, where appropriate, the EPs and CEPs of individual transactions to the monthly weighted-average price of sales of the foreign like product.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *Cemex* v. *United States,* 1998 WL 3626 (Fed Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (''CV'') as the basis for foreign market value when the Department finds home market sales to be outside the ordinary course of trade. This issue was not raised by any party in this review. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See* section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this decision and has determined that it would be inappropriate to resort directly to CV as the basis for NV, in lieu of foreign market sales, if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ordinary course of trade. Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of the Review'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in sections B and C of our antidumping duty questionnaire.

Export Price and Constructed Export Price

We calculated EP and CEP, as appropriate, in accordance with section 772 of the Act. The calculation for each respondent was based on the same methodology used in the preliminary results, with the following exceptions:

Chang Chun

As noted in the ''Treatment of Sales of Tolled Merchandise'' section, we modified the gross unit prices and dates of sale and shipment for transactions used in our *Preliminary Results* based on information obtained after the preliminary results. We also included certain additional sales shipped during the POR which were not included in our preliminary analysis. Furthermore, as identified by Chang Chun in its case brief, we made corrections to the product characteristics for certain U.S. sales which were incorrectly assigned in our preliminary results calculation. We made the corrections based on information Chang Chun provided in its November 12, 1998, supplemental Section C response (*see Calculation Memorandum for the Final Results for Chang Chun Petrochemical Co., Ltd.* dated June 9, 1998, (''Final Calculation Memorandum for Chang Chun'')).

DuPont

In our *Preliminary Results,* as noted by DuPont in its case brief, we incorrectly stated that we calculated EP for some of DuPont's sales when, in fact, all of DuPont's sales should have been classified as CEP sales. In our preliminary margin program, however, we actually calculated all sales reported by DuPont as CEP transactions. For the final results, we corrected the CEP price calculation for DuPont's sales of further manufactured products by stating the prices on the same unit basis as the normal value (*see Calculation Memorandum for the Final Results for E.I. duPont de Nemours & Co.,* dated June 9, 1998 (''Final Calculation Memorandum for DuPont''), *see also, Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 60 FR 42835, 42845 (August 17, 1995) where the Department made the same type of adjustment to CEP calculation for sales of further manufactured merchandise).

Normal Value

For Chang Chun, we based NV on the prices at which the foreign like products were first sold for consumption in the home market. For DuPont, we based NV on the prices at which the foreign like products were first sold for consumption in the respondent's largest third-country market, Australia. We calculated NV based on the same methodology used in the preliminary results, except for DuPont where we modified the margin calculation program to correct for certain ministerial errors identified by the petitioner. Specifically, we made the following corrections:

1. We corrected the calculation of variable manufacturing costs (''VCOM'') for DuPont's further processed U.S. sales by stating the per unit costs on the same unit basis as the VCOM of the Australian sales (*see* ''Final Calculation Memorandum for DuPont'').

2. We corrected the gross unit price for a third-country market sale which was added to DuPont's sales listing based on findings at verification. We note, however, that the per unit price suggested by the petitioner in its case brief is incorrect. We calculated the gross unit price based on the verified quantity and total value listed on the invoice (*see* ''Final Calculation Memorandum for DuPont'').

3. We changed the difference-in-merchandise adjustment calculation to correct for a clerical error in the equation used in our preliminary margin program (*see* ''Final Calculation Memorandum for DuPont'').

4. Although we did not resort to CV as the basis for NV for any of DuPont's U.S. sales in the final results, we made corrections for certain clerical errors contained in the preliminary margin program for calculating CV (*see* ''Final Calculation Memorandum for DuPont'').

Cost of Production Analysis

As discussed in the preliminary results, we conducted an investigation to determine whether the respondents made sales of foreign like product in the comparison market during the POR at prices below their cost of production (''COP'') within the meaning of section 773(b)(1) of the Act. We calculated the COP following the same methodology as in the preliminary results on a model-specific basis, except that for Chang Chun, we reallocated costs between PVA and acetic acid based on relative sales value, and made the appropriate adjustment to the reported COP (*see* Comment 4 for Chang Chun and ''Final Calculation Memorandum for Chang Chun'').

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product were made at prices below the COP, we disregarded the below-cost sales because such sales were found to be made within an extended period of time in ''substantial quantities'' in accordance with sections 773(b)(2) (B) and (C) of the Act, and because the below cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Where all contemporaneous sales of identical and similar merchandise were disregarded, we calculated NV based on CV, in accordance with section 773(a)(4) of the Act.

For both Chang Chun and DuPont, we did not find that comparison market sales of PVA products were made at prices below COP within the POR.

Analysis of Comments Received

Chang Chun

Comment 1: Treatment of Sales of Perry's Tolled Merchandise. Perry argues that the Department has misinterpreted section 351.401(h) of its proposed and final regulations in failing to find that Perry is the producer of the subject merchandise under the tolling agreement with Chang Chun. Perry claims that it meets all of the stated requirements of section 351.401(h) which would qualify Perry as the producer. Perry maintains that it controls all aspects of the production and sales of the finished PVA and has ownership of the main input, VAM, as well as the finished product, PVA. According to Perry, the Department's conclusion in the preliminary results that Perry is not a producer is based on factors that are irrelevant to the Department's determination regarding the producer of subject merchandise under the tolling arrangement. Perry argues that to be considered a producer in a tolling situation, the Department's regulation at section 351.401(h) does not require that the party be engaged in some processing work and dismisses as irrelevant the fact that Perry does not engage in any production activities, including production of the main input, VAM, does not own production facilities, and does not engage in R&D activities. Perry claims that, in past cases, the Department has found a ''tollee'' to be a producer where no processing was done by the ''tollee.'' In support of its position, Perry cites to the following cases: *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Flanges from India,* 58 FR 68853 (December 29, 1993) (''Steel Flanges from India''), *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memories from Taiwan,* 63 FR 8909 (February 23, 1998) (''*SRAMS from Taiwan*''), and *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan,* 62 FR 51427 (October 1, 1997) (''*Collated Roofing Nails from Taiwan*''). Additionally, Perry claims that in the *Preliminary Results,* the Department cited ''obsolete reasoning'' in *Chrome Plated Lug Nuts from Taiwan,* 56, FR 36130 (July 31, 1991) which has been overtaken by the Department's later precedents cited above.

Furthermore, Perry contends that, contrary to the Department's statement in the *Preliminary Results* that Perry's normal course of conducting business has not substantively changed, the tolling arrangement has required substantial changes in Perry's PVA business because Perry now assumes all risks by acquiring control over VAM and PVA production.

The petitioner responds that the Department was correct in determining that Perry is not the producer of PVA it imports into the United States. The petitioner states that the Department's determination is consistent with past cases, in which the Department deemed it necessary that the manufacturer be engaged in production activities. According to the petitioner, Perry's lack of involvement in critical production functions, such as knowledge of the physical characteristics of toll produced PVA, demonstrates that Perry did not have control over the production of tolled PVA it purported to have, and thus, does not satisfy the requirements of a producer expressed in the Department's proposed and final regulation. Accordingly, the petitioner urges the Department to continue to find that Perry is not a producer of PVA entitled to its own dumping rate.

DOC Position: On the basis of Perry's tolling agreement and Perry's interpretation of the Department's new tolling regulation, Perry asserts that it is the producer of the PVA processed under this contract. *See* section 351.401(h) of the *Final Regulations.* We disagree. In assessing whether Perry is the producer, we are not restricted to a review of the four corners of the contract; rather, when determining whether a party is a producer or manufacturer of subject merchandise, we look at the totality of the circumstances presented. Moreover, section 351.401(h) of the *Final Regulations* does not purport to address all aspects of an analysis of tolling arrangements. It merely sets forth certain conditions under which we will not find that a toller or subcontractor is the producer of the subject merchandise. Based upon the totality of the circumstances in this case, including the factors set forth in section 351.401(h), we find that Chang Chun, not Perry, is the producer of the PVA in question.

The record establishes that Chang Chun engaged in processing VAM into PVA under the tolling contract with Perry. Evidence also establishes that Chang Chun is a manufacturer of chemicals and a long-time producer of PVA. In contrast, Perry has been a U.S. importer and reseller of PVA produced by Chang Chun since 1978. It was only after Chang Chun was found dumping and assigned a 19.21 percent margin that Perry entered into the tolling arrangement. Prior to this arrangement, at no time had Perry been in the business of producing or manufacturing PVA or any other chemical nor, as part of its normal business practice, was Perry ever engaged in subcontracting any kind of chemical production or processing of subject merchandise or any chemical. (62 FR at 6527). Moreover, we found no evidence to suggest that Perry's decision to enter into a tolling arrangement with Chang Chun was for the purpose of expanding its operations to begin producing PVA or any other chemical. (62 FR at 6527). We find the mere rearrangement of Perry's contractual relationship with Chang Chun insufficient to establish Perry as a producer of PVA.

Although Perry claims that it acquired ownership of both the major input and the PVA, under the circumstances this

does not persuade us that Perry is the producer of the PVA at issue. Notwithstanding that Perry may have acquired contractual rights in the VAM, the record establishes that, in effect, Chang Chun manufactured the VAM purchased by Perry, and that Chang Chun retained possession and control of the VAM before it underwent processing into subject merchandise. Through a single intermediary, Perry made all of its VAM purchases from an affiliate of Chang Chun, which produced the VAM in a facility near Chang Chun's in Taiwan.

Perry argues that when purchasing VAM from the intermediary Perry had no direct knowledge that the VAM was produced by a company affiliated with Chang Chun and objects to the Department's characterization in the *Preliminary Results* that Perry knew the intermediary purchased the VAM from Chang Chun's affiliate. (63 FR at 6527). We stand by our interpretation of Perry's statements as reasonable and regard Perry's comments after the fact as self-serving. However, we note that even Perry acknowledges that it knew that Chang Chun's affiliate was one of the suppliers of this intermediary. Additionally, Chang Chun provided the Department with the VAM prices charged by its affiliate to this intermediary, and Perry's name appears on supporting documentation from this affiliate, thus demonstrating that Chang Chun knew that Perry was the ultimate purchaser (*see* Exhibit 3 of Chang Chun's Supplemental Response submitted on April 30, 1998, *see also* Comment 2 for Chang Chun). These facts describe circumstances fundamentally different from DuPont's tolling arrangement, wherein DuPont produced and owned the VAM it sent for processing to Chang Chun.

Additionally, the record indicates that Perry was not the exporter of the PVA and in fact only gained possession and control over the PVA as the U.S. importer when it reached the United States. In contrast, DuPont produced the VAM and was the exporter, as well as the importer, of the PVA to the United States. Thus, the record demonstrates that, in essence, the transactions between Perry and Chang Chun did not change, Perry merely paid Chang Chun twice—once for the VAM and once for the PVA. It was Chang Chun that was the producer and exporter to the United States—it retained control and possession of the VAM it produced, it processed that VAM into PVA, and it exported the PVA to the United States.

We also disagree with Perry that examining whether it has engaged in any production activities is irrelevant under section 351.401(h) of the *Final Regulations.* Although Perry argues that section 351.401(h) does not explicitly require that a party perform some processing to be deemed a producer, section 351.401(h) only addresses the circumstances in which a toller will be considered a producer of subject merchandise. Therefore, the Department is not restricted to the factors set forth in that regulation when determining whether a party other than a toller is the producer of merchandise under consideration. Moreover, while examining the production activities of a party may not be decisive in every case, whether a party has engaged either directly or indirectly in some aspect of the production of subject merchandise is an important consideration.

Additionally, Perry is simply incorrect in claiming that the Department has found a party to be the producer when the party performed no processing or manufacturing. *See Sweaters Wholly or in Chief Weight of Man-Made Fibre From Taiwan,* 58 FR 32644 (1993) (Jia Farn not the manufacturer where it performed no processing); *Stainless Steel Flanges From India,* 58 FR 68853 (1993) (Akai producer where related party performed some processing); *Static Random Access Memories From Taiwan,* 63 FR 8909 (1998) (producer was party controlling design of processed wafer, which was a substantial element of production); *Collated Roofing Nails From Taiwan,* 62 FR 51427 (1997) (Lei Chu the producer where affiliated party performed some processing). Furthermore, a review of those cases demonstrates that Perry's claim that *Chrome-Plated Lug Nuts From Taiwan,* 56 FR 36130, 131 (1991) is no longer valid reasoning is unfounded. Even though *Chrome-Plated Lug Nuts From Taiwan* pre-dated these cases, the reasoning is entirely consistent with the later cases.

Finally, Perry's assertion that its control over PVA sales to unaffiliated customers qualifies it as the producer under section 315.401(h) is also not dispositive of the issue. As discussed above, the issue here is who is the producer of the subject merchandise. Because we have found that Chang Chun is the producer/exporter, Perry's sales to unaffiliated customers are irrelevant.

A review of the tolling arrangement at issue and the surrounding circumstances leads us to conclude that this arrangement merely re-ordered the contractual relationship between the parties, but had no significant effect on how they conducted business. Perry continued to purchase PVA from Chang Chun, albeit in two separate transactions instead of through a single purchase of the finished product. Therefore, Perry is not a producer. Perry remains an importer and reseller of subject merchandise. We find, as we did in our *Preliminary Results,* that Chang Chun is the producer of the PVA under consideration.

Comment 2: Gross Unit Prices Constructed for Sales from Chang Chun to Perry. The petitioner notes that the record does not contain the prices Chang Chun's affiliated party charged for the sales of VAM to the unaffiliated trading company which, in turn, sold the VAM to Perry. As a substitute for the price Perry would have paid had it bought the VAM directly from Chang Chun's affiliate, the petitioner argues that the Department should estimate the trading company's mark-up (*i.e.,* profit) by calculating the average mark-up Perry received on its U.S. sales of PVA. According to the petitioner, Perry's mark-up for its sales of PVA is a reasonable proxy for the trading company's mark-up on VAM because both companies are trading companies involved in the purchase and resales of chemical products.

Chang Chun argues that the adjustment proposed by the petitioner is arbitrary, untimely and unsupported by any factual grounds. According to Chang Chun, the adjustment requested by the petitioner seeks to penalize Chang Chun for an alleged gap in the record for which it bears no responsibility. Chang Chun submits that the sales price of VAM by its affiliate to the trading company, which in turn sold the VAM to Perry, was not on the record at the time of the preliminary results because such information was not requested by the Department. Thus, Chang Chun urges the Department to reject the petitioner's request.

DOC Position: Because these sales were originally reported by Perry, the record did not contain information regarding prices from Chang Chun to Perry (*see* ''Treatment of Sales of Tolled Merchandise''). Although we have determined that Chang Chun produced and sold PVA to Perry, Chang Chun charged Perry separately for VAM and for processing VAM into PVA. At the time of our preliminary results, the record contained the price charged by Chang Chun to Perry for the conversion of VAM into PVA. However, we lacked the price charged by Chang Chun's affiliate for the VAM, the sum of which would equal Chang Chun's export price to Perry. What we had for purposes of the preliminary results was the price Chang Chun's affiliate charged for the VAM to an unaffiliated trading company, which in turn sold the VAM

to Perry. Therefore, the gross unit prices we calculated for the additional U.S. sales in our preliminary results did not reflect actual revenues Chang Chun received from these sales, because, as noted by the petitioner, these sales prices include a mark-up paid by Perry to an unaffiliated trading company. For the final results, we requested Chang Chun to provide the prices Chang Chun's affiliated party charged for the sales of VAM to the unaffiliated trading company. Chang Chun provided this information on April 30, 1998, which the Department verified in May 1998. Therefore, in our final margin program, we recalculated the gross unit prices by adding the price of VAM Chang Chun's affiliate charged to the unaffiliated trading company to Chang Chun's conversion fee.

Comment 3: Entered Values for Sales Reported by Perry. The petitioner notes that, in assessing dumping margins, the Department's regulations state that it ''normally will calculate the assessment rate by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise for normal Customs duty purposes.'' The petitioner further notes that the regulations go on to say that the Customs Service will ''assess dumping duties by applying the assessment rate to the entered value of the merchandise.'' The intent of the regulation, the petitioner observes, is to align the numerator and denominator of the dumping ratio.

The petitioner first notes that the entered values reported by Perry in its U.S. sales listing appear to be the sum of Perry's VAM costs and its processing fees. The petitioner claims, however, that the entered values reviewed at verification are systematically inconsistent with the values reported in Perry's U.S. sales listing. As a result, the petitioner contends that the total entered value of subject merchandise used in our assessment rate calculation is not calculated on the same basis as the entered value to which the rate will be applied. Because none of the reported entered values were the same as the verified entered values, the petitioner argues that the Department should revise the entered values to equal the average verified entered values.

Chang Chun argues that there were no discrepancies between the entered values reported by Perry in its sales listing and the entered values examined at verification. According to Chang Chun, the entered values of PVA as verified by the Department consistently reflected the sum of the reported VAM costs and the conversion fee Perry paid to Chang Chun.

DOC Position: We disagree with the petitioner that there were discrepancies between the entered values reported by Perry in its sales listing and the entered values examined at verification. At verification, we confirmed the entered values reported by Perry in its U.S. sales listing for the sales examined (*see Verification Report of Perry Chemical Corporation,* dated January 30, 1998, at page 11).

As noted by the petitioner, for duty assessment purposes, we calculate an assessment rate by dividing the dumping margin found on the sales of the subject merchandise examined by the entered value of such merchandise. In this case, as stated in our *Preliminary Results,* for duty assessment purposes, we estimated the entered values for Chang Chun's sales by subtracting international movement expenses from the gross sales value. We have continued to use this methodology in our final results. Specifically, for the sales in question, we estimated the entered values in the following manner: (1) for each sale of PVA shipped during the POR, we constructed the gross sales value by adding the price of VAM Chang Chun charged to the unaffiliated trading company to the price Chang Chun charged Perry for conversion of VAM to PVA; (2) we then subtracted international movement expenses from these gross sales value.

Comment 4: Allocation of Cost Between PVA and Glacial Acetic Acid. The petitioner contends that Chang Chun incorrectly allocated its costs between PVA and its coproduct, glacial acetic acid. Specifically, the petitioner asserts that Chang Chun did not allocate costs on the basis of relative sales value, as directed by the Department, resulting in a significant understatement of the cost of producing PVA. According to the petitioner, the flaw in Chang Chun's cost allocation methodology is evident from the resulting relative profit margins for PVA and acetic acid. The petitioner states that allocation of costs on the basis of relative sales value, when applied properly, should result in the same profit margins on the two products. In this case, the petitioner argues that Chang Chun's allocation methodology does not yield the same profit rate on PVA and acetic acid. Therefore, the petitioner contends that the Department should reallocate Chang Chun's reported costs as set forth in its case brief.

Chang Chun responds that the petitioner failed to identify any specific discrepancy in Chang Chun's allocation methodology and dismisses it as a conjecture without any support on factual grounds. Chang Chun asserts that it had correctly allocated its costs between acetic acid and PVA on a value basis, and therefore urges the Department to continue to use the reported costs in the final results.

DOC Position: We agree with Chang Chun, in part. The Department's long-standing practice, now codified at section 773(f)(1)(A) of the Act, is to rely on data from a respondent's normal books and records if they are prepared in accordance with the generally accepted accounting principles (''GAAP'') of the exporting country and reasonably reflect the costs of producing the merchandise (*see Notice of Final Results of antidumping Duty Administrative Review: Canned Pineapple Fruit from Thailand,* 63 FR 7392, 7398 (February 13, 1998)).

At verification, we noted that Chang Chun's methodology for allocating production costs to PVA and acetic acid was based on a relative-sales-value methodology and is consistent with the company's normal books and records prepared in accordance with its home country GAAP. Our review of Chang Chun's allocation methodology, however, indicates that Chang Chun relied upon sales prices of PVA occurring during the POR as a basis for allocating costs between PVA and acetic acid. While we determined in the less-than-fair-value investigation of this case that a relative-sales-value based allocation methodology is appropriate, we expressed concern that the sales value for PVA, used in our calculation, be representative of a period in which there is no allegation of dumping for the subject merchandise (*see Notice of Final Determination at Sales than Less Than Value: PVA from Taiwan* 61 FR 14064, 14071 (March 29, 1996) (''LTFV Determination''). Therefore, in the LTFV determination, we allocated joint production costs between PVA and acetic acid based on each product's relative sales values for a two-year period prior to the initial period of investigation (''POI'').

Consistent with our methodology established in the *LTFV Determination,* we consider it inappropriate, in this review, to rely on PVA sales prices occurring during a period of alleged dumping as a basis to allocate costs to PVA, particularly when these allocated costs are used as a means to measure the fairness of the selling prices for the same product, PVA. As stated in the *LTFV Determination,* we believe that by using sales of both products over an extended period prior to the original investigation, prices can reasonably be relied upon to form the basis for

allocating joint production costs, particularly in this case where acetic acid and PVA are commodity products, and their selling prices are influenced by world market forces of supply and demand.

Therefore, in this review, we requested Chang Chun to provide the relative sales value data for the two-year period prior to the POI (*see* October 16, 1997 Supplemental Questionnaire at page 10). Chang Chun provided the information in its November 7, 1997, supplemental response. For the final results, we have reallocated Chang Chun's joint production costs between PVA and acetic acid using the relative sales value of each product calculated on the basis of a two-year period prior to the POI (*see* ''Final Calculation Memorandum for Chang Chun'' dated June 9, 1998).

With respect to the petitioner's argument, while we agree that a relative-sales-value methodology should yield approximately the same profit rate for PVA and acetic acid, we note that the petitioner's data and analysis used to demonstrate that Chang Chun's allocation methodology results in distorted profit rates for PVA and acetic acid is based on incomplete information. Specifically, in calculating a profit rate for acetic acid, the petitioner used a different company's purchase price of acetic acid instead of Chang Chun's sales price because the record does not contain Chang Chun's actual average per unit sales price of acetic acid. Because the petitioner's analysis is not based on Chang Chun's own sales price information, we do not find it to be a reliable basis for reallocating Chang Chun's reported costs. Moreover, as stated above, for the final results, we have reallocated Chang Chun's costs between PVA and acetic acid in accordance with the methodology established in the LTFV determination.

Comment 5: Date of Sale. Chang Chun argues that the Department incorrectly determined the date of sale for a particular U.S. sales transaction, which can be confirmed from a worksheet contained in a verification exhibit. Based on this exhibit, Chang Chun provided a revised date of sale for this transaction and requested the Department to use the revised date in the final results.

The petitioner responds that the document used by Chang Chun to determine the revised date of sale is unreliable because it is unverified, and therefore, should not be used. Furthermore, the petitioner argues that the Department should recalculate the estimated date of sale not just for the one sale described by Chang Chun, but for all additional sales from Chang Chun to Perry included in our preliminary analysis.

DOC Position: As noted above in the ''Treatment of Sales of Tolled Merchandise'' section of the notice, for the final results, we used the actual dates of sale from Chang Chun to Perry provided by Chang Chun in its April 30, 1998, submission, which was verified by the Department. Therefore, both the respondent's and petitioner's comments are moot.

Comment 6: Chang Chun's Sales of PVA Shipped During the POR. On May 11, 1998, the petitioner filed a submission objecting to certain information provided by Chang Chun in its April 30, 1998, submission in response to the Department's request of April 23, 1998. The petitioner argues that the information on additional sales of PVA shipped during the POR which were not included in our preliminary analysis should be rejected. The petitioner claims that these new sales were untimely filed, incomplete, and relate to shipments that were not entered into the United States during the POR. As a result, the petitioner contends that these sales should not be included in the margin calculation.

Chang Chun objects to the petitioner's comments, stating that the information it provided in its April 30, 1998, submission was in accordance with the Department's specific requests for information. Chang Chun further argues that the additional sales of PVA shipped during the POR which were not included in the Department's preliminary analysis should be included for purposes of margin calculation if the Department continues to find the Chang Chun and not Perry is the producer of these sales of PVA.

DOC Position: With respect to the petitioner's argument that these sales should not be included in our margin calculation because they relate to shipments entered into the United States after the POR, we note that for purposes of administrative reviews, the Department's practice is to calculate dumping margins for export price sales based on sales entered during the POR, or if entry date is unavailable, based on sales shipped during the POR (*see Final Results of Antidumping Duty Administrative Review: Ferrosilicon From Brazil,* 62 FR 43504, 43509–10 (August 14, 1997) and *Final Results of Antidumping Duty Administrative Review: High-Tenacity Rayon Filament Yarn from Germany,* 61 FR 51421, 22 (October 2, 1996)). Here, the record indicates that Chang Chun could only accurately report its EP sales based on shipment dates in the POR. The antidumping questionnaire issued in this review specifically required Chang Chun to ''report each U.S. sale of merchandise entered for consumption during the POR, except: (1) For EP sales, if you do not know the entry dates, report each transaction involving merchandise shipped during the POR.'' In response to these questionnaire instructions, Chang Chun reported its sales based on shipments of PVA made during the POR. Accordingly, in our preliminary analysis, we examined Chang Chun's transactions involving merchandise shipped during the POR, including the additional shipments Chang Chun identified in its April 30, 1998, submission.

We also disagree with the petitioner that the information on additional sales shipped during the POR provided by Chang Chun on April 30, 1998, was untimely information or incomplete. In a letter dated April 23, 1998, we requested Chang Chun to provide additional information (*i.e.,* date of sale and date of shipment) concerning its U.S. sales to Perry used in our preliminary results. Subsequently, through a telephone conversation, we instructed Chang Chun to include in its response to the Department date of sale and date of shipment information for sales of PVA shipped during the POR which were not included in our preliminary analysis (*see Memorandum to the File from Case Analyst,* dated May 20, 1998). Thus, the information Chang Chun provided was timely submitted in accordance with the Department's specific request.

Finally, with regard to the petitioner's argument that the information provided by Chang Chun is incomplete because Chang Chun did not include the necessary information regarding movement charges or selling expenses for these additional shipments, we limited the scope of our request to the date of sale and shipment for shipments occurring in the POR. For movement and selling expenses for these additional sales Chang Chun provided, we are applying the expenses reported by Chang Chun in its U.S. sales listing submitted to the Department on August 22, 1997. Because these additional sales were made to Perry and were shipped by Chang Chun on the same delivery terms, we find that the expenses Chang Chun originally reported for its EP sales reasonably reflect the expenses it incurred for the additional sales included in our analysis.

DuPont

Comment 1: DuPont is the Producer of Tolled-PVA. In our *Preliminary Results,*

we determined that DuPont is the producer of the PVA processed in Taiwan by Chang Chun from VAM produced by DuPont in the United States. The petitioner argues that, to be considered a producer in a tolling situation, the Department's new tolling regulation, section 351.401(h) of the *Final Regulations*, requires that the producer retain title to the raw material input. *See* Antidumping Rules; Countervailing Duties, 62 FR 27296, 27411, which is legally effective only for segments of the proceeding initiated based on requests filed after June 18, 1997, but nevertheless a restatement of the Department's practice. The petitioner points to a particular clause in the tolling contract between DuPont and Chang Chun as evidence that one of the conditions in section 351.401(h) has not been met. Because of the business proprietary nature of the tolling contract, our full discussion of the petitioner's claim is contained in a separate memorandum (*see Memorandum to Louis Apple, Office Director, from Team,* dated June 8, 1998 (''DuPont Memorandum'')). As a result, the petitioner argues that DuPont is not the producer of PVA processed under the tolling agreement.

DuPont takes issue with the petitioner's interpretation of the particular clause in the tolling contract and responds that, contrary to the petitioner's contention, the Department properly concluded that DuPont was the producer of the tolled merchandise.

DOC Position: After review of the tolling contract between DuPont and Chang Chun, we disagree with the petitioner's reading of the particular clause at issue and continue to find that DuPont is the producer under section 351.401(h). As noted above, because the tolling contract itself and this particular clause is business proprietary, our discussion of this issue is contained in the ''DuPont Memorandum.''

Comment 2: Cost of Production Calculation for Sales of DuPont. The petitioner argues that the Department should have used Chang Chun's actual processing costs when conducting the sales-below-cost analysis, instead of the fee DuPont paid to Chang Chun for the tolling of VAM into PVA. The petitioner notes that the statute clearly requires Department to investigate the actual cost of producing the merchandise in any sales-below-cost investigation. According to the petitioner, even though the Department appears to consider DuPont to be the respondent in this case, because Chang Chun is the entity actually producing the subject merchandise in Taiwan, Chang Chun's cost of production should be examined. Citing to *Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway,* 56 FR 7661 (February 25, 1991) (''*Salmon from Norway*'') and *Final Determination of Sales at Less Than Fair Value: Fresh Kiwifruit from New Zealand,* 57 FR 13695 (April 17, 1992) (''*Kiwifruit from New Zealand*''), the petitioner contends that the Department's practice has been to base the cost of production, not on the purchase price between the respondent and the unaffiliated producer, but on the actual cost of producing the subject merchandise.

DuPont argues that it would be contrary to the statute and Department practice to use Chang Chun's actual cost of production because, according to DuPont, Chang Chun is nothing more than a supplier of services to DuPont. According to DuPont, the statute calls for determining costs from the records of the producer, and not from the records of any supplier of services to the producer. DuPont further argues that the statutory language governing the cost of production investigation does not support the petitioner's argument that the arm's-length price charged by Chang Chun to DuPont for tolling services should be disregarded in favor of Chang Chun's costs of production. DuPont contends that since DuPont is the producer in this case, its costs are the ones that should be examined.

DOC Position: We disagree with the petitioner. We find no statutory basis or precedent for the petitioner's argument that Chang Chun's actual cost of processing should be examined when determining DuPont's cost of production. Section 773(f)(1)(A) of the Act states that, for purposes of conducting an analysis of sales at less than COP, the ''costs shall be based on the records of the exporter or producer of the merchandise...'' In this review, we determined that DuPont is the producer of PVA processed by Chang Chun. Accordingly, the costs we examine in our analysis should reflect the total costs incurred by DuPont. DuPont's total costs consist of its cost to produce VAM and the cost it incurred to convert the VAM into PVA, which is the fee DuPont paid to Chang Chun.

We also note that the cases cited by the petitioner do not support its claim because these cases involved respondents who were resellers, not producers. The Department generally does not base COP on a reseller's cost to acquire the subject merchandise. However, the Department does base COP on the producer's actual costs, including the cost of inputs and services. *See* section 773(f) of the Act. In this case, DuPont is the producer and therefore, its actual costs are the proper basis for COP.

Comment 3: *Affiliation.* The petitioner argues that, if the Department cannot examine Chang Chun's actual cost of producing PVA without finding Chang Chun and DuPont affiliated under section 771(33)(G) of the Act, then the Department should determine that the parties are affiliated pursuant to the tolling contract. According to the petitioner, the Department should have found DuPont and Chang Chun to be affiliated because the tolling contract affords DuPont control over production of PVA, and the legal and operational ability to exercise direction over Chang Chun. The petitioner claims that the fact that, under the tolling contract, DuPont does not exercise direction over all activities of Chang Chun does not in any way diminish the fact that DuPont is in a position to, and does indeed, exercise direction over some of Chang Chun's operations, namely the production of tolled PVA. According to the petitioner, the statute requires that parties be deemed affiliated where legal or operational control exists as it does here under the tolling contract, regardless of whether the ability to exercise restraint or direction over the other person is pervasive or encompassing all aspects of the other person's business.

DuPont contends that the statutory definition of affiliation based on intercorporate control under section 771(33)(G) of the Act does not apply in this case. DuPont asserts that the contractual relationship between DuPont and Chang Chun is a mere supply contract relationship in which a producer of goods (*i.e.,* DuPont) contracts out a portion of the processing of those goods to another company (*i.e.,* Chang Chun). According to DuPont, such contractual relationship is not sufficient, in and of itself, to find affiliation between DuPont and Chang Chun. DuPont contends that none of the factors listed in the Department's regulations, such as a close supplier relationship, support a finding of affiliation under section 771 (33)(G). DuPont notes that, even in a far more extreme situation where a manufacturer was its customer's sole supplier, the Department declined to conclude that the manufacturer controlled the customer (*see Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol from South Africa,* 62 FR 61084 (November 14, 1997) (''*Furfuryl Alcohol from South Africa*''). Accordingly, DuPont urges the Department to reject the petitioner's argument and sustain its position in the preliminary results that DuPont and Chang Chun are not affiliated.

DOC Position: We agree with DuPont. In our *Preliminary Results*, we examined this issue and found that DuPont was not affiliated with Chang Chun based solely on the tolling agreement. As we stated, the tolling contract, in and of itself, does not establish that DuPont has legal or operational control over Chang Chun for the purposes of section 771(33)(G) of the Act (63 FR at 6527). We find no surrounding circumstances or other connections between the parties which would lead us to a contrary conclusion.

We cannot agree with the petitioner that the statutory language of section 771(33)(G) must be read so broadly as to require affiliation based solely on a conventional tolling agreement, which provides, at most, narrowly drawn legal obligations of limited duration involving some processing of subject merchandise. As DuPont notes, the contract here is not unlike any contract that may exist between a producer of goods and a company performing a portion of the production of those goods for a fee. Hence, to find that a party is affiliated solely because it is under a legal obligation to fulfill the terms of an agreement for subcontracting would be to infer control under section 771(33)(G) whenever such a contractual relationship exists, regardless of the surrounding circumstances or whether there are other connections between the parties. Such an outcome is not supported by section 771(33)(G).

Comment 4: *Major Input Rule*. The petitioner notes that under the major input rule set forth in section 773 (f)(3) of the Act, the Department may determine the value of the major input on the basis of the cost of production if the Department has reasonable grounds to believe or suspect that the amount represented as the value of such input is less than the cost of production of such input. Pursuant to the major input rule, the petitioner argues that the Department should have used Chang Chun's actual cost of production of PVA, rather than the tolling fee charged to DuPont, for purposes of calculating DuPont's COP. According to the petitioner, information on the record demonstrates that the actual cost of producing PVA incurred by Chang Chun was greater than the nominal tolling fee paid by DuPont. Moreover, the petitioner claims that there is no economic basis for assuming that the tolling fee Chang Chun charged to DuPont is equal to or exceeds its total cost of producing PVA. In fact, the petitioner further claims that, so long as the tolling fee Chang Chun charges to DuPont exceeds its marginal cost of production, Chang Chun has an incentive to provide its services, even if the tolling fee does not cover the full cost of producing PVA.

DuPont counters that the major input rule does not apply in this case since the Department has concluded that DuPont and Chang Chun are not affiliated.

DOC Position: DuPont is correct that the major input rule set forth in section 773(f)(3) of the Act applies only where the supplier of the input is affiliated with the producer of the merchandise. Because we have determined that Chang Chun and DuPont are not affiliated, the major input rule is inapplicable (*see* Comment 3 for DuPont).

Comment 5: Tolling Regulation Is an Illegal Interpretation of the Law. The petitioner contends that the Department's new tolling regulation is contrary to the statute, and cannot stand if the regulation does not permit an analysis of the costs incurred in the subject country in the course of producing the subject merchandise. According to the petitioner, an antidumping duty administrative review concerning subject merchandise produced in a subject country that fails to analyze the activity undertaken in the subject country solely because the production is pursuant to a tolling agreement is an impermissible construction of the statute and an abuse of the Department's discretion.

DOC Position: We disagree with petitioner that the Department's tolling regulation set forth in19 CFR 351.401(h) is inconsistent with the statute. The tolling regulation provides a means for determining when a toller will be considered the producer of a product, as discussed above (see Comment 2 for DuPont). Once the producer is determined, the Department must use the producer's actual costs of producing the merchandise, in accordance with section 773(f)(1)(A). DuPont's actual costs to produce PVA in Taiwan are its costs to produce VAM and its cost for processing services in Taiwan. There is no basis in the statute or the regulations for the petitioner's argument that the Department must go behind the producer's actual cost for inputs and services.

Comment 6: Special Merchandise Difference Adjustment. DuPont contends that one of its reported U.S. sales should either be excluded from the Department's calculations, or a value-based difference in merchandise (''difmer'') adjustment should be applied to it, because the sale involved a particular type of PVA with a certain physical characteristic that does not result in manufacturing cost differences. Because of this physical difference which, according to DuPont, is shown in DuPont Verification Exhibit 8(e), DuPont claims that the merchandise could not be sold for normal commercial uses at a market price. DuPont further explains that there are no corresponding sales of this product in the Australian market against which to compare this transaction.

Citing to *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland*, 56 FR 56363 (November 4, 1991), DuPont argues that it is a recognized practice of the Department to exclude such an isolated transaction for which a NV cannot be calculated. Alternatively, DuPont asserts that the Department should make a value-based adjustment to NV to account for the physical differences of this particular product based on differences in market value. According to DuPont, the Department's conventional difmer cost-based adjustment would not properly adjust for the product's physical differences because the physical difference, in this case, is not attributable to a manufacturing cost difference. DuPont claims that the only way to quantify the appropriate adjustment for the physical differences of this particular transaction is to examine the differences in price between that sale and all its other U.S. sales. In support of its claim, DuPont cites to *Final Determination of Sales at Less Than Fair Value: Nepheline Syenite From Canada*, 57 FR 9237 (March 17, 1992) and *U.H.F.C. Co.* v. *United States*, 916 F.2d 689 (C.A.F.C. 1990), where the Court of Appeals directed the Department to make a value-based difmer adjustment.

The petitioner contends that this sale should not be excluded because there is no basis for excluding sales to the United States from the margin calculation in administrative reviews. In addition, the petitioner notes that DuPont did not request a difmer adjustment based on market value prior to its case brief, nor did it submit any information to justify any such adjustment. According to the petitioner, the cases cited by DuPont refer to situations in which physical differences were demonstrated to affect the market value of the merchandise under consideration. For the DuPont sale in question, however, the petitioner argues that there is no information to indicate whether the difference in the price is limited to a difference in value associated with physical differences in the merchandise, or whether the difference in price on this sale was a result of a combination of factors, possibly including a physical difference in the merchandise. The petitioner

asserts, therefore, that there is no basis to quantify or make an adjustment for the difference in value.

DOC Position: Although the Department has the discretion to adjust for physical differences based on value, we agree with the petitioner that the sale in question does not warrant a value-based difmer adjustment based on information on the record for this proceeding (see 19 CFR 353.57(b) and 19 CFR 351.411(b)). We reviewed the documentation included in DuPont's verification Exhibit 8(e), and noted that information in the exhibit does not establish that the product sold was physically different from other U.S. sales made by DuPont during the POR. Because the nature of the physical difference DuPont alleges is proprietary, our full analysis of this issue is contained in the ''DuPont Memorandum.'' Therefore, because DuPont has not established that the PVA in question was physically different from any other PVA sold in the United States during the POR, we have continued to use this sale in our final margin analysis.

Comment 7: Foreign Inland Freight. In our preliminary results, we disallowed DuPont's claim for an inland freight expense from the Australian port to its warehouse for its comparison market sales because, at verification, the company failed to provide supporting documentation for the claimed amount. DuPont contends that the Department's action in this regard was improper and that a deduction for foreign inland freight should be allowed because it is an undisputed fact that a freight expense was incurred by DuPont in moving goods from the dock to its warehouse. DuPont further contends that verification generally was successful in establishing the completeness and accuracy of the information submitted by DuPont. According to DuPont, the problem at verification with regard to inland freight was that the company did not have ready access to original documentation supporting the freight deduction.

The petitioner contends that no deduction should be allowed in this instance. The petitioner notes that sections 782(i)(3) and 776(a)(2)(D) of the Act direct the Department to verify all information relied upon in making a final determination in an administrative review, and allow the Department to use facts otherwise available if an interested party ''provides such information but the information cannot be verified.'' Because DuPont did not provide evidence to support its claimed adjustment at verification, the petitioner states that the Department is correct in denying the adjustment.

DOC Position: We agree with the petitioner. The Department has a long-standing practice of denying a claim for an adjustment where the Department could not verify the claimed adjustment because the respondent fails to provide supporting evidence (*see, e.g., Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate From Finland*, 63 FR 2952, 2953 (January 20, 1998)). At verification, DuPont was unable to provide any supporting documentation to establish an expense for foreign inland freight. Accordingly, we have continued to disallow the claimed deduction for foreign inland freight for comparison market sales in our final margin calculation.

Comment 8: Scope of the Order. DuPont argues that its imports of PVA from Taiwan through a tolling agreement with Chang Chun are outside the scope of the antidumping duty order. According to DuPont, because it is a U.S. company and the producer of the PVA tolled by Chang Chun, it can not be subject to the antidumping law or the antidumping order. DuPont cites to its arguments on this point as expressed in its October 1, 1996, Application for a Scope Ruling and its brief to the Court of International Trade.

The petitioner responds that the Department correctly determined that the subject merchandise is produced in Taiwan, and hence within the scope of the order.

DOC Position: We disagree with DuPont. DuPont is the producer of the PVA at issue. The PVA is produced in Taiwan and is a product of Taiwan. Therefore, DuPont's Taiwanese PVA is subject to the order. The fact that DuPont is a U.S. company is irrelevant. *See E.I. DuPont de Nemours* v. *United States*, Slip.-Op. 98–46 (CIT April 17, 1998), which upheld the Department's scope ruling that the PVA produced by DuPont in Taiwan through the tolling agreement with Chang Chun is a product of Taiwan and thus subject to the antidumping duty order; *see also*, the Department's brief to the Court of International Trade, dated October 22, 1997, in opposition to DuPont's brief, made part of the record of this review by petitioner.

Final Results of the Review

As a result of our review, we determine that the following weighted-average margins exist for the period May 15, 1996, through April 30, 1997:

Manufacturer/producer/exporter	Margin (percent)
Chang Chun Petrochemical Co. Ltd	0.42
E.I. duPont de Nemours & Co.	9.46

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of AD duties calculated for the examined transactions in the POR to the total entered value of the same transactions. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions concerning the respondents directly to the U.S. Customs Service.

Furthermore, the following deposit rates shall be required for merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for DuPont and Chang Chun will be the rates indicated above; (2) if the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or LTFV investigation; and (3) if neither the exporter nor the manufacturer is a firm covered in this review or the LTFV investigation, the cash deposit rate will be 19.21 percent, the ''All Other'' rate made effective by the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as the 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 the 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 a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification 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(c).

Dated: June 9, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–15876 Filed 6–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–405–071]

Viscose Rayon Staple Fiber From Finland: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On December 10, 1997, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty finding on viscose rayon staple fiber from Finland. This review covers one company, Kemira Fibres Oy, and the period of March 1, 1996 through February 28, 1997. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: June 16, 1998.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Alexander Amdur, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4740 or (202) 482–5346, respectively.

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 by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all references to the regulations of the Department of Commerce (Commerce) are as codified at 19 CFR part 353, as they existed on April 1, 1997. Since the new regulations do not apply in these final results, we should note that whenever the new regulations are cited, they operate as a restatement of the Department's interpretation of the Act. *See !62 FR 27296 (May 19, 1997).*

Background

On December 10, 1997, we published in the **Federal Register** (62 FR 65063) the preliminary results of administrative review of the antidumping duty finding on viscose rayon staple fiber from Finland (44 FR 17156, March 21, 1979). We received a case brief from the sole respondent, Kemira Fibres Oy (Kemira), on January 22, 1998, as amended on January 30, 1998. The petitioners, Courtauld Fibers Inc. and Lenzing Fibers Corporation, submitted a rebuttal brief on January 29, 1998. We held a public hearing on February 5, 1998. The Department extended the final results of this review until June 8, 1998. We are conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

The product covered by this review is viscose rayon staple fiber, except solution dyed, in noncontinuous form, not carded, not combed and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments). The term includes both commodity and specialty fiber. This product is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 5504.10.00 and 5504.90.00. The HTS numbers are provided for convenience and customs purposes. The written description of the scope of the finding remains dispositive.

Scope Issues

Kemira claims that short-cut (LK) fiber and fire retardant (VISIL) fiber are not covered by the scope of the order, while petitioners claim that they are covered.

The Department included LK and VISIL fibers within the scope of the order for the purposes of the preliminary results of this review (*see* 62 FR 65063). We stated in our notice of preliminary results that because of the complexity of the issues relating to LK and VISIL fibers, we would commence a scope inquiry to determine whether LK and VISIL fibers are covered by the scope of the order.

We asked interested parties to submit comments on these scope issues, which we analyzed pursuant to 19 CFR 353.29(d)(6). On matters concerning the scope of an antidumping finding or duty order, the normal bases for determining whether a product is included within the scope are the descriptions of the product contained in the determinations by the Department (or the Treasury Department) and the ITC, the initial investigation, the petition and, if applicable, prior scope rulings. *See* 19 CFR 353.29(i)(1). If these descriptions are not dispositive, the Department refers to the criteria listed under 19 CFR 353.29(i)(2). By reference to the product descriptions provided by the parties, as well as the descriptions of the product contained in the final determinations of the Treasury Department and the ITC, and the petition, the Department is able to determine whether LK and VISIL fibers are covered by the scope of the order. Therefore, we have determined that it is unnecessary to refer to the additional factors of section 353.29(i)(2).

Based on our analysis under 19 CFR 353.29(i)(1), the Department has determined that LK and VISIL fibers are within the scope of the antidumping order on Viscose Rayon Staple Fiber from Finland. *See* June 8, 1998 Memorandum to Maria Harris Tildon from Holly Kuga Regarding Whether Short-Cut (LK) Fiber And Fire Retardant (VISIL) Fiber Are Within The Scope of the Finding (Order) on Viscose Rayon Staple Fiber from Finland.

Analysis of the Comments Received

Comment 1: Kemira argues that the Department erroneously reclassified certain export price (EP) sales made through its selling agent in the United States as constructed export price (CEP) sales. Kemira notes that all of the sales at issue were made prior to importation based on the date the order was confirmed and shipped directly from Kemira's factory to the customer in the United States. Kemira argues that its selling agent in the United States, Newco Fibres Company (Newco), relocates (in part) routine selling functions of the company from Finland to the United States, and does not perform any more selling functions in the United States than those U.S. entities in various cases in which the Department concluded that the sales were EP sales (*see, Certain Stainless Steel Wire Rods from France,* 58 FR 68865, 68869, (December 29, 1993); *Certain Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review,* 61 FR 18547, 18552, (April 26, 1996)). Kemira also argues that the Department's re-characterization of the sales at issue is

contrary to the statute because Kemira was the seller to the unrelated purchaser in all transactions, and Newco did not make any sales by or for the account of Kemira.

The petitioners argue that the Department's reclassification of EP sales to the United States made through Newco as CEP sales was appropriate. The petitioners note that the Department relied on the statutory definition of CEP, which is ''the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise.* * *'' (*See,* section 772(b) of the Act .) The petitioners note that Kemira acknowledges that ''sales activities in the United States market are conducted by * * * Newco,'' and argue that Newco plays a major role in the marketing of Kemira's products, including negotiating sales and obtaining customer orders. The petitioners further note that, although Newco passes all sales documentation to Kemira for confirmation, in actuality such confirmations appear to be routine. In fact, the petitioners note, it does not appear that Kemira ever rejected any order confirmations passed to it by Newco during the period of review (POR).

DOC Position: We agree with the petitioners. In our preliminary results of review, we examined the facts of this case in light of the statute with respect to EP and CEP sales. Section 772(b) of the Act, as amended, defines CEP as ''the price at which the subject merchandise is first sold (or agreed to be sold) in the United States *before or after the date of importation by or for the account of the producer* or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted'' (emphasis added). Section 772(a) of the Act defines EP as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States, as adjusted.''

Furthermore, based on the Department's practice, we examine several criteria for determining whether sales made prior to importation through a sales agent to an unaffiliated customer in the United States are EP sales, including: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent was limited to that of a ''processor of sales-related documentation'' and a ''communications link'' with the unaffiliated U.S. buyer. Where all three criteria are met, indicating that the activities of the U.S. selling agent are ancillary to the sale, the Department has regarded the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States where the sales agent performs them, and has determined the sales to be EP sales. Where one or more of these conditions are not met, indicating that the U.S. sales agent is substantially involved in the U.S. sales process, the Department has classified the sales in question as CEP sales. (*See,* e.g., *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews,* 63 FR 13170 (March 18, 1998).)

Our analysis of the facts indicates that, while Kemira's alleged EP sales meet the first two conditions, they fail to meet the third one. Kemira employs Newco in the United States to negotiate contracts with U.S. customers, including the negotiation of prices, for most of its U.S. sales. All contracts are subject to acceptance by Kemira and become effective upon Kemira's order confirmation. However, there have been no cases to our knowledge in which the terms of sale have not been accepted by Kemira during this POR. Therefore, the only difference that is apparent between the claimed EP and CEP sales is the fact that the claimed EP sales are shipped directly to the US customer; all other functions performed by Newco for such sales are identical. Consequently, we conclude that Newco, the agent in the United States, is not merely a processor of sales-related documentation or a communications link, but is, in fact, selling covered products in the United States on Kemira's behalf. Therefore, under section 772(b), we concluded that CEP treatment is also appropriate for sales made in the United States prior to importation by Newco, on behalf of the producer (*i.e,* Kemira), to an unaffiliated purchaser. We determine that EP treatment is appropriate for Kemira's other sales made to the United States before the date of importation which do not require the employment of the sales agent in the United States. We have no further information that would lead us to change our preliminary results with respect to this issue; therefore, we have made no changes for the final results of review.

Comment 2: Kemira argues that the Department should reconsider its adverse facts available (FA) determination concerning Kemira's U.S. sales of substandard merchandise. Kemira maintains that the Department misinterpreted Kemira's statement in its questionnaire response that it made sales of second-quality merchandise in the European market to mean that it did not have sales in either Finland or the United States. Kemira explains that it did not report its United States and Finnish sales of second-quality merchandise because the Department did not specify that such sales were covered by the review and should be reported.

In support of the Department's preliminary determination on this issue, the petitioners assert that it was appropriate for the Department to make an adverse inference concerning Kemira's U.S. sales of second-quality merchandise. The petitioners maintain that Kemira did not report its home market or U.S. sales of second-quality merchandise despite the fact that the Department twice requested Kemira to report all sales of merchandise within the scope of the order, and that there was no indication that second-quality merchandise was excluded from the scope of the order. The petitioners also note that it was not until the Department conducted verification that it discovered the existence of these sales.

DOC Position: We agree with the petitioners. Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form requested, significantly impedes a proceeding under the antidumping statute, or provides information that cannot be verified, the Department shall use FA in reaching the applicable determination. Section 782(d) states that, if the Department determines that a response to a request for information does not comply with the request, it shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency.

In its original questionnaire of May 20,1997, the Department requested Kemira to report all of its home market and U.S. sales of subject merchandise in accordance with the instructions in the questionnaire. Kemira did not report its home market and U.S. sales of second-

quality and substandard merchandise. On August 15, 1997, the Department issued a supplemental questionnaire to Kemira, again requesting Kemira to report all sales of viscose rayon fiber that are not specifically excluded from the scope of the finding. In its response to the supplemental questionnaire, Kemira again did not report any home market or U.S. sales of second-quality and substandard merchandise. The fact that Kemira reported the existence of sales of substandard merchandise in third countries, but, in response to two specific requests for information, failed to report such sales in the United States, lead the Department to believe that no such sales in the United States were made during the POR. It was not until verification that the Department discovered the existence of such sales.

In both requests for information, the Department advised Kemira that failing to provide the requested information may result in the application of FA. At verification, the Department was able to determine what percentage of Kemira's total U.S. sales were of second-quality merchandise. We observed that Kemira made a small quantity of second-quality merchandise sales in both Finland and the United States. (*See* Memorandum to Holly Kuga from Laurel LaCivita *et. al.* Regarding Kemira Fibres Oy: Report on the Verification of Sales Information Submitted in the 1996–1997 Review (Verification Report) of January 12, 1998.) Given Kemira's failure to report these sales, the existence of which was verified by the Department, we applied FA to sales of second-quality merchandise for the final results of review, in accordance with section 776 of the Act.

Kemira's argument that it did not report its United States and Finnish sales of second-quality merchandise because the Department did not specify that such sales were covered by the review is unfounded. There is nothing in the scope of the finding or the questionnaire that would indicate that second-quality merchandise is excluded from the scope of the finding. It is not required that the Department specify which sales are covered by a review, so long as the scope covers the merchandise sold. As the scope does not exclude second-quality merchandise (an undisputed fact), Kemira is required to report U.S. sales of such merchandise. Failure to do so warrants the application of FA.

Section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See* also *Statement of Administrative Action* (SAA) at 870. Kemira's failure to report the sales data requested by the Department, despite the Department's indication regarding the consequences of such an action, demonstrates that Kemira has, to date, failed to cooperate to the best of its ability in this review. Thus, in selecting among the FA for Kemira, an adverse inference is warranted. Section 776(b) states that an adverse inference may include reliance on information derived from: (1) The petition; (2) the final determination in the LTFV investigation; (3) any previous review under section 751 of the Act or investigation under section 753 of the Act; or (4) any other information placed on the record. *See also* SAA at 829–831.

We applied as adverse FA the highest calculated rate for Kemira from any segment of the proceeding to the sales of second-quality merchandise which were not reported to the Department. This rate of 8.7 percent is the margin calculated for Kemira in both the investigation and in the first period of review (44 FR 2219, January 10, 1979 and 46 FR 19844, April 1, 1981).

Therefore, for the purposes of the final results of review, the Department made no changes to the methodology applied in the preliminary results of review.

Comment 3: Kemira contends that the Department's application of a difference-in-merchandise (difmer) adjustment to different sizes of VISIL is unwarranted. It argues that there is no difference in material cost or material preparation between different sizes of fiber. Kemira states that the only potential cost difference would be in spinning time or cutting time, and such differences are minimal. Kemira argues that its cost accounting system does not make any distinction by fiber size, and that it reported all costs for VISIL fiber in accordance with its cost accounting system. Kemira also argues that the information it provided should have been accepted by the Department because the information was accurate, consistent with Kemira's recorded costs, and fully verifiable. Therefore, Kemira claims that the Department has no basis for resorting to FA for the difmer adjustment.

The petitioners contend that the Department clearly acted within its statutory authority in resorting to adverse FA in making a difmer adjustment for VISIL sales. The petitioners note that Kemira took the position in its questionnaire response that the variable cost of manufacturing (VCOM) for VISIL fibers sold in the home market and to the United States were the same, but at verification the Department ''observed that the time required to spin other non-VISIL fibers varied with the fiber length and linear density.'' (*See* December 1, 1997 Concurrence Memorandum at 15). The petitioners also note that Kemira failed to provide usable VCOM or total cost of manufacturing (TCOM) data that would allow the Department to make difmer adjustments, and, as a result, the Department made a difmer adjustment to normal value (NV) for VISIL sales based on adverse FA.

DOC Position: We agree with the petitioners. Kemira failed to appropriately report the information needed to calculate a difmer adjustment. Kemira reported the same VCOM and TCOM for products with different linear density and fiber length. The Department observed at verification that spinning and cutting time varied with the fiber length and linear density of the product (*see* December 1, 1997 Concurrence Memorandum at page 15). Although Kemira claims that its cost system does not acknowledge costs on the basis of fiber length or fiber width, and that any such differences are minimal, it failed to produce any evidence supporting that contention or to explain what Kemira considers to be a ''minimal'' difference. Kemira did not provide any worksheets in its questionnaire response on VISIL sales, which was submitted only a few days before the commencement of verification, showing how the variable cost figures were determined, or what factors were considered in its calculation of VCOM and TCOM, which impeded us from pursuing verification of this information. Furthermore, Kemira's claim contradicts a basic principal of cost accounting that, given identical labor and overhead rates on the same production line, longer production times on that line will result in higher production costs.

In an attempt to educate ourselves on the potential production cost differences with respect to the fiber width of rayon staple fiber, we spoke with a textile fiber expert on March 26, 1998, concerning the relationship between the fiber width and spinning times. The expert explained that there is a direct relationship between the fiber width and spinning time, such that if the cross-sectional area of a fiber (determined by the fiber width) increases in size, the spinning time decreases proportionally. Similarly, if the fiber width decreases in size, the spinning time increases by the same ratio. (*See* the April 8, 1998 Memorandum from Laurel LaCivita to the File Regarding The Relationship Between Fiber Width and Processing Time.) Record evidence indicates that

the fiber widths of the VISIL products sold in the United States and the home market during the POR are at extreme ends of the fiber-width spectrum. Consequently, we disagree with Kemira's position that potential spinning times and cost differences attributable to differences in fiber widths are insignificant in the calculation of the difmer adjustment.

Therefore, while Kemira reported per-unit costs allegedly calculated in accordance with its cost accounting system, such costs were not usable in calculating a difmer adjustment for VISIL sales because Kemira did not adjust its production costs to reflect differences in fiber width. Section 776(a)(1) of the Act provides that the Department may use facts available in situations in which the necessary information is not available on the record. The Department did not become aware that Kemira failed to provide VCOM and TCOM data for VISIL fiber on the basis of fiber widths until verification, and thus did not have appropriate information on the record to calculate the difmer adjustment. Accordingly, to fill the gap, the Department made a facts available upward adjustment to the NV equal to 20 percent of the TCOM of the U.S. model. This is the maximum upward difmer adjustment to the NV in accordance with 19 CFR 353.57 and Policy Bulletin 92.2.

Accordingly, given that we have no other information on the record on which to base the difmer adjustment, we have made no changes to our preliminary results of review and have applied to NV an adjustment equal to 20 percent of the TCOM of the U.S. model.

Comment 4: Kemira argues that the Department erroneously deducted the full amount of the commission expense paid for VISIL sales in the United States, when only a small portion of that expense qualifies as a CEP deduction. Kemira explains that the agency agreement for VISIL sales in the United States provided for declining *ad valorem* commission rates on such sales, with a ''guaranteed commission'' paid in the event that the sales did not reach a certain level or quota. Kemira notes that the guaranteed commission was only paid because the sales quota was not achieved, and that it would have been paid in the absence of any VISIL sales at all. Consequently, Kemira argues that the guaranteed commission is not a commission or a direct expense, but rather an indirect selling expense. Kemira notes that the guaranteed commission fits the definition provided in the Appendix I, p. I–6 of the Department's questionnaire which defines indirect expenses as ''fixed expenses that are incurred whether or not the sale is made. . . .'' Furthermore, Kemira argues that the guaranteed commission is a one-time expense associated with initial U.S. marketing efforts for VISIL, and is not an expense that is ''generally incurred'' in selling the subject merchandise. Therefore, Kemira maintains that it is not a deductible expense pursuant to section 772(d) of the Act, which provides that in CEP transactions the U.S. price be reduced by the amount of expenses ''generally incurred'' in selling the subject merchandise in the United States. Consequently, Kemira argues that only the *ad valorem* portion of the commission expense would be ''generally incurred'' on VISIL sales and should be applied to these sales as an indirect selling expense.

Kemira argues in the alternative that, if the Department includes the guaranteed commission in its calculations, it should determine the importer-specific assessment rate by dividing the amount of the guaranteed commission paid by the quantity of the merchandise entered during the POR. Kemira notes that based on the date of order confirmation, the quantity of VISIL products that entered the United States during the POR was at least twice as high as the quantity of VISIL sold during the POR. Further, Kemira argues that if the Department bases the assessment rate for VISIL sales on the margin determined for VISIL sales (and not entries), the (unit) amount of the guaranteed commission will be more than doubled.

The petitioners argue that the Department appropriately deducted the guaranteed commission as a commission for sales during the review period. They note that three facts are undisputed: (i) Kemira hired an unrelated entity to act as Kemira's sales agent to market VISIL fiber in the United States, (ii) Kemira agreed to pay an *ad valorem* ''commission'' to its sales agent, and (iii) Kemira agreed to guarantee a minimum commission payment to its sales agent, which Kemira paid. The petitioners argue that treating these payments as an indirect selling expense, and not as a commission, would directly contradict the way in which the parties themselves view the payment. The petitioners also counter Kemira's assertion that the commission would have been paid in the absence of any sales based on the terms of the agency agreement.

The petitioners also disagree with Kemira that the commission expense should be allocated over all entries during the review period, rather than over all sales during the period, as this would be a significant departure from the Department's traditional manner of allocating commissions which relate to sales based on an *ad valorem* rate.

DOC Position: We disagree with Kemira that only a small portion of the expenses paid under its agency agreement for VISIL sales in the United States should be classified as an indirect selling expense and deducted from CEP on this basis.

Commissions are payments to affiliated or unaffiliated parties providing services that relate to the sale of merchandise, which are normally treated as direct selling expenses if we find that they are at arm's length (for commission paid to affiliated parties) and directly related to the sale. In order to determine whether a claim for a commission paid to an unaffiliated selling agent is a bona fide commission, we examine the nature of the agreement or contract between the producer and selling agent which establishes the basis for payment of the commission and for services rendered in return for payment. (*See* Revised Import Administration Antidumping Manual, Chapter 8 at 35–37, January 1998.)

In this case, our examination of the terms of the agency agreement (contract) between Kemira and its U.S. selling agent shows that the agreement exists for the sole purpose of making VISIL sales in the United States during a specific time period, and stipulates that the agent be paid a commission based on declining *ad valorem* rates in accordance with the quantity of VISIL sold, and a guaranteed commission in the event U.S. VISIL sales did not reach a certain level. (*See* verification exhibit 12 and footnote 16 on page 16 of the December 1, 1997 Concurrence Memorandum for a proprietary description of the manner in which the guaranteed commission is tied to the U.S. sales value of VISIL products.) Contrary to Kemira's claim, the guaranteed commission paid under this agreement constitutes a direct selling expense specifically attributable to VISIL sales only and is not generally incurred in selling the subject merchandise in the United States.

Consequently, we agree with the petitioners that the guaranteed commission incurred on VISIL sales represents a commission covering sales during the review period. Therefore, we have made no changes since the preliminary results of review with respect to this issue, and have allocated all of the commission expense incurred during the review period over the value of sales made during the review period in accordance with our normal

methodology. Also, we will follow our normal assessment practice of allocating the amount of the uncollected dumping duty over the entered value of sales reported on the computer sales listing.

Comment 5: Kemira noted its agreement with the Department's treatment of certain entries of LK and VISIL fiber and supports our preliminary determination to exclude them from its margin calculation. Kemira also believes that, if LK and VISIL are found to be in the scope of the order, these entries should nonetheless be ''liquidated without any assessment of antidumping duties'' since these transactions were not reviewed.

DOC Position: As we stated in our preliminary results of review, we excluded three types of sales from our calculations. First, we excluded zero-priced samples from our dumping margin calculations. Second, we excluded sales that were shipped to the United States by a third-country reseller if the respondent did not have any reason to know at the time of sale that the merchandise was destined for the United States (for a detailed explanation, *see* December 1, 1997 Concurrence Memorandum). Third, we excluded sales that were entered and liquidated prior to the reinstatement of this antidumping order and resumption of the suspension of liquidation on February 22, 1996 (61 FR 6814). The latter sales were excluded only if we were able to link them directly to an entry prior to the suspension of liquidation (*see, e.g., Certain Stainless Steel Wire Rods From France: Final Results of Antidumping Duty Administrative Review,* 61 FR 177, (September 11, 1996)).

In our final results of review, we made no changes in our methodology for determining the weighted-average margin. However, in accordance with *NSK Ltd., et al* v. *United States,* 969 F. Supp. 34 (CIT 1997), we have adjusted our assessment calculations to ensure that no duties are collected on the zero-priced samples that we excluded from our calculations. We have included the entered values of the zero-priced samples in our calculation of the assessment rates and set the dumping duties due for such transactions to zero. We have done this because U.S. Customs will collect the *ad valorem* duty-assessment rate on all entries of subject merchandise regardless of whether the merchandise was a zero-priced sample.

We have made no further adjustments for the other sales that we excluded from our margin calculations. Sales that entered into the United States prior to the reinstatement of this antidumping order have been liquidated and all other sales are subject to the order.

Comment 6: Kemira claims that the Department erroneously failed to convert domestic brokerage expense (DBROKU) and packing expense (USPACK) from Finnmarks (FIM) to U.S. dollars (USD) for sales of LK fiber.

DOC Position: We agree and have multiplied the domestic brokerage and packing expenses for LK fiber sales to the United States by the exchange rate on the date of the U.S. sale to convert these expenses to U.S. dollars for the final results of review.

Comment 7: Kemira argues that the Department failed to follow the model match hierarchy described in the notice of the preliminary results of review. Specifically, it did not match sales to the United States with the identical merchandise sold in the home market in the same month as, or the closest month to, the month of the U.S. sales.

DOC Position: We agree. We inadvertently failed to include the variable WNDORDER in the model-match hierarchy in the computer program. Consequently, the program did not take the appropriate order of the window period into account when making its model-match selections. Therefore, we have modified our calculations to include this variable, thereby implementing the model-match hierarchy described in our notice of the preliminary results of review.

Comment 8: Kemira maintains that the Department incorrectly double-counted the deduction for marine insurance in its calculations by including it in both the variables for movement expense expressed in dollars (USMOVT) and movement expense expressed in foreign currency (HMMOVT). Kemira argues that the Department should eliminate marine insurance from one of these two variables.

DOC Position: We agree and have eliminated marine insurance expenses from the calculation of HMMOVT.

Final Results of Review

As a result of our review, we have determined that the following margins exist:

Manufacturer	Margin (Percent)
Kemira Fibres Oy	2.41

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties. For assessment purposes, we calculated importer-specific assessment rates for viscose rayon staple fiber. For both EP and CEP sales, we divided the total dumping margins (calculated as the difference between NV and EP (or CEP)) for each importer) by the entered value of the merchandise. We will direct Customs to assess the resulting ad valorem rates against the entered value of each entry of the subject merchandise by the importer during the POR.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of viscose rayon staple fiber from Finland entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that established in these final results of this administrative review; (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 or a previous review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the most recent rate established for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 3.9 percent, the ''new shipper'' rate established in the first review conducted by the Department, as explained below.

On March 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States,* 822 F.Supp. 766 (CIT 1993) and *Federal-Mogul Corporation* v. *United States,* 822 F.Supp. 782 (CIT 1993) decided that once an ''all others'' rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement the above-mentioned decisions, it is appropriate to reinstate the ''all others'' rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders.

However, in proceedings governed by antidumping findings, unless we are able to ascertain the ''all others'' rate from the Treasury LTFV investigation,

the Department has determined that it is appropriate to adopt the ''new shipper'' rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical errors as a result of litigation) as the ''all others'' rate for the purposes of establishing cash deposits in all current and future administrative reviews (*see*, e.g., *Final Results of Antidumping Duty Administrative Review of Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan*, 58 FR 64720, (December 9, 1993)).

Therefore, the ''all others'' rate applied is the rate of 3.9 percent from *Viscose Rayon Staple Fiber From Finland, Final Results of Administrative Review of Antidumping Finding* (46 FR 19844, April 1, 1981), the first review conducted by the Department in which a ''new shipper'' rate (or in this case, a rate for all shipments of the subject merchandise, including new shippers) was established.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a 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 a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 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 the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 8, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–15872 Filed 6–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502]

Certain Welded Carbon Steel Pipes and Tubes From India; 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 February 9, 1998, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from India. The review covers two manufacturers/exporters. The period of review is May 1, 1996, through April 30, 1997.

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. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: June 16, 1998.

FOR FURTHER INFORMATION CONTACT: Davina Hashmi, at (202) 482–5760, or Greg Thompson, at (202) 482–0410, of the Import Administration, International Trade Administration, U.S. Department of Commerce.

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 19 CFR Part 353 (1997).

Background

On February 9, 1998, the Department of Commerce (the Department) published the *Preliminary Results of Administrative Review of the Antidumping Duty Order on Certain Welded Carbon Steel Pipes and Tubes from India*, 63 FR 6531. The review covers two manufacturers/exporters. The period of review (POR) is May 1, 1996, through April 30, 1997. We invited interested parties to comment on the preliminary results of review. At the request of one respondent, Rajinder Pipes Ltd. and Rajinder Steel Ltd. (collectively called ''RSL''), we held a public hearing on April 6, 1998. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Reviews

The products covered by this review include circular welded non-alloy steel pipes and tubes, of circular cross-section, with an outside diameter of 0.372 inch or more but not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, bevelled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low-pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air-conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon-steel pipes and tubes within the physical description outlined above are included in the scope of this order, except for line pipe, oil-country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit.

Imports of the products covered by this review are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain corrections that changed our preliminary results. A discussion of the arguments raised in the case and rebuttal briefs submitted to the

Department is contained in the following section entitled, ''Analysis of Comments Received.''

Analysis of Comments Received

Comment 1: The petitioners argue that the Department should apply facts available to those selling expenses and costs that could not be verified due to Rajinder's failure to prepare for verification properly. Specifically, the petitioners posit that the Department should disallow the deduction from normal value (NV) certain unverified home-market (HM) selling expenses and should deduct from the price in the United States the highest reported expense for certain unverified U.S. selling expenses.

The petitioners state that, in accordance with sections 776 and 782(i) of the Act and *Olympic Adhesive Inc.* v. *United States* (899 F.2d 1565, 1572 (Fed. Cir. 1990)), the Department may disregard respondent's information if such information cannot be verified and where manipulation of the margins may occur because a respondent may provide information selectively that the Department requested. The petitioners argue that there is no justification for Rajinder's failure to prepare for verification properly and for the frequent delays the Department encountered at verification. The petitioners point out that Rajinder had been given, in advance, an itinerary of the topics to be covered during verification and posit that Rajinder had ample time to prepare adequately for the verification. The petitioners also note that Rajinder has previous verification experience and, therefore, should have known what was needed and expected.

Finally, the petitioners state that it is Department practice to make an adverse inference and to apply facts available in cases where respondent impedes the progress of the review and fails to act to the best of its ability to comply with the Department's request for information. The petitioners contend that, in the instant proceeding, the situation warrants the application of adverse facts available.

Rajinder refutes the petitioners' argument that facts available should be applied to certain HM and U.S. selling expenses and argues that the petitioners have distorted the facts as they relate to the HM verification. Rajinder contends that, although it could have been better prepared for verification, its lack of preparation does not warrant the use of facts available, nor does it suggest that Rajinder in any way has impeded this review or failed to cooperate with the Department. Rajinder states that, on the contrary, most of the claimed adjustments were verified with very few discrepancies. Rajinder points to the verification report as support for the number of tests performed and the number of adjustments the verifiers examined, most of which had no discrepancies and some of which had discrepancies that were disadvantageous to Rajinder.

Rajinder also refutes the petitioners' assertion that it provided requested information selectively. Rajinder explains that, with respect to those adjustments that the Department did not examine at verification, the verifiers were simply not able to cover those topics in the time allotted for the verification. Rajinder argues that, had it wanted to select adjustments that it did not want the Department to verify, it would have selected the large adjustments, not the minor ones.

Department's Position: We agree with the respondent in part. With the exception of HM indirect selling expenses and duty drawback (see comment 4), we have accepted all of Rajinder's submitted information. Our determination in this regard is consistent with the statute and our practice. We have concluded, in accordance with section 776(a) of the Act, that the use of facts available for Rajinder's HM indirect selling expenses is appropriate because we were unable to verify the accuracy of the information Rajinder submitted despite numerous requests on our part to obtain the data. By not providing certain basic verification documents that were essential to the establishment of the accuracy of the data submitted, Rajinder did not cooperate to the best of its ability to comply with our requests for such information. Accordingly, we are using an adverse inference with respect to this item in full accordance with law. See section 776(b) of the Act. While we have determined that Rajinder did not cooperate to the best of its ability with respect to the HM indirect selling expenses, we do not find that this undermines the credibility of the other information Rajinder submitted during this review. See *Monsanto Co.* v. *United States*, 698 F. Supp. 275 281 (CIT 1988). Accordingly, we have calculated Rajinder's margin using all the data it submitted with the exception of the two items mentioned above.

As for the petitioners' concerns that Rajinder manipulated the process, it should be noted that, from the outset of verification, we selected adjustments out of the order from which they were listed in the verification outline. In other words, we conducted a ''spot check'' of various expense items which would preclude Rajinder from ''manipulating'' the process and selectively providing information to certain adjustments. In this manner, we were able to ensure that all items we selected were covered in time.

Comment 2: The petitioners argue that certain letters Rajinder submitted to the Department (dated January 13, 14, 15, 20, and 26, 1998) were untimely filed and should be removed from the official record in this review and not considered by the Department for the final results of this review. The petitioners also contend that the verifying officials did not request information contained in the respective January letters as stated by the respondents. The petitioners state further that even the first of the series of January letters (dated January 13, 1998) was submitted beyond the normal seven-day period for submitting information after the date on which verification is completed.

Rajinder contends that the January submissions with which the petitioners take issue should not be removed from the official record. Rajinder states that the letter dated January 13, 1998, was submitted at the request of the Department for the purpose of clarifying Rajinder's calculations for its reported variable costs of manufacture. Rajinder also states that, in accordance with 19 CFR 353.31(b)(1), the Department may solicit information from respondents at any time. Rajinder states further that the letters dated January 14, 15, and 20, 1998, pertain to information contained in Rajinder's Duty Exemption Entitlement Certificate (DEEC) book which was in the possession of the Customs Authority at the time of verification. Rajinder contends that, with respect to the letter dated January 26, 1998, the content of the letter was already examined at verification and that Rajinder should not be penalized for submitting a document that was not in existence at the time of verification. Rajinder points out, however, that, in the event that the Department rejects the letters dated January 14, 15, 20, and 26, 1998, that these letters are not necessary to demonstrate the validity of Rajinder's duty-drawback claim.

Department's Position: In accordance with 19 CFR 353.31(a)(2) we have rejected the January 14, 15, 20, and 26, 1998, letters because they were untimely and we did not request the information they contained. See letters to the respondent's counsel dated February 12, 1998, and April 16, 1998. We accepted Rajinder's January 13 letter because the information contained in that letter was submitted at our request.

Comment 3: The petitioners contend that the Department erroneously found two levels of trade (LOTs) in the HM and argue that the Department should

rescind the LOT adjustment it granted Rajinder in the preliminary results of review. The petitioners argue that Rajinder prevented the examination of the existence of two HM LOTs at verification, despite the Department's intention to examine this topic, and therefore, the information upon which the Department based its findings of two HM LOTs is unsupported.

The petitioners take issue with the Department's reasoning behind its categorization of Rajinder's customers into two channels of distribution and assert that such reasoning does not establish two HM LOTs. The petitioners argue that, rather than base the determination of different LOTs in the HM properly on selling activities of the producer, the Department instead considered the selling functions of the purchaser. The petitioners also assert that the record does not support qualitatively or quantitatively the differences in selling activities and functions made between Channel One (sales to government agencies, OEMs, and end-users) and Channel Two (sales to local distributors and trading companies) customers.

In addition, the petitioners assert that, if the Department finds that two HM LOTs exist, Rajinder has not fulfilled its burden of providing evidence that established the claimed price differential between sales at the different LOTs, citing the URAA, the Statement of Administrative Action (103d Cong. 2d Session, House Doc. 103–316 at 829 (1994)), and *Koyo Seiko Co. Ltd.* v. *United States*, 18 ITRD 1867 at 1870 (CIT June 19, 1996). The petitioners point out that the CIT has upheld the Department's decision to deny respondent's claimed price differential where a respondent fails to provide such information (citing *NTN Bearing Corp.* v. *United States*, 905 F. Supp. 1083, 1093–4 (Ct. Int'l Trade 1995)).

The petitioners also argue that Rajinder has not demonstrated a causal link between the reported selling functions and the claimed differences in price. The petitioners argue further that, on a model-specific basis, Rajinder's data reveals a highly inconsistent and disparate pattern of price differences across different models which, the petitioners assert, cannot be attributed to differences in the claimed LOTs. The petitioners assert that such disparate price differences are attributable to premiums that the Indian government is willing to pay for such merchandise. The petitioners argue further that an analysis of the weighted-average HM prices of Channels One and Two sales are not commensurate with the number of selling activities associated with each LOT. For instance, petitioners argue that, given the large number of selling activities associated with Channel One sales, it does not make sense that the HM prices for Channel Two sales are higher than the HM prices for Channel One sales. The petitioners state that, because Rajinder has not provided evidence demonstrating a consistent pattern of price differences attributable to Rajinder's claimed LOTs, the Department should not grant Rajinder a LOT adjustment for the final results of review.

Rajinder argues that, contrary to the petitioners' assertion, the record does support a finding of two HM LOTs. Rajinder refutes the petitioners' argument that it prevented the Department from examining LOT information at verification and asserts that the petitioners mischaracterized the events that took place at verification. Rajinder notes that, because nearly every adjustment the Department examined at verification was accurate with no discrepancies found, there is no reason to question the selling activities listed in Rajinder's selling-functions chart.

In addition, Rajinder argues that both its original and supplemental questionnaire responses demonstrate that a price differential at the two claimed LOTs does exist. Rajinder argues further that it has explained the causal link between the reported selling functions and the claimed differences in price. Regarding the petitioners' model-specific analysis, Rajinder notes that this analysis incorporates sales that took place over a number of months. Rajinder points out that variances in price differences across different models over time is a normal phenomenon. Rajinder notes further that its sales made to the government involve state government agencies which desire lower prices and therefore would not pay premiums as alleged by the petitioners.

Rajinder argues that, with respect to the petitioners' assertion that its HM weighted-average prices are not commensurate with the number of selling activities associated with each LOT, the petitioners' analysis is flawed. Rajinder contends that the wrong months and, thus, the incorrect sales were used in the analysis. Rajinder states that, because its sales were made in months that have nearly six-month intervals between the sales compared, it is likely that prices will vary. Finally, Rajinder argues that the petitioners used net HM prices which distorted their analysis. Rajinder concludes that, because the petitioners' analysis is flawed and is therefore invalid, the Department should maintain its finding of two LOTs in the HM and make a LOT adjustment for the final results of review.

Department's Position: We disagree with the petitioners. For the final results of review, we have granted Rajinder a LOT adjustment. Although we did not specifically examine the issue of LOT at verification, the record supports Rajinder's claim of two channels of distribution in the HM. As noted previously, the purpose of verification is to ensure that a respondent reported the information the Department requested accurately (see our response to comment 1). In any given proceeding, the information we request from a respondent can be extensive. The examination of such information subject to verification is an extensive process, particularly given that a HM verification of a company's sales or cost information is normally conducted within a period of one week or less. The Department, therefore, cannot examine each and every adjustment that is included in the verification outline. *See Monsanto Co.* v. *United States*, 698 F. Supp. 275 281 (CIT 1988). In the instant case, Department officials selected adjustments to examine randomly and Rajinder was never put in a position to control the Department's verification of its response. Furthermore, the adjustments we examined at verification were accurate, with a few minor exceptions. The fact that we did not examine the issue of LOT does not lead us to question the validity of Rajinder's selling activities, channels of distribution, or the narrative response discussing such selling functions.

We also disagree with the petitioners' claim that the record lacks evidence of two separate LOTs in the HM. In its narrative response, Rajinder explained that it sells the foreign like product through two channels of distribution (Channel One and Channel Two). In our preliminary analysis memorandum, we stated that we grouped Rajinder's reported customer categories into two channels of distribution for the following reasons: (1) the level of involvement, selling functions and expenses for the two categories of customers are significantly different; (2) a number of OEM and end-user customers are departments within the Indian government and, therefore, we found that it is appropriate to place these customers in the same category as state government agencies; and (3) Channel One customers use merchandise for their own consumption, whereas Channel Two customers resell the merchandise purchased from Rajinder. The

petitioners argue factors two and three do not establish different LOTs. However, the categorization of such customers into two channels of distribution does not, in and of itself, establish two different LOTs. Rather, the three factors emphasize similarities between different customer types so that they can be placed in categories for the purpose of determining whether different LOTs exist. Further, while the significance of the three factors may vary across customer types, we have determined, based on an analysis of these three factors, that the customers fall into two distinct groups.

The petitioners' argument that LOT is determined by the selling activity of the producer, not the selling functions of the purchasers, is true, but misplaced. In order to determine the LOT of U.S. sales and comparison sales, we review and compare distribution systems that include not only selling activities of the producer, but also the class of its customer (point in the distribution chain). Furthermore, there is a direct relationship between the classification of a given entity and the function of that entity. Therefore, as part of our LOT analysis, we classify the producer's customers (*e.g.*, wholesaler, retailer) based on the activities they perform in selling the product under review. We do not, however, consider the selling functions of the customer when determining whether different LOTs exist.

We have accepted the selling-function chart Rajinder provided as part of its verified questionnaire response. As we stated in preliminary results of review, we used six of the listed functions to make a distinction between selling activities associated with Channels One and Two: market research, professional services and business systems development, engineering services, agent coordination, research and development, and advertising. As the chart that the petitioners included in their brief shows, there is a marked difference between the selling functions being performed in the two channels of distribution.

Based on the above factors, we determined that there are two LOTs in the HM. One of these (Channel Two) is equivalent to the sales made at the constructed export price (CEP). However, since some of our U.S. sales matched to the other LOT we reviewed the data to determine if a LOT adjustment was appropriate.

Sales at the other channel are made at a more advanced level; therefore, we next determined whether there was a pattern of consistent price differences between the two HM LOTs and whether a LOT adjustment was appropriate. The analysis we performed on Rajinder's information indicated that an adjustment was appropriate. The petitioners' argument regarding causation is misguided. The statute requires that the price differences be ''wholly or partly due'' to differences in LOTs; it does not require a determination of the exact price effect caused by LOT differences and it would not be possible to do so, given the variety of market forces that affect the sales price of each transaction we review (*see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France et.al: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081, 2108 (January 15, 1997) (*AFBs*)).

Comment 4: Rajinder argues that the Department's denial of its claimed duty-drawback adjustment is unreasonable. Rajinder contends that it met both parts of the Department's test: (a) Whether the import duty and rebate are directly linked to, and dependent upon, one another; and (b) whether the company claiming the adjustment can show that there were sufficient imports of the imported raw materials to account for the drawback received on the exported product. Rajinder contends further that, for the purpose of satisfying part one of the Department's two-part test, it provided record evidence demonstrating how the import duty and the duty drawback are related to one another. Rajinder indicates that it explained on the record how India's Advanced Licensing system operates and that India's duty-exemption schemes are well known by the Department and points to several administrative reviews involving Indian companies that subscribe to India's Advanced Licensing system. In addition, Rajinder indicates that it provided both the duty-drawback calculation methodology it used to calculate the adjustment and the respective advanced licenses under which it could import raw materials free of duty, provided such materials were used in the production of the exported product.

Rajinder points to the verification report and accompanying exhibits as evidence of its eligibility for exemption from customs duties. Rajinder states that the advanced licenses state explicitly that the respective materials would be ''eligible'' for exemption from customs duties and that the underlying licenses are replete with the term ''Duty Exemption.'' Rajinder contends that the verification team did not indicate that additional information was necessary to satisfy part one of the Department's two-part test. Rajinder also argues that it supplemented the record with the very information that prompted the Department to deny the claimed duty-drawback adjustment for the *Final Results of the New Shippers Antidumping Duty Administrative Review* 62 FR 47632, (September 10, 1997).

Rajinder contends further that it satisfied part two of the Department's two-part test. Rajinder points to the verification report and accompanying exhibits which it asserts demonstrate that it imported sufficient amounts of hot-rolled coil and steel to qualify for duty drawback. Rajinder refers to the check marks and notations on the verification exhibits that the Department's verifiers made which, Rajinder asserts, is an indication that the Department verified the quantities of hot-rolled coil Rajinder imported.

Rajinder argues that the Department misstated the purpose of Rajinder's January 20, 1998, submission of Rajinder's DEEC book. Rajinder indicates that, in the preliminary analysis memorandum, the Department stated that the purpose of submitting the DEEC book was to provide evidence that sufficient imports of raw materials were received for the final exported product. Rajinder contends that, contrary to the Department's statement regarding the purpose of the DEEC book, the actual purpose of submitting this book was merely to corroborate the data already on the record. Rajinder argues that the relevant verification exhibit already demonstrates the sufficiency of import quantities.

Rajinder states that it submitted the DEEC book for the record because the Department requested it at verification. Rajinder points out that it explained to the verifiers that only the completed DEEC book, which was at that time in the possession of the Indian Customs Service, would satisfy the additional information they sought.

The petitioners contend that the Department denied Rajinder's claimed duty-drawback adjustment correctly because Rajinder failed to meet either part of the Department's two-part test. The petitioners assert that, despite the fact that Rajinder was on notice from the *New Shippers Review* as to the information necessary to demonstrate its claimed duty-drawback adjustment adequately, Rajinder missed the opportunities to supplement the record with the necessary information. The petitioners point out that, throughout this review, the Department informed Rajinder of its need to provide additional information to satisfy the two-part test. The petitioners state, however, that in accordance with the

Department's regulations and practice, Rajinder failed to provide the necessary evidence to satisfy the requirements of its claimed duty drawback, citing *Nachi-Fujikoshi* v. *U.S.*, 890 F. Supp. 1008, 1015 (1992).

The petitioners argue that the fact that the Department recognizes India's Advanced Licensing scheme is irrelevant to the instant case. The petitioners contend that Rajinder merely provided a general description of the Advanced Licensing scheme and that the possession of the advanced licenses alone does not demonstrate the linkage between the import duty and the drawback.

The petitioners indicate their support for the Department's decision to require Rajinder to provide historical documentation demonstrating how Rajinder received advanced licenses and satisfied the requirements of those licenses. The petitioners point out that the advanced licenses stipulate the submission of quarterly reports to the government of India and that such reports should provide detail of the goods imported against the licenses. The petitioners assert that such reports or other similar documentation demonstrating that Rajinder fulfilled the obligations of the advanced license could have been submitted as proof of entitlement to the claimed duty drawback. The petitioners explain further that, because importation of raw materials may occur before or after exportation, historical records documenting how the program was applied to a specific company and product are necessary to demonstrate linkage. The petitioners contend that the advanced licenses alone do not serve as proof that the drawback was received, but instead establish the right to import raw materials.

The petitioners argue that Rajinder also failed to satisfy the second part of the Department's two-part test. With respect to the verification exhibit with which Rajinder claims the Department was satisfied, given the check marks placed on it, the petitioners assert that the check marks are merely indications that the numbers on the respective worksheets reconciled with the reported figures. The petitioners also argue that the record does not demonstrate adequately that the amount of steel coil Rajinder claims to have imported qualified for duty-free status under the advanced license.

In addition, the petitioners argue that, even if the Department permits Rajinder's steel duty-drawback adjustment, it should deny Rajinder's claim for the zinc duty-drawback adjustment. The petitioners argue that Rajinder did not import zinc during the POR and, instead, used the calculation it provided in the previous New Shippers Review. The petitioners contend that the zinc information submitted in January constitutes new information, which was illegible and should have been submitted prior to verification if Rajinder desired due consideration of the information. The petitioners contend further that Rajinder has not provided any evidence that the imports of zinc met the Department's two-part test. Specifically, the petitioner states that Rajinder did not provide any evidence that sufficient quantities of zinc were imported to cover the zinc incorporated into the pipe or that qualifying inputs of zinc were made within twelve months of the date of issuance of its advanced licenses.

Department's Position: For both steel and zinc, we agree with the petitioners that Rajinder has not satisfied either part of our test. While Rajinder is correct in stating that we found the figures in the verification exhibits we reviewed to be accurate, the figures did not establish a direct link between the import duty and the drawback Rajinder claimed it received. Based on our understanding of the system, as explained at verification, the imported goods may enter free of duties, but the company must prove to Indian Customs that the goods were used in a product that was or will be exported or the importer of the goods will be liable for the foregone duty. This is why we requested documentation from the DEEC book. Without such information there is no established link between the import duty and the drawback. Inasmuch as Rajinder knew that it would not have the documents needed to establish this link at verification, Rajinder should have explained to us in advance that we would not be able to review such documents until after verification. Rajinder's arguments concerning part two of the test are irrelevant since both parts of the test must be met in order to receive the adjustment.

Comment 5: Rajinder contends that the model-match methodology that the Department employed in the preliminary results is inaccurate and does not provide a fair comparison between U.S. and HM models. Rajinder argues that it provided the Department with the best possible matches between HM and U.S. models sold during the POR subject to the Department's model-match hierarchy set forth in the Department's original questionnaire. Rajinder argues, however, that the Department disregarded its own hierarchical model-match methodology and instead grouped certain models into ''families'' based on the model's nominal pipe size. Rajinder contends that the Department's family model-match methodology is unfair because it includes models that are not the most similar to the products sold to the United States.

Rajinder also points out that the Department did not provide an explanation as to why its family model-match methodology provides better results and the Department did not explain why it did not use the model matches Rajinder provided in its response. Rajinder asserts further that grouping models into families has never been employed in other standard pipe and tube cases and was not the approach employed in the previous New Shippers Review in which Rajinder participated. In addition, Rajinder asserts that the Department's model-match methodology does not provide the most similar comparisons and is contrary to antidumping law and to the CIT's ruling that comparisons should be based on the most similar merchandise, absent identical merchandise sold in either the home or U.S. markets (citing *Torrington Co.* v. *United States*, 881 F. Supp. 622, 634 (Ct. Int'l Trade 1995)).

In addition, Rajinder argues that the Department is using only one physical attribute, the nominal pipe size, as the basis for model matching and is disregarding another significant attribute, wall thickness, which, in the Department's model-match hierarchy, is one of the most important factors next to nominal pipe size. Rajinder asserts that matching models using only the nominal pipe size rather than including wall thickness as an important criterion by which to find the most similar matches produces an apples-to-oranges comparison.

Rajinder asserts further that the Department apparently selected HM models as matches to U.S. models based on size of the difference-in-merchandise adjustments associated with the selected models. Rajinder contends that differences in costs are not physical characteristics and that such figures should not be relied upon for the purpose of matching models. Moreover, Rajinder argues that the HM models that the Department selected as matches to U.S. models did not produce the smallest difference-in-merchandise adjustments.

Rajinder also points out that pipes sold in India are categorized by light, medium, and heavy pipe which is reflective of the wall thickness. Rajinder explains that the uses of the pipes are a direct determinant of whether light,

medium, or heavy pipe is necessary. Rajinder explains further that a light pipe cannot be compared with a medium pipe, as was done in the preliminary results.

For the above-mentioned reasons, Rajinder argues that the Department should use the models that Rajinder selected as the most similar HM models to the models sold in United States for the final results of review.

The petitioners claim that the Department's model-match methodology is not unreasonable and is not contrary to the statute. The petitioners assert that there is no reason for the Department to alter its approach for the final results of review. The petitioners argue that, in accordance with section 771(16) of the Act, the HM models the Department selected as potential matches meet the definition of foreign like product. The petitioners also argue that, although this model-match methodology deviates from that employed in other standard pipe cases, the Department has wide discretion in determining model matches in antidumping cases (citing *Torrington Co.* v. *United States*, 881 F. Supp. 622 at 634 (Ct. Int'l Trade 1995); (*Smith-Corona v. United States*, 713 F. 2d 1568, 1571 (Fed Cir. 1983), cert. denied, 465 U.S. 1022(1984)). The petitioners explain that the Department's methodology selects the most similar models that match as closely as possible the five physical characteristics in the hierarchy, classifies models into families on the basis of nominal pipe size, and selects the models that produce the smallest difference-in-merchandise adjustment. The petitioners point out that selecting model matches on the basis of difference-in-merchandise takes into account a combination of physical characteristics and, moreover, it is in accordance with section 771 (16)) of the Act, which calls for finding the closest possible match.

The petitioners contend that, although the Department's model-match methodology is different from the methodology employed in the previous New Shippers Review and other pipe cases, the use of this methodology in the instant case does not preclude it from being a reasonable model-matching approach. The petitioners contend further that, while controversy has arisen in the antifriction bearings proceedings regarding the family model-match methodology, such controversy is irrelevant given that the methodology was approved by the Court of International Trade, citing *Torrington Co.* v. *United States*, 881 F. Supp. 622 (CIT 1995). The petitioners note that the Department's model matching meets the statutory goal of matching products with the most similar characteristics.

The petitioners also rebut Rajinder's claim that the Department disregarded wall thickness that Rajinder claims to be the most important factor. The petitioners point out that determining whether certain characteristics are more important over others has been an ongoing controversial topic between the Department and certain domestic interested parties and various respondents in other proceedings. The petitioners note that the Department's methodology takes into account a combination of physical characteristics, including wall thickness.

In addition, the petitioners argue that differences in cost are reflective of differences in physical characteristics which is the premise behind the difference-in-merchandise adjustments. The petitioners also contend that, despite whether the pipe is light, medium, or heavy, all of the products used for comparison purposes have the same end use—the conveyance of gases and liquids and light structural uses. The petitioners argue that the Department's hierarchical approach to matching models that are most similar as set forth in its original questionnaire arbitrarily assigned a level of importance to certain characteristics and did not take into account differences in physical characteristics. The petitioners assert that a change in any one of the characteristics included in the hierarchy causes changes in other characteristics included in the hierarchy. The petitioners explain that a change in wall thickness can alter the thickness as well as the costs associated with end and surface finish, both of which are characteristics included in the hierarchy.

The petitioners point out that, under the hierarchical approach, the Department would, in ascending order, find matches at the highest level of the hierarchy and would, thereby, disregard any changes in characteristics at the lower levels as a result of finding a match at the higher level. The petitioners argue that, in essence, this approach may find matches at higher levels within the hierarchy with a higher difference-in-merchandise even though another match might yield a lower adjustment.

The petitioners argue that Rajinder has not provided evidence that the differences in wall thickness and the claimed specialized uses of the different wall thicknesses yield differences in market values. The petitioners therefore argue that, for the foregoing reasons, the Department should maintain the model-match methodology it used in the preliminary margin calculations for the final results of review.

Department's Position: We agree with Rajinder in part. We agree that we should alter the model-match methodology from what we used in the preliminary results, but we do not agree that we should automatically accept the matches that Rajinder suggested in its response. In the preliminary results, we matched each U.S. model to a ''family'' of home-market models.

Sections 771(16)(B) and (C) of the Act define foreign like product merchandise as identical products or products in the following two categories:

> (B) Produced in the same country and by the same person as the merchandise which is the subject of the investigation, like that merchandise in component material or materials and in the purposes for which used and approximately equal in commercial value to that merchandise.
>
> (C) Produced in the same country and by the same person and of the same general class or kind as the merchandise which is the subject of the investigation, like that merchandise in the purposes for which used, and which the administering authority determine may reasonably be compared with that merchandise.

In accordance with section 771(16) of the Act, we modified our matching methodology and applied the criteria as follows. We did not consider grade and finish since those categories were the same for all HM models. The remaining criteria are size, wall thickness, and end finish. For size, we agree with the respondent, as we did in the preliminary results, that the U.S. models should be matched to HM models with a size of 32 mm or 40 mm. Each of the U.S. models fell between two HM models with essentially equivalent differences in wall thickness. For these four models, we reviewed the end finishes. All of these models had the same end finish, so that was not a determinant. This left two possible HM matches for each U.S. model. For these final results, unlike the preliminary results, we compared the variable cost of manufacture for all of these products and matched those products with the smallest differences (see analysis memorandum dated May 20, 1998).

Comment 6: The petitioners argue that the Department should not make a deduction from NV for Rajinder's reported HM credit expenses. The petitioners assert that, based on Rajinder's methodology for calculating credit expenses, one cannot discern the invoice against which payment was being made because these expenses were not calculated on an order-or product-specific basis. The petitioners

also note that Rajinder used an arbitrary method for determining payment dates based on whether a certain customer owed Rajinder more or less than fifty percent of its outstanding balance which, the petitioners argue, does not correlate to a customer's actual payment history. The petitioners suggest that the Department use instead a customer-specific average credit period as it has done in the past with cases in which a respondent's system utilized revolving accounts rather than rely upon any arbitrary method for determining payment dates.

The petitioners also argue that Rajinder did not provide a reliable HM short-term interest rate. The petitioners note that, at verification, Rajinder provided the Department with statements from two of its banks that specify the short-term interest rate charged to Rajinder. However, the petitioners point out that Rajinder received a number of short-term loans from various financial institutions and that the interest rates charged by the two banks are not representative of the interest rates incurred on the short-term loans that Rajinder has outstanding with the various other financial institutions. The petitioners assert that Rajinder is therefore manipulating the interest rate used in the credit expense calculation by providing the interest rates selectively. The petitioners argue that, because the cost of working capital is fungible, the Department should calculate an average short-term interest rate from all short-term loans Rajinder has outstanding with the various financial institutions. In addition, the petitioners contend that, because Rajinder has failed to provide the Department with information necessary to calculate an average short-term interest rate, the Department should disallow an adjustment to NV for credit expenses.

Rajinder argues that credit expenses were verified with very few discrepancies and notes that the few discrepancies the Department found were disadvantageous to Rajinder. Rajinder argues, therefore, that because the credit expense calculation was verified and found to be accurate there is no reason to deny an adjustment to NV for this expense. Rajinder also refutes the petitioners' assertion that Rajinder used an arbitrary method to calculate its HM credit expenses. Rajinder points out that the calculation methodology was reasonable and consistent with the manner in which Rajinder's customers remit payment. Rajinder also states that petitioners' suggested methodology is only one of several methodologies that can be used to calculate credit expenses. Rajinder also argues that, if the Department rejects Rajinder's reported HM credit expenses, it should provide Rajinder with an opportunity to use a different method.

Rajinder contends further that the short-term interest rate was verified and found to be accurate. Rajinder argues that it did not select the interest rate to be used in the calculation and there is nothing on the record or in the verification report or accompanying exhibits to suggest that it is unrepresentative of its short-term cost of borrowing. Rajinder notes that high interest rates are common in India, given the rate of inflation and devaluation. Rajinder asserts that, for the final results of review, the Department should accept Rajinder's credit expense calculation including the short-term interest rate used in the calculation.

Department's Position: We agree with Rajinder. Rajinder calculated credit periods based on the manner in which its payment system operates. Many companies have revolving lines of credit for their customers. Despite the fact that such a system may make it difficult to tie specific sales to subsequent payments from the customer, calculation of average credit periods based on such a system is not unreasonable. In fact, as the verification report alludes, Rajinder's reported figures generally erred on the conservative side.

We have also accepted Rajinder's reported interest rate. Rajinder did not, as the petitioners suggest, supply the verifiers with interest-rate information selectively for two of its bank loans. The verifiers reviewed all of Rajinder's outstanding loans (short-and long-term) and traced the short-term loans to entries in the general ledger and Rajinder's financial statements showing outstanding balances and payments. In addition, the verifiers randomly chose two of the loans and reviewed all of the supporting documentation from which the interest rates were drawn. The interest rate charged on the two loans reviewed by the Department in detail corresponded with the rate Rajinder used in its calculation of credit expenses.

Comment 7: Rajinder contends that, while the Department deducted U.S. selling expenses from U.S. prices, it failed to deduct HM indirect selling expenses from NV, creating an apples-to-oranges comparison. Rajinder states that, for the final results of review, the Department should deduct HM indirect selling expenses subject to the amount permissible under the CEP-offset provision.

The petitioners refute Rajinder's argument that HM indirect selling expenses should be deducted from NV. The petitioners argue that, because the Department made a LOT adjustment which accounts for differences in selling expenses, including indirect selling expenses, the Department cannot make a CEP offset for HM indirect selling expenses. The petitioners point out that, if the Department compared sales at the same LOT, a CEP offset could not be performed (citing *Antidumping Duties*, Final Rule, 62 FR 27296, 27372 (May 19, 1997)).

Department's Position: The statute directs us to adjust NV for HM indirect selling expenses where we are not able to make a LOT adjustment. See sections 773(a)(7)(A)(i) and (ii) and section 773(a)(7)(B) of the Act. Since we made a LOT adjustment to NV for the final results of review, we may not deduct HM indirect selling expenses from NV as an offset to U.S. indirect selling expenses.

Comment 8: The petitioners argue that, for the final results of review, the Department should not make a deduction from NV for Rajinder's claimed HM indirect selling expenses.* The petitioners contend that Rajinder has not documented these selling expenses adequately and has not clarified its calculation of how it allocated such expenses to black and galvanized pipe, despite the Department's request for additional information in its supplemental questionnaire. The petitioners also argue that company officials provided conflicting information on this subject at verification.

Rajinder argues that there is no basis for disallowing a deduction from NV for these selling expenses merely because they were not verified. Rajinder notes that, for those expenses that were examined, the Department found such expenses to be reported accurately. Rajinder argues that it did respond to the Department's request for additional information in its supplemental questionnaire response by providing a breakdown of the expenses attributable to HM indirect selling expenses, including worksheets demonstrating the calculation of pipe based on the weight and type of the pipe.

Department's Position: As discussed in our response to Comment One, we have not accepted Rajinder's HM

* Given the lack of clarity from both parties, we assume the comments in this section are referring to the use of indirect-selling expenses as the commission offset.

indirect selling expenses. Therefore, this argument is moot.

Comment 9: The petitioners contend that the Department should revise the CEP-profit ratio calculated in the preliminary results of review. The petitioners assert that the cost of goods sold (total costs minus the change in inventory) should be subtracted from the total revenues because only those products that were sold generated revenue. The petitioners point out that incorporating this change into the calculation will increase the CEP-profit ratio considerably.

Rajinder refutes the change in the numerator of the CEP-profit ratio that the petitioners propose, arguing that profit is the difference between revenue and expenses which includes the cost for inventory that has not yet been sold. Rajinder contends, however, that the CEP-profit ratio is overstated because the Department deducted an amount for imputed expenses incorrectly. Rajinder also points out that the Department deducted an incorrect figure for ''Total Costs'' which erroneously yields a profit, instead of a loss, for the period.

Department's Position: We agree with both the petitioners and Rajinder in part. We agree that the cost of goods sold should be subtracted from the total revenue (see *Calculation of Profit for Constructed Export Price Transactions Policy Bulletin*, dated September 4, 1997). The calculations that we performed added the change-in-inventory figure to the total revenue after deducting the total costs. This calculation produces the same results that the petitioners suggest.

We also agree with Rajinder that we made some arithmetic errors in the calculation. We have corrected these errors (see analysis memorandum, dated May 20, 1998).

Comment 10: Rajinder argues that the Department incorrectly included imputed credit expenses and inventory carrying costs in the CEP-profit calculation.

The petitioners agree with Rajinder that the CEP-profit calculation is incorrect and provide suggested changes to correct the calculation.

Department's Position: We disagree with both the respondent and the petitioners. The suggested approaches blur the definition of U.S. expenses, as defined in section 772(f)(2)(B) of the Act, and U.S. selling expenses, as defined in sections 772(d)(1) and (2). As we discussed in *AFBs* at 2126, sections 772(f) (1) and 772(f)(2)(D) of the Act state, the per-unit profit amount shall be an amount determined by multiplying the total actual profit by the applicable percentage (ratio of total U.S. expenses to total expenses). Specifically, the Act defines ''total actual profit'' as the total profit earned by the foreign producer, exporter, and affiliated parties described in subparagraph (C) with respect to the sale of the merchandise for which total expenses are determined under such subparagraph. 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 section 772(f)(1) of the Act.

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 Act, which defines ''total United States Expense'' as the total expenses described under sections 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).

Comment 11: Rajinder contends that, in the Department's recalculation of HM imputed credit expenses, excise taxes should not be deducted because the amount of credit extended to the customer is inclusive of excise tax.

The petitioners contend that the Department should continue to exclude Rajinder's excise taxes in the calculation of Rajinder's HM imputed credit expense calculation because, to do otherwise, is inconsistent with and contrary to both Department policy and practice. The petitioners contend further that, because the taxes are ultimately rescinded to the government as revenue, it does not serve the purpose of the adjustment to price for imputed credit expenses.

Department's Position: We have not deducted excise taxes in the recalculation of HM imputed credit expense. This tax is included in the price Rajinder charged to the customer and is paid to the government when the goods are removed from the factory. Therefore, the amount of the tax is an imputed credit expense brought on by the sale of the pipe and, as such, is appropriate to include in the interest expense calculation.

Comment 12: Rajinder contends that the Department matched certain U.S. sales transactions to the incorrect HM sales transactions. Specifically, Rajinder argues that the Department inadvertently defined a certain computer variable, which it used for matching purposes, by the date of payment. Rajinder argues that, for the final results of review, the Department should define the variable as the sale date.

Department's Position: We agree with Rajinder and have corrected this clerical error.

Comment 13: Rajinder contends that, despite the Department's inclusion of language in the program to change the sale dates of certain U.S. sales transactions, the computer output demonstrates that such changes were not implemented. Rajinder requests that the Department make such changes for the final results of review.

The petitioners agree with Rajinder that changes to the sale dates are appropriate and provide suggestions for those changes.

Department's Position: We agree and have corrected this error for the final results (see analysis memorandum, dated May 20, 1998).

Comment 14: Rajinder contends that the Department inadvertently failed to make corrections to its reported HM shipment dates as presented at the outset of verification. Rajinder requests that the Department make these changes for the final results of review because corrections to the shipment date ultimately affect HM prices.

Department's Position: We agree with respondent and have made the necessary changes for the final results of review.

Final Results of Review

As a result of our analysis of the comments received and the correction of certain inadvertent clerical errors, we find that the following margins exist for the period May 1, 1996, through April 30, 1997:

Manufacturer/Exporter	Percentage margin
RSL	31.13
Lloyd's Metals & Engineers*	0.00

*This firm made no shipments of subject merchandise to the United States during the instant POR. Rate is from the last segment of the proceeding in which the firm had shipments/sales.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For CEP sales, we divided the total dumping margins for the reviewed sales by the total entered value of those

reviewed sales for each importer/customer. We will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of the importer's/customer'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.

To calculate the cash deposit rate for each exporter, we divided the total dumping margins for each exporter by the total net value (EP or CEP) for that exporter's sales of subject merchandise in the United States during the review period. The following deposit requirements will be effective for shipments of 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 the reviewed companies will be the rates outlined 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 less-than-fair-value (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 continue to be 7.08 percent, the ''All Others'' rate made effective by the final determination of sales at LTFV, as explained in the 1995/96 New Shippers Review of this order. See *Certain Welded Carbon Steel Pipes and Tubes from India; Final Results of New Shippers Antidumping Duty Administrative Review*, 62 FR 47632, 47644 (September 10, 1997).

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)(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 determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 8, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–15873 Filed 6–15–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; 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 December 8, 1997, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea. This review covers imports of pipe from four producers/exporters during the period November 1, 1995 through October 31, 1996.

Based on our analysis of comments received, these final results differ from the preliminary results. In addition, we continue to find for these final results that sales of subject merchandise were made below normal value during the review period.

EFFECTIVE DATE: June 16, 1998.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai or Craig Matney, Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–4087 and 482–1778, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations, codified at 19 CFR part 353, April 1997.

Background

This review covers four manufacturers/exporters, *i.e.*, Hyundai Pipe Co. Ltd. (Hyundai), Korea Iron and Steel Co., Ltd. (KISCO) and its affiliate Union Steel Manufacturing Co., Ltd. (Union), SeAH Steel Corporation (SeAH) and Shinho Steel Co., Ltd. (Shinho), collectively referred to as ''the respondents.'' Since the publication of our *Notice of Preliminary Results of Antidumping Duty Administrative Review of Circular Welded Non-Alloy Pipe from the Republic of Korea*, (*Preliminary Results*) 62 FR 64559 (December 8, 1997), we received revised home market datasets from the respondents in December 1998. We also received case briefs from the respondents and from the petitioners on January 20, 1998, and rebuttal briefs on January 30, 1998.

Scope of Review

The merchandise subject to this review is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other

related industries. Unfinished conduit pipe is also included in this order.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of this review except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. In accordance with the Department's *Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the Republic of Korea, Mexico, and Venezuela* 61 FR 11608 (March 21, 1996), pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A–53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines is outside of the scope of the antidumping duty order.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Date of Sale

The respondents have argued that, contrary to the methodology used in the *Preliminary Results,* we should use invoice date as the date of sale for sales to the United States. For these final results, we continue to find contract date to be the appropriate date of sale with respect to sales to the United States. (For further discussion of this issue, *see* Comment 1 in the General Comments section of this notice below.)

Product Comparisons

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States* (CEMEX), 1998 U.S. App. LEXIS 163. In that case, based on the pre-URAA version of the Act, the Court ruled that the Department may not resort immediately to constructed value (CV) as the basis for foreign market value (now normal value, or ''NV'') when the Department finds home market sales of the identical or most similar merchandise to be outside the ordinary course of trade. This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ordinary course of trade to include sales below cost. See, Section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV as the basis for NV where the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ordinary course of trade. Instead, the Department will use other sales of similar merchandise to compare to the US sales if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison.

Accordingly, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all home market sales of the foreign like product that were in the ordinary course of trade for purposes of determining appropriate product comparisons to US sales. Where there were no sales of identical merchandise in the home market in the ordinary course of trade to compare to US sales, we compared US sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. Thus, we have implemented the Court's decision in *CEMEX* to the extent that the data on the record permitted.

Aside from the preceding, we followed the methodology outlined in our *Preliminary Results* with the following exception: for certain of Shinho's models that had identical product characteristics but were assigned non-identical control numbers, we recoded them with identical control numbers.

Export Price and Constructed Export Price

We followed the methodology in the *Preliminary Results* with the following exceptions: (1) We used in our analysis all export price (EP) transactions that were entered during the POR; (2) we recalculated adjustments for duty drawback for SeAH; (3) we recalculated the short-term interest rate for KISCO/Union on a collapsed basis; (4) we included interest revenue in the calculation of net price for KISCO/Union.

Normal Value

We used the same methodology outlined in the *Preliminary Results* with the following exceptions: (1) For sales with weight conversion factors below the allowed minimum, we used the minimum as non-adverse facts available; (2) sales failing the arm's-length test and resales of products purchased from other producers were not included in the product-matching concordance for Hyundai and SeAH; (3) we reallocated SeAH's foreign brokerage, US duty and US brokerage expenses on a value basis; (4) sales of overruns were removed from the arm's length test for SeAH; (5) indirect selling expenses for KISCO/Union were recalculated; (6) the short-term interest rate for KISCO/Union was recalculated on a collapsed basis; (7) we recalculated Shinho's CV interest expenses with respect to short-term interest offsets and foreign exchange gains/losses; 8) we recalculated the credit expenses for one of Shinho's home market customers.

Level of Trade/CEP Offset

We received no comment from interested parties on the methodology we employed in the *Preliminary Result*s with respect to level of trade. Based on our analysis of information on the record as articulated in the *Preliminary Results,* we are not changing our methodology with respect to level of trade for these final results.

Cost of Production Analysis

As discussed in the *Preliminary Results,* we conducted an analysis to determine whether the respondents made sales of the foreign like product in the home market at prices below their cost of production (COP) within the meaning of section 773(b)(1) of the Act. We used the same methodology employed in the *Preliminary Results* with the following exceptions: (1) The general and administrative (G&A) and interest factors for all respondents were recalculated using a denominator inclusive of packing; (2) we recalculated KISCO/Union's G&A and interest expense on a collapsed basis; (3) we recalculated Shinho's interest expenses with respect to short-term interest offsets and foreign exchange gains/losses.

Constructed Value

In calculating CV, we followed the methodology employed in our *Preliminary Results,* with the following exceptions: (1) The SG&A and interest factors for all respondents were recalculated using a denominator inclusive of packing; (2) we adjusted Hyundai's CV for direct selling expenses incurred in the home market; (3) we converted CV profit to a theoretical-weight basis for Shinho; (4) we corrected the circumstance of sale (COS) adjustment for credit expenses for

Shinho; (5) we recalculated Shinho's interest expenses with respect to short-term interest offsets and foreign exchange gains/losses.

Interested Party Comments

General Comments

Comment 1: Invoice Date v. Contract Date as the Date of U.S. Sale

The respondents note that before the issuance of the original questionnaire in this proceeding on January 13, 1997, the Department adopted the policy of using invoice date as the presumptive date of sale in February 1996 with the publication of its proposed antidumping regulations (*see Antidumping and Countervailing Duties: Notice of Proposed Rulemaking and request for Public Comments*, (*Proposed Regulations*) 61 FR 7308, 7381 (February 27, 1996)). Consistent with the instructions in the questionnaire, the respondents state that they used invoice date as the date of sale for US sales and received no indication from the Department that this was not acceptable until October 30, 1997, despite meetings subsequent to the issuing of the questionnaire with Department officials on this same issue.

The respondents acknowledge that the Proposed Regulations and Final Regulations (i.e., *Antidumping Duties; Countervailing Duties: Final Rule*, (*Final Regulations*) 62 FR 27926, 27411 (May 19, 1997) codified at 19 CFR § 351.401(i)) speak of the use of dates other than invoice date under circumstances involving long-term contracts, sales with exceptionally long periods of time between invoice and shipment dates, and situations involving large custom-made merchandise. However, the respondents then point out that the particular circumstances in this case with respect to US sales (i.e., long periods of time between the date on which the material terms of sale are set and invoice date) do not fall within these stated exceptions. The respondents also emphasize that the Final Regulations clearly state that exceptions to the presumption to use invoice date must be narrowly drawn. Indeed, the respondents note that in *Certain Stainless Steel Wire Rod from India: Final Results of New Shipper Antidumping Duty Administrative Review*, (*Certain Stainless from India*) 62 FR 38976, 38978 (July 21, 1997), the Department maintained that the use of invoice date as the date of sale was appropriate over the objection of the petitioners that the lag time of up to several months between purchase order date and invoice date was too long. The respondents also cite other cases in which the Department held that invoice date was the appropriate date of sale.

The respondents argue that since their sales processes are quite typical for manufactured products, that they should be afforded typical consideration—i.e., the use of invoice date as the date of sale. Otherwise, argue the respondents, the exception of not using invoice date as the date of sale would become the rule, and the selection of the date of sale would be purely at the discretion of the Department.

The respondents point out that even if the sales terms rarely change after the contract date, the possibility for change exists and sometimes does occur. The respondents then cite to the Preamble to the Final Regulations where it states that ''absent satisfactory evidence that the terms of sale were finally established on a different date, the Department will presume that the date of sale is the date of invoice'' (*Final Regulations* at 27349). According to the respondents, the sales terms in this case are subject to change and are not, therefore, ''finally established'' within the meaning of the Preamble to the Final Regulations until the date of invoice.

In addition, the respondents argue that using a different date of sale for home market sales than for US sales contradicts the Department's preference of using a single date of sale for a given respondent instead of a different date for each sale, as stated in the Preamble to the *Final Regulations* (*see* 62 FR 27348). As support for using the same date of sale in both markets, the respondents cite to *Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line Pressure Pipe from Germany: Preliminary Results of Antidumping Duty Administrative Review*, (*Germany Line Pipe*) 62 FR 47446, 47448 (September 9, 1997) in which the Department used shipment date (a proxy for invoice date which occurred after the shipment date) despite a long lag time between order confirmation date and shipment date in order to maintain dates of sale in the home market and the United States on the same basis.

The petitioners point out that both the Proposed and Final Regulations cited by respondents are not applicable to this proceeding since it was initiated prior to the date on which these regulations became effective. Even if they were, add the petitioners, the Department's decision not to use invoice date as the date of sale for US sales was fully consistent with those regulations as they state:

> [T]he Department may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

See *Final Regulations* at 27411. The petitioners take issue with the respondents' assertion that the listed exceptions are the only allowable circumstances under which the Department may abandon the use of invoice date. Instead, state the petitioners, the list of exceptions is illustrative and not exhaustive. The petitioners also note that while the respondents cite to language in the regulations speaking generically about the malleable nature of sales terms up until the time that payment is demanded, they have not cited to evidence on the record of this proceeding which would demonstrate that sales terms in this case are not usually established on the contract date for sales to the United States. Rather, state the petitioners, there is more than satisfactory evidence on the record of this proceeding showing that contract date better reflects the date on which material terms of sale were established for US sales.

Department's Position

While we agree with the respondents that the Department prefers to use invoice date as the date of sale, we are mindful that this preference does not require the use of invoice date if the facts of a case indicate a different date better reflects the time at which the material terms of sale were established. Indeed, as all parties have recognized, both the Proposed and Final Regulations speak to giving the Department flexibility to abandon the use of invoice date. In granting this flexibility, the regulations anticipate the possibility of inappropriate comparisons via the strict use of invoice date as the date of sale.

As for the respondents point that the facts in this case (i.e., long lag times between contract date and invoice date) do not fit the exceptions articulated in the regulations, we note that the exceptions listed are exemplary and are not intended to be limiting as can be seen in the Proposed Regulations where it states:

> [T]he Department recognizes that [invoice] date may not be appropriate in some circumstances, such as those involving certain long-term contracts or sales in which there is an exceptionally long time between the date of invoice and the date of shipment. [Emphasis added.] (Proposed Regulations at 7330.)

If invoice date does not reasonably approximate the date on which the material terms of sale were made in

either of the markets under consideration, then its blanket use as the date of sale in an antidumping analysis is untenable. The facts in this case, as explained below, clearly demonstrate that the use of invoice date as the date of sale in both markets would lead to inappropriate comparisons.

In this case, the sales processes for US and home market sales differ markedly. Sales in the home market are typically out of inventory with the purchase order/contract, invoice and shipment dates all occurring within a relatively short period of time. In contrast, US sales are usually conducted on a made-to-order basis (CEP sales out of inventory being an exception.). The material terms of sale in the US are set on the contract date and any subsequent changes are usually immaterial in nature or, if material, rarely occur. Most importantly, due to the made-to-order nature of US transactions, there is a very long period of time between the contract date, and the subsequent shipment and invoicing of the sale. The long periods between the contract date and invoice/shipment date for US transactions are measured in multiple months with some reaching upwards of six months. As can be seen from the foregoing, ''invoice'' dates in both markets, while the same in name, are materially quite different for purposes of determining price discrimination simply because the sales processes for the two markets are quite different. If we were to use invoice date as the date of sale for both markets, we would effectively be comparing home market sales in any given month to US sales whose material terms were set months earlier— an inappropriate comparison for purposes of measuring price discrimination in a market with less than very inelastic demand. Notwithstanding the respondents' comment that the terms of sale are subject to change and that, therefore, the final terms are not known until the date of invoice, we find that, in this case, there is no information on the record indicating that the material terms of sale change frequently enough on US sales so as to give both buyers and sellers any expectation that the final terms will differ from those agreed to in the contract. Therefore, we are continuing to use contract date as the date of sale with respect to US sales for these final results, except for CEP sales out of inventory. See also *Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand,* 63 FR 7392, 7394 (February 13, 1998) (For CEP sales out of inventory, invoice date reasonably approximates the date on which the material terms of sale are set and is, therefore, appropriately used as the date of sale.).

As for the respondents' additional concern that using a ''different'' date of sale in home market than in the United States would be contrary to the Department's preference of using a single date of sale as articulated in the Preamble to the (*see Final Regulations* at 27348), we find such concern to be unwarranted. Given the sales processes of the different markets, the only dates which are substantively equivalent for purposes of measuring price discrimination, although different in name, are the invoice date in the home market and the contract date in the United States.

Comment 2: Inclusion of All EP Sales Entered During The POR

SeAH argues that the Department erroneously excluded from its analysis EP sales entered during the POR but with dates of sale outside the POR. According to SeAH, § 751(a)(2)(A) of the Act requires that the Department examine each entry, as opposed to sale, during the POR by stating:

> For the purpose of [administrative reviews of antidumping duty orders], the administering authority shall determine
>
> (i) the normal value and export price (or constructed export price) of each entry of the subject merchandise * * *

The petitioners counter that the review covers all ''sales'' during the POR as delineated in the questionnaire. According to the petitioners, it is the questionnaire which determines the reporting requirements during a review and the questionnaire clearly stated, ''State the total quantity and value of the merchandise under review that you sold during the period of review'' (*see* January 13, 1997 questionnaire at A–1). As for the language in the statute cited by SeAH in support of a review covering all entries, the petitioners cite to *American Permac* v. *United States,* 783 F. Supp. 1421 (CIT 1992) (*American Permac*) to show that the statute does not preclude the Department from excluding certain sales if they are distortive where it says:

> The court has a difficult time reading the ''each entry'' language to compel inclusion of all sales, no matter how distorting or unrepresentative. In actuality, both investigations and periodic reviews examine sales, not entries, and the methodology is not distinguishable in any relevant way.

The petitioners also cite to 19 CFR 353.22(b) and, inter alia, *Final Results of Antidumping Duty Administrative Reviews: Portable Electric Typewriters from Japan, (Typewriters from Japan)* 56 FR 56393, 56397 (November 4, 1991) to show that the Department has the discretion to base administrative reviews on entries, exports or sales.

Department's Position

We agree with SeAH that all POR entries of EP sales should be included in our analysis. The petitioners' citation to *American Permac* does not apply to this case. In that case, the Court was examining the issue of whether or not the Department had the authority to deny a request which did not arise until the hearing to exclude a certain number of US sales from the universe of reported transactions. One of the Department's arguments in *American Permac* was that it was required by the statute to examine all sales in the reported universe. While the Court based its final decision to uphold the Department's denial of exclusion based on the untimely nature of the exclusion request, it did state that it doubted that Congress ''intended to compel distortions if exclusion of a few sales would remedy the problem'' (*see American Permac* at 1424). While *American Permac* does support the authority of the Department to exclude certain US sales from its analysis, it does not address the issue of whether the universe of reported sales is to be based on entries or sales during the POR.

Section 751(a)(2)(A) of the Act states that a dumping calculation should be performed for each entry during the POR. While the § 353.22(b) of the Department's regulations does give the Department some flexibility in this regard by stating that the review can be based on entries, exports or sales, it is our preference to base the review on entries when possible. In this case, we find no compelling reason to move away from the use of entries to determine the universe of US sales to be reported for EP sales as there are no circumstances on the record that would require such a move. Accordingly, we have included in our analysis for these final results all entries of EP sales during the POR as reported by SeAH. In addition, we have made the same revision in our calculations for all of the other respondents.

Comment 3: Inaccurate or Missing Conversion Factors

The petitioners state the respondents have reported some conversion factors for the conversion of home market sales and cost information to a theoretical-weight basis that are below the minimum conversion factor allowable in various grades of standard pipe, as

determined using maximum industry-standard tolerance of wall thickness. Where no other conversion factor exists for such products, the petitioners propose assigning the highest reported conversion factor among transactions of the same specification. In the event there is no available conversion factor for a particular product, the petitioners argue that Department should not apply any conversion factor.

Hyundai acknowledges that a few of its conversion factors were calculated incorrectly and requests that the Department allow them to correct this error. Additionally, Hyundai notes that the error did not impact the *Preliminary Results* as the products with the incorrect conversion factors were not used in calculating the margin.

KISCO/Union contends that the petitioners' argument refers to the conversion factor between theoretical and *standard* actual weight, which may differ slightly from the actual weight and that the petitioners have presented no evidence that the conversion factors from actual to theoretical weight fall below the industry-standard. KISCO/Union also states that the home market customers have accepted this merchandise without noting any weight problems. In the case that the Department determines that conversion factors which fall below the industry standards should not be applied, KISCO/Union argues that the Department should substitute the industry standard for the limited number of incorrect conversion factors reported in the response.

SeAH and Shinho acknowledge that the conversion factors on some home market sales are below the minimum but point to the extremely tiny proportion these sales constitute. In addition, KISCO/Union, SeAH and Shinho state that most of these sales were not used in the Department's calculation for the *Preliminary Results*.

Department's Position

We disagree with the petitioners that what amounts to adverse facts available should be applied to sales with conversion factors below the minimum allowed. Such errors in the respondents' data affect only a minuscule number of transactions and appear to be inadvertent. With respect to KISCO/Union's argument, we agree the conversion factor between the theoretical and standard actual weight may differ from the factor used to convert the actual weight to the theoretical. Nevertheless, we find that certain reported conversion factors at issue are aberrational because it is impossible to produce a pipe that is within the industry-standard tolerances with conversion factor below this minimum. See *Final Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, (First Review Final Results)* 62 FR 55574, 55577 (October 27, 1997). Therefore, we have calculated the minimum conversion factor allowable in various grades of standard pipe by using the maximum industry-standard tolerance of wall thickness. We used the calculated minimum factor for those sales and costs where the reported factors fell below the minimum.

Comment 4: SG&A and Interest Ratios

The petitioners state that the respondents have calculated their SG&A and interest ratios based on a sales denominator that includes packing. When this ratio is multiplied by a cost of manufacturing (COM) that is exclusive of packing, as was done in the preliminary calculations, the petitioners allege that the resulting SG&A amount is understated. The petitioners suggest that the Department could add packing to the COM before the SG&A and interest expenses are calculated as was done in the *First Review Final Results*.

Hyundai agrees with the petitioner that its SG&A ratio was calculated with a packing-inclusive denominator and that packing should be added to COM before calculating SG&A.

KISCO/Union, SeAH and Shinho state that the addition of packing to the COM prior to calculating SG&A and interest expenses would have only a negligible effect on the margin calculations and is, therefore, not necessary.

Department's Position

In the preliminary results we did in fact understate SG&A and interest expenses by multiplying a packing-exclusive COM by expense ratios calculated based on a packing-inclusive amount. For these final results, we have corrected this error by adding packing to the COM before applying the ratios to calculate SG&A and interest expenses.

Comment 5: Duty Drawback Adjustment

The petitioners argue that duty drawback rebates received by respondents, except for KISCO/Union, were based on a theoretical weight basis while the payments of the original duties were on an actual weight basis. As a result, the petitioners stated that total rebates received exceed total duties paid. Since the Act allows only for the addition to US price of import duties paid and rebated, the petitioners point out than any adjustment should be capped by the amount of duty actually paid. (See 19 U.S.C. § 1677a(d)(B) (1994).)

The respondents point out that, contrary to the petitioners' assertions, not all duty drawback rebates are excessive in that two separate programs were used. In particular, state the respondents, rebates under the individual-application system have been found by the Department in previous segments of this proceeding to be non-excessive; therefore, the Department was correct in adjusting US price by the entire amount of the rebate. The respondents note that the Department did limit the duty drawback adjustment to the amount of duties paid on those transactions receiving rebates under the fixed-rate system in the *Preliminary Results*.

Department's Position

As stated in the *Preliminary Results* at 64561, to the extent that duty drawback rebates are in excess of the actual amount of duties paid, we agree with the petitioners that adjustments to US price should be limited to the amount of duties paid. The respondents received duty drawback under two systems: the fixed rate system and the individual application system. Rebates received under the individual application system are limited to actual duties paid and are not excessive. Therefore, we have used the full amount of rebates under the individual application system in our analysis for these *Final Results*. Under the fixed rate system, however, rebates exceed actual duties paid (*see First Review Final Results*). In the *Preliminary Results*, we did cap the amount of rebates received under the fixed-rate system, where applicable, for all respondents except for SeAH. For these final results, we have applied the cap to SeAH as well.

Comment 6: Income Offsets to G&A

The petitioners claim that Hyundai, KISCO/Union and Shinho have understated their G&A expenses by offsetting such expenses by various non-operating income items unrelated to the subject merchandise. Since it is the Department's practice to limit offsets to G&A to income from operations related to the production of subject merchandise, these respondents' offsets should be denied. See, *Final Determination of Sales at Not Less Than Fair Value: Saccharin From Korea (Saccharin from Korea)* 59 FR 58828 (November 15, 1994) and *Certain Fresh Cut Flowers From Colombia: Final Results of Antidumping Duty Administrative Reviews (Flowers from Colombia)* 61 FR 42833, 42843 (August 19, 1996).

Hyundai maintains that its offsets to G&A do relate to the production and sale of subject merchandise. KISCO/Union argues that non-operating expenses should not be included in G&A if non-operating income is found not to be an allowable offset. Shinho replies that it has fulfilled the Department's requirement to include only items related to production in its G&A offset.

Department's Position

The Department permits offsets to G&A expenses for income earned from the company's production operations. During the course of this proceeding, we have received from respondents responses to our original questionnaire and multiple supplemental questionnaires. Based on our examination of these responses with respect to the calculation of G&A expenses and offsets, we are accepting what respondents have provided with the exception of dividend income offsets claimed by Hyundai and KISCO/Union. See U.S. Steel v. United States, Slip Op. 98–17, (CIT February 25, 1998). In particular, we find that the items petitioners complain about appear, on their face, to be of a general nature arising from the companies' operations.

We are disallowing the offsets to G&A due to dividend income for Hyundai and KISCO/Union. We note that dividend income is generally claimed as an offset to interest expenses and is allowable when such income arises from short-term investments of a company's working capital. However, in this case, we find that Hyundai's and KISCO/Union's dividend income has not been shown to be derived from short-term investments.

Comment 7: CV Credit Expenses

The respondents argue that, in the *Preliminary Results*, the Department double-counted imputed credit expenses in the calculation of CV. The respondents state that this occurred because the Department included both total actual interest expense and imputed U.S. credit expenses in the CV calculation. The respondents state that it is the Department's practice first to subtract home market imputed credit expenses before adding U.S. imputed credit expenses in calculating a circumstance-of-sale (COS) adjustment for CV. As evidence of this practice, several respondents cite, *inter alia*, *Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review, (France Wire Rods)* 62 FR 7206, 7209, (February 18, 1997).

The petitioners dispute that the Department double-counted the respondents' imputed credit expenses in CV, and state that the Department calculated CV in accordance with section 773(e) of the Act. However, the petitioners concede that the Department's new-law practice is to make a COS adjustment to NV for differences in credit expenses between the US and exporting country markets.

Department's Position

We agree with the petitioners that we calculated CV in accordance with section 773(e) of the Act. However, we also agree with both the petitioners and the respondents that we made an error in our COS adjustments to CV by not deducting home market credit expenses before adding US credit expenses. It is the Department's standard practice to make such an adjustment. See, *e.g.*, *France Wire Rods* and *Stainless Steel Bar From India: Final Results of Antidumping Duty Administrative Review*, 63 FR 13622, 13624 (March 20, 1998) (Comment 5). We have adjusted the calculations accordingly for these final results.

Company-Specific Comments

Hyundai

Comment 8: Further Processed Merchandise

Hyundai argues that, in the *Preliminary Results*, the Department improperly treated sales of subject merchandise that were purchased from unaffiliated suppliers and further processed. In Hyundai's view, US sales of subject merchandise may only be compared to sales of the foreign like product that were produced in the same country by the same person. Hyundai states that if sales data consists of merchandise produced by two different manufacturers, the Department normally compares the sales produced by each company separately. Hyundai cites *Steel Wire Rope from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke Antidumping Duty Order in Part*, 62 FR 64353 (December 5, 1997), noting that respondents sold merchandise in both the US and home market that was produced by the respondent and by unaffiliated suppliers and that the Department compared the merchandise according to producer. Hyundai continues its argument by saying that the further processing of the purchased pipe does not convert the pipe from non-subject to subject merchandise. It maintains that because the pipe was already subject merchandise, the Department must segregate Hyundai's sales into two categories (pipe purchased and further processed by Hyundai, and pipe manufactured by Hyundai) and compare the two categories separately.

Petitioners argue that the Department's precedent supports treating Hyundai as the producer of the finished products, citing *Antifriction Bearings and Parts Thereof from France*, 61 FR 66,472 (December 17, 1996). In *Antifriction Bearings*, a respondent purchased finished bearings from an unaffiliated subcontractor and resold them in the home market and United States. According to the petitioners, the Department treated sales of goods not manufactured by a company to be products of that company because the subcontractor did not know the destination of the products, and because the respondent company controlled the production and sale of the product. The petitioners argue that the same facts exist in this case.

Department's Position

Because Hyundai engages in what is often substantial further manufacturing and because it sells and warrants the further-processed merchandise as its own product, it is unclear whether the *Steel Wire Rope* methodology is appropriate in this case. Nevertheless, the issue is moot, as Hyundai was unable to provide the necessary information for us to follow the methodology. In *Steel Wire Rope*, the specific suppliers of each resold item were identifiable. In this case, the suppliers for specific sales are not known; Hyundai is only able to distinguish whether it manufactured the product from start to finish, or whether it purchased the product before further processing. Thus, even if it were appropriate, the information provided by Hyundai does not allow us to employ the methodology used in *Steel Wire Rope*.

Comment 9: Arm's Length Freight

The petitioners argue that Hyundai did not adequately demonstrate that the transactions between Hyundai and an affiliated transport company were at arm's length. The petitioners state that the Department requested information on the affiliated company's provision of shipping services to non-affiliated customers and that, because Hyundai failed to provide this information, Hyundai's ocean freight rates should be based on facts available. Furthermore, the petitioners note that when the affiliated transport company arranged for third parties to transport the subject merchandise, the affiliate did not charge

any mark-up, thus providing services for free, suggesting again that the transactions were not arm's length.

Hyundai rebuts that the information on the record does adequately demonstrate that the transactions were arm's length. Hyundai points to documents which support their claim, such as an invoice and other documents from an unaffiliated company and their affiliate's tariff schedule. Hyundai argues that it is not required to provide information showing that the affiliate charged the same rates to unaffiliated customers. It also notes that it provided the same kind of evidence supplied in *Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Duty Administrative Review*, 61 FR 13834 (March 28, 1996), in which the Department determined that freight services were provided by an affiliate at arm's length prices. Lastly, Hyundai rejects the petitioners' argument that, because they were not charged a mark-up by the affiliate when arranging services from a third party, the transactions were not arm's length. Hyundai states that the affiliate is often involved in name only and that, regardless of any supposed lack of mark-up, it otherwise demonstrated that the prices paid to its affiliate were comparable to prices charged to unaffiliated parties and thus at arm's length.

Department's Position

As stated in the questionnaire issued to the respondents on January 13, 1997, ''arm's length transactions are those in which the selling price between the affiliated parties is comparable to the selling prices in transactions involving persons who are not affiliated.'' Hyundai demonstrated that the prices charged by its affiliate were comparable to prices it is charged by unaffiliated freight providers. Hyundai is not required to show that the affiliate charged a third party comparable prices, although this is another way in which arm's length can be demonstrated. The Department never specifically asked Hyundai to supply this kind of information; rather, we suggested it as one option Hyundai could choose to demonstrate arm's length. The fact that the affiliate may at times not charge Hyundai with a mark-up when arranging third party transactions is not in itself demonstrative of a non-arm's length transaction. Rather, the evidence in this case that Hyundai pays the affiliate comparable prices to those paid to unaffiliated providers is sufficient to demonstrate arm's length.

Comment 10: Additional Freight

The petitioners find Hyundai's additional freight costs to be unreliable and argue that the Department should deny any adjustment to NV for this additional freight. The petitioners claim that there are several problems with Hyundai's reporting of this expense. They state that Hyundai did not indicate whether the service was provided by an affiliate. They also maintain that Hyundai has not substantiated the claim that it is not able to report these costs on a shipment-specific basis, nor have they explained sufficiently the basis on which the charges are incurred. The petitioners argue that the information on these additional freight costs is unreliable, noting for example a change in the total cost reported from one supplemental response to the next.

Hyundai responds that it did provide adequate information on the additional freight expenses. It explains that the service in question is not provided by an affiliate and that because these services are not invoiced on a shipment-specific basis they cannot be reported on a shipment-specific basis.

Department's Position

After reviewing the information on the record, we see no reason to deny the adjustment. Contrary to the petitioners' claims, the loading service was not provided by an affiliate. Further, the way in which Hyundai incurs this cost prohibits shipment-specific reporting.

Comment 11: Export Price Adjustment

Petitioners assert that the Department should deduct certain expenses that they claim relate to movement (e.g., communication costs and markups) incurred by Hyundai's U.S. affiliates from export price under section 772(c)(2)(A)of the Act. According to the petitioners, these costs are incident to bringing the subject merchandise from Korea to delivery in the United States, and thus should be deducted from U.S. price. Because Hyundai has not reported all of these expenses in its response, petitioners advocate that we should apply, as facts available, a factor based on the affiliates' SG&A rates.

Hyundai argues that because its sales to the United States are export price sales, the specific expenses discussed by petitioner cannot be deducted.

Department's Position

Pursuant to section 772(c)(2)(A) of the statute, the export price is to be reduced by any additional costs, charges, or expenses which are incident to bringing the subject merchandise from the exporting country to the United States. In this case, the Department has made the appropriate movement-related reductions to export price by deducting the costs incurred for moving the subject merchandise from Korea to the customer in the United States. In accordance with our normal practice, these costs included brokerage and handling, marine insurance, international freight, U.S. brokerage and wharfage, and inland freight charges incurred in both countries. The Department does not consider the type of expenses that the petitioners ask us to deduct from export price as costs that are incident to bringing the subject merchandise from Korea to the place of delivery in the United States.

Comment 12: Overstatement of Inventory Carrying Cost

The petitioners state that rather than using the cost reported in the inventory records, Hyundai incorrectly used sales value when computing the inventory carrying cost adjustment. They assert that the reported adjustment should be recalculated downward to compensate for this difference.

Hyundai argues that it calculated the adjustment correctly, basing inventory carrying cost on production cost, not sales value.

Department's Position

We agree with the petitioners that Hyundai's reported inventory carrying cost adjustment is overstated. Upon examination of the record, we are unable to substantiate the inventory carrying cost adjustment as reported by Hyundai. It is not clear on what basis, value or cost, the adjustment was calculated. In fact, Hyundai states in its original response that it calculated the adjustment by using the ''value'' of the inventoried merchandise. The Department requested that the respondents calculate inventory carrying cost adjustment based on the opportunity cost to maintain inventory, noting that the cost is normally calculated by using the merchandise's cost or acquisition price. Because Hyundai's inventory carrying cost adjustment is overstated, we have recalculated this adjustment based on Hyundai's reported COM.

Comment 13: Erroneous Coding

The petitioners note that Hyundai reported inland freight charges on some home market FOB sales. They state that the Department should deny any freight adjustment for these sales, but still reduce COP by the amount of the claimed adjustment.

The respondent notes that these sales were incorrectly coded and should have been reported delivered, not FOB.

Department's Position

We agree with Hyundai and have corrected the database for more minor errors in reporting. Further, we find no reason to apply an adverse inference to these transactions, as petitioners request.

KISCO/Union

Comment 14: Collapsing of Kisco and Union

KISCO/Union argues that the Department should reverse its decision to ''collapse'' Union and KISCO and should instead calculate individual dumping margins for each company based on the respective sales and cost data, for the reasons set forth in previously submitted comments by Union and KISCO on September 5, 1997 and September 11, 1997.

The petitioners first note that KISCO/Union's comment, other than a reference to their previous submissions, presents no new arguments on this issue. As such, the petitioners contend that KISCO/Union's comment may not be considered, in accordance with section 353.38(c)(2) of the Department's regulations which require that the case brief shall separately present in full all arguments believed to be relevant to the final results, ''including any arguments presented before the date of publication of the preliminary determination or preliminary results.'' In case the Department chooses to reconsider Union and KISCO's previous submissions on this issue, the petitioners argue that there is overwhelming evidence that supports the Department's collapsing decision, discussed in the petitioners' previously submitted comments on October 16, 1997 and October 20, 1997.

Department's Position

For reasons discussed in our *Preliminary Results*, we continue to find that it is appropriate to collapse Union and KISCO.

Comment 15: Kisco and Union's Collapsed Data

On October 22, 1997, the Department instructed KISCO/Union to resubmit its cost and sales data on a consolidated basis. The petitioners argue that KISCO/Union failed to do this properly. First, the petitioners state that KISCO/Union's methodology of weighing each field in the COP and CV databases by the production quantity in each company's response creates varying G&A factors depending on each company's production quantity of each product. The petitioners argue that the Department should recalculate G&A expenses such that a single entity-wide factor is applied to the weighted average cost of manufacture or base KISCO/Union's G&A ratio on facts available. According to the petitioners, a similar distortion is created for all adjustments to NV or export price, such as indirect selling expenses and all imputed expenses, that were based on individual company data instead of aggregated data.

KISCO/Union first notes that the manner in which it reported its data is materially identical to the methodology used by the Department in the *First Review Final Results,* which was not challenged by the petitioners. KISCO/Union disagrees with the petitioners' argument relating to price adjustments, movement charges, and selling expenses, arguing the Department's longstanding practice is to calculate such adjustments as specifically as possible, which it claims was already done in the individual companies' responses. Given such policy, KISCO/Union further argues that use of a single indirect selling expense ratio is inappropriate because KISCO and Union's sales are handled by completely separate sales departments within their respective companies, each with their own expenses. With respect to the petitioners' arguments relating to the calculation of G&A and interest expense, KISCO/Union contends recalculation is unnecessary because the petitioners have failed to demonstrate that any material distortion arose from the methodology used by it. Alternatively, KISCO/Union states that the recalculation of G&A and interest expense on an entity-wide basis can be performed using data already on the record and do not require use of facts available.

Department's Position

We agree with the petitioners in part. Because the Department has decided to collapse Union and KISCO and thus treat the two companies as a single entity for purposes of calculating the dumping margin, we find that G&A, interest expense, indirect selling expense ratio and interest rate should be calculated on an entity-wide basis. We note that the methodology employed by the Department in the *First Review Final Results* was limited by the information that was available on the record in that proceeding.

For these final results, we have recalculated G&A by adding the G&A expenses from Union and KISCO and dividing this sum by the total sum of cost of goods sold for the two companies. With respect to interest expenses for companies that are part of a consolidated group, the Department's policy is to base the interest expense calculation on the consolidated financial statements of the group. Because Union and KISCO are part of the Dongkuk Steel Mill Group (DSM group), the interest expense for the collapsed entity of KISCO/Union should also be based on the consolidated financial statement of that group. As pointed out by KISCO/Union, however, Union is not included in the consolidated DSM statements. Accordingly, we have re-calculated the interest expense on an entity-wide basis by adding the net interest expense of the DSM group with that of Union and dividing by the total cost of goods sold for the combined DSM group and Union. To calculate a collapsed home market indirect selling expense ratio, we divided the combined indirect selling expenses of Union and KISCO by the combined total domestic sales value of both companies. We also have re-calculated all imputed expenses, including credit expenses and inventory carrying costs, using the weighted-average interest rate for the collapsed entity.

With respect to other adjustments to price and NV or movement charges, we used the information provided because such items were reported properly by KISCO/Union.

Comment 16: Consistency of COP and CV Data

The petitioners argue that KISCO/Union has reported inconsistent COP and CV data in their collapsed data. In one instance, the petitioners state that the underlying components of total COM differ between the COP and CV databases but the total is the same. The petitioners also note that the production quantities for many products differ between the two databases. The petitioners assert that KISCO/Union has not provided sufficient explanation of its methodology to account for such variations and as such, the Department must base its final results on facts available.

KISCO/Union acknowledges that the databases do contain differences but contend that they can be corrected easily. This error occurred when products were sold only in one market. With respect to the one instance where the cost fields varied while the total COM remained the same, KISCO/Union explains that the discrepancy resulted when the conversion factor for converting from an actual weight basis to a theoretical weight basis was inadvertently applied twice to the costs but not to the total COM itself. KISCO/Union argues that because only total

COM is used in the Department's dumping margin calculation, the error has no effect on the margin calculation.

Department's Position

We have examined KISCO/Union's collapsed data and are satisfied that the discrepancies resulted from simple ministerial errors. We also find that KISCO/Union's error in applying the conversion factor does not affect the Department's calculations. For these final results, we corrected the databases and calculated weight-averaged total COMs using the combined cost components and production quantities.

Comment 17: Interest Expenses

The petitioners contend that KISCO failed to demonstrate that the ''interest from short-term securities,'' reported in DSM financial statement, was a proper offset to interest expenses. The petitioners further argue that KISCO/Union failed to show why it did not account for the foreign exchange and translation gains and losses as reported in DSM's financial statements. Because KISCO/Union did not provide an explanation that such gains and losses are unrelated to DSM's purchase transactions or borrowing cost, petitioners urge that the Department should include those items in the calculation of interest expenses.

KISCO/Union counters that the petitioners' argument does not apply because the calculation of its combined interest expense was not based on the DSM consolidated financial statements. Instead, KISCO/Union explains that the collapsed data reported a weighted-average interest expense by product, based on the company-specific interest expense. KISCO/Union states that the use of interest rates based on the DSM statements would be inappropriate because Union is not included within the consolidated DSM statements.

With respect to foreign currency translation gains and losses, KISCO/Union argues that the Department has previously held that such items are properly included in G&A expenses, which are calculated at the level of the operating companies, rather than interest expense, which may be calculated at the level of the consolidated group of companies. Accordingly, KISCO/Union contends that because DSM is itself an operating company, its G&A expenses should be assigned to its own production alone unless they are shown to be attributable to subject merchandise or foreign like product.

Department's Position

As discussed in Comment 15, we calculated an entity-wide net interest expense factor for KISCO/Union by combining Union's net interest expense with the net interest expense from DSM's consolidated income statement. Contrary to petitioners' argument, we find no basis on which to exclude DSM's interest income as a reduction in the company's interest expense. In fact, DSM's consolidated financial statements identify the income amounts as having been earned by the company from its investments in short-term securities. See, *Final Results of Administrative Review of Porcelain-on-Steel Cooking Ware from Mexico,* 61 FR 54,616, 54,621 (October 21, 1996) (describing the Department's practice, in calculating COP and CV, of reducing respondent's interest expense by interest income earned from short-term investments).

With respect to the net foreign currency exchange loss reported in DSM's consolidated financial statements, we have included this amount in our calculation of KISCO/Union's combined net interest expense. As noted by petitioners, KISCO/Union did not explain why it did not account for any of DSM's foreign exchange gains or losses in calculating COP and CV. Rather, KISCO/Union stated that it excluded these amounts from costs because they were properly categorized as G&A expenses. In past antidumping cases, however, the Department has treated the gains and losses arising from the restatement of foreign currency debt as part of the respondent's net financing costs. See, *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Korea,* 63 FR 8934, 8940 (February 23, 1998) (where the Department treated foreign exchange losses on long-term debt as part of interest expense). Here, DSM's consolidated financial statements report that the group holds loans denominated in foreign currencies. DSM, however, did not attribute to its net financing costs any of the foreign exchange gain or loss resulting from restatement of these loan balances. Therefore, for the final results, we have recalculated KISCO/Union's financial expense to include the net foreign exchange loss reported in DSM's consolidated income statement as non-adverse facts available.

Comment 18: Indirect Selling Expenses

The petitioners argue that Union's indirect selling expense ratio must be recalculated before being collapsed with KISCO's data. Specifically, they claim Union has misallocated its home market indirect selling expenses on the basis of percentage of employees involved in domestic sales compared to export sales or sales administration. Instead, the petitioners claim that the Department, in accordance with its normal practice, should allocate such expenses based on costs of sales in each market.

KISCO/Union contends that the Department has accepted Union's allocation methodology in every previous review involving Union and has no reason to depart from the past practice in the present proceeding.

Department's Position

Where transaction-specific reporting is not feasible, the Department's general practice is to allow companies to allocate expenses, provided that the allocation method used does not cause inaccuracies or distortions. See *Statement of Administrative Action,* (*SAA*), H.R. Doc. No. 103–316, vol. 1 (1994) at 153–154. Whether a particular allocation methodology used is reasonable is determined on a case-by-case basis. In this instance, we find Union's methodology of allocating its indirect selling expenses based on the number of employees may cause inaccurate results because a large portion of the indirect selling expenses were not incurred based on the number of employees. Therefore, we have recalculated Union's indirect selling expense by allocating the total expense on the basis of percentage of domestic sales to total sales.

Comment 19: Union's Freight Forwarder

The petitioners argue that Union failed to demonstrate that its transactions with Kukje Transportation, Union's affiliated freight forwarder, were at arm's length prices. The petitioners state that the sample trucking lists provided by Union do not show that the prices charged by Kukje were comparable with those charged by an unaffiliated freight forwarder. Specifically, the petitioners claim that the freight fee schedule does not show that the prices were based on the same destination and that schedule does not identify the trucking firm to which it applies. Accordingly, the petitioners urge the Department to calculate Union's freight forwarding expenses based on facts available.

KISCO/Union contends that the destination codes in the freight fee schedule that Union provided show clearly that the rates were based on the same destination, and demonstrate that identical rates were charged to affiliated and unaffiliated parties. KISCO/Union also points out that the name of the

trucking firm was clearly identified and the higher rate applies to a later time.

Department's Position

We disagree with the petitioners. Upon a careful examination of the information submitted by Union regarding its transactions with Kukje, we find there is sufficient evidence to demonstrate that the transactions were at arm's length. The sample trucking lists and fee schedules, which clearly identify the destination codes and the name of the unaffiliated trucking firm, demonstrate that the prices charged by Kukje were comparable to that charged by unaffiliated firms.

Comment 20: Home Market Credit Period For Letter-of-Credit Sales

The petitioners argue that the Department should deny KISCO/Union's claim for credit expenses for ''cash'' sales in the home market for the time period when Union must submit appropriate shipment documents for review by the bank before payments can be credited to Union's account. The petitioners state that the adjustment must be denied because there is no evidence that the check or local letter of credit is not negotiable by Union upon receipt. According to the petitioners, Union's claimed adjustment actually constitutes an imputed credit expense for that waiting period involved in clearing check or local letter of credit deposits. The petitioners argue that because there is no indication that a similar waiting period is included in calculating Union's credit expenses on US sales, the claim must be rejected.

KISCO/Union asserts that there is no support for the petitioners' claim that the adjustment represents an imputed credit expense for the waiting period for clearing check deposits. KISCO/Union clarifies that ''cash'' sales simply refer to local letter of credit sales. KISCO/Union states that Union has merely calculated the credit expenses associated with the period from the date merchandise is shipped to the date that Union actually receives payment by negotiating the shipping documents. KISCO/Union points out that the Department has previously adjusted for the credit expense incurred in such sales in the *First Review Final Results* and in other cases in which Union was a respondent.

Department's Position

We agree with KISCO/Union. We normally adjust for imputed credit expense to account for the opportunity cost associated with the period of time between shipment and payment. Because payment by the bank is not made until the required documents are presented by Union, an adjustment for imputed credit expense for the waiting period is proper. We have no reason to believe that the letter of credit is actually negotiable upon receipt.

Comment 21: Union's Warehousing Expenses

The petitioners contend that Union's reported pre- and post-sale warehousing costs are overstated. They argue that these costs should be calculated by applying the ratio between the volume of pipe warehoused for a specific sale and the total volume of all other products warehoused, whether as inventory or in connection with specific sales. The petitioners argue that the adjustment must be denied because there is no information on the record to determine what share of total warehousing labor and identifiable costs were incurred as direct warehousing costs.

KISCO/Union counters that pursuant to the URAA, warehousing is treated as a movement expense without drawing a distinction between direct and indirect expenses. Further, KISCO/Union contends that the Department has repeatedly accepted Union's allocation methodology in the past reviews and there is no evidence that a volume-based allocation methodology should be used instead.

Department's Position

We agree with KISCO/Union. KISCO/Union is correct in stating under the URAA, home market movement charges, which include warehousing expenses, are to be deducted from NV regardless of the direct or indirect nature of the expenses. See section 773(a)(6)(B)(ii) of the Act. In general, all warehousing expenses that are incurred after the merchandise leaves the original place of shipment are considered as movement expenses. See, e.g., *Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews,* 63 FR 13170, 13179 (March 18, 1998). Here, the original place of shipment is Union's Pusan plant and the warehouse is located in Seoul. Because these warehousing expenses are incurred after leaving the original place of shipment, we consider the expenses proper movement charges.

Where transaction-specific reporting is not feasible, the Department's general practice is to allow companies to allocate expenses, provided that the allocation method used does not cause inaccuracies or distortions. See *SAA* at 153–154. Whether a particular allocation methodology used is reasonable is determined on a case-by-case basis. In this instance, we find that there is no evidence to indicate that the allocation methodology used by KISCO/Union causes inaccuracies or distortions.

Comment 22: Duty Drawback

The petitioners claim that based on the reported total weight of hot-rolled coil imported during the POR the amount of duty drawback reported by KISCO on US sales appears to be excessive when compared to import duties included in CV. The petitioners argue that in the *First Review Final Results* the Department adjusted the US price only by the amount of duties actually included in the product. Using the same argument, the petitioners contend that because the CV is intended to value merchandise exported to the United States, the actual amount of duties included in the exported product for CV purposes should be equal to the amount of duties paid on the imported inputs as reported in CV. Accordingly, the petitioners state that where NV is based on CV, the Department must reduce the amount of duty drawback to that reported in CV, or in the alternative, lower CV by the amount of duties and make no adjustment for duty drawback.

KISCO/Union first points out that duty drawback is received on the amount of imported coil incorporated into merchandise exported by KISCO during the POR, rather than the amount of coil imported during the POR. KISCO/Union explains that because the duty drawback system in Korea permits refunds of duties for merchandise exported up to two years after importation, KISCO was entitled to receive duty drawback during the POR on coil imported before the POR. KISCO/Union argues that the amount of duties included in the exported product is the actual amount and cannot be made to vary depending on the comparison NV. Citing *Avesta Sheffield, Inc.* v. *United States,* 838 F. Supp. 608 (CIT 1993), KISCO/Union states that it is well-established that the duty drawback adjustment is not limited by the amount of duties included in NV.

Department's Position

Pursuant to section 772(c)(1)(B) of the Act, the Department is required to adjust the EP and CEP by the amount of duty drawback received on the imported inputs. As we stated in the *First Review Final Results,* the amount of the adjustment is limited to the amount of duties actually paid on the input of the exported product. Because both Union and KISCO have received duty drawback under the individual-

transaction provision of the Korean duty drawback law, there is no reason to believe that the duty drawback reported reflects an amount other than the actual duties paid (*see* comment 5 above).

We disagree with the petitioners' contention that the amount of duties included in CV should be equal to the amount of actual duties paid on the imported inputs. As held by the CIT, the Department is not required to limit the drawback adjustment by an average rate of duty for all raw materials utilized. See *Avesta,* 838 F. Supp. at 612 (''As concerns either raw materials or sales, there is no requirement that ITA match overall rebates to overall duties to achieve balanced numbers on both sides of the comparison.''). No changes to the duty drawback adjustment are therefore necessary for KISCO/Union.

Comment 23: Packing Costs

The petitioners argue that the Department should reject KISCO's packing costs because they are unexplained and distortive. The petitioners contend that KISCO did not submit any supporting documentation for packing costs charged by subcontractors that would explain how costs were derived. In particular, the petitioners object to KISCO's calculation of thinner and lacquer costs and suggest that KISCO has ''simply posit(ed)'' a per-unit cost of thinner and lacquer. Furthermore, the petitioners assert that KISCO's methodology of allocating packing costs, including costs for thinner and lacquer, tags or bands, on the basis of the number of bundles or tonnage packed is unreasonable because such costs vary depending on pipe thickness or the surface area of the particular product. The petitioners argue that these alleged problems provide more reasons to base the final results on facts available.

With respect to KISCO's allocation methodology, KISCO/Union states that the petitioners' argument is ''speculative and trivial'' in terms of costs involved, and also asserts that the same packing cost methodology was verified and accepted by the Department in the *First Review Final Results.* KISCO/Union points out that KISCO was never requested to provide copies of subcontractor fees schedules or related documents. KISCO/Union also argues that KISCO's original questionnaire response clearly shows that the per-unit cost of lacquer and thinner was calculated by dividing the total cost of materials by the total quantity packed during the period.

Department's Position

Although KISCO did not submit any supporting documentation for its packing costs charged by subcontractors, use of facts available would be clearly inappropriate in this case where the information was never requested specifically by the Department. Moreover, there is no evidence on the record that would indicate that the packing costs provided by KISCO and the allocation methodology used by it are inaccurate or distortive. With respect to the allocation of lacquer and thinner costs, KISCO's response clearly shows that the per-unit cost was properly calculated by dividing the total cost of materials by the total quantity packed during the period. Moreover, the petitioners have provided no evidence that variations in the pipe thickness or surface area of the particular product, if any, would have more than an insignificant effect on the per-unit cost.

Comment 24: Loading Charges

The petitioners contend that KISCO failed to respond adequately to the Department's inquiry regarding KISCO's affiliated company, Chunyang Transportation Company (''Chunyang''). The petitioners assert that despite the Department's request to provide evidence demonstrating the arm's length nature of the transactions between KISCO and Chunyang, KISCO failed to do so by merely submitting Chunyang's fee schedule for KISCO without any other evidence of comparable fees charged by unaffiliated parties. Consequently, the petitioners argue that KISCO's loading charges must be based on facts available.

KISCO/Union counters that KISCO could not provide other evidence of comparable fees because KISCO and Chunyang dealt exclusively with each other during the POR. Therefore, KISCO/Union asserts that by providing Chunyang's fee schedule, KISCO provided all of the information available to it. Further, KISCO/Union claims that in the *First Review Final Results,* the same documentation was accepted by the Department as evidence of arm's length nature of transactions, without protest by the petitioners. KISCO/Union also notes that the Department did not find any indications of less than arm's length dealings in the verification of the *First Review Final Results.* As such, KISCO/Union argues that the use of facts available is unwarranted.

Department's Position

We agree with the petitioners. There is no evidence supporting KISCO's claim that its transactions with Chunyang for this period of review were at arm's-length. As such, the Department has no way of establishing that the prices charged to KISCO are at arm's-length. In the absence of price information, KISCO should have provided information relating to the costs of Chunyang. Since KISCO did not provide this information, we find that the use of facts otherwise available is appropriate pursuant section 776(a)(1) of the Act. As facts available, we have used the highest reported rate of loading charges of all the respondents in the present review, which has resulted in the use of KISCO's own charges.

Comment 25: Double-Counting of Inventory Carrying Costs

KISCO/Union claims that the Department erroneously double-counted inventory carrying cost for purposes of the cost test and in the calculation of CV. According to KISCO/Union, inventory carrying cost is deducted in the calculation of net price in the cost test of the margin program but the COP to which the net price is compared includes total actual interest expense and therefore includes imputed inventory carrying cost. Consequently, KISCO/Union argues that the Department's calculations unfairly compares a net price for home market sales that does not include imputed inventory carrying cost to a COP that does. KISCO/Union asserts that because the Department's current policy is to make no deductions for imputed expenses (*i.e.,* imputed credit and inventory carrying costs) in calculating the net home market price for the cost test, the program must be corrected so that inventory carrying cost is not deducted in the calculation of net price to be compared to COP. Similarly, KISCO/Union argues that the Department double-counted inventory carrying cost in the calculation of CV by including both total actual interest with no offset for imputed expenses, and indirect selling expenses inclusive of inventory carrying cost.

The petitioners counter that the Department was correct to add imputed inventory carrying costs in COP and CV. The petitioners contend that the actual net interest expense included in COP and CV does not include imputed interest expenses for inventory carrying costs, which represents an opportunity cost that is not reflected in the actual interest expenses of the company. Therefore, the petitioners state that the Department correctly deducted inventory carrying costs from net price before comparison to COP and correctly included inventory carrying costs in CV.

Department's Position

We agree with KISCO/Union and have corrected our program to remove the deduction of inventory carrying cost from the net price to be compared with COP and in from the build up of CV. As for the petitioners argument that inventory carrying costs are not included in a company's interest expense, we note that a company's ''interest'' expenses will include, among other items, cost that it incurs in financing its inventory. While such costs are not directly calculated as imputed expenses and directly entered into the company's books, they are, nonetheless, costs that are covered by its financing expenses.

SeAH

Comment 26: Duty Drawback Adjustment

The petitioners contend that SeAH can report duty drawback on a sales-specific basis, but point out that SeAH has asked for the duty drawback adjustment to be made on the basis of an average amount allocated across all US sales. The petitioners request that this duty drawback adjustment be denied.

SeAH states that it provided transaction-specific data in general, but could only provide an average for CEP sales because these sales could not be linked to individual shipments. SeAH notes that in the *LTFV* investigation and in the *Preliminary Results*, the Department accepted the average as a reasonable methodology for calculating duty drawback.

Department's Position

We find that where a respondent cannot report transactions-specific adjustments, reasonable allocations are acceptable. Here, SeAH has calculated average POR amounts for duty drawback on its CEP sales since it is unable to link shipments to subsequent sales. For CEP sales, we find SeAH's methodology to be reasonable.

Comment 27: US Duty, Brokerage, and Handling on CEP Sales

The petitioners argue that SeAH should not be allowed to allocate US Duty, Brokerage, and Handling on CEP sales. Because SeAH has reported these foreign charges on an average weight basis, rather than the value basis in which they were incurred, and because the statute requires that margins be calculated on a sale-specific basis (*see* 19 U.S.C. § 1675(a)(2)(A)), the petitioner contends that we should not accept the allocations. The petitioners suggest a facts available rate of the highest rate for any EP sale of that product or the highest rate reported for any sale for each expense where EP sales data is not available.

SeAH states that it is not able to link inventory sales to original shipments and therefore must report the charges in question on an average basis. SeAH emphasizes that while it may be theoretically possible to link imports of subject merchandise with the reported sale, neither SeAH nor its affiliates maintain their sales data in this way. A link could only be found if done manually. SeAH insists that this methodology was used in the *LTFV* investigation and has not been further questioned by the Department.

Department's Position

We find that SeAH's reporting of US Duty, Brokerage, and Handling as allocations on CEP sales is reasonable, in that CEP sales can not be linked to shipment-specific information for these expenses. We agree with the petitioner, however, in that the allocation for US Duty and Brokerage on volume is distortive because it is not on the same basis in which it is incurred. For these final results, we have reallocated US Duty and Brokerage based on value for CEP sales because these expenses are incurred on a value basis. We will continue to accept the allocation of Handling because it is incurred on a weight basis.

Comment 28: International Freight

The petitioners suggest that SeAH's international freight expenses should be based on facts available because SeAH has failed to support its ocean freight expenses and the information in the responses is inconsistent. The petitioners suggest that the Department use an adverse facts available rate based on the highest rate charged for any single shipment.

SeAH reexamined its response and found that though their source documents and data presented are correct, several of their sample calculations were incorrectly presented. SeAH insists that this was an error only in the sample calculation attachments and not in the sales databases. In addition, SeAH has provided in an attachment to the rebuttal brief a sales trace showing the correct amounts.

Department's Position

While there were several clerical errors in the sample calculations, the source documents and data support the amounts reported by SeAH for international freight expenses. Accordingly, we have not made any changes to SeAH's reported international freight expenses.

Comment 29: US Packing Costs

The petitioners suggest that SeAH's US packing costs should be based on facts available because SeAH has ignored the Department's requests to provide information on the type of packing materials used, as well as the average labor hours by packing type and the average labor cost per hour. The petitioners also point out that SeAH has failed to provide a list of overhead expenses incurred in packing or to demonstrate how these expenses were allocated in each packing type. The petitioners insist that SeAH should have provided a better explanation of why it cannot calculate the amount of packing material used for each product as well as the methods used to derive the packing labor costs. The petitioners suggest a facts available rate of the highest packing cost for any product reported by SeAH for US sales and the lowest reported for home market sales.

SeAH contends that it has provided in its responses the basis for each packing calculation by calculating the packing costs on a metric ton basis, distinguishing between domestic and export markets, black and galvanized pipe, outside diameter dimension categories, and standard and conduit pipe. SeAH argues that because packing labor costs were consistent with the fee schedule of its subcontractors, they should be acceptable. SeAH insists that the allocation of material costs on a metric-ton basis is appropriate because these costs were based on the actual average per metric ton of materials used during the POR, depending on the type of pipe and its destination.

Department's Position

We agree with SeAH that its methodology for reporting packing costs is reasonable because it has allocated the costs on the basis on which they are incurred. This methodology has been accepted in prior segments of this review. We have no reason to believe, based on the information on the record, that the reported costs are unreliable.

Comment 30: Affiliated Producers' Costs

The petitioners find that SeAH's reported costs should be rejected because it has failed to report the costs of certain affiliated producers. The petitioners describe the decision by SeAH not to report these costs as ''unilateral'', and suggest that SeAH has not reported direct materials, labor, and other costs incurred to produce the merchandise under review. The petitioners find that products

manufactured by affiliated producers are a significant portion of the total merchandise produced and sold in the home market, and would have been a more significant portion if home market sales reporting had not be limited to merchandise comparable to that sold in the United States. The petitioners point out that excluding some costs from reporting can cause a large number of additional sales to fall below cost and result in a substantial increase in the use of CV, which can have a significant effect on the margin calculated. The petitioners suggest that the Department reject SeAH's CV and COP information.

SeAH responds by claiming that the decision not to report the costs in question was not ''unilateral'' because the Department agreed that SeAH did not have to report these costs. SeAH reiterates that the costs of the affiliated producers are minimal compared to SeAH's total costs and would have no impact on the reported COM. SeAH also notes that the petitioners' suggestion that not all of the merchandise produced by affiliated producers has been reported is unsubstantiated. According to SeAH, comparison merchandise has been distinguished from non-comparison merchandise in it responses. As for the inclusion of the affiliated producers' general expenses in calculating general expenses for SeAH, SeAH argues that these expenses apply to very few models and would have no impact on the CV.

Department's Position

In the course of this proceeding, we informed SeAH that it need not report costs for its affiliated producers pending the examination of information on their percentage of SeAH's production by model type (*see* Memorandum to the File, from IA analyst/Marian Wells, November 18, 1997). Upon examining information submitted by SeAH on the percentage of production by the affiliated producer, we decided not to request these costs for purposes of this review. For any given model, the affiliated producer's percentage of production was small compared to SeAH's production; as a result; including the costs of this affiliated producer would have had almost no effect on our calculations.

Comment 31: Indirect Selling Expenses and ISE Ratio

The petitioners claim that SeAH did not include several expenses in its reporting of indirect selling expenses. The petitioners provide specific examples of indirect selling expenses for SeAH's affiliated resellers that were not fully explained or appear to be inconsistent with SeAH's financial statements.

SeAH responds to the petitioners' allegations by stating that it has reported all incurred expenses either as SG&A or, if they fit the criteria, as movement expenses reported as outbound freight or direct selling expenses. SeAH notes that the Department has accepted its reporting methodology since the beginning of the case.

Department's Position

All of SeAH's expenses are identified and there is nothing on the record to indicate that these expenses have been mischaracterized.

Comment 32: Inland Freight Costs and Plant-To-Warehouse Freight Costs in G&A

The petitioners argue that SeAH did not adequately report its inland freight costs concerning freight from the plant to the warehouse and from the plant to the distribution point in its initial submission. When SeAH responded to supplemental questionnaires, the petitioners point out, freight costs and warehousing costs were inconsistent with estimates described in SeAH's initial response. For example, SeAH initially stated that it shipped pipe from the factory to the Pohang warehouse only occasionally. Later, SeAH found that it actually shipped much more frequently than previously reported. Because of inconsistencies like this one, the petitioners suggest that SeAH's freight and warehousing costs are incomplete and unreliable. According to the petitioners, SeAH has also failed to report inland freight costs on a shipment-by-shipment basis and should therefore be considered non-responsive.

The petitioners maintain that because certain delivery charges have been taken out of SeAH's G&A accounts and there is no indication that they have been accounted for elsewhere, the use of facts available is required. As facts available, the petitioners state that these expenses should be returned to the calculation of G&A, and inland freight costs should be based on facts available and SeAH's plant-to-warehouse freight costs should be added to SeAH's reported G&A expense.

SeAH states that the petitioners used the last reported home market sales database based on the revised date of sale methodology to calculate the total number and volume of warehoused sales and then compared these figures to the total sales volume in the earlier response with a smaller home market database. This overstated the proportion of domestic sales that were warehoused. This same error by the petitioners led them to overestimate the number of warehoused sales of comparison merchandise. Also, SeAH argues that the calculation of average per metric ton cost was necessary because there is no link between shipments to the warehouse and the sales from the warehouse inventory. Regarding the calculation of the average factory-to-warehouse freight charges, SeAH states that the petitioners were in error when they divided (for the sample months) sales shipped by truck only by the total quantity shipped by truck and rail, thus understating the per-ton freight charge. SeAH did this calculation correctly and found that the variance between the annual average and the monthly average was relatively small. Monthly freight charges may contain some variance because freight charges per ton vary by the size/type of truck used. Regarding SG&A charges, SeAH clarifies that the inland freight charge is recorded in its books as an indirect selling expense but was not ''included'' as an indirect selling expense for purposes of responding to the antidumping questionnaire. SeAH maintains that it has excluded all freight from its calculation of indirect selling expenses.

Department's Position

We agree with SeAH that the petitioners made errors in their calculations by mixing together information from earlier HM datasets not used for these final results with newer information that was used. We find that SeAH has explained sufficiently how their calculation was performed in regards to each of the petitioner's claims, and its reporting was reasonable. Where possible, i.e., for EP sales, SeAH has reported shipment-by-shipment freight costs. Because SeAH is unable to link shipments to the warehouse and sales from the warehouse for CEP sales, we consider the average per-metric ton costs to be the most reasonable methodology available for reporting CEP sales.

We have also found that while SeAH recorded these plant-to-warehouse expenses as selling expenses in its books, this does not mean that they must be reported for the Department's purposes as selling expenses. SeAH's plant-to-warehouse freight costs should not be added to SeAH's reported G&A expense because plant-to-warehouse freight costs are considered movement expense for antidumping calculation purposes.

Comment 33: Foreign Brokerage Charges

The petitioners find that SeAH's foreign brokerage charges have been calculated incorrectly because they are

based on the FOB value of each shipment divided by the number of tons in each shipment. The petitioners find that this calculation results in distortions because it does not account for variance in value. The petitioners suggest that the Department recalculate foreign brokerage charges by multiplying, for each observation, the per-unit value by the ad valorem charges for foreign brokerage. For brokerage on CEP sales, the petitioners suggest the use of on facts available because SeAH has not acted to the best of its ability in reporting expenses on a transaction-specific basis.

SeAH states that its foreign brokerage methodology based on volume has not been questioned by the Department. SeAH conducted a sample value allocation of 50 observations (27 sales) and found it made little difference to the calculation. SeAH argues that its methodology is sound and that there is no reason for a change in methodology for the final results. If, in fact, the Department finds reason for a change in methodology, SeAH provides several suggestions for the revised calculation.

Department's Position

We agree with the petitioners. We have reviewed SeAH's responses and found that foreign brokerage should be reallocated based on value because it is incurred based on value. We have made this reallocation in our final results.

Comment 34: SG&A Expenses

The petitioners state that SeAH has erred in reducing the SG&A component of CV by the amount of expenses in its books for factory-to-warehouse freight. In addition, the petitioners claim that SeAH is not clear in explaining whether the credit expenses, container stuffing charges and postage expenses recorded in its books that were not included in SG&A have been included elsewhere.

SeAH states that credit expenses, container stuffing charges and postage, as documented in its response, were incurred on exports of non-subject merchandise. As for the factory-to-warehouse freight, SeAH explained that this was reported as a movement expense in the response to the questionnaire.

Department's Position

SeAH used the accounts for SG&A from its books and then deducted various costs from those accounts when appropriate (i.e., costs not associated with subject merchandise and freight costs which were reported separately). Therefore, we have not changed SeAH's SG&A component of CV.

Comment 35: Selling Expenses of Affiliated Importers

The petitioners point out that regardless of how selling expenses of SeAH's affiliated importers are characterized, they should be deducted from CEP. Each of these companies incurs SG&A expenses in performing selling functions that have been relocated from Korea, including shipping arrangements, arranging for entry of the merchandise, issuing invoices, inventory maintenance, and collecting payment. Whether they are considered direct or indirect selling expenses, the petitioners find that they should be deducted from the price used to establish CEP.

SeAH does not disagree that indirect selling expenses should be deducted from CEP sales. SeAH stated that indirect selling expenses were deducted from CEP sales in the *Preliminary Results* margin calculation program. SeAH believes that there is no reason to change this portion of the programming for the final results.

Department's Position

We deducted indirect and direct selling expenses from CEP sales for the *Preliminary Results* of this review and have continued to do so for these final results.

Comment 36: Marine Insurance Costs

The petitioners suggest that based on information provided in SeAH's response, SeAH is able to calculate its marine insurance costs on a product-specific basis. The petitioners also find that SeAH's method of calculating marine insurance is distortive because it is an average over all products and not based on a per-transaction basis. Because SeAH is able to determine the marine insurance premium rate applicable to all reported shipments of subject merchandise, and can trace the C&F value of each product for each shipment, the petitioners claim that it should have calculated an average per-metric ton insurance expense on a transaction-specific basis. The petitioners state that SeAH has further proven itself uncooperative by not at least reporting average marine insurance on a product-specific basis. The petitioners suggest that SeAH's marine insurance costs be based on facts available.

SeAH argues that the Department should reaffirm the methodology used in the first reviews of this case. SeAH maintains that it has explained adequately why it cannot calculate marine insurance on a transaction-specific basis in its response.

Department's Position

We agree with SeAH that it has used a reasonable and appropriate methodology to report their marine insurance costs. SeAH has calculated the reported amount of marine insurance on the same basis that it is incurred by applying the insurance premium rate to the C&F value of the shipment as shown on the commercial invoice. We are accepting SeAH's methodology for these final results.

Comment 37: Transaction-specific Entered Values for CEP Sales

The petitioners suggest that SeAH is able to calculate the average entered value during the POR for sales on a product-specific basis. The petitioners maintain that SeAH's reporting of an average per-unit entered value by surface finish rather than a transaction-specific entered value proves that SeAH has not responded to the best of its ability. The petitioners suggest entered values for CEP based on facts available.

SeAH argues that its methodology is consistent with that used in the *First Review,* but has provided information if the Department chooses to calculate an approximate entered value.

Department's Position

Since we are calculating assessment rates on a per-volume, as opposed to value, basis, this issue is moot.

Shinho

Comment 38: Basis of Indirect Selling Expense Allocations

The petitioners argue that Shinho failed to justify its allocation of indirect selling expenses by the number of employees in its various divisions. The petitioners note that the Department stated in a supplemental questionnaire that its preferred methodology is to allocate such expenses on the basis of sales volume. Furthermore, the petitioners cite the *Notice of Final Determination of Sales Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa, (Carbon Steel Plate)* 62 FR 61731, 61736 (November 19, 1997), as stating that the Department normally allocates G&A expenses based on the cost of sales because an allocation ''based on a single factor (e.g., head counts, fixed costs) is purely speculative.'' The petitioners also point to *Carbon Steel Plate* which it states that to deviate from this methodology requires ''evidence that our normal G&A allocation methodology unreasonably states G&A costs.'' Therefore, the petitioners conclude that the Department should allocate

Shinho's indirect expenses based on the cost of sales.

Shinho states that its accounting records do not separately record (SG&A) expenses. Thus, in order to assign costs to each of these functions, Shinho allocated those expenses not directly assignable to each division on the basis of a headcount. Shinho claims that its allocation methodology for indirect selling expenses is consistent with its practice in the original investigation, which was verified and accepted by the Department. Furthermore, Shinho asserts that while the Department prefers to allocate such expenses based on sales volume, it will accept alternatives that are reasonable and fully explained. Shinho states that it adequately explained its methodology and that it is reasonable because many such expenses are related to the number of employees in each division.

Department's Position

Contrary to the petitioner's assertions, we note that Shinho did allocate some indirect selling expense items by value. As for the items that Shinho allocated by number of employees, we find its methodology to be reasonable because these items vary according to the number of employees. This methodology is consistent with that used in the original investigation (*see, LTFV* at 57).

Comment 39: Allocation of Packing Expenses

The petitioners maintain that Shinho misallocated the cost of packing clips and bands by allocating their cost by metric ton rather than by bundle. The petitioners argue that Shinho has not shown that its per-bundle usage rate approximates its calculated weight basis. Additionally, the petitioners state that Shinho has not been cooperative in reporting its packing costs by (1) failing to report the average cost of each packing material as requested by the Department, (2) not reporting a cost for the white steel bands noted in their response, (3) providing packing cost worksheets that are inconsistent and irreconcilable, (4) not identifying the composition of ''common'' packing material costs, (5) not fully explaining the derivation of the allocated coating materials costs, and (6) using an improper methodology for calculating packing labor costs. Thus, the petitioners argue that the Department should double Shinho's reported home market packing costs for use as facts available for its U.S. packing costs. In support of this recommendation, the petitioners cite *Circular Welded Non-Alloy Steel Pipes and Tubes from Mexico: Final Results of Antidumping Duty Administrative Review,* 62 FR 37014, 37020 (July 10, 1997), where the Department followed such a methodology when the respondent had been uncooperative.

With regard to the manner in which it allocated its packing bands and clips, Shinho asserts that the distinction drawn by the petitioners between a per-bundle and a per-metric ton allocation is a ''distinction without a difference.'' Next, Shinho states that ''white'' steel bands do not refer to a separate packing material but rather to the bands used to bind galvanized pipe (internally referred to as ''white'' pipe) and are included already in the reported costs. Additionally, Shinho disputes the petitioners' claim that the worksheets it provided with its response are inconsistent. According to Shinho, its worksheets contain the information necessary to calculate the average cost of each packing material, including coating materials, on a product-specific basis and that these product-specific costs reconcile with the total material usage. Moreover, Shinho states that its allocation of packing labor expenses is consistent with its normal accounting methodology. Shinho further asserts that a per-metric ton allocation of packing labor expense is appropriate because Shinho's operation of a crane accounts for a substantial amount of the packing labor expense. According to Shinho, the capacity of the crane used for packing is measured in tons, the same basis used to allocate the expense. For the aforementioned reasons, Shinho argues that the Department should reject the petitioners' call for the use of adverse facts available for Shinho's home market packing costs.

Department's Position

For purposes of this review, we find Shinho's allocation of the cost of bands and clips to be reasonable. With regard to the petitioners' other points, we find that the information submitted by Shinho with regard to packing costs supports the reported amounts. Therefore, we find no reason to apply facts available with regard to Shinho's packing costs.

Comment 40: Home Market Credit Period

The petitioners assert that it is unclear whether Shinho calculated its customer-specific average credit period on a monthly or annual basis because Shinho stated that it maintains its accounts receivables on a monthly basis and its notes receivables on an annual basis. Additionally, the petitioners cite the example Shinho prepared comparing a specific customer's monthly average accounts receivable period to the year-end accounts receivable for the same customer. The petitioners state that this example, based on a customer that Shinho hand-picked, shows that Shinho overstated its home market credit period. Given these apparent discrepancies, the petitioners request that the Department not adjust NV for home market credit expenses.

Shinho states that, in this review, it reported its home market credit period on an annual, customer-specific basis. According to Shinho, this method most closely approximates the invoice-specific credit period, which is the Department's preferred methodology. Shinho states the Department has accepted customer-specific reporting in other cases. See *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order: Antifriction Bearings and Parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom,* 58 FR 39729, 39747 (July 29, 1993) and *Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured from Japan: Final Results of Antidumping Administrative Review,* 58 FR 30018, 30023 (May 25, 1993).

Department's Position

We find that Shinho's use of average annual customer-specific home market credit periods is reasonable giving the limitations of its accounting system. Therefore, we are using Shinho's reported customer-specific home market credit periods for these final results with the exception of one customer. We agree with the petitioners that the supporting documentation Shinho provided comparing the customer-specific monthly average to the year-end average credit period for this one customer showed that the reported credit period is overstated. Therefore, we have adjusted the home market credit period for this customer.

Comment 41: Reliability of Home Market Short-term Interest Rate

The petitioners argue that the Department should not make an adjustment for home market credit expenses because Shinho's reported home market interest rate is unreliable. The petitioners assert that Shinho's trial balance, used by Shinho to support its claim for its reported US interest rate, refutes Shinho's home market credit calculation. The petitioners state that if the Department does not reject Shinho's home market credit expense adjustment in its entirety, as facts available, it

should instead calculate the expense using the US interest rate.

Shinho states that the Department should not reject the firm's calculation of its home market short-term interest rate based on a document provided to support its calculation of its corresponding US interest rate. Shinho argues that the Department did not request that the company reconcile its home market credit expense calculation to supporting company accounting records, including its trial balance. Shinho contends, however, that had the Department made such a request, the company could easily have shown how it had derived the figures used in its home market credit calculation. Furthermore, Shinho states that the same methodology was accepted and verified by the Department in the prior review.

Department's Position

We agree with Shinho that we should not reject or adjust its reported home market interest rate. We requested a reconciliation of Shinho's reported US interest rate; however, we did not request such a reconciliation for its home market interest rate. Thus, we have no reason to believe that the reported home market interest rate is inaccurate.

Comment 42: Interest Expense Factor

The petitioners state that it is the Department's policy to require that interest income used to offset interest expense for the purpose of calculating CV be related directly to production and short-term in nature. See, *First Review Final Results at 55583 and Flowers from Colombia*, at 42833, 42843.

According to the petitioners, Shinho estimated its short-term interest income by calculating its ratio of short-term to long-term deposits. Shinho applied this ratio to the total interest earned to calculate the amount of short-term interest it earned. The petitioners assert that this ratio overstates the short-term interest earned because short-term deposits typically earn less interest than similar long-term deposits. Furthermore, the petitioners claim, Shinho did not identify the short-term deposits that earned interest income or show that its accounting records do not track separately short-term interest income. Finally, the petitioners argue that Shinho did not show that the interest earned from securities was related to production. For each of these reasons, the petitioners state that the Department should reject Shinho's claimed interest income as an offset to its interest expense.

Shinho argues that the Department should continue to offset the firm's interest expense with the short-term interest income that it reported. Shinho asserts that its methodology of calculating short-term interest income is reasonable given that short-term interest income earned is not recorded separately from long-term interest income in its financial statements. Shinho states that the Department accepted a similar approach in the *Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods from France*, 58 FR 68865, 68872 (December 29, 1993). Shinho maintains that the petitioners' citation of the previous review is erroneous because, in that review, the Department rejected the inclusion of a particular investment because it was not short-term, rather than rejecting the full offset because it was calculated by applying a ratio of short-term to total deposits. Finally, Shinho states that the Department did not question the company's methodology and that the petitioner, prior to its briefs, did not raise the issue.

Department's Position

We agree with the petitioners' assertion that Shinho's methodology for calculating the interest income offset to interest expense would be distortional when short-term and long-term deposits earn interest at different rates. Given that the records of interest income earned by Shinho maintained in the normal course of business do not track interest income vis-a-vis the term of the deposit, we have adjusted Shinho's reported interest income offset based on the difference between the short-term deposit rate and the long-term government bond rate in Korea. Additionally, with respect to petitioners' argument that we reject the nature of Shinho's interest income from securities, there is no information on the record which indicates that this income earned from securities was other than short-term in nature. Therefore, we have retained this income in our calculation of Shinho's interest expense for COP and CV.

Comment 43: Exchange Rate Gains & Losses

The petitioners assert that Shinho failed to account for its foreign exchange gains and losses in its cost calculations. The petitioners state that it is the Department's standard practice to account for these gains and losses when they are related to production. Therefore, the petitioners state that the Department should make the appropriate adjustment to Shinho's net interest expense factor.

Shinho agrees that it did not adjust its interest factor for foreign exchange gains and losses. However, Shinho states that it did provide the Department with the information necessary to make the adjustment. Shinho notes that the requested adjustment is relatively insignificant.

Department's Position

It is the Department's standard policy to adjust for foreign exchange gains and losses in a respondent's net interest expense factor. We have made this adjustment for these final results.

Comment 44: Control Number Uniqueness

The petitioners state that the Department should consolidate several of Shinho's control numbers that have identical matching criteria.

Shinho agrees that two of the control numbers at issue are identical under the Department's concordance hierarchy, but that this discrepancy did not have an impact on the margin calculations in the *Prelimary Results*. Shinho disagrees with the petitioner that a third product is identical under the Department's hierarchy because one of the matching characteristics is different.

Department's Position

We have combined the two products that have identical matching criteria. We agree that the third product differs in one of the matching criteria; therefore, we have not reclassified this product.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on the rates certified by the Federal Reserve Bank. Section 773A(a) directs the Department to use a daily exchange rate to convert foreign currencies into U.S. dollars unless the daily rate involves a ''fluctuation.'' It is our practice to find that a fluctuation exists when the daily exchange rate differs from a benchmark rate by 2.25 percent. See *Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 61 FR 35188, 35192 (July 5, 1996). The benchmark rate is defined as the rolling average of the rates for the past 40 business days.

Final Results of the Review

As a result of this review, we find that the following margin exists for the period November 1, 1995, through October 31, 1996:

Manufacturer/exporter	Margin (percent)
Hyundai	4.01
KISCO/Union	0.71
Shinho	3.34
SeAH	3.51

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. In accordance with the methodology in *First Review Final Results* we calculated exporter/importer-specific assessment values by dividing the total dumping duties due for each importer by the number of tons used to determine the duties due. We will direct Customs to assess the resulting per-ton dollar amount against each ton of the merchandise entered by these importers' during the review period.

Furthermore, the following deposit requirements will be effective for all shipments of welded non-alloy steel pipe from Korea 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 Act: (1) The cash deposit rate for the reviewed companies will be the rates established in the final results of this administrative review (except no cash deposit will be required for those companies whose weighted-average margin is *de minimis, i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value 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 an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original 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) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 4.80 percent, the ''all others'' rate established in the less-than-fair-value investigation. See *LTFV* at 42942.

This notice serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 8, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–15874 Filed 6–15–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–559–001]

Certain Refrigeration Compressors From the Republic of Singapore: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration/International Trade Administration/Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On December 9, 1997, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore.

In our preliminary results of review, we preliminarily determined that the signatories to the suspension agreement complied with the terms of the suspension agreement during the period of review (POR). We gave interested parties an opportunity to comment on our preliminary results. We received comments from petitioner and respondents.

We have now completed this review, the thirteenth review of this Agreement, and determine that the Government of the Republic of Singapore (GOS), Matsushita Refrigeration Industries (Singapore) Pte. Ltd. (MARIS), and Asia Matsushita Electric (Singapore) Pte. Ltd. (AMS), the signatories to the suspension agreement, have complied with the terms of the suspension agreement during the period April 1, 1995 through March 31, 1996. Based on our analysis of the comments received, we have not changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: June 16, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3434 or 482–0165, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

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 regulations set forth at 19 CFR part 355 (April 1997).

Background

On December 9, 1997, the Department of Commerce (the Department) published in the **Federal Register** (62 FR 64806) the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore. We received comments from interested parties on our preliminary results. Additionally, the Department sent out a supplemental questionnaire to the respondents on December 22, 1997 to obtain additional information on testing of the subject merchandise. Petitioner provided comments to respondents' subsequent January 6, 1998 submission on January 7, 1998. *See* Comments 3 and 6 below. We have now completed this administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of hermetic refrigeration compressors rated not over one-quarter horsepower from Singapore. This merchandise is currently classified under *Harmonized Tariff Schedule* (HTS) item number 8414.30.40. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period April 1, 1995 through March 31, 1996, and includes three programs. The review covers one producer and one exporter of the subject merchandise, MARIS and AMS, respectively.

Under the terms of the suspension agreement, the GOS agrees to offset completely the amount of the net bounty or grant (subsidy) determined by the Department in this proceeding to exist with respect to the subject merchandise. The offset entails the

collection by the GOS of an export charge applicable to the subject merchandise exported on or after the effective date of the agreement. *See Certain Refrigeration Compressors from the Republic of Singapore: Suspension of Countervailing Duty Investigation (''Suspension Agreement''),* 48 FR 51167, 51170 (November 7, 1983).

Analysis of Comments Received

Comment 1: Respondents argue that the Department should notify the GOS that it may refund the entire amount of the provisional export charge collected with respect to past imports with respect to this POR. Additionally, respondents argue that the Department should establish a zero provisional export charge for future exports of the subject merchandise.

First, respondents argue that the Department has consistently maintained, with respect to both antidumping and countervailing duty proceedings, that there is no difference between a de minimis and a zero subsidy, citing, inter alia, *Final Negative Countervailing Duty Determination: Certain Steel Products from South Africa,* (58 FR 62100, 62103, 62104 November 24, 1993). Additionally, respondents note that the Department's prior regulations stated that ''[a] de minimis margin is considered a zero margin.'' *See Countervailing Duties Final Rule,* 53 FR 52306, 52327 (December 27, 1988). Moreover, respondents argue that the Department's May 1997 regulations (which the Department notes do not govern this review) state that a de minimis margin is the same as ''a zero margin.'' *See Antidumping Duties, Countervailing Duties,* 62 FR 27296 (May 19, 1997)(to be codified at 19 C.F.R. Section 351.106(b)). Respondents also note that the Statement of Administrative Action (''the SAA'') states that ''de minimis margins are regarded as zero margins.'' *See Statement of Administration Action, in Uruguay Round Trade Agreements, Texts of Agreements, Implementing Bill, Statement of Administrative Action, and Required Supporting Statements,* H.R. Doc. No. 103–316, 103d Cong. 2d Sess. (1994) at 844 (the ''SAA''). Finally, respondents argue that the Court of International Trade (CIT) did not review a de minimis finding on the grounds that doing so would be to provide an advisory opinion on a case in which no subsidization was found. *See Georgetown Steel Corp.* v. *United States,* 810 F. Supp. 318, 321 (Ct. Int'l Trade 1992). Therefore, respondents argue that former and current law, current Commerce regulations and the CIT support the treatment of a de minimis margin as a zero margin, and thus the Department has no authority to impose or establish a de minimis export charge.

Second, respondents argue that the Department has stated that, as a matter of policy, it is a waste of resources to offset de minimis subsidies, because it is costly and has a minimal impact on the market. *See Antidumping Duties and Countervailing Duties: De Minimis Margins and De Minimis Subsidies,* 52 FR 30660, 30661 (August 17, 1987) (''it would be unreasonable for the Department and the U.S. Customs Service to squander their scarce resources administering orders for which the dumping margins and net subsidies are below 0.5%''). Respondents assert that this rationale also applies in the context of a suspension agreement, and provides the Department an additional reason to modify its preliminary administrative review results.

Lastly, respondents argue that requiring the GOS to collect a de minimis export charge would be contrary to the intent of the suspension agreement. Respondents assert that the suspension agreement was intended to offset the amount of the net subsidy through an export charge, and this charge should be neither smaller nor greater than the duty Customs would collect. According to respondents, requiring the collection of a de minimis export charge, when there would be no countervailing duty imposed on imports under a CVD order, would contravene the requirement of the suspension agreement that the export charge offset (but not exceed) the amount of the subsidization.

Petitioner argues that the suspension agreement and the countervailing duty law require that all bounties and grants be countervailed. Petitioner asserts that the terms of the agreement require the GOS ''to offset completely the amount of the net bounty or grant determined by the Department in this proceeding to exist with respect to the subject product.'' *See Suspension Agreement* at 51169. Petitioner also argues that there is not a de minimis threshold within the suspension agreement governing this proceeding.

Petitioner notes that the authorization for suspension agreements from the Tariff Act of 1930, as amended, section 704(b)(1), states the foreign government or exporters of the product must agree ''to eliminate the countervailable subsidy completely or to offset completely the amount of the net countervailable subsidy.'' Petitioner argues that the language of the suspension agreement specifically states that the subsidy is to be ''offset completely'' and the Department does not have the authority to disregard that language as respondents have requested. Petitioner asserts that the language of the agreement cannot be changed, and to do so would not be consistent with the Act.

Petitioner argues that the respondents suggest that the regulatory and statutory provisions setting the de minimis standards in investigations and reviews of contested orders prevail over the language of the agreement and section 704(d) of the Act. Petitioner states that the May 1997 regulations are aimed at the conduct of investigations in disputed cases or the review of results in those cases. Thus, petitioner maintains that the language of the Act (specifically, the de minimis provisions), cannot be applied to the monitoring of a suspension agreement. Moreover, petitioner asserts that the monitoring provision in the Act (section 704(d)) is not to be used to ''import'' rules from other areas of countervailing duty enforcement. Therefore, petitioner argues that the provisions of the Act and the May 1997 regulations are not applicable to this case because the respondents have exercised their right to arrive at an ad hoc arrangement (*i.e.*, the suspension agreement) to ''modify * * * behavior so as to eliminate dumping or subidization * * *'' See 19 CFR section 351.208(a), 62 FR 27388.

Petitioner rebuts respondents' argument that the collection of the export charge would waste the Department's resources, asserting that because all parties agreed to the suspension agreement, both the Department and the respondents have saved resources by avoiding the final phase of the investigation. Lastly, petitioner argues that respondents' claim that requiring the GOS to collect a de minimis export charge would be contrary to the suspension agreement is inconsistent with the principles of contract interpretation; namely, only when the contract terms are ambiguous is it proper to look outside to divine some intent. Since the de minimis standard is not found in the suspension agreement, petitioner argues that it cannot be read into the agreement.

Petitioner asserts that respondents' reliance upon *Georgetown Steel* is misplaced because the CIT did not reject a challenge to the de minimis determination, but instead declined to reach additional issues because the Department's de minimis calculation in that case was not disturbed. Furthermore, petitioner argues that respondents have not presented any evidence or legal argument to disregard the meaning of the suspension

agreement, citing a decision of the Court of Appeals for the Federal Circuit which stated that if the ''provisions are clear and unambiguous, they must be given their plain and ordinary meaning . . . and the court may not resort to extrinsic evidence to interpret them.'' *See McAbee Construction, Inc.* v *United States,* 97 F.3d 1431, 1435 (Fed. Cir. 1996)(citation omitted).

Department's Position: We agree with respondents. The Department's policy with respect to a de minimis and or a zero subsidy is clear. The applicable Department regulations for this review state that ''the Secretary will disregard any aggregate net subsidy that the Secretary determines is less than 0.5% ad valorem or the equivalent specific rate.'' *See* 19 CFR 355.7. Additionally, petitioner's argument for requiring the GOS to continue to offset the net bounty or grant is not accurate. First, the Department's regulations apply equally to administrative reviews and/or suspension agreements. Suspension agreements must be written in accordance with the same statute and regulations which govern the review of an order. We agree with respondents that the Department has held that if a subsidy is de minimis there are no benefits to constitute bounties or grants within the meaning of the countervailing duty law. *See Certain Steel Products from South Africa,* 58 FR 62100, 62103 (November 24, 1993). While petitioner is correct that the suspension agreement does not have a de minimis threshold within its text, such language is unnecessary, precisely because the Department's CVD regulations govern the review of the agreement.

Second, petitioner's argument that the suspension agreement requires that the GOS ''offset completely the amount of the net bounty or grant'' has merit only when that net bounty or grant is above a de minimis level. Although the suspension agreement does not provide for de mimimis language in the text of the agreement, the Department's regulations make it clear that, ''the Secretary will treat as de minimis any . . . countervailable subsidy rate that is less than 0.5 percent ad valorem, or the equivalent specific rate.'' *See* 19 CFR Section 355.7. If the suspension agreement were an order, the Department would not require the U.S. Customs Service to collect duties. Therefore, the Department has no basis, either through the applicable statute, regulations, or case precedent to require the GOS to continue collecting an export charge for the subject merchandise. Of course, any subsequent review for which the Department finds a countervailable subsidy above de minimis would result in the resumption of the collection of cash deposits on subject merchandise.

Comment 2: Petitioner argues that the Department should capture benefits which MARIS and AMS have accrued after the results of administrative reviews have become final. Petitioner asserts that the current administrative review revealed evidence that respondents may have received preferential tax benefits in prior administrative reviews that were not included in the relevant final results for those administrative reviews. Petitioner asserts that under Singaporean law, respondents have up to six years to negotiate their final tax assessment, and the results of an administrative review may become final before taxes are finalized. Therefore, petitioner maintains that these tax benefits may never become part of the Department's calculations.

Petitioner asserts that the suspension agreement clearly states that all benefits received by the respondents are to be offset by payments to the GOS. Petitioner states that Singapore's tax collection methodology permits and encourages avoidance of the intended purpose of the suspension agreement, which is to offset completely the tax benefit. Petitioner contends that to correct this problem, the Department should require respondents to submit information on their tax liabilities made final during any POR, regardless of when they accrued, and then adjust the current administrative review calculations to reflect the benefits received from prior administrative reviews. In doing so, the Department will capture any benefits that respondents may have received from the tax programs, and eliminate incentives to delay finalization of tax liabilities until after the results of the Department's administrative review have become final. Petitioner contends that following its suggested solution would not require the Department to reopen past inquires, but would simply recognize that benefits become effective when the final tax liability is determined, *i.e.,* in the then-current POR.

Respondents argue that there is no basis for the Department to reexamine benefits allegedly provided by the GOS in prior reviews. According to respondents, petitioner contends that in this administrative review it was revealed for the first time that the operation of the Singapore tax system may have resulted in respondents receiving preferential tax benefits in prior years that were not included in the final administrative results of prior reviews. However, respondents argue that the Singaporean tax system has been in effect since before the petition was filed, and the Singaporean tax system allows a taxpayer to object to his initial tax assessment and continue to negotiate the final amount of assessment by the GOS within a certain time period. Thus, respondents argue that the Department and the petitioner have been made aware of Singapore's tax system prior to the current review.

Respondents also note that they have described the tax system process in past administrative reviews. Additionally, respondents assert that they have submitted provisional tax computations in prior administrative reviews, and that this fact should have alerted the Department and petitioner that the tax computations were not final. Moreover, respondents assert that in the twelfth administrative review, the Department used MARIS' (then-) most recent tax computations to calculate the export charge, although the tax computations were not final. *See Certain Refrigeration Compressors from the Republic of Singapore: Final Results of Countervailing Duty Administrative Review,* 62 FR 36045 (July 3, 1997).

Second, respondents argue that, as a matter of law, prior administrative reviews cannot be reopened. Respondents assert that under U.S. law, each administrative review is a separate proceeding, conducted based upon its own record. *See* 19 USC Sec. 1675(a)(1). Additionally, respondents assert that entries covered in prior administrative reviews cannot be assessed an additional export charge once their countervailable status has been determined. *See FAG Kugelfischer Geor Schafer KgaA* v. *United States,* 932 F. Supp. 315 (Ct. Int'l Trade 1996).

Third, respondents argue that during the course of this suspension agreement and other Departmental proceedings, the Department's practice has been to calculate Economic Expansion Incentives Act (EEIA) tax benefits based on the latest tax calculations that the respondents submitted for that POR. Additionally, respondents maintain that the Department does not change a methodology it has regularly utilized absent some intervening change in basic fact or law, and that neither of these events has occurred in this case.

Lastly, respondents argue that the suspension agreement does not allow adjustments to an export charge once a final export charge has been set. Therefore, respondents argue that the Department should continue its practice of basing its calculation of any benefit MARIS receives from Part VI of the

EEIA on MARIS' most recent tax computation.

Department's Position: The Department's analysis of the benefits received through EEIA Part VI yielded an ad valorem rate of 0.23 percent. We note that, even if we were to recalculate the margin based on the revised tax figures, the total countervailing duty rate calculated for AMS and MARIS during the POR would remain de minimis. *See* The Department's Calculation Methodology Memorandum: *Export Charge Rate Calculation for the Final Results of the Thirteen Administrative Review—Certain Refrigeration Compressors from Singapore* (April 1, 1995—March 31, 1996 (June 8, 1998).

Comment 3: Petitioner argues that respondents have failed to explain discrepancies in reported volume and value of sales. Petitioner asserts that AMS sales of subject merchandise were approximately 23% higher than MARIS' production, although MARIS is AMS' sole supplier. Petitioner notes that respondents stated in their October 7, 1997 submission that the discrepancy was due to the fact MARIS and AMS booked their sales when made, thus creating differences in the timing of when a particular sale is reported, and that AMS receives a greater price for the compressors it sells than it pays to MARIS. Petitioner asserts that minor timing differences alone cannot explain the discrepancy.

Petitioner argues that the explanation the Department obtained at verification did not provide an adequate reason for this discrepancy. Petitioner notes that at verification respondents provided another explanation for the discrepancy in volume and value; specifically, that MARIS' engineers performed tests ''to determine which compressors were 1/4 horsepower or less based on generally accepted standard engineering principles,'' and that MARIS discovered that its and its parent company's manuals and sales literature did not correlate, and that some of MARIS' sales thus had been misclassified as subject merchandise. However, petitioner argues that MARIS' data provided at verification does not explain the continuing discrepancy in volume and value because a discrepancy continues to exist from the questionnaire responses. Petitioner asserts that respondents have not explained why the explanation in their October 7, 1997 response differs from the explanation provided at verification. Additionally, petitioner states that it is unclear when MARIS' engineers performed the engineering tests to determine which compressors were subject merchandise. Moreover, petitioner asserts that even if MARIS' tests were accurate, they are not relevant, because the agreement covers refrigeration compressors ''rated'' not greater than 1/4 horsepower, regardless of whether they in fact are. Petitioner argues that refrigeration compressors that respondents found to be over 1/4 horsepower were nevertheless rated (*i.e.*, labeled, identified, advertised and sold by MARIS and AMS) as falling within the scope of the agreement and therefore are subject merchandise. Lastly, petitioner argues that the discrepancy cannot be explained away by the respondents testing explanation because any knowledgeable engineer or salesman can convert BTU ratings into horsepower without the need for tests.

Petitioner also argues that the data provided by respondents concerning testing of their units and their attempt to explain discrepancies in reported units sold constitute new information submitted in an untimely fashion. Petitioner asserts that the Department should reject this information in accordance with its long-standing policy of rejecting new information. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61964 (November 20, 1997), *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation*, 62 FR 61787, 61790 (November 19, 1997), *Certain Helical Spring Lock Washers from the People's Republic of China*, 62 FR 61794 (November 19, 1997), and *Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 62 FR 37030 (July 10, 1997). Therefore, petitioner argues that the inconsistencies in respondents' explanations should lead the Department to apply an adverse facts available in this case.

Respondents argue that there is no basis to apply facts available with adverse inferences with regard to the alleged discrepancies in MARIS' and AMS' volume and value of sales. Respondents assert that the discrepancies between MARIS' and AMS' volume and value of sales of subject merchandise do not provide insufficient data for the Department to apply adverse facts available.

First, respondents argue that there is no evidence that either MARIS' or AMS' sales figures are inaccurate. Respondents assert that at verification the Department verified both MARIS' and AMS' volume and value sales figures by tying the figures to each company's general ledger, and the Department found no discrepancies.

Second, respondents state that they have provided the following explanations regarding the difference between the company figures: (1) Differences in testing by the two companies resulted in different classifications for merchandise that was rated near ¼ horsepower; (2) AMS receives a greater price for the compressors it sells than it pays to MARIS for the same compressors; and (3) the sale of the same compressor can be booked at different times, leading to discrepancies in the amount of sales that occur in a year. Respondents maintain that the vast majority of the difference was due to the misclassification of the subject merchandise and the majority of these compressors were shipped to countries other than the United States.

Third, respondents argue that there is no basis for including compressors greater than ¼ horsepower (*i.e.*, non-subject merchandise) simply because they were inaccurately rated as being subject merchandise. Additionally, respondent argue that the Department should not reject as untimely new information submitted at verification or provided pursuant to a supplemental questionnaire that was issued by the Department.

Finally, respondents argue that the cases cited by petitioners in fact show that the Department has the discretion to accept supplemental information. Respondent notes that the Department has stated that it can accept new information at verification when (1) ''the need for that information was not evidenced previously, (2) the information makes minor revisions to information already on the record, or (3) the information corroborates, supports, or clarifies information already on the record.'' *See Final Results of Antidumping Administrative Review: Titanium Sponge from the Russian Federation*, 61 FR 58525 (November 15, 1996). Respondents assert that the Department requested additional information from MARIS and AMS on the alleged discrepancies due to a request from the petitioner. Moreover, respondents point to two Department determinations that state it is within the Department's discretion to accept new information. *See Notice of Final Determination of Sales at Less Than Fair Value; Certain Pasta from Turkey*, 61 FR 30309, 30310 (June 14, 1996), and *Notice of Final Results of Antidumping Administrative Review; Certain Cut-to-Length Carbon Steel Plate from Belgium*, 63 FR 2959, 2960 (January 20, 1998). Respondents note that in this case, the

Department requested the additional information after verification due to issues raised by petitioner to ascertain whether information provided on the record was accurate.

Lastly, respondents argue that the petitioner does not offer any support for its argument that the scope of the suspension agreement is determined based upon how respondents ''labeled, identified, advertised and sold'' its compressors, and that the rating of a compressor is an objective fact determined by its performance, and not by sales literature.

Department's Position: The Department accepts respondent's explanations for the discrepancy in MARIS' and AMS' volume and value figures, and the Department has verified to its satisfaction respondent's explanations for the discrepancy. First, we note that, at verification, the Department verified the accuracy of both MARIS' and AMS' volume and values figures. The Department verified MARIS' and AMS' sales figures by tying the figures to each of the company's general ledger, and the Department found no discrepancies. *See Verification Report*, at pages 10–11 and 18–19, December 1, 1997. Specifically, the Department verified MARIS' and AMS' total sales of subject merchandise (*i.e.*, volume and value) to the United States by tying the figures to the company's books and ledgers, and the Department found no discrepancies. *See Verification Report*, at pages 12 and 18–19. Additionally, at verification MARIS stated that one of the reasons for the difference between the company figures was that MARIS preformed testing on all of its compressors. This testing resulted in different classifications for merchandise that was rated near ¼ horsepower. Also, MARIS stated that AMS used a different list from MARIS' to classify compressors. Thus, the different classifications resulted in AMS reporting a more inclusive amount of compressors including those compressors that were not subject merchandise. Additionally, at verification, MARIS stated that the vast majority of compressors that petitioner argues are not reconciled, were shipped to countries other than the United States. *See Verification Report*, at page 15. Furthermore, the Department verified that MARIS had misclassified compressors as subject merchandise which were then shipped to United States. *See Verification Report*, at page 15 and *Verification Exhibit* M–17. At verification, the Department did not find any discrepancies in the materials that were reviewed using its standard verification procedures and practices.

Admittedly, the Department did not and cannot verify every item in a respondent's questionnaire response. ''However, [v]erification 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.'' *See Monsanto* v. *United States*, 698 F. Supp. 275, 280 (Ct. Int'l Trade 1988). Nevertheless, the Department did verify to its satisfaction respondent's explanations for the discrepancy and did not find any evidence that respondent's were attempting to mislead or withhold any information from the Department. Therefore, the Department has no reason to apply adverse facts available in this case because respondents complied with all requests for information and their submissions were verified to the Department's satisfaction.

Second, we disagree with petitioner's argument that the data provided by respondents concerning the testing of their units was new information submitted in an untimely fashion. It is well-established in the Department's regulations that we may invite submission of factual information from parties at any time during a proceeding. *See* Section 355.31(B)(1). Furthermore, the cases petitioner cites, as evidence that new information should be rejected were all cases in which new information was submitted without the request of the Department. Therefore, the Department will use the information requested after verification in our final results of administrative review.

Finally, contrary to petitioners' contention, the scope of the suspension agreement is not determined based upon how respondents may have labeled, identified, advertised, and sold the subject merchandise. Rather, the language of the suspension agreement covers those refrigeration compressors that are in fact not over one-quarter horsepower, and exported, directly or indirectly, from the Republic of Singapore to the United States. *See Suspension Agreement* at 51170. Accordingly, petitioner has not provided supporting evidence using the above criteria to justify any changes to the scope of the suspension agreement.

Comment 4: Petitioner argues that respondents have failed to explain changes made to their tax benefit computations. Petitioner states that at verification MARIS amended its tax computations in a manner which reduced the company's estimated tax liability, and as a result, the benefits accruing under the EEIA. Petitioner argues that MARIS provided two different explanations at verification for the change in the tax benefit and that both explanations cannot be correct. *See* Verification Report at page 13, December 1, 1997 (Business Proprietary Version). Petitioner asserts that it is critical for the Department to ascertain MARIS' final tax liability in order to calculate the company's actual tax benefit. Also, petitioner argues that the Department is justified in applying adverse facts available because the Department provided both MARIS and AMS the opportunity to explain changes to their tax benefit computations and respondents failed to provide ''credible'' explanations and accurate data.

Respondents assert that the statements they provided regarding their tax benefit computations are consistent, and that the movement of the warranty provisions from the Year of Assessment 1996 to the Year of Assessment 1997 caused the increase in the warranty claim for 1997. Therefore, the Department should continue to base MARIS' tax benefit on the information provided at verification.

Department's Position: We agree with respondents. At verification, the GOS provided the Department with updated income tax computations from MARIS, and stated that MARIS increased its ''provision for warranty'' based on additional warranty claims. *See* GOS verification report at page 4. Additionally, MARIS stated that an independent accounting firm computed and filed its taxes with the IRAS, and that an official from the accounting firm confirmed at verification that MARIS' tax computations were amended because the company's ''provision for warranty'' increased due to additional warranty claims. *See* GOS and MARIS Verification reports at pages 4 and 13, respectively. The Department reviewed MARIS'' warranty expenses, and found this explanation to be reasonable and not contradicted by any other information reviewed at verification. *See* MARIS and GOS verification reports at pages 4 and 13, respectively. Therefore, the Department has no evidence to support petitioner's claim that respondents have failed to explain changes made to its tax benefit computations. Therefore, for the purposes of calculating a final margin, we have made no adjustments.

Comment 5: Petitioner argues that the Department should correct its methodology to conform to its methodology from past administrative reviews by removing the deduction for the base export profit. Petitioner states that in the preliminary results, the Department calculated an adjusted profit applicable to export sales using a base export profit reduction, and that

this export profit reduction has never been used in past administrative reviews. Petitioner notes that no changes have occurred in the EEIA program to account for the Department's change in its calculation methodology. Moreover, petitioner argues that disregarding past practice in the benefit calculation injects uncertainty into the administrative review process, and thereby weakens the transparency of the administrative review process.

Respondents note that petitioner is incorrect in stating that the Department changed its methodology with regard to the base export profit. Respondents state that in past administrative reviews, the Department has calculated an export charge by subtracting the base export profit figure, and that the Department has used this methodology in other Singaporean reviews that benefit from Part VI of the EEIA. Moreover, respondents assert that petitioner's proposal to exclude ''the base export profit reduction'' would violate the suspension agreement because Singaporean law states that the base export profit is taxed at the normal corporate tax rate (*i.e.*, a countervailable benefit is not conferred on the amount of the base export profit). Respondents note that petitioner's request that the Department not subtract the base export profit would result in the Department countervailing a benefit not received, thereby resulting in an export charge that is greater than what is required to offset the benefit that MARIS receives. Therefore, respondents contend that the Department should continue to subtract the base export profit figure from its calculations.

Department's Position: We agree with respondents. In prior administrative reviews of *Refrigeration Compressors*, (*e.g.*, the 1992/1993 and 1993/1994) the Department has maintained a line item in its calculation methodology which included an adjustment for base export profit. Specifically, the Department's calculation of EEIA benefits included the line item deduction ''Less: Base Export Profit.'' *See* The Department's Calculation Methodology Memorandum: *Export Charge Rate Calculation for the Final Results of the Tenth Administrative Review—Certain Refrigeration Compressors from Singapore* (April 1, 1992—March 31, 1993). The Department's calculation for the 1993/1994 and 1994/1995 POR also includes the same line item deduction. *See* The Department's Calculation Methodology Memorandum: *Export Charge Rate Calculation for the Final Results of the Tenth Administrative Review—Certain Refrigeration Compressors from Singapore* (April 1, 1993—March 31, 1994).

However, in the last administrative review of *Refrigeration Compressors* for the period April 1, 1994 through March 31, 1995, the Department inadvertently neglected to subtract the base export profit in its calculation. In that administrative review, the respondents submitted on the record a base export profit amount which should have been deducted in our calculations. *See* Questionnaire Response April 25, 1996, Exhibit A–8, Statement A–1. Neither respondents nor petitioner commented on this inadvertent omission. No party raised the issue and therefore this calculation stood in our final results of review.

Accordingly, the Department rejects petitioner's argument that the base export profit should be excluded from the calculation because this reduction has never been used and is a change in the Department's methodology. Therefore, for the purposes of calculating a final margin, we have made no adjustments.

Comment 6: Petitioner argues that the Department should reject certain information submitted at verification regarding MARIS' tax liability, MARIS' and AMS' explanation of its sales figures, and MARIS' tax liability and hence export subsidy, and apply facts available with adverse inferences. Petitioner asserts that respondents participated in this review with an intent to mislead the Department by not providing complete and accurate information.

First, petitioner argues that MARIS withheld information on its tax liability and misrepresented the reason for withholding this information. Petitioner points out that in the 12th administrative review, the Department allowed MARIS to rely on estimated taxes due, for the purpose of calculating tax benefits received under EEIA (Part VI) although the IRAS had subsequently assessed higher taxes. Petitioner asserts that MARIS' failure to provide information regarding changes in its tax situation is a violation under the suspension agreement, which requires that ''[t]he Government of the Republic of Singapore . . . notify the Department in writing within 30 days prior to granting any new benefits to producers, manufacturers or exporters of the subject merchandise which may be countervailable.'' *See Suspension Agreement* at 51170. Additionally, MARIS and AMS's predecessor agreed that they would ''notify the Department in writing if they . . . apply for or receive directly or indirectly any new benefits on the subject product.'' *See Suspension Agreement* at 51170. Petitioner maintains that in past reviews, respondents have made repeated undertakings to supplement their tax calculations as they became final and if they incurred an additional liability. *See* 1994/95 administrative review *Response of the Government of Singapore, MARIS and AMS to the Department's countervailing Duty Questionnaire* (Public Version) pp. III–20, III–21 (April 25, 1996), which has been placed on the record of this review. Petitioner states that respondents told the Department that they would provide new tax information when the provisional tax figures were finalized, but never provided these updated figures when these figures changed. In fact, according to petitioners, the existence of updated tax figures was never positively represented by respondent, but instead was identified at verification by the Department. Additionally, petitioner states that respondents' explanation regarding the IRAS' new calculations (specifically, that these calculations were made subsequent to the May 27, 1997) is misleading, given that the new calculation was dated January 28, 1997 and paid in February, 1997.

Second, petitioner argues that MARIS failed to provide an accurate and adequate explanation of discrepancies between MARIS' and AMS' sales figures. Petitioner notes that respondents offered two explanations for this discrepancy. The first explanation, made in early October, 1997, related to the timing of sales by MARIS compared with those by AMS. The second explanation, made at verification in October 1997, was that MARIS performed tests to determine which compressors should be classified as subject merchandise.

Third, petitioner argues that MARIS provided two different explanations (*i.e.*, see comment 4) for changes to its tax liability. Petitioner argues that at verification MARIS provided a recalculation of its tax liability for the POR which would reduce its export charge payable. Petitioner asserts that the explanation the MARIS' accountants provided at verification is not consistent with the explanation MARIS' accountants provided to the GOS. Petitioner states that, given the fact the Singaporean tax law permits the negotiation of the tax owed past the Department's final results of review, the Department should critically examine any unusual adjustments to MARIS tax return.

Based on these alleged attempts to mislead the Department, petitioner asserts that the Department should apply adverse facts available, by finding

that the respondents have ''failed to cooperate by not acting to the best of [their] ability to comply with a request for information.'' 19 C.F.R. Section 351.308(a). Petitioner argues that the five criteria that the Department uses to determine the use of facts available have not been met in this case. These criteria stipulate that: (1) The information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information *and* meeting the requirements established by the Department with respect to the information; and (5) the information can be used without undue difficulties. *See Final Results of Antidumping Duty Administrative Review: Circular Non-Alloy Steel Pipe from Mexico*, 62 FR 37014 (July 10, 1997). Petitioner asserts that in this case none of the criteria have been met.

Respondents assert that petitioner's allegation that MARIS misstated its tax liability and did not submit a timely recalculation of its taxes is not relevant to this review, but instead applies to the prior review, for which the record is closed. Consequently, respondents assert the administrative record allows no further adjustments. Second, respondents argue that petitioner's allegation that there is a discrepancy between MARIS and AMS sales figures is without merit. Respondents assert that there are no inaccuracies in either company's sales figures, and that neither of these sales figures has any bearing on the calculation of the export charge. Lastly, respondents argue that petitioner's allegation that the Department has no choice but to rely on MARIS' preliminary tax benefit calculation because respondents offered two conflicting explanations is misplaced. Respondents state that the Department reviewed MARIS' tax-related records at verification (which included the warranty provision), and that the petitioner has not provided any information that suggests that the warranty provision is incorrect.

Finally, respondents argue that there is no basis for the Department to apply adverse facts available to MARIS' and AMS' sales figures because these figures do not have a bearing in the calculation of the export charge. Respondents assert that the export charge is calculated using MARIS' total exports of all compressors (*i.e.*, subject and non-subject merchandise), and the figures petitioner contend the Department should consider are total sales of subject merchandise (*i.e.*, only compressors that are less than ¼ horsepower) to all markets. Therefore, respondents argue that the figures petitioner has questioned are not used in the calculation of the export charge.

Department's Position: We disagree with petitioner. The Department has determined that the use of facts available is not warranted in this final results of administrative review. First, petitioner argues that the respondents did not meet its obligations under the suspension agreement to provide updated tax information. The specific example to which the petitioner cites is from the previous administrative review and therefore is not relevant in the current review. With regard to petitioner's specific arguments concerning this information, it is a restatement of the argument petitioner makes in comment 2 above.

Second, petitioner argued that MARIS failed to provide an accurate and adequate explanation of discrepancies between MARIS and AMS sales figures. The Department has determined that MARIS has provided a sufficient explanation for the alleged discrepancies which the Department verified to its satisfaction. With regard to petitioner's specific arguments concerning this information submitted by respondents, see comment 3 above.

Third, petitioner argued that MARIS provided two different explanations for changes to its tax liability. The Department has determined that MARIS explanations for its changes to its tax liability were reasonable. With regard to petitioner's specific arguments concerning this information submitted by respondents, see comments 4 and 5 above.

Additionally, pursuant to section 776(a) and (b) of the Act, examples of when the Department uses adverse facts available includes when an interested party withholds information that has been requested by the Department or fails to provide requested information by a set deadline or significantly impedes a proceeding. In this case, the Department has determined that respondents have not failed to cooperate with the Department and have acted to the best of their ability in complying with all requests for information. Additionally, respondents have met all the deadlines for submission of information (*i.e.*, questionnaire and supplemental questionnaire responses).

What the petitioner characterizes as untimely information and justification for the Department's application of facts available was information within the Department's discretion to request and accept at any time during an investigation or administrative review. *See* 19 C.F.R. 355.31(b)(1). Therefore, facts available is not applicable under these circumstances.

Final Results of Review

We determine that the signatories to the suspension agreement have complied with the terms of the suspension agreement, including the payment of the provisional export charge for the review period. From April 1, 1995 through March 31, 1996, a provisional export charge of 1.80 percent was in effect.

We determine the net subsidy to be 0.23 percent of the f.o.b. value of the merchandise for the April 1, 1995 through March 31, 1996 review period. Following the methodology outlined in section B.4 of the agreement, the Department determines that, for the period of review, a negative adjustment may be made to the provisional export charge rate in effect. Because the rate determined from this review is *de minimis*, the adjustment will equal the entire provisional export charge in effect for the POR, plus interest. For this period the GOS may refund or credit, in accordance with section B.4.c of the agreement, the amount to the companies, plus interest, calculated in accordance with section 778(b) of the Tariff Act.

Notification of Interested Parties

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(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 the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act and section 355.22 of the Department's regulations (19 CFR 355.22 (1997)).

Dated June 8, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–15871 Filed 6–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Exemption of Foreign Air Carriers From Customs Duties and Taxes; Request for Finding of Reciprocity (Indonesia)

Notice is hereby given that the Department of Commerce is undertaking to determine, pursuant to sections 309 and 317 of the Tariff Act of 1930, as amended (19 U.S.C. 1309 and 1317), whether the Government of Indonesia allows customs duties exemptions to aircraft of U.S. registry in connection with international commercial operations substantially reciprocal to those exemptions granted in the United States to aircraft of foreign registry.

At present, carriers of Indonesia are eligible to receive exemptions for aviation fuel and lubricants only (Treasury Decision 90–61). The Government of Indonesia has expressed its interest in expanding exemptions for its carriers to the full extent permitted by the Tariff Act of 1930, as amended.

The Tariff Act of 1930, as amended, provides exemptions for aircraft of foreign registry from payment of import duties on the import of certain supplies into the United States for such aircraft in connection with their international commercial operations. ''Supplies'' as used in this context cover a wide range of articles used by aircraft in international operations, including fuel and lubricants, spare parts, consumable supplies, and ground handling and support equipment. These exemptions are allowed upon a finding by the Secretary of Commerce, or his designee, and communicated to the Secretary of the Treasury, that such country allows, or will allow, ''substantially reciprocal privileges'' to aircraft of U.S. registry with respect to import of supplies into that country.

Interested parties are invited to submit their views and comments concerning this matter in writing to Mr. Everette James, Deputy Assistant Secretary for Service Industries and Finance, Room 1128, U.S. Department of Commerce, Washington, DC 20230. All submissions should be made in five copies and should be received no later than thirty (30) days following the publication of this notice.

Copies of all written comments received will be available for public inspection between the hours of 8:30 a.m. and 5:00 p.m. Monday through Friday in the Freedom of Information Inspection Facility, International Trade Administration, Room 4001, U.S. Department of Commerce, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eugene Alford, Office of Service Industries, International Trade Administration, Room 1124, U.S. Department of Commerce, Washington, DC 20230, (202) 482–5071.

Dated June 10, 1998.

Everette James,

Deputy Assistant Secretary for Service Industries and Finance.

[FR Doc. 98–15870 Filed 6–15–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Secretary Daley's Commercial Development Mission to Africa

AGENCY: International Trade Administration, Commerce.

ACTION: Secretary Daley's Commercial Development Mission to Africa.

SUMMARY: This notice serves to inform the public of a Secretarial Commercial Development Mission to Africa, September 12–20, 1998, and of the opportunity to apply for participation in the mission; sets forth objectives, procedures, and participation criteria for the mission; and requests applications.

DATES: Applications should be submitted to Lucie Naphin by July 15, 1998, in order to ensure sufficient time to obtain in-country appointments for applicants selected to participate in the mission. Applications received after that date will be considered only if space and scheduling constraints permit. The mission is scheduled to travel to South Africa, Kenya and Cote d'Ivoire, with other possible stops in the region.

ADDRESSES: Request for and submission of applications—Applications are available from Lucie Naphin, Director of the Office of Business Liaison, at (202) 482–1360 or via facsimile at (202) 482–4054. Numbers listed in this notice are not toll-free. An original and two copies of the required application materials should be sent to Ms. Naphin. Applications sent by facsimile must be immediately followed by submission of the original application to Ms. Naphin at the following address: Office of Business Liaison, Room 5062, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lucie Naphin at (202) 482–1360. Information is also available via the International Trade Administration's (ITA) Internet home page at ''http://www.ita.doc.gov''.

SUPPLEMENTARY INFORMATION:

Trade Mission Description

Secretary of Commerce William M. Daley will lead a Commercial Development Mission to Africa with program stops in several countries, including: South Africa, Kenya, and Cote d'Ivoire. The mission will build on the momentum of President Clinton's March 1998 visit to Africa in which Secretary Daley participated, strengthening commercial ties and expanding the dialogue between the public and private sectors of Africa and the United States.

The U.S. business delegation members on this mission will include U.S. companies whose interests are compatible with the developmental aspirations of the host countries, as well as those for whom advocacy will assist their efforts to win contract awards. The delegation will include business executives primarily representing companies in sectors which have been recommended by U.S. Embassies as having strong growth potential in the region, including: telecommunications, information technology, computers and software, agribusiness, power generation, health care, financial services, environmental technologies and general infrastructure.

The mission is scheduled to depart Washington, DC on Saturday, September 12, 1998 and return on Sunday, September 20. The precise schedule will depend on the availability of African government and private sector officials, the specific goals and interests of mission participants, and specific recommendations of the U.S. Embassies in the region.

The program for the mission will include: embassy briefings on the commercial/economic environment; meetings with potential buyers, agents/distributors and strategic alliance partners; meetings with African government ministers and business leaders; meetings with American business executives based in Africa; and legal seminars featuring African and U.S. government speakers as well as participation from the local private sector in each region.

The goals for the mission will include:

- Integrating Africa more fully into the global economy;
- Renewing African determination to build prosperity through free enterprise;
- Encouraging regional economic integration and cooperation;

• Working with African nations to transform the African-U.S. relationship from one of aid dependency to one of commercial partnership for mutual advantage;

• Achieving a more level playing field for U.S. firms in African markets;

• Increasing trade between Africa and the United States.

A full description of the mission is set forth in the Mission Statement, which is available from Lucie Naphin, Director of the Office of Business Liaison, at the address listed above or at the web site listed above.

Trade Mission Participation Criteria

The recruitment and selection of private sector participants in this mission will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions announced by Secretary Daley on March 3, 1997. Individuals must be at a level of executive seniority appropriate to the goals of the mission. Company participation will be determined on the basis of:

• Consistency of the company's goals with the scope and desired outcome of the mission as described herein;

• Relevance of a company's business line to the plan for the mission;

• Past, present and prospective business activity in Africa; and

• Diversity of company size, type, location, demographics and traditional under-representation in business.

An applicant's partisan political activities (including political contributions) are irrelevant to the selection process. An interested party must fill out an application to be considered for participation in the mission.

Endorsements/Referrals

Third parties may nominate or endorse potential applicants, but companies that are nominated or endorsed must themselves submit an application to be eligible for consideration. Referrals from political organizations will not be considered.

Costs

The fees to participate in the mission have not yet been determined and will be based on the number of participants. The fees will not cover travel or lodging expenses.

Authority: 15 U.S.C. 1512.

Dated: June 12, 1998.

Robert Marro,

Regional Director, Office of Africa, Near East and South Asia, International Trade Administration, Department of Commerce.

[FR Doc. 98–16127 Filed 6–15–98; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 980608150–8150–01]

RIN 0640–ZA03

Revision of the Cost-Share Requirement and Applicability of the Ten Bonus Points to All Future Solicitations To Operate Minority Business Development Centers (MBDC)

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Interim final policy request for comments.

SUMMARY: In order to attract and retain a greater number of qualified firms to operate its MBDC program, MBDA is revising its cost-share requirement for financial award recipients from forty percent (40%) to fifteen percent (15%) to be applied to all future competitions for MBDCs, as well as to all prospective renewals and/or extensions of awards originally competed at the 40% cost-share level. MBDA is also extending its policy to give an additional ten (10) bonus points to the applications of community-based organizations in all future MBDC solicitations. Previously, the 40% cost-share requirement and the 10 bonus points were applied to awards in certain designated geographic service areas only. The initial policies regarding these requirements were published in the **Federal Register** Notice of May 31, 1996, Vol. 51, page 27336 and continued on page 27337.

DATES: This interim policy is effective June 16, 1998. Comments on this interim policy must be submitted on or before July 16, 1998.

ADDRESSES: Comments should be sent to Mr. Paul R. Webber IV, Assistant Director, Minority Business Development Agency, U.S. Department of Commerce, Room 5073, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Webber IV at (202) 482–5061.

SUPPLEMENTARY INFORMATION: Under Executive Order 11625, MBDA provides business development assistance to persons who are members of groups determined by MBDA to be socially or economically disadvantaged, and to business concerns owned and controlled by such individuals. To deliver this assistance, MBDA funds MBDCs that offer a full range of management and technical assistance services, coordinate public and private resources on behalf of clients, and serve as a conduit for information concerning business development.

MBDA selects applicants to operate its MBDCs through a competitive solicitation process. The guidelines for operation of an MBDC are set forth in a detailed Competitive Application Package (CAP). The funding instrument for the MBDCs is a cooperative agreement, which, in addition to the CAP and the competitive solicitation published in the **Federal Register**, sets forth the applicable requirements which must be met by an MBDC operator (collectively, the ''program guidelines'').

Under the program guidelines, selected geographic service areas were designated in the May 31, 1996, **Federal Register**, in which the Department of Commerce currently funds up to 60% of the total budgeted cost of operating an MBDC on an annual basis. The MBDC operator has been required to contribute at least 40% of the total project cost (the ''cost-share requirement''). Prior to the Notice, MBDC operators were required to contribute only 15% of the total project costs. Contributions, which may be utilized in satisfying the cost-share requirement, include cash contributions, non-cash application contributions, third party in-kind contribution and client fees. In addition, the applications from those designated service areas were given an additional ten (10) bonus points for being community-based organizations that had received a programmatically acceptable and responsive score. In order to attract a greater number of qualified firms to compete in the MBDC program, all future MBDC solicitations, regardless of geographic service area, will be competed, with the Department of Commerce funding up to 85% of the total project cost. The operator will be required to contribute at least 15% of the total project cost in order to satisfy the cost-share requirement.

In addition, under existing program guidelines, continued funding of an award is at the total discretion of MBDA based on such factors as the MBDC's performance, changes in availability of funds, and shifts in agency priorities. MBDA has determined that it is an agency priority to retain existing MBDC operators by easing the burden caused by a 40% cost-share requirement. It is also an agency priority to establish consistency and equity with regard to the cost-share requirement between existing MBDC operators and future operators. Accordingly, the cost-share requirement of existing MBDC operators will be decreased from 40% and will revert to MBDA's prior policy of 15% at the time of renewal and/or extension of

awards. However, the decrease in cost sharing will not be applied retroactively.

Finally, based on prior experience with community-based organizations, MBDA has determined that it is in the interest of the MBDC program to encourage the participation of such organizations in the competition to operate MBDCs. Therefore, MBDA has determined that it is an agency priority to extend the policy of allowing 10 bonus points during the evaluation process to community-based organizations, which was limited to certain designated locations in the **Federal Register** notice of May 31, 1996, to all future MBDC solicitations. The MBDC evaluation scoring system will add 10 bonus points to the applications of community-based organizations which receive a programmatically acceptable and responsive score. Each qualifying application will receive the full 10 points. Community-based applicant organizations are those organizations currently located within the geographic service area designated in the solicitation for the award, and whose headquarters and/or principal place of business have been located within the geographic service area during the last five years. Where an applicant organization has been in existence for fewer than five years or has been present in the geographic service area for fewer than five years, the individual years of experience of the applicant organization's principals may be applied toward the requirement of five years of organization experience. The individual years of experience must have been acquired in the geographic service area which is the subject of the solicitation.

Statement of Policy

In order to implement its revised program in support of the minority business sector, MBDA hereby revises its policy of requiring a 40% cost-share requirement for MBDC awards in certain locations and establishes a cost-share requirement for all prospective MBDC awards of at least 15% of total project cost for financial assistance recipients. In addition, the cost-share requirement of existing MBDC operators will be decreased from 40% to 15% at the time of renewal and/or extension of awards. However, this decrease in cost sharing will not be applied retroactively. MBDA will also extend the policy of allowing 10 bonus points during the evaluation process to community-based organizations, which was limited to certain designated locations in the **Federal Register** notice of May 31, 1996, to all future MBDC solicitations.

Executive Order 12866

This policy revision was determined to be not significant for purposes of E.O. 12866.

Administrative Procedure Act

Since this notice of policy revision is a matter relating to public property, loans, grants, benefits, or contracts under 5 U.S.C. 553(a)(2), the requirements of section 553 do not apply.

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this notice of policy change because the notice was not required to be promulgated as a proposed rule before issuance in final form by 5 U.S.C. § 553 or by any other law, As a result, neither an initial nor final Regulatory Analysis was required, and none has been prepared.

Executive Order 12612

This policy statement does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Authority: 15 U.S.C. 1512 and Executive Order 11625.

Dated: June 4, 1998.

Juanita E. Berry,

Federal Register Liaison Officer, Minority Business Development Agency.

Courtland Cox,

Director, Minority Business Development Agency.

[FR Doc. 98–15869 Filed 6–15–98; 8:45 am]

BILLING CODE 3510–21–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Government Owned Invention Available for Licensing and Prospective Grant of Exclusive Patent License

SUMMARY: The invention listed below is owned by the United States Government, as represented by the Department of Commerce. The Government's ownership interest in the invention is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of Federally funded research and development.

This Notice is also in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology (''NIST''), U.S. Department of Commerce, is contemplating the grant of an exclusive license to practice the invention embodied in the invention listed below, U.S. Patent Number 5,620,857, titled, ''Optical Trap for Detection and Quantitation of Subzeptomolar Quantities of Analytes,'' in the field of use of diagnostic, analytical and research applications for the detection, measurement and/or monitoring of analytes, and in the licensed territory of the United States of America, its territories, possessions and commonwealths and all other countries in which NIST obtains patent protection at the request and expense of Bayer Corporation, to Bayer Corporation, having a place of business in Tarrytown, NY.

DATES: Comments must be received in writing no later than September 14, 1998.

ADDRESSES: Comments on the Prospective Grant must be submitted to: Terry Lynch, National Institute of Standards and Technology, Industrial Partnerships Program, Building 820, Room 213, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Terry Lynch, National Institute of Standards and Technology, Industrial Partnership Program, Building 820, Room 213, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: The invention available for licensing is:

NIST Docket Number: 94–042.

Title: Optical Trap for the Detection and Quantitation of Subzeptomolar Quantities of Analytes.

Abstract: Tightly focused beams of laser light are used as ''optical tweezers'' to trap and manipulate polarizable objects such as microspheres of glass or latex with diameters on the order of 4.5 micrometers. When analytes are allowed to adhere to the microspheres, small quantities of these analytes can be manipulated, thus allowing their detection and quantitation even when amounts and concentrations of the analytes are extremely small. Illustrative examples include measuring the strength needed to break antibody-antigen bonds and the detection of DNA sequences.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Dated: July 9, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–15867 Filed 6–15–98; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 980413092–8092–1]

RIN 0648–ZA39

NOAA Climate and Global Change Program, Program Announcement

AGENCY: Office of Global Programs, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Climate and Global Change Program represents a National Oceanic and Atmospheric Administration (NOAA) contribution to evolving national and international programs designed to improve our ability to observe, understand, predict, and respond to changes in the global environment. This program builds on NOAA's mission requirements and longstanding capabilities in global change research and prediction. The NOAA Program is a key contributing element of the U.S. Global Change Research Program (USGCRP), which is coordinated by the interagency Committee on Environmental and Natural Resources. NOAA's program is designed to complement other agency contributions to that national effort.

DATES: Strict deadlines for submission to the FY 1999 process are: Letters of intent must be received at OGP no later than July 16, 1998. Full proposals must be received at OGP no later than September 30, 1998. Applicants who have not received a response to their letter of intent by August 21, 1998, should contact the program office. The time from target date to grant award varies with program area. We anticipate that review of full proposals will occur during late 1998 and funding should begin during the spring of 1999 for most approved projects. May 1, 1999, should be used as the proposed start date on proposals, unless otherwise directed by the appropriate Program Officer. Applicants should be notified of their status within 6 months. All proposals must be submitted in accordance with the guidelines below. Failure to heed these guidelines may result in proposals being returned without review.

ADDRESSES: Proposals may be submitted to: Office of Global Programs, National Oceanic and Atmospheric Administration, 1100 Wayne Avenue, Suite 1225, Silver Spring, MD 20910–5603.

FOR FURTHER INFORMATION CONTACT: Irma duPree at the above address, or at phone: (301) 427–2089 ext. 17, fax: (301) 427–2073, Internet: duPree@ogp.noaa.gov.

SUPPLEMENTARY INFORMATION:

Funding Availability

NOAA believes that the Climate and Global Change Program will benefit significantly from a strong partnership with outside investigators. Current Program plans assume that over 50% of the total resources provided through this announcement will support extramural efforts, particularly those involving the broad academic community. Because of ongoing debates on the Federal budget, it is uncertain how much money will be available through this announcement. Actual funding levels will depend upon the final FY 1999 budget appropriations. This Program Announcement is for projects to be conducted by investigators both inside and outside of NOAA, primarily over a one, two or three year period. The funding instrument for extramural awards will be a grant unless it is anticipated that NOAA will be substantially involved in the implementation of the project, in which case the funding instrument should be a cooperative agreement. Examples of substantial involvement may include but are not limited to proposals for collaboration between NOAA or NOAA scientists and a recipient scientist or technician and/or contemplation by NOAA of detailing Federal personnel to work on proposed projects. NOAA will make decisions regarding the use of a cooperative agreement on a case-by-case basis. Funding for non-U.S. institutions and contractual arrangements for services and products for delivery to NOAA are not available under this announcement. Matching share is not required by this program.

Program Authority

Authority: 49 U.S.C. 44720 (b); 33 U.S.C. 883d, 883e; 15 U.S.C. 2904; 15 U.S.C. 2931 et seq.

(CFDA No. 11.431)—Climate and Atmospheric Research: Program Objectives

The long term objective of the Climate and Global Change Program is to provide reliable predictions of climate change and associated regional implications on time scales ranging from seasons to a century or more. NOAA believes that climate variability across these time scales can be modelled with an acceptable probability of success and are the most relevant for fundamental social concerns. Predicting the behavior of the coupled ocean-atmosphere-land surface system will be NOAA's primary contribution to a successful national effort to deal with observed or anticipate changes in the global environment. NOAA has a range of unique facilities and capabilities that can be applied to Climate and Global Change Investigations. Proposals that seek to exploit these resources in collaborative efforts between NOAA and extramural investigators are encouraged.

Program Priorities

In FY 1999, NOAA will give priority attention to individual proposals in the areas listed below. Investigators are asked to specify clearly which of these areas is being pursed. The names, affiliations and phone numbers of relevant Climate and Global Change Program Officers are provided. Funding for some programs may be limited to ongoing projects or may be used to fund projects proposed in FY 1998 that were unable to be funded due to budgetary circumstances. Prospective applicants should communicate with Program Officers for information on priorities within program elements and prospects for funding. Applicants should sent letters of intent and proposals to the NOAA Office of Global Program rather than to individual Program Officers.

- Aerosols—The Aerosols Project focuses on research to improve the predictive understanding of the role of anthropogenic aerosols in climate forcing. Due to limited funds anticipated in FY 1999, all funding is expected to be used to maintain support for ongoing research activities. Unfortunately, therefore, we are unable to seek applications to fund new starts. For further information contact: Joel M. Levy, NOAA/Office of Global Programs, 301–427–2089 ext. 21, Internet: levy@ogp.noaa.gov.
- Atlantic Climate Change Program (ACCP)—NOAA/OGP is currently developing a refocused, follow-on program to ACCP that will address modes of climate variability in the Atlantic sector. This new program is being developed in close collaboration with the International Climate Variability and Predictability Program (CLIVAR). A science plan for the emerging Atlantic program is in preparation and it is anticipated that a program announcement will be issued later in FY 1999.
- Atmospheric Chemistry—The Atmospheric Chemistry Project focuses

on global monitoring, process-oriented laboratory and field studies, and theoretical modeling to improve the predictive understanding of the atmospheric trace gases that influence the earth's chemical and radiative balance. FY 1999 grants in Atmospheric Chemistry will focus on studies associated with the International Global Atmospheric Chemistry (IGAC) project of the IGBP. Emphasis is placed on research that focuses on the analysis and interpretation of NARE-related field studies and the development of related modeling tools and airborne instrumentation to support future such studies. Proposals are also solicited for investigations that improve upon global warming potentials (or other indices) in order to better relate responses to greenhouse gases to regional radiative forcing and associated regional climate changes. For an information sheet containing further details, contact: Joel M. Levy, NOAA/Office of Global Programs, 301–427–2089 ext. 21, Internet: levy@ogp.noaa.gov; or Fred C. Fehsenfeld, NOAA/Aeronomy Laboratory, Boulder, CO, 303–497–5819, Internet: fcf@al.noaa.gov.

• Climate Change Data and Detection—the scientific goals of this element include efforts to: (1) provide data and information management support activities needed to assure the availability of critical data sets from a variety of national and international programs of primary interest to NOAA's Climate and Global Change Program, e.g., the CLIVAR (Climate Variability and Prediction) Program, GEWEX (Global Energy & Water Cycle Experiment), GOALS (Global Ocean-Atmosphere-Land-System), GCOS, National and International Assessments, etc.; (2) provide data and information management support related to cross cutting science efforts necessary to assess seasonal, interannual, decadal, and longer climate variations and changes; (3) document the quantitative character of observed climate variations and changes; and (4) attribute changes in the observed climate record to specific climate forcings. Proposals are sought that are clearly linked to these scientific objectives and that are under the direction of a scientific principal investigator. Proposals that are directly linked to major national and international assessments, such as the Inter-governmental Panel on Climate Change (IPCC), are encouraged. Proposals to enhance data system infrastructure without firm science driven objectives will not be considered. NOAA/NASA Jointly Sponsored Project: A number of new starts are anticipated within the NOAA/National Aeronautics and Space Administration (NASA) co-sponsored project that supports research in the areas of data fusion and enhancement of climate data sets through the use of space and/or ground based observations.

NOAA/DOE Jointly Sponsored Project: A very limited number of new starts are anticipated within the NOAA/Department of Energy (DOE) co-sponsored project that specifically addresses all aspects of Climate Change Detection and Attribution.

Additional details on the jointly sponsored projects are provided on the supplementary fact sheet included in the Program Announcement mailing (additional copies of the supplementary fact sheet can be obtained from Irma duPree at the Office of Global Programs). For further information contact: Bill Murray, NOAA/Global Programs, Silver Spring, MD; 301–427–2089 ext. 26, Internet: murray@ogp.noaa.gov, Chris Miller, NOAA/NESDIS, Silver Spring, MD, 20910, 301–713–1264, Internet: miller@esdim.noaa.gov, Martha Maiden, NASA/Goddard Space Flight Center, Greenbelt, MD, 301–286–0012, Internet: martha.maiden@gsfc.nasa.gov, or Rick Petty, DOE/Environmental Sciences Division, Germantown, MD, 301–903–5548, Internet: Rick.Petty@oer.doe.gov.

• Climate Dynamics and Experimental Prediction—This program will not accept applications to initiate centers at new institutions, but will accept renewal applications for ongoing efforts or as part of ongoing negotiations. For further information, contact Mark Eakin, NOAA/Global Programs, Silver Spring, MD; 301–427–2089, ext. 19, Internet: eakin@ogp.noaa.gov.

• Economics and Human Dimensions of Climate Fluctuations—This program element is aimed at understanding how social and economic systems are currently influenced by fluctuations in climate (seasonal, interannual, and decadal), and how human behavior can be (or why it may not be) affected based on information about variability in the climate system. We are particularly interested in the extent to which probabilistic, early-warning climate forecast information can be incorporated into existing decision-making to affect adjustment and adaptation. Projects should be comprised of analyses of the following: how decision processes are sensitive to climate variability; how decisions could incorporate climate information, particularly forecasts; the social and economic factors that enhance or impede the use of climate information; and the consequences of people changing their decisions based on climate information. Decision processes can be investigated at the individual, industry, sector or institutional level, and the climate information should be based on regional climate influences driven by global climate phenomena (e.g., ENSO events, North Atlantic Oscillation, Pacific Decadal Oscillation). For more information and a detailed information sheet, researchers are strongly encouraged to contact: Caitlin Simpson, 1100 Wayne Avenue, Suite 1225, Silver Spring, MD 20910; telephone: 301–427–2089, ext 47; or email: simpson@ogp.noaa.gov.

• Education—contact: Daphne Gemmill, NOAA/Office of Global Programs, Silver Spring, MD; 301–427–2089, ext. 20, Internet: gemmill@ogp.noaa.gov.

• GCIP (GEWEX Continental-Scale International Project)—In research funded through this component, NOAA will direct its principal contribution for the GEWEX Continental-scale International Project to: (1) Improving the representation of processes such as cold season hydrometeorological processes, subgrid scale precipitation variability, evolving soil moisture fields and their subgrid scale variability and evolving vegetation covers in coupled land/atmosphere models; (2) improving the measurement and understanding of heavy precipitation and runoff regimes in the eastern part of the Mississippi River Basin and their role in water and energy budgets; (3) improving the analysis of precipitation over a range of time and space scales; (4) initiating studies of critical physical processes in the eastern part of the Mississippi River Basin; and (5) undertaking studies and model development to make the outputs of climate forecasts and information more relevant for water resource manager. Emphasis will also be placed on issues related to the scale integration of hydrometeorological processes in climate models and on the transfer of representations of these processes into a climate model either through a nested model approach or improved land surface schemes. As outline in its Major Activities Plan for 1997, 1998 with Outlook for 1999, GCIP anticipates that researchers will use its comprehensive in-situ, remote sensing and model output data sets for diagnostic studies and for model development and validation. A number of GCIP initial data sets have been prepared to provide data services support during the build-up period before the five-year enhanced observing period which started on 1 October 1995. The initial data sets are compiled for on-line access by GCIP

investigators to the extent that is technically feasible. They have also been published on a CD–ROM for wide distribution. GCIP is interested in proposals that utilize these data sets to address the scientific problems outlined above. Further information about the GCIP data sets already compiled as well as the plans and projected schedule for future datasets can be accessed through the GCIP ''home page'' on the World Wide Web at the URL address: http://www.ogp.noaa.gov/gcip. The focus for the GEWEX Continental-scale International Project (GCIP) is the Mississippi River Basin. A more detailed information sheet will be provided to those who contact Rick Lawford, NOAA/Office of Global Programs, Silver Spring, MD; (301) 427–2089, ext. 40, Internet: lawford@ogp.noaa.gov.

• Global Ocean—Atmosphere—Land System (GOALS)—The objectives of the GOALS program element are to understand global climate variability on seasonal-to-interannual time scales, to determine the extent to which this variability is predictable, to develop the observational, theoretical, and computational means to predict this variability, and to foster the development of experimental predictions within the limits of proven feasibility. GOALS is intended to further our understanding and improve predictions of the El Niño/Southern Oscillation (ENSO) phenomena as well as to extend our understanding of predictability of seasonal to interannual fluctuations beyond the tropical Pacific to include the effects of the other tropical oceans, higher latitude oceans, and land surface processes. For an information sheet outlining high-priority GOALS activities solicited in FY 1999, please contact: Michael Patterson, NOAA/Office of Global Programs, Silver Spring, MD; 301–427–2089, ext. 12, Internet: Patterson@ogp.noaa.gov. Scientists interested in submitting proposals to the proposals Pan-American Climate Studies (PACS) Program, a subprogram within GOALS focussing on seasonal-to-interannual climate variability over the Americas, are directed to the program description below.

• Pan-American Climate Studies (PACS)—The principal goal of PACS is to extend the scope and improve the skill of operational seasonal-to-interannual climate prediction over the Americas. Particular emphasis is placed on understanding the mechanisms associated with warm season rainfall and its potential predictability. In addition to seasonal mean rainfall and temperature, PACS is concerned with the frequency of occurrence of significant weather events over the course of a season or seasons.

The scientific objectives of PACS are to promote a better understanding and more realistic simulation of: (1) The role of boundary processes in forcing of seasonal-to-interannual climate variability over the Americas, (2) the structure and evolution of tropical SST fields, (3) the seasonally varying mean climate over the Americas and adjacent ocean regions, (4) the structure and variability of the ITCZ/cold tongue complex and subtropical stratus cloud decks and their influence on climate over the Americas, and (5) the relevant land surface processes that shape the distribution of continental precipitation. Please refer to the PACS home page for further information (http://tao.atmos.washington.edu/pacs/). For an information sheet outlining high-priority PACS activities solicited in FY 1999, please contact: Michael Patterson, NOAA/Office of Global Programs, Silver Spring, MD; 301–427–2089 ext. 12, Internet: Patterson@ogp.noaa.gov.

Consistent with the above objectives, PACS and GCIP have initiated an integrated program focusing on warm season rainfall over North America. Please refer to the separate description of this joint PACS/GCIP program below.

PACS intends to contribute to an international field program in the tropical eastern Pacific being planned for the year 2000. Proposals contributing to this effort will be solicited under a separate PACS Field Program Announcement to be issued later this year.

• Joint PACS/GCIP Program on the North American Monsoon System—In response to recommendations from the joint PACS/GCIP Modeling Workshop held in October, 1997, NOAA and NASA are initiating a joint PACS/GCIP program to accelerate research on the North American monsoon system. A near-term priority for the program is to address the difficulty that current-generation global and regional climate models have in predicting the space and time distribution of precipitation with the accuracy necessary for hydrological prediction and applications. Four specific research areas are presently identified: (1) the apparent link between the summer monsoon in Northwest Mexico and precipitation in the Great Plains of the United States and its potential for predictive value; (2) the influence of regional hydrometeorological land surface processes on large-scale precipitation over North America and the importance this influence has on predictability; (3) defining how processes of varying spatial and temporal scales influence seasonal-to-interannual predictability over North America; (4) diagnostic studies designed to determine the limits of predictability in regional climate variations. The workshop report may provide helpful information to researchers interested submitting proposals to this new program area. For a copy of the report and further information about the program, please contact: Michael Patterson, NOAA/Office of Global Programs, Silver Spring, MD; 301–427–2089 ext. 12, Internet: Patterson@ogp.noaa.gov.

• Ocean-Atmosphere Carbon Exchange Study (OACES)—OACES focuses on global observations, process-oriented field studies and modeling to improve our ability to predict the fate of anthropogenic carbon dioxide (CO_2). Over the years, OACES research has involved: (i) high-quality measurements of CO_2 system parameters that can be used to document the transient invasion of anthropogenic CO_2 into the ocean, (ii) time-series measurements of atmospheric $^{12}CO_2$ and $^{13}CO_2$ through NOAA's global cooperative flask sampling network to examine carbon sources and sinks, (iii) underway pCO_2 measurements on ships of opportunity, (iv) assimilation of oceanic and atmospheric observations into general circulation models to contribute towards more accurate predictions of future climate changes, and (v) development of improved sensors for determining ocean-atmosphere-land carbon fluxes. In FY99, limited funds are available for proposals addressing the following areas: (a) synthesis of ocean carbon data collected on OACES-funded cruises in support of the Global CO_2 Survey and (b) external participation in the NOAA/OGP-supported Carbon Modeling Consortium. For an information sheet containing further details, please contact Lisa Dilling, NOAA/Office of Global Programs, Silver Spring, MD; 301–427–2089 ext. 16, Internet: dilling@ogp.noaa.gov or see the web at: http://www.ogp.noaa.gov/NPE/OACES/OACES99info.html.

• Paleoclimatology—The NOAA Paleoclimatology Program will entertain proposals that support the joint IGBP PAGES/WCRP CLIVAR Research Initiative that is jointly supported by NOAA and the National Science Foundation (NSF). Proposals should be submitted to the NSF Earth System History Announcement of Opportunity with an expected due date in January 1999. Proposals should address seasonal- to annually-dated time series to develop an understanding of the full range of natural environmental

variability during the holocene. Research efforts should focus on the utilization of seasonally- to annually-dated paleoclimate time series to develop an understanding of the seasonal to century scale variability and predictability of: (1) the ENSO and African/Asian monsoon systems, (2) the ocean thermohaline system and its relation to global change, and (3) the hydrologic system at regional to global scales, as it relates to the above. Investigators from the paleoclimate and modern climate dynamics communities are encouraged to collaborate on proposals that focus on understanding the full range of natural variability and how well this variability can be represented by models. Particular interest exists for work that illustrates and explains abrupt shifts of climate variability relevant to future climate change. Proposals submitted in response to this emphasis will be jointly reviewed in accordance with established NSF and NOAA procedures for external merit review and will be supported by the NSF/Earth Science History (ESH) Program and/or the NOAA/Office of Global Programs. Letters of Intent are not required for this program. For an information sheet or more information, contact Mark Eakin, NOAA/Global Programs, Silver Spring, MD; 301–427–2089 ext. 19, Internet: eakin@ogp.noaa.gov; Jonathan Overpeck, NOAA/National Geophysical Data Center, Boulder, CO; 303–497–6172, Internet: jto@mail.ngdc.noaa.gov; or Herman Zimmerman, NSF ESH/ATM Program, Arlington, VA; 703–306–1527, Internet: hzimmerm@nsf.gov.

Eligibility

Extramural eligibility is not limited and is encouraged with the objective of developing a strong partnership with the academic community. Non-academic proposers are urged to seek collaboration with academic institutions. Universities, non-profit organizations, for profit organizations, State and local governments, and Indian Tribes, are included among entities eligible for funding under this announcement. While not a prerequisite for funding, applicants are encouraged to consider conducting their research in one or more of the National Marine Estuarine Research Reserve System or National Marine Sanctuary sites. For further information on these field laboratory sites, contact Dr. Dwight Trueblood, NOAA/NOS, 301–713–3145 ext. 174.

The NOAA Climate and Global Change Program has been approved for multi-year funding up to a three year duration. Funding for non-U.S. institutions is not available under this announcement.

Letters of Intent

Letters of Intent (LOI): (1) Letters should be no more than two page in length and include the name and institution of principal investigator(s), a statement of the problem, brief summary of work to be completed, approximate cost of the project, and program element(s) to which the proposal should be directed. (2) Evaluation will be by program management. (3) It is in the best interest of applicants and their institutions to submit letters of intent; however, it is not a requirement. (4) Facsimile and electronic mail are acceptable for letters of intent only. (5) Projects deemed unsuitable during LOI review will not be encouraged to submit full proposals.

Evaluation Criteria

Consideration for financial assistance will be given to those proposals which address one of the Program Priorities listed below and meet the following evaluation criteria:

(1) Scientific Merit (20%): Intrinsic scientific value of the subject and the study proposed.

(2) Relevance (20%): Importance and relevance to the goal of the Climate and Global Change Program and to the research areas listed above.

(3) Methodology (20%): Focused scientific objective and strategy, including measurement strategies and data management considerations; project milestones; and final products.

(4) Readiness (20%): Nature of the problem; relevant history and status of existing work; level of planning, including existence of supporting documents; strength of proposed scientific and management team; past performance record of proposers.

(5) Linkages (10%): Connections to existing or planned national and international programs; partnerships with other agency or NOAA participants, where appropriate.

(6) Costs (10%): Adequacy of proposed resources; appropriate share of total available resources; prospects for joint funding; identification of long-term commitments.

Selection Procedures

All proposals will be evaluated and ranked in accordance with the assigned weights of the above evaluation criteria by (1) independent peer mail review, and/or (2) independent peer panel review; both NOAA and non-NOAA experts in the field may be used in this process. The program officer will not be a voting member of an independent peer panel. Their recommendations and evaluations will be considered by the Program Manager/Officer in final selections. Those ranked by the panel and program as not recommended for funding will not be given further consideration and will be notified of non-selection. For the proposals rated either Excellent, Very Good or Good, the Program Manager will: (a) ascertain which proposals meet the program priorities, and do not substantially duplicate other projects that are currently funded by NOAA or are approved for funding by other federal agencies, hence, awards may not necessarily be made to the highest-scored proposals, (b) select the proposals to be funded, (c) determine the total duration of funding for each proposal, and (d) determine the amount of funds available for each proposal.

Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding.

Proposal Submission

The guidelines for proposal preparation provided below are mandatory. Failure to heed these guidelines may result in proposals being returned without review.

(a) Full Proposals: (1) Proposals submitted to the NOAA Climate and Global Change Program must include the original and two unbound copies of the proposal. (2) Investigators are not required to submit more than 3 copies of the proposal, however, the normal review process requires 20 copies. Investigators are encouraged to submit sufficient proposal copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5x11″), or otherwise unusual materials submitted as part of the proposal. Only three copies of the Federally required forms are needed. (3) Proposals must be limited to 30 pages (numbered), including budget, investigators vitae, and all appendices, and should be limited to funding requests for one to three year duration. Appended information may not be used to circumvent the page length limit. Federally mandated forms are not included within the page count. (4) Proposals should be sent to the NOAA Office of Global Programs at the above address. (5) Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

(b) Required Elements: All proposals should include the following elements:

(1) Signed title page: The title page should be signed by the Principal Investigator (PI) and the institutional representative and should clearly

indicate which project area is being addressed. The PI and institutional representative should be identified by full name, title, organization, telephone number and address. The total amount of Federal funds being requested should be listed for each budget period.

(2) Abstract: An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institution(s) investigator(s), total proposed cost and budget period.

(3) Results from prior research: The results of related projects supported by NOAA and other agencies should be described, including their relation to the currently proposed work. Reference to each prior research award should include the title, agency, award number, PIs, period of award and total award. The section should be a brief summary and should not exceed two pages total.

(4) Statement of work: The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, relevance to the goal of the Climate and Global Change Program, and the program priorities listed above. Benefits of the proposed project to the general public and the scientific community should be discussed. A year-by-year summary of proposed work must be included clearly indicating that each year's proposed work is severable and can easily be separated into annual increments of meaningful work. The statement of work, including references but excluding figures and other visual materials, must not exceed 15 pages of text. Investigators wishing to submit group proposals that exceed the 15 page limit should discuss this possibility with the appropriate Program Officer prior to submission. In general, proposals from 3 or more investigators may include a statement of work containing up to 15 pages of overall project description plus up to 5 additional pages for individual project descriptions.

(5) Budget: Applicants must submit a Standard Form 424 (4–92) ''Application for Federal Assistance'', including a detailed budget using the Standard Form 424a (4–92), ''Budget Information—Non-Construction Programs''. The form is included in the standard NOAA application kit. The proposal must include total and annual budgets corresponding with the descriptions provided in the statement of work. Additional text to justify expenses should be included as necessary.

(6) Vitae: Abbreviated curriculum vitae are sought with each proposal. Reference lists should be limited to all publications in the last three years with up to five other relevant papers.

(7) Current and pending support: For each investigator, submit a list that includes project title, supporting agency with grant number, investigator months, dollar value and duration. Requested values should be listed for pending support.

(8) List of suggested reviewers: The cover letter may include a list of individuals qualified and suggested to review the proposal. It also may include a list of individuals that applicants would prefer to not review the proposal. Such lists may be considered at the discretion of the Program Officer.

(c) Other requirements:

(1) Applicants may obtain a standard NOAA application kit from the Program Office.

Primary applicant Certification—All primary applicants must submit a completed Form CD–511, ''Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying''. Applicants are also hereby notified of the following:

1. Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension,'' and the related section of the certification form prescribed above applies;

2. Drug Free Workpace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR Part 26, Subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

3. Anti-Lobbying—Persons (as defined at 15 CFR Part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions'', and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, appendix B.

Lower Tier Certifications

(1) Recipients must require applicants/bidders for subgrants, contracts, subcontracts, or lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form SF–LLL, '' Disclosure of Lobbying Activities.'' Form DC–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

(2) Recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

(3) Preaward Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation to the applicant on the part of Department of Commerce to cover preaward costs.

(4) This program is subject to the requirements of OMB Circular No. A–110, ''Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations'', and 15 CFR Part 24, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'', as applicable. Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

(5) All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(6) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(7) No award of Federal funds shall be made to an applicant who has an

outstanding delinquent Federal debt until either:

(i) The delinquent account is paid in full,

(ii) A negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to the Department of Commerce are made.

(8) Buy American-Made Equipment or Products—Applicants are encouraged that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

(9) The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

(d) If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

(e) In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin or disability shall be excluded from participation in, denied benefits of, or be subjected to discrimination under any program or activity receiving financial assistance from the NOAA Climate and Global Change Program. The NOAA Climate and Global Change Program does not have direct TDD (Telephonic Device for the Deaf) capabilities, but can be reached through the State of Maryland supplied TDD contact number 800–735–2258, between the hours of 8:00 am–4:30 pm.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number.

Classification: The standard forms have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB approval number 0348–0043, 0348–0044, and 0348–0046. This notice has been determined to be not significant for purposes of Executive Order 12866.

Dated: June 10, 1998.

J. Michael Hall,

Director, Office of Global Programs, National Oceanic and Atmospheric Administration.

[FR Doc. 98–15887 Filed 6–15–98; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060998B]

Marine Mammals; File No. 782–1438

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

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, BIN C15700, Building 1, Seattle, WA 98115–0070, has requested an amendment to scientific research Permit No. 782–1438.

DATES: Written or telefaxed comments must be received on or before July 16, 1998.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6150); and

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 782–1438, issued on May 8, 1998 (63 FR 27265) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No. 782–1438 authorizes the permit holder to conduct aerial surveys of large and small cetaceans in the waters off the coasts of Alaska, Washington, Oregon, and California. During the course of these surveys, some pinniped species may be inadvertently harassed. The permit holder requests authorization to conduct delphinid and pinniped vessel surveys, and photo-identify and biopsy sample large cetaceans, in order to estimate abundance, distribution, identify individuals, and determine stock structure.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 9, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–15868 Filed 6–15–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060398A]

Marine Mammals

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that D. Ann Pabst, Ph.D., University of North Carolina at Wilmington, 601 South College Road, Wilmington, North Carolina 28403–3297, has been issued an amendment to scientific research Permit No. 1031.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250); and

Regional Administrator, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813/570–5301).

SUPPLEMENTARY INFORMATION: On April 23, 1998, notice was published in the **Federal Register** (63 FR 20171) that an amendment of permit No. 1031, issued March 5, 1997 (62 FR 11158), had been requested by the above-named individual. The requested amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

Issuance of this amendment, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 10, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–15994 Filed 6–15–98; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the Chicago Mercantile Exchange for Designation as a Contract Market in Dry Whey Futures and Options and Nonfat Dry Milk Futures and Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and options contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in dry whey futures and options contracts and nonfat dry milk futures and options contracts. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before July 16, 1998.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the CME dry whey futures and options or the nonfat dry milk futures and options.

FOR FURTHER INFORMATION CONTACT: Please contact Frederick Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, 20581, telephone (202) 418–5273. Facsimile number: (202) 418–5527, Electronic mail: flinse@cftc.gov

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 522) and the Commission's regulations thereunder (17 CFR Part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such material should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on June 9, 1998.

Steven Manaster,

Director.

[FR Doc. 98–15976 Filed 6–15–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability and Announcement of Public Hearings for the Draft Legislative Environmental Impact Statement (DLEIS) for Renewal of the B–20 Land Withdrawal at Naval Air Station Fallon, Nevada

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency a Draft Legislative Environmental Impact Statement (DLEIS) for the renewal of the withdrawal of approximately 21,576 acres of Public Lands for training range B–20 in Churchill County, Nevada near Naval Air Station Fallon, Nevada. This DLEIS and the renewal request are being submitted in accordance with Public law 99–606, the Military Lands Withdrawal Act of 1986. Two public

hearings will be held for the purpose to receive oral and written comments on the DLEIS. Federal, state and local agencies, and interested individuals are invited to be present or represented at the hearings.

DATES: Hearing dates are as follows:

1. July 13, 1998, 7:00 p.m., Fallon, Nevada.
2. July 14, 1998, 7:00 p.m., Reno, Nevada.

ADDRESSES: Hearing locations are:

1. Fallon—Fallon Convention Center, 100 Campus Way, Fallon, Nevada.
2. Reno—Airport Plaza Hotel, 1981 Terminal Way, Reno, Nevada.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel L. Dennis at (650) 244–3007.

SUPPLEMENTARY INFORMATION: The proposed action evaluated this DLEIS is the renewal of the withdrawal of approximately 21,576 acres of public land at training range B–20 in Churchill County, Nevada, near Naval Air Station Fallon, Nevada. These lands were withdrawn under the Military Lands Withdrawal Act of 1986 (Public Law [PL] 99–606). As part of this process, the Department of the Navy has prepared a DLEIS to evaluate the potential for significant environmental effects of the proposed action. The DLEIS has been prepared pursuant to Section 102(2)(c) of the National Environmental Policy Act and the Council on Environmental Quality implementing regulations (40 CFR 1500–1508).

The DLEIS has been distributed to various federal, state and local agencies, local group, elected official, special interest groups, and individuals. The DLEIS is also available for review at the following public libraries: Austin Branch Library; Battle Mountain Branch Library; Round Mountain Branch Library; Gabbs City Library; Fallon Churchill County Public Library; Eureka Branch Library; Carson City Library; and Reno Washoe County Public Library.

Two open houses and public hearings will be held for the purpose to receive oral and written comments on the DLEIS. The first open house will be held on Monday, July 13, 1998, at 3:00 to 5:30 p.m., and the public hearing at 7:00 to 10:00 p.m., at the Fallon Convention Center, 100 Campus Way, Fallon, Nevada. The second open house will be held on Tuesday, July 14, 1998, at 3:00 to 5:30 p.m., and the public hearing at 7:00 to 10:00 p.m., at the Airport Plaza Hotel, 1981 Terminal Way, Reno, Nevada. Federal, state and local agencies, and interested individuals are invited to be present or represented at the hearings. Oral comments will be heard and transcribed by a court recorder. 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 three minutes. Longer comments should be summarized at the public hearing and mailed to Mr. Samuel Dennis (Code 7031), Engineering Field Activity West, Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, California 94066–5006, fax (650) 244–3206. Written comments are requested not later than September 15, 1998.

Dated: June 12, 1998.

Matthew G. Shirley,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 98–16125 Filed 6–15–98; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education, Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: June 26, 1998 from 8:30 a.m. to 5:00 p.m.

ADDRESSES: Channel Inn Hotel, 650 Water Street, S.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Karelis, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3100, ROB # 3, Washington, DC. 20202–5175. Telephone: (202) 708–5750. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under Section 1001 of the Higher Education Amendments of 1980, Title X (20 U.S.C. 1131a–1). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and approval or disapproval of grants of a given kind.

On June 26, 1998, from 8:30 a.m. to 1:00 p.m. the Board will meet in open session. The proposed agenda for the open portion of the meeting will include a review of the Comprehensive Program priorities, an update of FIPSE targeted competitions, and an update of FIPSE's FY 1998 budget.

On June 26, 1998, from 1:00 p.m. to 5:00 p.m. the meeting will be closed to the public for the purpose of reviewing and recommending grant applications submitted to the Comprehensive Program. This portion of the meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C.A. Appendix 2) and under exemptions (4) and (6) of the Government in the Sunshine Act (Public law 94–409, 5 U.S.C. 552b (c) (4) and (6). The review and discussions of the applications and the qualifications of proposed staff to work on these grants are likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential, and to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

The meeting site is accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device or materials in an alternate format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, Room 3100, Regional Office Building # 3, 7th & D Streets, S.W.,

Washington, DC 20202 from the hours of 8:00 a.m. to 4:30 p.m.

Dated: June 12, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–16090 Filed 6–12–98; 1:57 pm]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision Under the Randolph-Sheppard Act

SUMMARY: Notice is hereby given that on January 20, 1998, an arbitration panel rendered a decision in the matter of *Wayne Coxey* versus *State of Washington Department of Services for the Blind (Docket No. R–S/96–6).* This panel was convened by the U.S. Department of Education pursuant to 20 U.S.C. 107d–1(a), upon receipt of a complaint filed by petitioner, Wayne Coxey.

FOR FURTHER INFORMATION: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 600 Independence Avenue, SW., Room 3230, Mary E. Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access To This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov//fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G-Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

In September 1994 the State Licensing Agency (SLA) offered complainant an opportunity to operate a cafeteria in the Washington State Department of Licenses in Olympia, Washington. Two months after Mr. Coxey began operating the Highway Licenses Building cafeteria, the building's tenant committee began to complain about Mr. Coxey's operation of the vending facility. The complaints included allegedly unsanitary food preparation practices, poor selection of food items, questionable pricing practices, rude service, a disrespectful and disgruntled attitude toward employees and customers, and inconsistent hours. Earlier in the year, because of similar problems with Mr. Coxey at another facility, the SLA barred him from continuing to operate that facility.

Following a meeting among Mr. Coxey, the tenant committee, and the SLA, the cafeteria operation improved. However, by May 1995, the tenant committee complained that the service had again deteriorated to an unsatisfactory level. Subsequently, the building's tenant committee contacted the SLA and again requested improvement in the cafeteria operation.

The SLA met with complainant and prepared a corrective action plan to bring about improvements. The corrective action plan requested that Mr. Coxey improve the following: Hours of operation, health and sanitary practices, food handling and storage, customer and employee relations, consistent refund policy, and the submission to the SLA of timely profit and loss statements.

On September 19, 1995, the SLA met with Mr. Coxey to discuss the implementation of the corrective action plan. Complainant rejected the plan. Following that meeting, the tenant committee requested that the SLA remove Mr. Coxey from the cafeteria. On November 2, 1995, the SLA removed him and on December 22, 1995, the SLA issued to Mr. Coxey a letter sustaining the removal. Mr. Coxey appealed his termination and requested and received a full evidentiary hearing, which was held on January 24, 1996. In an opinion dated February 13, 1996, the Administrative Law Judge affirmed the SLA's decision to suspend Mr. Coxey's operating agreement and remove him from the cafeteria, and on February 27, 1996, the SLA terminated his vending operator's license. It was that decision that Mr. Coxey sought to have reviewed by a Federal arbitration panel. A hearing was held on February 24 and 25, 1997.

Arbitration Panel Decision

The issue before the arbitration panel was whether the SLA acted reasonably and within the scope of its authority under the Act and regulations when it removed Mr. Coxey from the Highway Licenses Building cafeteria and terminated his vending license. On the basis of the evidence presented at the hearing, the majority of the panel ruled that Mr. Coxey was hostile toward every attempt to improve the operation of the cafeteria. The panel further concluded that complainant had rejected the SLA's attempts to have him conform to the SLA's rules and regulations governing the vending facility program in the State of Washington.

The majority of the panel ruled that retaining the complainant as a licensee would jeopardize the credibility of the Randolph-Sheppard program. The panel found that the SLA had acted correctly and within the scope of its authority when it removed Mr. Coxey from the cafeteria and terminated his vending operator's license.

One panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: June 11, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–15946 Filed 6–15–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC98–1–001 FERC Form No. 1]

Information Collection Submitted For Review and Request For Comments

June 10, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received comments from electric utilities, federal and state agencies responding to an earlier **Federal Register** notice of February 17, 1998 (63 FR 7777–8). In its submission to OMB the Commission has addressed these comments and included a listing of the commenters.

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before July 16, 1998.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 726 Jackson Place, N.W. Washington, D.C. 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Division of Information Services, Attention: Mr. Michael Miller, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. Collection of Information: FERC Form 1 ''Annual Report for Major Electric Utilities, Licensees and Others.''

2. Sponsor: Federal Energy Regulatory Commission.

3. Control No.: OMB No. 1902–0021. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There is an increase in the reporting burden due to an increase in the number of entities who are now subject to the Commission's jurisdiction and as a result must submit this annual report. This is a mandatory information collection requirement.

4. Necessity of Collection of Information: Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the Federal Power Act (FPA). Under the FPA the Commission may prescribe a system of accounts for jurisdictional companies, and after notice and hearing, may determine the accounts in which particular outlays and receipts will be entered, charged or credited. The FERC Form 1 is designed to collect financial information from privately owned electric utilities and licensees who have generation, transmission, distribution and sales of electric energy, however produced throughout the United States and its possessions, subject to the Commission's jurisdiction.

Respondent Description: The respondent universe currently comprises on average, 210 companies subject to the Commission's jurisdiction.

6. Estimated Burden: 255,570 total burden hours, 210 respondents, 1 response annually, 1,217 hours per response (average).

7. Estimated Cost Burden to Respondents: 255,570 hours ÷ 2,008 hours per year × $109,889 per year = $13,450,290, average cost per respondent = $64,049.

Statutory Authority: Sections 4, 301, 304 of the Federal Power Act (FPA), 16 U.S.C. 791a–825.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–15902 Filed 6–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–406–000]

CNG Transmission Corporation; Notice of Informal Settlement Conference

June 10, 1998.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, June 17, 1998, at 10:00 a.m. through Thursday, June 18, 1998, at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervener status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact William J. Collins (202) 208–0248.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–15910 Filed 6–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 271–AR]

Entergy Arkansas, Inc.; Notice of Entergy Arkansas, Inc. To Use Alternative Procedures in Filing a License Application

June 10, 1998.

On May 26, 1998, the existing licensee, Entergy Arkansas, Inc. (Entergy), filed a request to use alternative procedures for submitting an application for new license for the existing Carpenter-Remmel Hydroelectric Project No. 271. The project is located on the Ouachita River, in Garland and Hot Springs Counties, Arkansas, and consists of two developments. The 56.0 megawatt (MW) Carpenter development includes Lake Hamilton Reservoir, which is created by Carpenter Dam. The downstream 11.0 MW Remmel development includes Lake Catherine Reservoir, which is created by Remmel Dam. The project does not occupy lands of the United States.

Entergy has demonstrated that it has made an effort to contact all resource agencies, Indian tribes, nongovernmental organizations (NGOs), and others affected by the proposal, and that a consensus exists that the use of alternative procedures is appropriate in this case. Further, waiving the Commission's regulations will be automatic upon approval of the alternative procedures stipulated in Order No. 596.[1]

Entergy has developed a communications protocol that is supported by the interested entities.

The purpose of this notice is to invite any additional comments on Entergy's request to use the alternative procedures, pursuant to Section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date.

The alternative procedures being requested here combine the prefiling consultation process with the environmental review process, allowing Entergy to complete and file an Environmental Assessment (EA) in lieu of Exhibit E of the license application. This differs from the traditional process, in which an applicant consults with agencies, Indian tribes, and NGOs during preparation of the application for the license and before filing it, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the prefiling consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

Alternative Procedures and Carpenter-Remmel Hydroelectric Project Schedule

Entergy has distributed an Initial Consultation Packet for the proposed project to state and federal resource agencies, local interests, and NGOs. Entergy has submitted a proposed schedule for the alternative procedures that leads to the filing of a license application by February 28, 2001.

Comments

Interested parties have 30 days from the date of this notice to file with the Commission any comments on Entergy's proposal to use the alternative procedures to file an application for the Carpenter-Remmel Hydroelectric Project.

Filing Requirements

The comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street, NE, Washington, DC 20426.

All filings must bear the heading ''Comments on the Alternative Procedures,'' and include the project name and number (Carpenter-Remmel Hydroelectric Project No. 271).

For further information on this process, please call Chris Metcalf of the Federal Energy Regulatory Commission at (202) 219–2810.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–15908 Filed 6–15–98; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 596, Regulations for the Licensing of Hydroelectric Projects, 81 FERC ¶ 61,103 (1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–591–000]

Kern River Gas Transmission Company; Notice of Request Under Blanket Authorization

June 10, 1998.

Take notice that on June 3, 1998, Kern River Gas Transmission Company (Kern River), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP98–591–000 a request pursuant to Sections 157.205 and 157.211, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to amend the approval previously received in Docket No. CP97–617–000 in order to reflect a revision in the ownership arrangements for the authorized Primm Meter Station under Kern River's blanket certificate issued in Docket No. CP89–2048–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Kern River states that pursuant to a superseding facilities agreement, it now proposes to own only the mainline tap and Southwest Gas will own the remainder of the Primm Meter Station which Kern River will construct as previously authorized. Kern River further states that, pursuant to an operating agreement with Southwest Gas, it will operate the meter facilities owned by Southwest Gas as part of Kern River's open-access transmission system.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–15907 Filed 6–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR98–15–000]

Louisiana Resources Pipeline Company Limited Partnership; Notice of Application for Approval of Rates and Charges Under NGPA Section 311(a)(2)

June 10, 1998.

Take notice that on June 1, 1998, Louisiana Resources Pipeline Company Limited Partnership (LRP) tendered for filing an Application for Approval of Rates and Charges pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Section 284.123(b)(2) of the Commission's regulations.

LRP seeks the Commission's approval to (a) continue its current maximum transportation rate of $0.2756 per MMBtu for interruptible transportation service to be provided by LRP as an intrastate pipeline pursuant to Section 311(a) of the NGPA; (b) establish a maximum firm transportation reservation charge of $8.4771 per MMBtu per month; (c) establish a maximum firm transportation usage of $0.0375 per MMBtu; and (d) establish a maximum rate for interruptible Part 'N Ride services of $0.2756 per MMBtu. LRP proposes to make all rates effective June 1, 1998.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888

First Street, NE., Washington, DC, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before June 25, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not be served to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The petition for rate approval is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–15909 Filed 6–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–589–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

June 10, 1998.

Take notice that on June 3, 1998, NorAm Gas Transmission Company (NGT), 525 Milam, P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP98–589–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulation under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate certain facilities, located in Webster Parish, Louisiana, under NGT's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to operate a 3-inch tap, 3-inch regulator station with two regulators, and two 4-inch meter stations, on NGT's Line S in Webster Parish, Louisiana, under Subpart G of Part 284 of the Commission's Regulations. NGT states that this meter station is being constructed under Section 311 of the Natural Gas Policy Act and Subpart B of Part 284 of the Commission's Regulations to provide service to Arkla, a distribution division of NorAm Energy Corporation (Arkla). NGT declares that Arkla will install 550 feet of 6-inch pipeline to connect this delivery point to an addition to Arkla's Louisiana distribution system which it is acquiring from Louisiana-Nevada Gas Transit Company.

NGT states that the estimated volumes to be delivered through these new facilities are 3,008,086 MMBtu annually and 14,857 MMBtu on a peak day. NGT declares that the estimated cost of these facilities is $107,578 and Arkla will reimburse NGT for $104,795.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If not protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–15905 Filed 6–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–188–000]

Tennessee Gas Pipeline Company; Notice of Technical Conference

June 10, 1998.

In the Commission's order issued on May 28, 1998, the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Wednesday, July 22, 1998, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–15911 Filed 6–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–590–00]

Texas Eastern Transmission Corporation; Notice of Request Under Blanket Authorization

June 10, 1998.

Take notice that on June 3, 1998, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP98–590–000 a request pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to install, own, maintain and operate and operate a new point of delivery, which will consist of a 2-inch side valve and 2-inch insulating flange (tap) on its existing 24-inch Line No. 1 in Stoddard County, Missouri, to make deliveries to Noranda Aluminum, Inc. (Noranda), and industrial end-user, under the blanket certificate issued in Docket No. CP82–535–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Noranda will install, or cause to be installed, a single 3-inch meter run plus associated piping (meter station), approximately 50 feet of 2-inch pipe that will extend from the meter station to the tap (connecting pipe), and electronic gas measurement equipment (EGM). Texas Eastern will own the tap and EGM. Noranda will own the connecting pipe and meter station. Texas Eastern will operate the tap, EGM, meter station, and connection pipe. Texas Eastern will maintain the tap and EGM. Noranda will maintain the meter station and connecting pipe.

Texas Eastern estimates the cost for installing the tap, and from reviewing and inspecting the installation of the meter station, connecting pipe, and EGM to be approximately $6,949, which Noranda has agreed to reimburse Texas Eastern for 100% of the costs and expenses associated with the proposed delivery point. Texas Eastern will deliver up to 4 MMCF/d to Noranda at the proposed delivery point pursuant to its Rate Schedule IT–1.

Texas Eastern states that Noranda is located in the service area of and is currently a customer of Associated Natural Gas Company (Associated). However, Noranda has informed Texas Eastern that the service Noranda receives from Associated is an interruptible service. Texas Eastern states that the installation of the tap and

provision of open-access service to Noranda will not constitute a bypass of Associated. Texas Eastern claims that it has notified in writing both Associated and the Public Service Commission of Missouri of Noranda's service request.

Texas Eastern states that it will provide service to the proposed delivery point by using existing capacity on its system and it will have no effect on its peak day or annual deliveries. Texas Eastern has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therfor, the proposed activity shall be deemed authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–15906 Filed 6–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–588–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

June 10, 1998.

Take notice that on June 2, 1998, Williston Basin Interstate Pipeline Company (Williston Basin) 200 North Third Street, Suite 300, Bismarck, North Dakota, filed in Docket No. CP98–588–000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.216) for authorization to upgrade existing meter stations in Montana, South Dakota and Wyoming, under Williston Basin's blanket certificate issued in Docket No. CP82–487–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is no file with the Commission and open to public inspection.

Williston Basin states it is requesting authorization to upgrade existing meter stations in Fallon and Phillips Countries, Montana, Butte County, South Dakota and Big Horn County, Wyoming by abandoning certain existing facilities and constructing and operating upgraded facilities to allow Williston Basin to convert to Electronic Custody Transfer measurement at these locations. The Total cost of the proposed upgrades is approximately $48,000.

Williston Basin states that this proposal is not prohibited by its existing tariff and that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers. There will be no effect on Williston Basin's peak day and annual deliveries and the total volumes delivered will not exceed total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–15904 Filed 6–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2908–000, et al.]

Western Resources, Inc., et al.; Electric Rate and Corporate Regulation Filings

June 8, 1998.

Take notice that the following filings have been made with the Commission:

1. Western Resources, Inc.

[Docket No. ER98–2908–000]

Take notice that on June 3, 1998, Western Resources, Inc. tendered for filing a revised long-term firm transmission agreement between Western Resources and Western Resources Generation Services. The revisions are tendered in response to a deficiency letter from the Federal Energy Regulatory Commission staff. The agreement is proposed to become effective May 1, 1998.

Copies of the filing were served upon Western Resources Generation Services and the Kansas Corporation Commission.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Arizona Public Service Company

[Docket No. ER98–3203–000]

Take notice that on June 3, 1998, Arizona Public Service Company (APS) tendered for filing Umbrella Service Agreements to provide Firm and Non-Firm Point-to-Point Transmission Service to Arizona Electric Power Coop., Inc., under APS'' Open Access Transmission Tariff.

A copy of this filing has been served on Arizona Electric Power Coop., Inc., and the Arizona Corporation Commission.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Orange and Rockland Utilities, Inc.

[Docket No. ER98–3204–000]

Take notice that on June 3, 1998 Orange and Rockland Utilities, Inc. (Orange and Rockland) filed a Service Agreement between Orange and Rockland and Northeast Utilities (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of Orange and Rockland's Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of May 21, 1998 for the Service Agreement. Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Texas-New Mexico Power Company

[Docket No. ER98–3205–000]

Take notice that on June 3, 1998, Texas-New Mexico Power Company (TNMP) tendered for filing an Umbrella Service Agreement For Short-Term Nonfirm Energy Transactions of One Year or Less, between TNMP, as seller,

and Tucson Electric Power Company, purchaser.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Duke Power, a Division of Duke Energy Corporation

[Docket No. ER98–3209–000]

Take notice that on June 3, 1998, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Market Rate Service Agreement between Duke and Southern Company Energy Marketing L.P., dated March 20, 1998.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. FirstEnergy System

[Docket No. ER98–3211–000]

Take notice that on June 3, 1998, FirstEnergy System filed a Service Agreement to provide Firm Point-to-Point Transmission Service for ProLiance Energy, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing in Docket No. ER97–412–000. The proposed effective date under the Service Agreements is May 15, 1998, respectively.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. FirstEnergy System

[Docket No. ER98–3212–000]

Take notice that on June 3, 1998, FirstEnergy System filed Service Agreements to provide Firm Point-to-Point Transmission Service for ProLiance Energy, LLC, The Detroit Edison Company, CNG Power Services Corporation, DTE Energy Trading, Incorporated, Federal Energy Sales, Incorporated, Public Service Electric & Gas Company and Tennessee Power Company, the Transmission Customers. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing in Docket No. ER97–412–000. The proposed effective dates under these Service Agreements are May 15, 1998, May 22, 1998 and June 1, 1998, respectively.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER98–3213–000]

Take notice that on June 3, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP) tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between NSP and AYP Energy, Inc.

NSP requests that the Commission accept both the agreements effective May 4, 1998, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Company

[Docket No. ER98–3214–000]

Take notice that on June 3, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with ECONnergy Energy Company, Inc. under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the ECONnergy Energy Company, Inc.

NUSCO requests that the Service Agreement become effective May 29, 1998.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Company

[Docket No. ER98–3215–000]

Take notice that on June 3, 1998, Northeast Utilities Service Company (NUSCO) on behalf of its affiliate, Public Service Company of New Hampshire, tendered for filing an amendment to its Rate Schedule FERC No. 182.

The proposed changes extend the term of the rate schedule to be coterminous with the extension of the New Hampshire Retail Competition Pilot Program by the New Hampshire Public Utilities Commission. NUSCO requests that the changes to the rate schedule be made effective June 4, 1998, or such other earlier date as permitted by the Commission.

Copies of the filing were served upon the Select Energy, Inc. and the New Hampshire Public Utilities Commission.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Washington Water Power

[Docket No. ER98–3217–000]

Take notice that on June 3, 1998, Washington Water Power (WWP), tendered for filing a Certificate of Concurrence with PacifiCorp for exchange service as an addition to Service Agreement No. 118 under Docket No. ER97–1867–000 previously filed under WWP's FERC Electric Tariff First Revised Volume No. 9.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–15903 Filed 6–15–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

June 10, 1998.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Application to Amend Existing Licenses and to Incorporate the Terms of Settlement Agreement and to Amend Pending Application for License.

b. *Project Nos:* 2552–033, 2322–026, 2325–029, 2574–025, 2611–034, 11472–004, 5073–055.

c. *Date Filed:* May 27, 1998.

d. *Applicant:* Central Maine Power Company, Merimil Limited Partnership, UAH-Hydro Kennebec Limited Partnership, Ridgewood Maine Hydro Partners, L.P., Benton Falls Associates.

e. *Name of Projects:* Licensed Projects—Fort Halifax, Shawmut, Weston, Lockwood, Hydro Kennebec and Benton Falls and Pending Application for original License for Burnham Project.

f. *Location:* The Lower Kennebec River and the Sebasticook River, a

tributary to the Lower Kennebec River, in Kennebec and Somerset Counties, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:*

F. Allen Wiley, P.E., Managing Director, Central Maine Power Company, 41 Anthony Avenue, Augusta, ME 04330, (207) 623–3521

William Fiedler, UAH-Hydro Kennebec Limited Partnership, RFD No. 4, box 7060, Winslow, ME 04901, (207) 872–0542

Stacy Fitts, Benton Falls Associates, 1075 Clinton Avenue, Clinton, ME 04901, (207) 453–9703

Kevin Webb, CHI Energy, c/o Ridgewood Maine Hydro Partners, Andover Business Park, 200 Bullfinch Drive, Andover, MA 01810, (978) 681–1900.

i. *FERC Contact:* John Schnagl, (202) 219–2661.

j. *Comment Date:* July 15, 1998.

k. *Description of Proposed Action:* Central Maine Power Company, Merimil Limited Partnership, UAH-Hydro Kennebec Limited Partnership, and Benton Falls Associates, licensees of Project Nos. 2552, 2322, 2325, 2574, 2611, and 5073 and Ridgewood Maine Hydro Partners, L.P. applicant for original license for Project No. 11472 seek to incorporate the applicable terms of the Agreement Between Members of the Kennebec Hydro Developers Group, the Kennebec Coalition, the National Marine Fisheries Service, the State of Maine, and the U.S. Fish and Wildlife Service, dated May 26, 1998 into the aforementioned existing license or pending license application. This amendment application is pursuant to a settlement among parties reached in fish passage matters related to the aforementioned projects. The Lower Kennebec River Comprehensive Hydropower Accord was filed with FERC in this matter on May 28, 1998. A public notice is also being issued today concerning the application by the Licensees of the Edwards Project (No. 2389) and the State of Maine to transfer the Edwards Project license to the State of Maine. This application for license transfer is also made pursuant to the Lower Kennebec River Comprehensive Hydropower Settlement Accord.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–15912 Filed 6–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Lower Kennebec River Comprehensive Hydropower Settlement Accord

June 10, 1998.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Lower Kennebec River Comprehensive Hydropower Settlement Accord.

b. *Project Nos:* 2389–030, 2322–025, 2325–027, 2552–033, 2574–024, 2611–033, 5073–054, 11472–003.

c. *Date Filed:* May 28, 1998.

d. *Applicants:* The City of Augusta, Maine; Edwards Manufacturing Company, Inc.; The Kennebec Coalition (American Rivers, Inc., The Atlantic Salmon Federation, Kennebec Valley Chapter of Trout Unlimited, The Natural Resources Council of Maine, and Trout Unlimited); Kennebec Hydro Developers Group (Central Maine Power Company, Merimil Limited Partnership, Ridgewood Maine Hydro Partners, L.P., and Benton Falls Associates); The State of Maine; The U.S. Department of Commerce, through the National Maine Fisheries Service; and the U.S. Department of Interior, through the U.S. Fish and Wildlife Service.

e. *Name of Projects:* Licensed Projects—Edwards Dam, Fort Halifax, Shawmut, Weston, Lockwood, Hydro-Kennebec, and Benton Falls; and Pending Application for original License for Burnham Project.

f. *Location:* The Lower Kennebec River and the Sebasticook River, a tributary to the Lower Kennebec River, in Kennebec and Somerset Counties, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contract:*

Donald H. Clark, Wilkinson, Barker, Knauer, & Quinn, 2300 N Street, NW., Suite 700, Washington, DC 30037, (202) 783–4141

Evan Richert, Director, Maine State Planning Office, 38 State House Station, Augusta, ME 04333, (207) 287–0677

Dan Squire, Wilmer, Cutler & Pickering, 2445 M Street, N.W, Washington, DC 20037–1420, (202) 663–6060

Lewis Flagg, Commissioner (Acting), Maine Department of Marine Resources, 21 State House Station, Hallowell Annex-Baker Building, Augusta, ME 04333–0021, (207) 624–6550

Lee Perry, Commissioner, Maine Department of Inland Fisheries and Wildlife, 41 State House Station, 284 State Street, Augusta, ME 04333–0041, (202) 287–5202

Judith Stolfo, U.S. Department of the Interior, One Gateway Center, Suite 612, Newton, ME 02158, (617) 527–3400

Anton P. Giedt, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930–2298, (978) 281–9289

F. Allen Wiley, P.E., Managing Director, Central Maine Power Company, 41 Anthony Avenue, Augusta, ME 04330, (207) 623–3521

William Fielder, UAH-Hydro Kennebec Limited Partnership, RFD No. 4, Box 7060, Winslow, ME 04901, (207) 872–0542

Stacy Fitts, Benton Falls Associates, 1075 Clinton Avenue, Clinton, ME 04901, (207) 435–9703

Kevin Webb, CHI Energy, c/o Ridgewood Maine Hydro Partners, Andover Business Park, 200 Bulfinch Drive, Andover, MA 01810, (978) 681–1900

Gerald C. Poulin, President, Kennebec Hydro Resources, Inc., General Partner, Merimil Limited Partnership, Edison Drive, Augusta, ME 04330, (207) 621–3521.

I. *FERC Contact:* John A. Schnagl, (202) 219–2661.

j. *Comment Date:* July 15, 1998.

k. *Description of Proposed Action:* The applicants request the Commission approve the Lower Kennebec River Comprehensive Hydropower Settlement Accord, filed pursuant to Commission Rule 602, 18 CFR 385.602. This comprehensive settlement would accomplish the following: (1) a charitable donation of the Edwards Dam from Edwards Manufacturing Company to the State of Maine; (2) the removal of the Edwards Dam, the lowermost dam on the Kennebec River, by the State of Maine in 1999; (3) contribution of $7.25 million towards Edwards Dam removal and related activities, and towards other Kennebec River anadromous and catadromous fish restoration efforts, by Bath Iron Works Corporation and Kennebec Hydro Developers Group members; and (4) amendment of certain fish passage obligations at seven dams on the Kennebec and Sebasticook Rivers owned by Kennebec Hydro Developers Group members upstream of the Edwards Dam. Public notices are also being issued today concerning Commission approval of specific elements of this comprehensive settlement.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''PROTESTS,'' OR ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–15913 Filed 6–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License

June 10, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Transfer of License.

b. *Project No.:* 2389–031.

c. *Date filed:* May 28, 1998.

d. *Applicants:* Edwards Manufacturing Company, the City of Augusta, Maine, and the State of Maine.

e. *Name of Project:* Edwards Dam.

f. *Location:* The lowermost dam on the Kennebec River, in Kennebec County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contacts:* Mr. Evan Richert, Director, Maine State Planning Office, 38 State House Station, Augusta, ME 04333, (207) 287–8050.

i. *FERC Contact:* John Schnagl, (202) 219–2661.

j. *Comment Date:* July 15, 1998.

k. *Description of Transfer:* The licensees, Edwards Manufacturing Company and the City of Augusta, Maine, seek to transfer the project license to the State of Maine. This transfer is pursuant to a settlement among parties reached in this and related matters whereby the State of Maine will remove the dam with funds from outside parties. The Lower Kennebec River Comprehensive Hydropower Settlement Accord was filed with FERC in this matter on May 28, 1998. A public notice is also being issued today concerning the application regarding modification of fish passage deadlines on seven dams on the Kennebec and Sebasticook Rivers owned by Kennebec Hydro Developers Group members upstream of the Edwards Dam. This application for license amendment is also made pursuant to the Lower Kennebec River Comprehensive Hydropower Settlement Accord.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–15914 Filed 6–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2389]

Edwards Manufacturing Company, City of Augusta, Maine; Notice of Meeting

June 10, 1998.

A technical conference will be held on June 30, 1998, to discuss removal of Edwards Dam. The process and schedule for dam removal will be defined and any additional studies identified.

The conference will be held at the Civic Center in Augusta, Maine on June 30, 1998, at 9:00 am. Any recommendations for technical items to be included on the conference agenda should be filed with the Commission by June 26, 1998, and copies provided to all parties.

Items may be filed to: The Secretary, Federal Energy Regulatory Commission, Mail Code: DLC, HL–11.2, 888 First Street, N.E., Washington, DC 20426.

The Offer of Settlement filed with the Commission on May 28, 1998, proposes an ambitious schedule. Frequent technical interaction with Commission staff would be essential to meet that schedule. To help expedite this process, the possibility of waiving the Commission's ex parte requirements will be discussed among the parties at the technical conference.

Any questions, please contact Mr. John Schnagl at (202) 219–2661.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–15915 Filed 6–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: June 8, 1998 63 FR 31212.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: June 10, 1998 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Number and Company has been added on the Agenda scheduled for the June 10, 1998 meeting.

Item No.	Docket No. and company
CAE–17	ER98–852–000, The Washington Water Power Company

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16087 Filed 6–12–98; 12:21 pm]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of February 16 Through February 20, 1998

During the week of February 16 through February 20, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C., Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: June 4, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 73: Week of February 16 Through February 20, 1998

Appeals

Diane C. Larson, 2/17/98, VFA–0367

Diane C. Larson perfected an Appeal under the Privacy Act. The Appellant requested that OHA review a determination issued by the Office of Energy Intelligence to ascertain whether an adequate search had been conducted for documents responsive to the Appellant's Privacy Act request. The Appellant also asked that OHA order the Office of the Inspector General (OIG) to expedite the issuance of a determination. OHA denied this Appeal because it found that the search conducted by the staff of the Office of Energy Intelligence was adequate, and that OHA lacked jurisdiction to review the processing of Appellant's Privacy Act request by the OIG.

FOIA Group, Inc., 2/18/98, VFA–0369

FOIA Group, Inc. filed a Freedom of Information Act (FOIA) Appeal requesting that the Office of Hearings and Appeals of the Department of Energy (DOE) order the release of information withheld pursuant to 5 U.S.C. § 552(b)(4). Specifically, a DOE facility released a copy of a contract, but deleted certain information. In considering the Appeal, the DOE determined that most of the withheld information, specifically, annual prices, pricing and delivery terms, annual demand amounts of power Bonneville Power Administration would supply, and total revenue amounts, was commercial information within the meaning of Exemption 4. Thus, the DOE facility properly withheld this information. However, the DOE found that the DOE facility should release some withheld information, specifically, topic headings. Accordingly, the DOE remanded FOIA Group, Inc.'s Appeal to the Bonneville Power Administration.

Ruth Towle Murphy, 2/20/98, *VFA–0371*

Ruth Towle Murphy (Murphy) filed an Appeal from a determination issued to her by the Manager of the Oak Ridge Operations Office (Manager) of the

Department of Energy (DOE). In her Appeal, Murphy asserted that the Manager improperly withheld, pursuant to Exemption 4, financial information from documents relating to contracts between Science Applications International Corporation and the DOE regarding the Office of Scientific and Technical Information. After reviewing the withheld information, the DOE determined that the information was properly withheld pursuant to Exemption 4. Consequently, Murphy's Appeal was denied.

Personnel Security Hearings

Personnel Security Hearing, 2/19/98 VSO–0173

A Hearing Officer from the Office of Hearings and Appeals issued an Opinion regarding the eligibility of an individual for access authorization under the provisions of 10 C.F.R. Part 710. After considering the record, Hearing Officer found that the DOE had presented sufficient evidence to show that the individual had used cocaine on five occasions and that he used cocaine despite having signed a Drug Certification and knowing of the DOE and his employer's policies barring illegal drug use. The Hearing Officer also found that the individual had not presented sufficient evidence to mitigate the security concerns raised by his conduct. Accordingly, the Hearing Officer recommended that the individual's access authorization should not be restored.

Personnel Security Hearing, 2/19/98 VSO–0184

A Hearing Officer found that the concern raised by an individual's illness or mental condition remained unresolved. Accordingly, the Hearing Officer recommended in the Opinion that the individual's access authorization not be restored.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Delta Asphalt Paving Co	RF272–55648	2/18/98
Delta Asphalt Paving Co	RD272–55648	.....
Hancock Service Company	RG272–179	2/18/98
Adams FS, Inc	RG272–180	.....
LaFarge Corporation	RK272–4765	2/19/98
LaFarge Corporation	RK272–4766	.....
Neal Tyler & Sons, Inc	RK272–4724	2/19/98
Gwinnett County Board of Commissioners	RK272–4733	.....

[FR Doc. 98–15952 Filed 6–15–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of February 23 Through February 27, 1998

During the week of February 23 through February 27, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C., Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: June 4, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 74: Week of February 23 Through February 27, 1998

Appeals

INEEL Research Bureau, 2/26/98, VFA–0373

DOE granted an appeal of determination in response to a request for an index of classified documents. OHA found that the DOE's Idaho Operations Office (DOE/ID) did not release indices that were responsive to a broadly worded request submitted by the appellant. The matter was therefore remanded to DOE/ID.

Sandra M. Hart, 2/27/98, VFA–0372

The DOE's Office of Hearings and Appeals (OHA) issued a decision granting in part a Freedom of Information Act (FOIA) Appeal filed by Sandra M. Hart. Hart sought the release of three portion of an EEO complaint filed by a third party that were withheld to by the DOE's Idaho Operations Office (Idaho). In its decision, OHA found that Idaho's withholding of this information was appropriate under FOIA Exemptions 6, 7(C) and 7(A). Accordingly, the Appeal was denied.

Personnel Security Hearing

Personnel Security Hearing, 2/24/98, VSO–0176

A Hearing Officer found that an individual had not successfully mitigated security concerns arising from her severe depression and use of controlled substances without a prescription. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Request for Exception

Public Service Electric and Gas (New Jersey), 2/24/98, VEE–0044

The Public Service Electric and Gas of New Jersey (PSE&G) filed a request for confidential treatment of certain data that the firm submits to the Energy Information Administration (EIA) in connection with EIA's survey and monitoring of domestic electric power production. The PSE&G request was based upon the increasingly competitive nature of the market for electric power, and the argument that in the hands of its competitors, the data would allow competitors to know PSE&G's marginal cost of electrical power production, to the detriment of the firm. In view of the broad implications of the PSE&G argument, the Office of Hearings and Appeals negotiated an agreement under which EIA (1) would not generally release the data in question for any reporting electric utility, and (2) would issue a **Federal Register** notice soliciting comments from the industry and the public on confidentiality associated with the EIA electric surveys in order to re-evaluate EIA's data disclosure policy in this area. The EIA commenced the processes to which it agreed and, on

February 11, 1998, the PSE&G request was dismissed.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Crude Oil Supplemental Refund Dist.	RB272–0133	2/27/98
Crude Oil Supplemental Refund Dist.	RB272–0134	2/27/98
Tejas Trucking, Inc. et al	RK272–04704	2/27/98
The Augsbury Organization, Inc	RK272–3844	2/24/98
The Augsbury Organization, Inc	RF304–15515	
The Augsbury Organization, Inc	RC272–379	

Dismissals

The following submissions were dismissed.

Name	Case No.
American Aggregates Corp.	RF272–98820

[FR Doc. 98–15953 Filed 6–15–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearing and Appeals

Notice of Issuance of Decisions and Orders; Week of April 13 Through April 17, 1998

During the week of April 13 through April 17, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C., Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: June 4, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 81: Week of April 13 Through April 17, 1998

Appeals

FAS Engineering, Inc., 4/14/98, VFA–0375

FAS Engineering, Inc. filed an Appeal from a determination by the Department of Energy's (DOE) Golden Field Office, denying a request for information under the Freedom of Information Act (FOIA). In its Appeal, FAS contended that Golden improperly withheld the requested information from disclosure under the deliberative process privilege of FOIA Exemption 5. The DOE found that Golden properly applied the threshold requirements of Exemption 5 to the requested documents. However, the DOE remanded this matter to Golden to issue a new determination, either releasing reasonably segregable factual material or explaining the reasons for withholding any factual material contained in the requested documents. Consequently, the Appeal was granted.

FAS Engineering, Inc., 4/17/98, VFA–0400, VFA–0401

FAS Engineering Inc. filed two Freedom of Information Act (FOIA) Appeals requesting that the Office of Hearings and Appeals of the Department of Energy (DOE) release documents it withheld from two FOIA requests pursuant to Exemption 5 of the FOIA. In considering the Appeals, the DOE determined that many of the documents contained segregable factual information that should not have been withheld pursuant to Exemption 5. For these reasons, the DOE directed the FOIA Official to review all of its withheld information again and either release factual information, such as ''rating guidelines,'' headings, names of contractor employees and bid proposal submissions contained in these documents, or provide a detailed explanation for withholding any such information. Thus, the DOE remanded the Appeal to the Idaho Operations Office.

Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P., 4/15/98, *VFA–0396*

Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P. (Appellant), filed an Appeal of a determination issued to it by the Department of Energy (DOE) in response to a request under the Freedom of Information Act (FOIA). In its request to the Federal Energy Technology Center (FETC), the Appellant asked for information concerning a Request for Proposal. FETC forwarded the request to the Rocky Flats Field Office (RFFO). In its determination, RFFO found that it possessed no responsive documents. On appeal, the Appellant argued that the search by RFFO had been inadequate. The DOE first found that RFFO had never been responsible for overseeing the RFP at issue and therefore, possessed no responsive documents. The DOE further noted that FETC had conducted a further search for documents once FETC realized that it had overseen the RFP at issue. Finally, the DOE noted that RFFO was only required to search for documents possessed as of the date of the FOIA request. Since the management and operating contractor had come into possession of responsive documents after the request date, the Appellant could make a new FOIA request for those documents. Accordingly, the Appeal of the adequacy of RFFO's search was denied.

Moore Brower Hennessy & Freeman, P.C., 4/16/98, *VFA–0393.*

Moore Brower Hennessy & Freeman, P.C. (Moore) filed an Appeal of a determination issued to it by the Department of Energy (DOE) in response to a request under the Freedom of Information Act (FOIA). In the request, Moore asked for copies of records relating to a construction contract that

Lockheed Martin Information Technologies Company (LMITCO), the management and operating contractor of the Idaho National Engineering Laboratory, awarded to a construction company. In its determination, the Idaho Operations Office (Idaho) stated that it could not release the responsive material because the responsive documents were in LMITCO's possession. The DOE found that, even though in LMITCO's possession, the documents in the current request were nonetheless subject to release under the DOE regulations. Accordingly, the Appeal was granted.

Nuclear Control Institute, 4/15/98, *VFA–0395*

The DOE issued a decision granting in part a Freedom of Information Act (FOIA) Appeal filed by the Nuclear Control Institute (NCI). NCI sought the release of information withheld by the Oak Ridge and Oakland Operations Offices. In its decision, the DOE found that the Operations Offices failed to consider the public interest in disclosure and had not articulated any foreseeable harm that would result from the release of several documents withheld under FOIA Exemption 5. The DOE also found that the Operations Offices had not segregated releasable information. Accordingly, the Appeal was remanded to Oak Ridge and Oakland.

The National Security Archive, 4/16/98, *VFA–0196*

The National Security Archive filed an Appeal from a denial by the Department of the Air Force of a request for information that it filed under the Freedom of Information Act (FOIA). Because the withheld information was identified as classified under the Atomic Energy Act, the Air Force withheld it at the direction of the DOE under Exemption 3 of the FOIA. In considering the information that was withheld, the DOE determined on appeal that a small portion of the document must continue to be withheld under Exemption 3, but the remainder could be released. Accordingly, the Appeal was granted in part and a newly redacted version of the requested information was ordered to be released.

Whistleblower Hearing

Timothy E. Barton, 4/13/98 *VWA–0017*

A Hearing Officer issued an Initial Agency Decision concerning a whistleblower complaint. The decision found that, while the employee proved that disclosures he had made were protected under 10 C.F.R. Part 708 and contributed to his termination, the employer demonstrated by clear and convincing evidence that it would have terminated the complainant in the absence of the protected disclosures.

Personnel Security Hearing

Personnel Security Hearing, 4/17/98, *VSO–0179*

A Hearing Officer found that an individual had shown that he is not currently suffering from the ''mental illness,'' dysthymia, or from any ''mental condition'' that would cause a defect in his judgment or reliability. Accordingly, the Hearing Officer recommended in the Opinion that the individual be granted an access authorization.

Refund Application

Enron Corp./Solar Gas, Inc., 4/17/98, *RF340–55*

The DOE granted an Application for Refund submitted by Solar Gas, Inc. (Solar Gas) in the Enron Corporation (Enron) special refund proceeding. The DOE excluded from Solar Gas' claim the volume of propane relating to exchange or buy/sell transactions between Solar Gas and Enron. With respect to the firm's other purchases from Enron, the DOE found that Solar Gas had demonstrated that the prices it paid to Enron for propane resulted in some economic injury to Solar Gas, but not a level of injury sufficient to qualify Solar Gas for a full volumetric refund. The DOE therefore limited this refund to the 81.5 percent of the firm's volumetric refund. Accordingly, the DOE granted Solar Gas a refund, including interest, of $521,622.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Imogene R. Owens	RK272–01777	4/14/98
Two F Company, L.L.C. ET AL	RK272–04788	4/15/98
Union County, NJ	RC272–00389	4/14/98

Dismissals

The following submissions were dismissed.

Name	Case No.
Personnel Security Hearing	VSO–0188

[FR Doc. 98–15954 Filed 6–15–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6111–1]

Revision to Addendum to Mobile Source Enforcement Memorandum 1A; Revised Tampering Enforcement Policy for Alternative Fuel Conversions

A. Purpose

The purpose of this document is to revise the tampering enforcement policy for alternative fuel conversions as currently provided in the U.S. Environmental Protection Agency's (EPA) Addendum to Memorandum 1A in response to comments and suggestions received by the regulated community and other stakeholders.

B. Background

EPA issued an Addendum to Mobile Source Enforcement Memorandum 1A (Addendum) on September 4, 1997, to address emissions increases that resulted from the conversion of gasoline powered vehicles and engines to operate on compressed natural gas (CNG) and liquefied petroleum gasoline (LPG or propane). The background and basis for the issuance of the Addendum and the contents of the new policy are fully contained in the Addendum. Since issuance of the Addendum, EPA has received a number of inquiries and recommendations that certain revisions to the policy would be in the public interest while not jeopardizing the

effectiveness of the Addendum. EPA believes some of those suggestions are appropriate and is revising the Addendum as described below.

C. Revised Policy

Effective June 1, 1998, the Addendum to Memorandum 1A is revised as follows:

1. In lieu of meeting the testing requirements under Options 1, 2 or 3 of the Addendum for model year 1997 and older motor vehicles and engines, compliance with the requirements for demonstrating a ''reasonable basis'' may be achieved by completing back-to-back I/M 240 emissions tests as contained in 40 CFR Part 51, Subpart S, for each converted vehicle using gasoline in the vehicle or engine's original configuration and with each operational fuel after conversion provided:

(a) All tests are conducted in accordance with the specified protocols under 40 CFR Part 51, Subpart S,

(b) The vehicle as tested in the original configuration with gasoline meets the applicable standards under 40 CFR 51.351,

(c) The exhaust emissions of each regulated pollutant after conversion using the alternative fuel are no greater than .90 times the emissions levels for each pollutant before conversion, except that no hydrocarbon standard shall apply for operation exclusively using CNG,

(d) If dual fuel operation is retained, the exhaust emissions of each regulated pollutant after conversion using the original certification fuel are no greater than the emissions levels for each pollutant before conversion, and

(e) No party shall convert more than 25 vehicles or engines of any single vehicle/engine family combination in any calendar year under this I/M 240 protocol.

2. The final date for both testing and installations under Option 3 of the Addendum is extended from April 24, 1998 and December 31, 1998, respectively, to June 30, 2000, for up to and including 1999 model year vehicles and engines. All alternative fuel conversions of model years 2000 and later vehicles and engines and conversions of model year 1998 and 1999 vehicles and engines after June 30, 2000, may only be performed in accordance with Options 1 or 2 of the Addendum.

3. As an alternate to engine dynamometer testing for heavy duty engine conversions under Option 3 for a specific heavy duty engine family, the manufacturer may demonstrate a ''reasonable basis'' by performing back-to-back chassis dynamometer emission tests in accordance with the Urban Dynamometer Driving Schedule for Heavy Duty Vehicles (UDDS) contained in 40 CFR Part 86 Appendix I, Paragraph (d), provided:

(a) The exhaust emissions results for THC, NO_X and CO measured during the UDDS after conversion and when operated exclusively or in combination with the alternative fuel are no greater than .90 times the baseline emissions for THC and NO_X and no greater than 1.00 times CO before conversion, except that NMHC after conversion shall be compared to the baseline THC before conversion in the case of operation exclusively with CNG, and

(b) All tests are performed in accordance with all specified protocols in 40 CFR Part 86, Subpart M, including vehicle preparation, dynamometer loading, emissions measurements and driving schedule except that commercially available fuel may be used for vehicle preconditioning and baseline testing.

4. As an alternate to engine dynamometer testing for heavy duty engine conversions under Option 3 for a specific heavy duty engine family or the alternate procedures provided in paragraph 3. above or the Addendum, any party may propose an alternate heavy duty vehicle or engine test procedure which operates the subject test engine through a range of engine speed and load conditions reasonably representative of both urban and highway driving, measures the exhaust emissions specified above on a grams per mile or grams per brake horsepower-hour basis and specifies appropriate pass/fail criteria equivalent to paragraph 3. above for the purpose of demonstrating a ''reasonable basis'' under EPA's tampering enforcement policy. Any such proposed procedures shall be submitted to the Director, Air Enforcement Division (2242A), Office of Enforcement and Compliance Assurance, U.S. EPA, 401 M Street, S.W., Washington, D.C. 20460 for consideration and approval, if appropriate, under this policy prior to the initiation of any vehicle procurement, modification or testing.

5. The results of federal emissions tests conducted under Option 3 for a specific engine family may be applied as a ''reasonable basis'' for up to a maximum of three additional engine families to that tested for demonstrating compliance with the applicable Tier 1 emission standards for that class of vehicle or engine as specified in 40 CFR Part 86 provided:

(a) The engine family tested in accordance with 40 CFR Part 86 meets the applicable Tier 1 standards for that vehicle or engine class with the application of the appropriate deterioration factor as provided under Option 3,

(b) The engine family tested above represents the ''worst case'' for emissions of the applicable engine families as based on engine or vehicle parameters reasonably expected to adversely affect the emission results such as maximum gross vehicle weight, maximum engine displacement and any other reasonable engineering judgments,

(c) The determination of ''worst case'' is confirmed by conducting I/M 240 emissions tests of one vehicle or engine of each applicable engine family after conversion,

(d) The results of the I/M 240 tests of the three additional engine families are no greater than the I/M 240 emission results of the original engine family tested,

(e) The additional engine families meet the criteria specified in paragraphs 3.(b)(4)B. through D. of the Addendum, and

(f) The evaporative emission control system remains as installed by the original engine manufacturer if gasoline operation is retained.

6. For both LEV and Tier 1 vehicles or engines, any additional engine families for which emission data would be carried across under paragraph 5. above or paragraph 3.(b)(4) under Option 3 of the Addendum must be produced by the same vehicle or engine manufacturer as the original engine family tested.

7. Any party responsible for demonstrating compliance, installing, converting, selling or marketing alternative fuel conversion systems in accordance with the requirements of the Addendum and this revised policy shall retain the results of all tests, installations and sales of such systems as specified under Option 3 of the Addendum or this Revision for inspection by EPA for five (5) years following completion of the testing, installing or marketing of such systems.

8. Any provisions or requirements of the Addendum not extended or revised herein remain in effect as provided in the Addendum.

C. Conclusion

EPA believes the revisions described above will provide additional flexibility and streamlining to manufacturers, installers and marketers of alternative fuel conversion systems while not jeopardizing the emission reduction purposes of the original Addendum. EPA will continue to review the progress of the industry in developing and testing of alternative fuel systems to

ensure the emissions benefits are being achieved and to determine if any future revisions are necessary. Any questions regarding this revised policy should be directed to the Mobile Source Enforcement Branch at (202) 564–2255.

Bruce C. Buckheit,

Director, Air Enforcement Division, Office of Enforcement and Compliance Assurance.

[FR Doc. 98–15845 Filed 6–15–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

June 9, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 16, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0214 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0128.

Title: Application for General Mobile Radio Service and Interactive Video Data Service.

Form Number: FCC 574.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Business and other for-profit entities; Not-for-profit Institutions; State, Local or Tribal Government.

Number of Respondents: 1,826.

Estimated Time Per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirements.

Cost to Respondents: $124,000.

Total Annual Burden: 913 hours (GMRS and IVDS filing fees and postage costs).

Needs and Uses: This form is used by General Mobile Radio Service (GMRS) and some Interactive Video Data Service (IVDS) applicants for a new or modified license. (IVDS Auction applicants use FCC 600.) Applicants my also file this form for renewal when they do not receive the automated renewal notice, FCC Form 574R, sent to them by the Commission. This form is required by the Communications Act of 1934, as amended; International Radio Regulations, General Secretariat of International Telecommunications Union and FCC Rules - 47 CFR 1.922, 1.924, 95.71, and 95.73. FCC 574 is also being used by some Interactive Video Data Service licensees until the Universal Licensing System (ULS) is implemented. FCC Rules 47 CFR 95.811, 95.815, 95.817 and 95.833 identify the collection of the data for IVDS purposes.

The Wireless Telecommunications Bureau staff will use the data to determine eligibility of the applicant to hold a radio station authorization and for rulemaking proceedings. Compliance personnel will use the data in conjunction with field engineers for enforcement purposes. The data obtained from the collection is vital to maintaining an acceptable database.

This form is being revised to delete the fee payment blocks. FCC Form 159, Fee Remittance Advice, is required with any payment to the FCC. The fee payment blocks duplicated the collection of this information. A space has been added for the applicant to provide an Internet/e-mail address. The collection of ''FCC Tower Number'' has been changed to ''Antenna Structure Registration Number'' due to the FCC revising the way antennas are registered with the FCC.

When the Universal Licensing System (ULS) is implemented, GMRS applicants will use the proposed FCC form 605 and IVDS applicants will file the proposed FCC 601. At the time of implementation, the FCC will notify OMB of any change in the status of this collection of information.

Federal Communications Commission.

Willima F. Caton,

Deputy Secretary.

[FR Doc. 98–15997 Filed 6–15–98; 8:45am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2281]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800. Oppositions to these petitions must be filed July 1, 1998. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Electronic Filing of Documents in Rulemaking Proceedings (GC Docket No. 97–113).

Number of Petitions filed: 1.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–15940 Filed 6–15–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders,

Federal Maritime Commission, Washington, D.C. 20573.

Intralog, Inc., 1500 San Remo Avenue, Suite 253, Coral Gables, FL 33146, Officers: Dieter J. Bartels, President, Samuel J. Mow, Vice President. '

Dedola International, Inc., One World Trade Center, Suite 1070, Long Beach, CA 90831, Officers: Marc S. Dedola, President, Stephen S. Dedola, Exec. Vice President.

Washington World Trading Corp. d/b/a, Washington World International Freight Forwarders, 1380 Golfview Drive East, Pembroke Pines, FL 33026, Officers: Lucia Novoa, President, Francisco Novoa, Vice President.

Far International, 10450 NW 41st Street, Miami, FL 33178, Officer: Jose Luis Farah, President.

Woojin Shipping, Inc. d/b/a Axon Int'l, 960 Rand Road, #228, Des Plaines, IL 60016, Officer: Young H. Kim, President.

Pelican Trans International, Inc., 1057 Westfield Lane, Schaumburg, IL 60193, Officer: Annie Pak, Vice President.

Robert S. Rullo, 42 Harrison Avenue, North Plainfield, NJ 07060, Sole Proprietor.

Dated: June 10, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–15916 Filed 6–15–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 1, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Thomas H. Olson Family Limited Partnership, Lisco, Nebraska (of which Thomas H. Olson and Cynthia A. Olson are the sole general partners); to acquire voting shares of First Nebraska Bancs, Inc., Sidney, Nebraska, and thereby indirectly acquire First National Bank, Sidney, Nebraska; First National Bank, Julesburg, Colorado; and First National Bank, Torrington, Colorado.

Board of Governors of the Federal Reserve System, June 11, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–15998 Filed 6–15–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 10, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Hancock Holding Company, Gulfport, Mississippi; to merge with American Security Bancshares, Inc., Ville Platte, Louisiana, and thereby indirectly acquire American Security Bank, Ville Platte, Louisiana.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Fort Madison Financial Company, Fort Madison, Iowa; to acquire at least 51 percent of the voting shares of Bank of Dallas City, Dallas City, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Carlinville National Bank Shares, Inc., Carlinville, Illinois; to acquire 100 percent of the voting shares of Shipman Bancorp, Inc., Shipman, Illinois, and thereby indirectly acquire Citizens State Bank of Shipman, Shipman, Illinois.

D. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Marquette Bancshares, Inc., Minneapolis, Minnesota; to merge with Dakota Company, Inc., Minneapolis, Minnesota, and thereby indirectly acquire Marquette Bank Nebraska, N.A., O'Neill, Nebraska, and Marquette Bank South Dakota, N.A., Sioux Falls, South Dakota.

Board of Governors of the Federal Reserve System, June 11, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–15999 Filed 6–15–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 1, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. J.P. Morgan & Co. Incorporated, New York, New York (''JPM''), to engage *de novo* through its subsidiaries, including J.P. Morgan Investment Management Inc., New York, New York, in acting as a commodity pool operator (''CPO'') for certain closed-end private investment funds that are exempt from registration under the Investment Company Act of 1940 (15 U.S.C. § 80a-1 *et seq.*). *See Dresdner Bank AG*, 84 Fed. Res. Bull. 361 (1998).

In connection with its proposal, JPM also seeks to act as CPO for certain open-end investment funds. JPM submits that the funds will be managed by an independent board that will be responsible for the overall management of the funds. JPM states that the independent board, and not JPM, will control the funds and will perform the activities typically associated with being a CPO. However, to avoid the administrative burdens associated with each individual board member having to register as CPO, JPM will register as a CPO itself.

In publishing this proposal for comment, the Board does not take a position on the issue raised by the notice. Notice of the proposal is published solely to seek the views of interested parties on the issues presented and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Notificants' proposal is available for immediate inspection at the Federal Reserve Bank of New York and the offices of the Board in Washington, D.C. Interested persons may express their views on the proposal in writing, including on whether the proposed activities ''can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' 12 U.S.C. § 1843(c)(8).

Board of Governors of the Federal Reserve System, June 11, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–16001 Filed 6–15–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99011]

Notice of Availability of Funds; Emerging Infections Program

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program to establish an Emerging Infections Program (EIP) to join a national network of EIPs. This program will assist in local, State, and national efforts to conduct surveillance and applied epidemiologic and laboratory research in emerging infectious diseases and to pilot and evaluate prevention measures. This program addresses the ''Healthy People 2000'' priority area of Immunization and Infectious Diseases.

The purpose of the program is to assist State health departments to establish new EIPs as part of the national network. EIPs will be population-based centers designed to assess the public health impact of emerging infections and to evaluate methods for their prevention and control.

Activities of the EIPs will fall into the general categories of: (1) active surveillance; (2) applied epidemiologic and applied laboratory research; and (3) implementation and evaluation of pilot prevention/intervention projects.

The EIPs will maintain sufficient flexibility to accommodate changes in projects as required by the emergence of public health infectious disease problems. EIPs will be strategically located to serve a variety of geographical areas, diverse groups and difficult-to-reach populations—e.g., under-served women and children, the homeless, immigrants and refugees, and persons infected with HIV. They will enlist the participation of local health departments, academic institutions, and other public and private organizations with an interest in addressing public health issues relating to emerging infectious diseases, and will seek support from sources, in addition to CDC, to operate the EIP.

B. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally-recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. In consultation with States, assistance may be provided to political subdivisions of States.

The following States already participating in the EIP cooperative agreement program should not apply to this announcement: California, Connecticut, Georgia, Maryland, Minnesota, New York, and Oregon.

C. Availability of Funds

Up to $1,000,000 is available in FY 1999 to fund two awards. The average award will be about $500,000. This amount is for both direct and indirect costs. It is expected that the awards will begin on or about October 1, 1998, and will be made for a 12-month budget period within a project period of up to five years. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Note: Per instructions in Evaluation Criteria section below, the application should include proposals for four projects. CDC will select from one to four of those projects to fund based on the capacity of the applicant, priorities of the EIP network, and availability of resources.

Funding Preferences

EIPs are currently established in the seven following states: California, Connecticut, Georgia, Maryland, Minnesota, New York, and Oregon. To achieve appropriate geographical representation in the EIP network, for one of the two potential awards made under this announcement, funding preference may be given to approved applications from States in Standard Federal Regions VI, VII, and VIII.

Region VI: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Region VII: Iowa, Kansas, Missouri, Nebraska

Region VIII: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

D. Program Requirements

Recipient Activities

1. Establish and operate an EIP to further local, State, and national efforts to address emerging infectious diseases:

a. Organize the EIP so that it will have the capacity to conduct approximately three concurrent projects.

b. Organize the EIP so that it will maintain the ability to accommodate changes in specific projects and priorities as the public health system's need for information changes or new health problems emerge.

c. Operate the EIP so that it can function effectively as part of a national network of EIPs. Collaborate with CDC and other EIP sites, through the EIP steering committee and otherwise, to coordinate project priorities and to assure that important emerging infections issues are addressed appropriately.

d. Establish the EIP in a defined population, which could include either an entire State or a geographically defined area (or areas) within a State. To accomplish the objectives of certain EIP activities, a minimum population base of approximately 1,000,000 may be necessary.

2. Obtain technical and financial assistance to supplement the core assistance from CDC.

3. Collaborate with other public and private organizations that have an interest in addressing public health issues relating to emerging infectious diseases (e.g., local public health agencies, schools of public health, university medical schools, medical examiners, health care providers, clinical laboratories, community-based organizations, other Federal and State government agencies, research organizations, medical institutions, foundations, etc.).

4. Propose and conduct emerging infections activities in collaboration with appropriate partner organizations. Collaborate with other EIPs, as appropriate, to finalize protocols for and conduct EIP activities.

a. Categories of EIP activities. Activities of the EIP will fall into three categories:

(1) Active population-based surveillance projects. These may include collection and submission of disease-causing infectious agents to State, CDC, or other laboratories. For example, the surveillance case definition for the condition might involve detection of a positive culture or a drug resistant isolate in a microbiology laboratory, a serologic test result, a histopathologic finding, or a clinical syndrome, depending upon the disease or condition under surveillance; the specific approach to surveillance could also vary depending on the disease or condition under surveillance. Surveillance should be comprehensive (e.g., inclusion of audits to assure complete reporting), with active rather than passive case-finding.

(2) Applied epidemiologic and applied laboratory projects. Examples of potential projects include: evaluation of illnesses often not specifically diagnosed for which information about trends and etiology are important (e.g., diarrhea, community-acquired pneumonia); evaluation of clinical outcomes or risk factors for drug resistant infections; and evaluation of the clinical spectrum of influenza and the efficacy of influenza vaccines in target populations.

(3) Implementation and evaluation of pilot prevention/intervention projects for emerging infectious diseases. Examples might include assessment of efforts to promote safe food preparation in the home, evaluation of impact of hand-washing promotion on infectious diseases in child-care facilities, or evaluation of antibiotic prescribing practices in out-patient settings.

b. Specific EIP activities. In the application, propose a total of 4 projects from the following list (see Applicant Content section for details):

Required (propose both):

(1) Active population-based laboratory surveillance for foodborne diseases and related activities (FoodNet).

(2) Active Bacterial Core Surveillance (ABCs) activities.

Optional (select and propose 2 of the following):

(3) Active surveillance for syndromes of possibly infectious etiology (e.g., encephalitis, fulminant hepatitis).

(4) A collaboration with one or more managed-care organizations on a surveillance, risk factor, or pilot prevention project.

(5) A project to quantify or otherwise explore linkages between chronic and infectious diseases.

5. As a part of certain EIP projects, provide specimens such as disease-causing isolates or serum specimens to appropriate organizations (which may include CDC) for laboratory evaluation (e.g., molecular epidemiologic studies, evaluation of diagnostic tools).

6. Manage, analyze, and interpret data from EIP projects, and publish and disseminate important public health information stemming from EIP projects in collaboration with CDC.

7. Monitor and evaluate scientific and operational accomplishments and progress in achieving the purpose of this program.

8. Provide training opportunities at the EIP site (e.g., infectious disease fellows, laboratory fellows, public health students) that are consistent with the purpose of this announcement.

CDC Activities

1. Provide consultation, scientific, and technical assistance in general operation of the EIP and in designing and conducting individual EIP projects.

2. Participate in analysis and interpretation of data from EIP projects. Participate in the dissemination of findings and information stemming from EIP projects.

3. Assist in monitoring and evaluating scientific and operational accomplishments of the EIP and progress in achieving the purpose and overall goals of this program.

4. As needed, perform laboratory evaluation of specimens or isolates (e.g., molecular epidemiologic studies, evaluation of diagnostic tools) obtained in EIP projects and integrate results with other data from EIP projects.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application. Your application will be evaluated on the criteria listed, so it is important to follow them in preparing your program plan.

Applications should address the following topics in the order presented:

1. Understanding the objectives of the EIP;

2. Description of the population base for the EIP;

3. Description of existing capacity to assess, control, and prevent emerging infectious diseases;

4. Operational plan (including 4 project proposals as described below);

5. Personnel qualifications and management plan;

6. Evaluation plan; and

7. Budget.

Applicants should propose a total of 4 projects from the following list of activities.

Note: Two of the four projects proposed must be the FoodNet and ABC's projects (numbers 1 and 2 below). The other two should be selected from numbers 3–5 below. Each specific project proposal should be clearly identified in a distinct portion of the Operational Plan and should not exceed 3 pages. Though the activities described below address distinct issues and needs, they may be implemented in an integrated manner such that staff members work on more than one activity (supplies and equipment are shared, etc.):

1. Population-based laboratory surveillance for foodborne diseases and related activities (FoodNet): Conduct population-based laboratory surveillance including completion of case reports (which include demographic information as well as information about the diagnosis and outcome) and collection of disease-causing isolates—for seven bacterial and two parasitic foodborne pathogens (*Salmonella, E. coli* O157, *Campylobacter, Shigella, Listeria, Yersinia, Vibrio, Cryptosporidium and Cyclospora).* Completeness of surveillance should be verified by periodic (at least yearly) audits of area laboratories. In these audits, records in each laboratory should be reviewed and case report form information should be completed on cases not identified through the routine surveillance. Since this core activity will be done in collaboration with other EIP sites and CDC, the project should be designed so that data can be integrated with data from the other EIPs. Additional core activities for foodborne disease surveillance: (a) systematic survey of physician and laboratory practices regarding diagnostic practices for diarrheal pathogens (similar to those done in other sites), (b) active hemolytic uremic syndrome (HUS) surveillance through pediatric nephrologists, (c) pulsed-field gel electrophoresis (PFGE) of all *E. coli* O157 from catchment area, as part of expanding national network, and when the method is ready to be applied, PFGE of *Salmonella typhimurium* isolates, (d) participation in national antimicrobial resistance surveillance, and (e) surveillance for outbreaks of calicivirus gastroenteritis and/or endemic calicivirus gastroenteritis.

2. Active Bacterial Core Surveillance (ABCs) activities: Population-based laboratory surveillance for invasive disease caused by emerging, vaccine preventable, and drug resistant bacterial diseases. Conduct active population-based laboratory surveillance including completion of case reports (which include demographic information as well as information about the diagnosis and outcome) and collection of disease-causing isolates for invasive bacterial disease caused by *Streptococcus pneumoniae, Haemophilus influenzae, Neisseria meningitidis*, groups A and B streptococci, Vancomycin-resistant enterococcus and *Listeria monocytogenes.* Collect additional demographic, medical, and vaccination history information on all invasive *Haemophilus influenzae* cases in persons less than 15 years of age (very small numbers). Collect additional information in cases of early-onset group B streptococcus disease. Completeness of surveillance should be verified by periodic (semiannual) audits of area laboratories. In these audits, records in each laboratory should be reviewed and case report form information should be completed on cases not identified through the routine surveillance. Since this core activity will be done in collaboration with the other EIP sites and CDC, the project should be designed so that data can be integrated with data from the other EIPs.

3. Active surveillance for syndromes of possibly infectious etiology: (For example: encephalitis, fulminant hepatitis, or myocarditis.) Protocols for this project should be developed together with CDC and the EIP sites involved in the current EIP project on Unexplained Deaths and Critical Illnesses Possibly Due to Infections.

4. Collaboration with managed-care organizations. (For example, collaborations with one or more managed-care organizations might include surveillance of infectious syndromes or piloting and evaluation of prevention projects.) Emphasis should be on infectious diseases of public health importance.

5. Linkages between chronic and infectious diseases. (For example, projects might seek to quantify or otherwise explore links between chronic diseases and infectious diseases (e.g., hepatitis C and chronic liver disease; infections due to Chlamydia pneumoniae and atherosclerosis; mycoplasma infections and asthma, human papilloma virus and cervical cancer, genital infections and premature birth, or others.)

Funding in future years may permit implementation of projects which are developed and implemented by individual EIP sites. Briefly describe activities which the applicant would propose to implement in the EIP in the future if given the opportunity.

Page Limitations

The application narrative (excluding budget, appendices, and required forms) must not exceed 25 single-spaced pages, printed on one side, with one inch margins, and unreduced font. Only the following information should be presented in appendices: Letters of support, documentation of bona fide agent status, curricula vitaes, and budget. All other materials or information that should be included in the narrative will not be accepted if placed in the appendices.

Budget Instructions

For each line-item (as identified on the Form 424a of the application), show both Federal and non-Federal (e.g., State funding) shares of total cost for the EIP. For each staff member listed under the Personnel line item, indicate their specific responsibilities relative to each of the proposed projects. Include provisions for travel of the principal investigator and one EIP participant to two meetings at CDC in Atlanta during the first year of the program.

Bona Fide Agent Status

If applicant is an agent of a State public health agency and not a State public health agency itself, documentation that applicant is acting as a bona fide agent of a State public health agency should be provided in an appendix. Applicants acting as bona fide agents of a State public health agency are strongly encouraged to consult with CDC's Grants Management Specialist (identified in Section J below) prior to submitting the application for guidance regarding what constitutes acceptable documentation.

F. Submission and Deadline

Notice of Intent To Apply

In order to assist CDC in planning and executing the evaluation of applications submitted under this announcement, all parties intending to submit an application are requested to inform CDC of their intention to do so at least ten (10) days prior to the application due date. Notification should include: (1) name and address of institution, and (2) name, address, and telephone number of contact person. Notification should be provided by facsimile, postal mail, or E-mail, to Laura Conn, National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop C–12, Atlanta, GA 30333, E-mail address lbk1@cdc.gov, Facsimile (404) 639–4197.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are provided in the application kit. On or before July 31, 1998, submit the application to: Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99011, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–18, Atlanta, GA 30305–2209

If your application does not arrive in time for submission to the independent review group, it will not be considered

in the current competition unless you can provide proof that you mailed it on or before the deadline (i.e., receipt from U.S. Postal Service or a commercial carrier; private metered postmarks are not acceptable).

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. Your application should address each section in the order presented below:

1. Understanding the objectives of the EIP (10 points)

a. Demonstration of a clear understanding of the background and objectives of this cooperative agreement program.

b. Demonstration of a clear understanding of the requirements, responsibilities, problems, constraints, and complexities that may be encountered in establishing and operating the EIP.

c. Demonstration of a clear understanding of the roles and responsibilities of participation in the EIP network.

2. Description of the population base of the EIP area (10 points).

a. Clear definition of the geographic area and population base in which the EIP will operate. Detailed description of the demographics of the proposed population base.

b. Clear description of various special populations within the defined population base as they relate to the proposed activities of the EIP, such as the rural or inner city poor, under served women and children, the homeless, immigrants and refugees, and persons infected with HIV.

c. Extent to which the population base is diverse in terms of demographics and special populations.

3. Description of existing capacity to assess, control and prevent emerging infectious diseases: (35 points)

a. Description of applicant's past experience in conducting active surveillance, applied epidemiologic research, applied laboratory research, and prevention research, in general, and on emerging infectious diseases, including antimicrobial drug resistant, foodborne and waterborne, currently or potentially vaccine preventable, and opportunistic diseases.

b. Demonstration of applicant's ability to develop and maintain strong cooperative relationships with both public and private, local and regional, medical, public health, laboratory, academic, and community organizations. Evidence of applicant's ability to solicit and secure programmatic collaboration, and financial and technical support from such organizations.

c. Demonstration of support from non-applicant participating agencies, institutions, organizations, laboratories, individuals, consultants, etc., indicated in applicant's operational plan. Applicant should provide (in an appendix) letters of support which clearly indicate collaborators' willingness to be participants in the EIP. Do not include letters of support from CDC personnel.

4. Operational plan (40 points).

a. The extent to which the applicant's plan for establishing and operating the population-based EIP clearly describes the proposed organizational and operating structure/procedures and clearly identifies the roles and responsibilities of all participating agencies, organizations, institutions, and individuals. The extent to which the applicant describes plans for collaboration with CDC and other EIP sites in the establishment and operation of the EIP and individual EIP projects, including project design/development (e.g., protocols), management and analysis of data, and synthesis and dissemination of findings.

b. Description of applicant's partnerships with necessary and appropriate organizations for establishing and operating the proposed EIP and for conducting individual EIP projects.

c. Description of plans to provide training opportunities for providers-in-training (e.g., infectious disease fellows, laboratory fellows, public health students).

d. Description of a plan to solicit and secure financial and technical assistance from other public and private organizations (e.g., schools of public health, university medical schools, public health laboratories, community-based organizations, other Federal and State government agencies, research organizations, foundations, etc.) to supplement the core funding from CDC.

e. Quality of the proposed projects (as requested in the Application Content section above) regarding consistency with public health needs, intent of this program, feasibility, methodology/approach, and collaboration/participation of partner organizations. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

5. Personnel qualifications and management plan.

a. Identification of applicant's key professional personnel to be assigned to the EIP and EIP projects (provide curriculum vitae for each in an appendix). Clear identification of their respective roles in the management and operation of the EIP. Descriptions of their experience in conducting work similar to that proposed in this announcement.

b. Identification of key professional personnel from other participating or collaborating institutions, agencies, organizations outside of the applicant's agency that will be assigned to EIP activities (provide curriculum vitae for each in an appendix). Clear identification of their respective roles.

c. Description of all support staff and services to be assigned to the EIP.

d. Description of approach to maintaining sufficiently flexible EIP staffing to accommodate the likelihood that the requirements of EIP projects will change from time to time due to changes in the public health system's need for information or the emergence of new diseases.

6. Evaluation (5 points).

a. Quality of plan for monitoring and evaluating scientific and operational accomplishments of the EIP and of individual EIP projects.

b. Quality of plan for monitoring and evaluating progress in achieving the purpose and overall goals of this cooperative agreement program.

7. Budget (not scored).

Extent to which the line-item budget is detailed, clearly justified, and consistent with the purpose and objectives of this program. Extent to which applicant shows both Federal and non-Federal (e.g., State funding) shares of total cost for the EIP.

If requesting funds for any contracts, provide the following information for each proposed contract: (1) Name of proposed contractor, (2) breakdown and justification for estimated costs, (3) description and scope of activities to be performed by contractor, (4) period of performance, and (5) method of contractor selection (e.g., sole-source or competitive solicitation).

8. Human Subjects (not scored).

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

____ Yes ____ No

Comments:_____

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports. The first semiannual report is required with each year's continuation application and should cover program activities from beginning of the current budget period to date of report/application preparation. The second semiannual report is due 90 days after the end of each budget period and should cover activities for the entire budget period recently completed. This second report may simply be a ''cut/paste'' update of the first semiannual (partial budget period) report to add information from date of first report to the end of the budget period.

2. Financial Status Report (FSR), no more than 90 days after the end of the budget period; and

3. Final FSR and performance reports, no more than 90 days after the end of the project period. Send all reports to: Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Rd., NE., Rm. 300, Mailstop E–18, Atlanta, GA 30305–2209.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR98–1 Human Subjects Requirements

AR98–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR98–7 Executive Order 12372 Review

AR98–9 Paperwork Reduction Act Requirements

AR98–10 Smoke-Free Workplace Requirements

AR98–11 Healthy People 2000

AR98–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301(a) and 317(k)(1)(2) of the Public Health Service Act [42 U.S.C. sections 241(a) and 247b(k)(1)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist Grants Management Branch, Procurement and Grants Office, Announcement 99011, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–18, Atlanta, GA 30305–2209, Telephone (404) 842–6546, E-mail address: oxb3@cdc.gov.

For program technical assistance, contact Robert W. Pinner, M.D., or Pat McConnon, M.P.H., Office of the Director, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), Mailstop C–12, 1600 Clifton Road, NE., Atlanta, GA 30333, Telephone (404) 639–2603, E-mail address for Dr. Pinner: rwp1@cdc.gov/E-mail address for Mr. McConnon: pjm2@cdc.gov.

See also the CDC homepage on the Internet: http://www.cdc.gov

Potential applicants may obtain a copy of ''Addressing Emerging Infectious Disease Threats: A Prevention Strategy for the United States'' through the Centers for Disease Control and Prevention (CDC), National Center for Infectious Diseases, Office of Planning and Health Communication—EP, Mailstop C–14, 1600 Clifton Road, NE., Atlanta, GA 30333. Requests may also be sent by facsimile to (404) 639–3039.

Dated: June 10, 1998.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–15924 Filed 6–15–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements for Prevention Research Centers, Program Announcement 98047; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Disease, Disability, and Injury Prevention and Control SEP: Cooperative Agreements for Prevention Research Centers, Program Announcement 98047.

Times and Dates: 8 a.m.–5 p.m., July 14, 1998; 8 a.m.–5 p.m., July 15, 1998; 8 a.m.–5 p.m., July 16, 1998.

Place: Sheraton Colony Square Hotel, 188 14th Street, N.E., Atlanta, Georgia 30316.

Status: The meeting will be open from 8 a.m.–9 a.m., July 14, 1998; and closed 9 a.m. July 14, 1998, through 5 p.m. July 16, 1998.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 98047.

Portions of this meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Contact Person for more Information: Michael N. Waller, National Center for Chronic Disease Prevention and Health Promotion, CDC, M/S K30, 4770 Buford Highway, N.E., Atlanta, Georgia 30345, telephone 770/488–5264.

Dated: June 10, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–15926 Filed 6–15–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Office of the Director, Centers for Disease Control and Prevention (CDC); Meeting

Name: Guide to Community Preventive Services (GCPS) Task Force Meeting.

Times and Dates: 10 a.m.–5 p.m., June 22, 1998; 8 a.m.–3 p.m., June 23, 1998.

Place: The Wyndham Garden Hotel, 3340 Peachtree Road, NE, Atlanta, Georgia 30326, telephone (404) 231–1234.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 40 people.

Purpose: The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, which is based on the best available scientific evidence and current expertise regarding essential public health services and what works in the delivery of those services.

Matters to be Discussed: Agenda items include a discussion on DHHS Initiative to Eliminate Disparities in Health; Report on Methods Development (including a discussion on cost effectiveness); a review of evidence on interventions on Vaccine Preventable Diseases (VPD); a presentation on the layout of the VPD Chapter; the plan to field test the VPD Chapter; the review of evidence, layout and field testing of the Motor Vehicle Occupant Injury chapter; reports on the Physical Activity and Tobacco Chapters; plans for implementation and evaluation of the Guide; and plans for publishing chapters of the Guide in peer-review journals.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Marguerite Pappaioanou, Chief, GCPS Development Activity, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, CDC, 1600 Clifton Road, NE, M/S D–01, Atlanta, Georgia 30333, telephone 404/639–4301.

Persons interested in reserving a space for this meeting should call 404/639–4301 by close of business on June 17, 1998.

Dated: June 10, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–15927 Filed 6–15–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Center for Environmental Health Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: 1998 National Lead Grantee Conference: Linking Health, Housing, Environment.

Times and Dates: 6 p.m.–9 p.m., June 21, 1998; 9:00 a.m.–6 p.m., June 22, 1998; 8 a.m.–5:15 p.m., June 23, 1998; 8:30 a.m.–11:45 a.m., June 24, 1998.

Place: Phoenix at Civic Plaza, 225 East Adams Street, Phoenix, Arizona 85004–2379, telephone 602/262–6225.

Status: Open to the public, limited by space available.

Purpose: The purpose of this meeting is to provide a forum to strengthen and enhance Federal grantee capacity to develop and implement cost effective programs by providing state-of-the-art program and technical information; building program management skills; and encouraging coordination and cooperation among grantees and the public and private sectors.

Matters to be Discussed: Workshops and topical tables on specific program issues will include Managing Effective Grants; Remodeling and Renovation: Protecting Workers and Families; Lead Hazard Control and Rehabilitation; Partnering with Community-based Organizations; Identifying and Testing Lead Hazards; HUD Guidelines; Core Public Health Functions; Waste Management; Outreach and Public Education on Lead Issues; EPA-related Certification and Regulations; Title X Status Report; Managed Care and Medicaid Issues; NHANES III-Part 2; Insurance and Liability; CDC Screening Guidelines; Lead Effects Research; Healthy Homes; Laboratory Techniques and Technologies; and Media Perspectives.

Workshops and topical tables are subject to change as priorities dictate.

Contact Person for More Information: Barbara Nelson, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F–42, Atlanta, Georgia 30341–3724, telephone 770/488–7272.

Dated: June 10, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–15928 Filed 6–15–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Title: Information Collection from applicants who will respond to Request for Applications for funding of 6 OCS competitive grants.

OMB No.: 0970–0062.

Description: The Office of Community Services is requesting approval to continue the use of its program announcements to collect information which will enable the agency to determine which projects to fund and the amount of the grant awards. The programs covered include: Community Food and Nutrition; Discretionary Grants Program; Low Income Home Energy Assistance Program; Job Opportunities for Low-Income Individuals; Training and Technical Assistance and Capacity Building; and Family Violence Prevention and Services Program.

Information collected from the requirements contained in these 6 program announcements will be the sole source of information available to OCS in reviewing applications leading to awards of discretionary grants to eligible applicants.

The application forms that will be used contain information for competitive review in accordance with the program announcements' guidelines. The data provided is necessary to compute the amount of the grant in relation to proposed project activities by the ACF Grant Officers.

OMB recommended that ACF submit one information collection package covering all OCS program announcements, since the same application form is used in each announcement. This information collection was last approved in 1995 and is due to expire September 30, 1998. Since the last approval, the Demonstration Partnership Program no longer exists. Therefore, this request covers 6 programs, rather than the 7 programs previously covered.

Respondents: Not-for-profit institutions.

Instrument	Estimated number of respondents	Number of responses per respondent	Average burden hours per respondent	Total burden hours
CFN Announcement	250	1	10	2500
LIHEAP Announcement	10	1	24	240
Community Economic Dev. Announcement	200	1	35	7000
JOLI Announcement	150	1	40	6000
CSBG T&TA Announcement	25	1	24	600

Instrument	Estimated number of respondents	Number of responses per respondent	Average burden hours per respondent	Total burden hours
Family Violence Announcement	100	1	40	4000

Estimated Total Annual Burden: 20,340.

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, 370 L'Enfant Promenade, S.E., Washington, DC 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: June 10, 1998.

Bob Sargis,

Acting Reports Clearance Officer,

[FR Doc. 98–15879 Filed 6–15–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Relocation of the Dockets Management Branch

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the relocation and partial closing of the Dockets Management Branch (DMB). During this relocation process, it is necessary to partially close DMB to allow the staff to set up the new offices. This relocation will permit more efficient utilization of work and document storage space. The purpose of this document is to inform the public in advance to avoid confusion in carrying out DMB's functions.

FOR FURTHER INFORMATION CONTACT: Jennie C. Butler, Dockets Management Branch (HFA–305), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–7542.

SUPPLEMENTARY INFORMATION: On June 20, 1998, DMB will move from its current location at 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, to a new location at 5630 Fishers Lane, rm. 1061, Rockville, MD 20857. Therefore, from June 19 to 22, 1998, DMB will be partially closed. During this time, the public reading room will be open from 9 a.m. to 4 p.m., normal business hours, to accept hand-delivered documents, but will not provide other services.

Anyone wishing to hand deliver documents to DMB on June 19, 1998, should go to 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, and anyone wishing to hand deliver documents to DMB on June 22, 1998, should go to 5630 Fishers Lane, rm. 1061, Rockville, MD. Normal operations of DMB will resume on June 23, 1998, at the new location, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857. Also starting on June 23, 1998, the new phone number for DMB will be 301–827–6860.

DMB, which is part of the Office of Management and Systems, is responsible for many activities under 21 CFR 10.20. The major functions of DMB include: (1) Serving as the entry point for citizen petitions, comments, hearing requests, and other documents related to FDA's rulemaking and administrative activities; (2) maintaining a public reading room where documents are available for public inspection; (3) providing copies of official records maintained in accordance with the Freedom of Information Act; and (4) providing advice and guidance regarding filing requirements pertaining to FDA's rulemaking or administrative activities.

Dated: June 10, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–15878 Filed 6–15–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–250, and HCFA–R–153]

Agency information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

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 this 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) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Secondary Payer and Supporting Regulations in 42 CFR 489.20; *Form No.:* HCFA–250 (OMB# 0938–0214); *Use:* Medicare Secondary Payer (MSP) is essentially the same concept known in the private insurance industry as coordination of benefits, and refers to those situations where Medicare does not have primary responsibility for paying the medical expenses of a Medicare beneficiary. HCFA contracts with health insuring organizations, herein referred to as intermediaries and

carriers, to process Medicare claims. HCFA charges its Medicare intermediaries and carriers with various tasks to detect MSP cases; develops and disseminates tools to enable them to better perform their tasks; and monitors their performance in achievement of their assigned MSP functions. Because intermediaries and carriers are also marketing health insurance products that may have liability when Medicare is secondary, the MSP provisions create the potential for conflict of interest. Recognizing this inherent conflict, HCFA has taken steps to ensure that its intermediaries and carriers process claims in accordance with the MSP provisions, regardless of what other insurer is primary. These information collection requirements describe the MSP requirements.; *Frequency:* Other—Monthly for New Beneficiaries Only; *Affected Public:* Individual or Households; *Number of Respondents:* 14,204,000; *Total Annual Responses:* 14,204,000; *Total Annual Hours:* 773,240.

(2) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Drug Utilization Review and Supporting Regulations in 42 CFR 456.700; *Form No.:* HCFA–R–153, HCFA–R–153a (OMB# 0938–0659); *Use:* These information collection requirements are necessary to establish patient profiles in pharmacies, identify problems in prescribing and/or dispensing, determine each program's ability to meet minimum standards required for Federal financial participation, and ensure quality pharmaceutical care for Medicaid patients. State Medicaid agencies that have prescription drug programs are required to perform prospective and retrospective drug use review in order to identify aberrations in prescribing, dispensing and/or patient behavior.; *Frequency:* Annually; *Affected Public:* State, Local or Tribal Government, Business or other for-profit, and Not for profit institutions; *Number of Respondents:* 50; *Total Annual Responses:* 50; *Total Annual Hours:* 588,667.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, 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 Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 9, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–15970 Filed 6–15–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2028–N]

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: February 1998 and March 1998

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: One new proposal for a Medicaid demonstration project was submitted to the Department of Health and Human Services during the month of February, and none was submitted in March 1998 under the authority of section 1115 of the Social Security Act. One proposal was approved in February, and no proposals were disapproved or withdrawn during February or March. (This notice can be accessed on the Internet at http://www.hcfa.gov/cmso/sect115.htm.)

Comments: We will accept written comments on this proposal. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: Mail correspondence to: Gloria Smiddy, Center for Medicaid and State Operations, Health Care Financing Administration, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Gloria Smiddy, (410) 786–7723.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

As part of our procedures, we publish a notice in the **Federal Register** with a monthly listing of all new submissions, pending proposals, approvals, disapprovals, and withdrawn proposals. Proposals submitted in response to grant solicitation or other competitive process is reported as received during the month that such grants or bid is awarded, so as to prevent interference with the awards process.

II. Listing of New, Pending, Approved, Disapproved, and Withdrawn Proposals for the Months of February and March 1998

A. Comprehensive Health Reform Programs

1. New Proposal

No new proposals were received during the months of February or March 1998.

2. Pending Proposals

The following comprehensive health reform proposal is pending.

Demonstration Title/State: BadgerCare/Wisconsin.

Description: The State submitted a proposal that would use a combination of title XIX and title XXI funding to ensure access to health care for all children and parents in uninsured families with incomes below 185 percent of the Federal poverty level. Once enrolled, families would maintain

their eligibility until their income reaches 200 percent of the Federal poverty level. The benefits would be identical to the Medicaid benefits package and current provisions for quality assurance under Wisconsin's present Medicaid managed care system.

Date Received: January 23, 1998.

State Contact: Angie Dombrowicki, Department of Health and Family Services, Division of Health, One West Wilson Street, Room 237, P.O. Box 309, Madison, WI 53701–0309, Phone: (608) 266–1935.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Center for Medicaid and State Operations, Family/Children's Health Program Group, 7500 Security Boulevard, Baltimore, MD 21244–1850.

The pending proposals for July 1997 through November 1997 referenced in the **Federal Register** of February 4, 1998 (63 FR 5810) remain unchanged except for the New Jersey proposal, which is discussed in item 4, below.

3. Approved Conceptual Proposals (Award for Waivers Pending)

No conceptual proposals were approved during the months of February or March 1998.

4. Approved Proposals

The following comprehensive health reform proposal was approved during the month of February. No comprehensive health reform proposals were approved during the month of March.

Demonstration Title/State: New Jersey Managed Charity Care Demonstration.

Description: The State will incorporate aspects of managed care into the current charity care program to achieve program efficiencies, better value, and improved care and health outcomes for charity care beneficiaries. The demonstration would use the DSH funds allocated to the charity care component and re-direct these funds to a new managed charity care program.

Date Received: March 24, 1997.

Date Approved: February 13, 1998.

State Contact: Laurie Facciarossa, Division of Medical Assistance and Health Services, CN 712, Trenton, NJ 08065, Phone: (609) 588–4518.

Federal Project Officer: Dan McCarthy, Health Care Financing Administration, Center for Medicaid and State Operations, Family and Children's Health Program Group, Division of Integrated Health Systems, 7500 Security Boulevard, Baltimore, MD 21244–1850.

5. Disapproved Proposals

No proposals were disapproved during the months of February or March 1998.

6. Withdrawn Proposals

No proposals were withdrawn during the months of February or March 1998.

B. Other Section 1115 Family Planning Programs

1. New Proposals

The following Family Planning proposal was received during the month of February 1998. No new proposals were received during the month of March 1998.

Demonstration Title/State: Family Planning Expansion Project/Oregon.

Description: Oregon submitted a proposal to expand family planning coverage to women and men with incomes less than 185 percent of poverty.

Date Received: February 18, 1998.

State Contact: Julie Abrams, Health Division, State of Oregon, Salem, Oregon 97310, Phone: (503) 731–4235.

Federal Project Officer: Alisa Adamo, Health Care Financing Administration, Center for Medicaid and State Operations, Family and Children's Health Programs Group, Division of Integrated Health Systems, 7500 Security Boulevard, Baltimore, MD 21244–1850.

2. Pending Proposals

The pending proposals for July 1997 through November 1997 that are referenced in the **Federal Register** of March 10, 1998 (63 FR 11686) remain unchanged.

3. Approved Conceptual Proposals (Award of Waivers Pending)

No conceptual proposals were approved during the months of February or March 1998.

4. Approved, Disapproved, Withdrawn Proposals

No proposals were approved, disapproved or withdrawn during the months of February or March 1998.

III. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal. If further help or information is needed, inquires should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments.)

Dated: May 19, 1998.

Sally K. Richardson,

Director, Center for Medicaid and State Operations.

[FR Doc. 98–15947 Filed 6–15–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. as amended. The grant applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group Subcommittee G—Education.

Date: June 23–24, 1998.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, Washington, DC 20007.

Contact Person: Dr. Harvey Stein, Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Boulevard, North, Rockville, MD 20892–7403, Telephone: 301/496–7481.

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 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: June 9, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–15918 Filed 6–15–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Meeting

Pursuant to section10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute (NCI) Board of Scientific Advisors on June 22–23, 1998 in Conference Room 10, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland.

This meeting will be open on June 22 from 8 a.m. to recess and on June 23 from 8 a.m. to adjournment. Agenda items will include the following: NCI Director's Report; Deputy Director of Extramural Science's Reports; Legislative Update; Scientific Presentation(s); Concept Reviews; program review updates and reports, and discussions pertaining to new and ongoing Board business. Attendance by the public will be limited to space available.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations and additional information pertaining to the meeting should contact Dr. Paulette S. Gray, Executive Secretary, NCI Board of Scientific Advisors, 6130 Executive Blvd., EPN, Rm. 600C, Bethesda, MD 20892 (301–496–4218).

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.

Dated: June 9, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–15919 Filed 6–15–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant, applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: June 30, 1998.

Time: 7:30 AM to 5 pm.

Agenda: To review and evaluate grant applications.

Place: 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Richard S. Fisher, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NIDCD/NIH, 6210 Executive Blvd., Room 400C, MSC–7180, Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: June 9, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–15920 Filed 6–15–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Disease Meeting: Congressionally-Directed Diabetes Research Working Group

The Congressionally-Directed Diabetes Research Working Group is seeking public comment on future directions for diabetes and diabetes-related research funded by the National Institutes of Health (NIH).

In report language accompanying the fiscal year 1998 appropriations for the NIH and the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), both the House of Representatives and the Senate urged the NIH Director, in collaboration with the Director of the NIDDK, to establish an external Diabetes Research Working Group. Further, the Congress charged the Working Group with developing a comprehensive plan for NIH-funded diabetes research that would include recommendations for future diabetes research initiatives and directions. The plan is to be submitted to the Congress in November 1998.

Notice is hereby given of the meeting of the Congressionally-Directed Diabetes Research Working Group to take place on July 9, 1998. The meeting will run approximately from 8 a.m. to 5:30 p.m. in Conference Room D of the William H. Natcher Building, National Institutes of Health, Bethesda, Maryland. A two-hour portion of this open meeting—from approximately 10:00 a.m. until approximately 12:00 p.m., will be reserved for the Working Group to hear public comment from private citizens and from individuals representing voluntary health, research, and professional organizations, and other organizations concerned about diabetes will be made in the order in which requests are made to the Working Group and shall not exceed five minutes in length. Written statements of unspecified length may also be submitted to the Working Group.

Persons and organizations having an interest in making a statement during the open session of the Working Group meeting, and/or in submitting a written statement to the Working Group, should contact Ms. Carol Feld, Executive Secretary, Diabetes Research Working Group, at 301–496–6623 this is not a toll-free number) on or before July 1.

Dated: June 9, 1998.

Ms. Carol Feld,

Executive Secretary of the Congressionally-Directed Diabetes Research Working Group.

[FR Doc. 98–15921 Filed 6–15–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC): Public Review of the ''Spatial Data Transfer Standard, Part 5: Raster Profile and Extensions''

ACTION: Notice; Request for comments.

Note: This announcement extends the deadline for comment stated in an announcement published June 4, 1998, until September 5, 1998.

SUMMARY: The FGDC is sponsoring a public review of the draft ''Spatial Data Transfer Standard, Part 5: Raster Profile and Extensions''.

The FGDC recognizes that standards must meet the needs and recognize the views of State and local governments, academia, industry, and the public. The purpose of this notice is to solicit such views. The FGDC invites the community to review, test, and evaluate the proposed standard. Comments are encouraged about the content, completeness, applicability, and usability of the proposed standard.

The FGDC anticipates that the proposed standard will be adopted as Federal Geographic Data Committee standard after updating or revision. The standard may be forwarded to voluntary standards bodies for adoption if interest warrants such actions.

DATES: Comments must be received on or before September 5, 1998.

CONTACT AND ADDRESSES: Requests for written copies of the standard should be addressed to ''Spatial Data Transfer Standard, Part 5: Raster Profile and Extensions'', FGDC Secretariat (attn: Jennifer Fox), U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192; telephone 703–648–5514; facsimile 703–648–5755; or Internet at gdc@usgs.gov. The standard may be downloaded from this Internet address: ftp://www.fgdc.gov/Standards/Documents/Standards/SDTS__Pt5/.

Reviewer's comments may be sent to the FGDC via Internet mail to: gdc-sdtsras@www.fgdc.gov.

Reviewer comments may also be sent to the FGDC Secretariat at the above address. Please send one hardcopy version of the comments and a soft copy version, preferably on a 3.5×3.5 diskette in WordPerfect 5.0 or 6.0/6.1 format.

SUPPLEMENTARY INFORMATION: The Spatial Data Transfer Standard (SDTS) defines a general mechanism for the transfer of geographically referenced spatial data and its supporting metadata, i.e., attributes, data quality reports, coordinate reference systems, security information, etc. The overriding principle that SDTS promotes is that the spatial data transfer should be self-documenting. The data set in SDTS should contain all of the information that is needed to assess and (or) use the data for any appropriate GIS application. The SDTS base specification (Parts 1, 2 and 3) is implemented via profiles of SDTS. A SDTS profile, in general terms, may be defined as a limited subset of the standard, designed for use with a specific type of data model, i.e., topological vector, point, grid, image, etc. Specific choices are made for encoding possibilities not addressed, left optional, or left with numerous choices with in the SDTS base specification. A profile may also specify extensions to the base standard to address changing technologies, and to take advantage of other industry standards. For raster image data, there are numerous standards, with various properties, restrictions, and degrees of implementation. The SDTS Raster Profile and Extensions (SRPE) permits the use of two common industry standards for image data: Basic Image Interchange Format (BIIF) and Tagged Image File Format (TIFF). The BIIF defines a general mechanism for the transfer of image data and any supporting data, i.e. image parameters, visualization parameters, compression parameters, text annotations, symbols, etc. BIIF is an ANSI/ISO standard and is in wide use in the commercial military community (formerly NITF). TIFF is a general purpose image file format that is used widely for simple image applications.

For answers to questions related to the content of the standard please contact the Federal Geographic Data Committee (FGDC) Subcommittee on Base Cartographic Data, attn. Mark DeMulder, U.S. Geological Survey, 511 National Center, Reston, VA 20192.

Dated: June 9, 1998.

Richard E. Witmer,

Chief, National Mapping Division, U.S. Geological Survey.

[FR Doc. 98–15864 Filed 6–15–98; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Bureau of Indian Affairs (BIA) in accordance with the Paperwork Reduction Act (44 U. S. C. 3506(c)(2)(A) is soliciting comments on the proposed information collection for the Child Abuse and Neglect Reporting Form.

FOR FURTHER INFORMATION CONTACT: Copies of the documents contained in the information collection request may be obtained by contacting Larry Blair, Bureau of Indian Affairs, Office of Tribal Services, 1849 C Street NW., MS–4603–MIB, Washington, DC 20240. Telephone: (202) 208–2479.

DATES: Submit comments on or before August 17, 1998.

ADDRESSES: Your comments and suggestions on the requirements should be made directly to Larry Blair, Bureau of Indian Affairs, Office of Tribal Services, 1849 C Street, NW., MS–4603–MIB, Washington, DC 20240. Telephone: (202) 208–2479.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Child Abuse and Neglect Reporting Form, OMB No. 1076-(new) information collection complies with the requirements of 25 CFR Part 23, the Indian Child Welfare Act, and as required by Pub. L. 95–608, the Indian Child Welfare Act of 1978, and Pub. L. 99–570, the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986. The collection is also required by Pub. L. 101–630, the Indian Child Protection and Family Violence Prevention Act. The information is collected from tribes and BIA agencies and consolidated at the area office for the purpose for gathering data to determine the number of child abuse and neglect cases and types of assistance provided. The data is used to determine the number of cases involving alcohol and substance abuse, involving recurring episodes, and those involving minor siblings. The data is used to track the number of cases reported to appropriate authorities and to gather information pertaining to treatment and prevention of family violence. The data is also used by the administering agency or tribe to review program implementation, to benchmark program service population and to identify areas in need of additional services. The headquarters office uses the data to prepare the annual program budget justification.

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

II. Request for Comments

We specifically request your comments concerning:

1. Whether the collection of information is necessary for the proper performance of the functions of the BIA, including whether the information will have practical utility;

2. The accuracy of the BIA's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and,

4. How to minimize the burden of the information collection on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

III. Data

Title of the Collection of Information: U. S. Department of the Interior, Bureau of Indian Affairs, Child Abuse and Neglect Reporting Form.

OMB Number: 1076-(new).

Affected Entities: Individual members of Indian tribes who are living on or near a reservation or in a legislatively mandated service area.

Frequency of Response: Annual.

Estimated Number of Annual Responses: 554.

Estimated Time per Application: 1 hour.

Estimated Total Annual Burden Hours: 554 hours.

Dated: June 4, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–15967 Filed 6–15–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BW–110–1830–00 24 1A]

Request for Approval of a New Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request approval of a new information collection to collect taxpayer identification numbers from those doing business with BLM. The BLM needs this information in case an entity fails to timely pay money owed, in which case BLM may refer the matter to the Treasury Department for collection.

DATES: Please provide any comments on the proposed collection by August 17, 1998.

ADDRESSES: Comments may be mailed to: Bureau of Land Management, Accounting Group (BC–610), National Business Center, P.O. Box 25047, Denver, Colorado 80225–0047, or Bureau of Land Management, Regulatory Affairs Group (WO–630), 1849 C St., N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Dorothy Butler, (303) 236–6332.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), BLM is required to provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on (a) whether the proposed collection is necessary for the proper performance of the agency's functions, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden 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. BLM will receive and analyze any comments received and include them with its request for approval from the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Debt Collection Improvement Act of 1996 (DCIA), 31 U.S.C. 3701, contains a number of provisions that affect how BLM does business. One of the more significant provisions allows BLM to refer debts delinquent over 180 days to the Treasury Department for collection. Another provision gives the Treasury Department increased flexibility in seeking to collect the debts by various offsets of payments, including tax refunds.

The DCIA requires that all Federal disbursements include the payee's Social Security Number or Taxpayer Identification Number (SSN/TIN). This information aids the Treasury Department in matching debtors to payments and in seeking those payments from the debtors.

BLM is seeking to implement the SSN/TIN requirement by creating a specific form, requesting the payee's full name, address, and SSN/TIN. The name and address will be used to identify the payee and the SSN/TIN will be used for debt collection purposes, if necessary. We plan to print the form on colored paper so that it can be removed from files to which the public has access. The information will not be available to the public electronically, as the SSN/TIN are data protected under the Privacy Act.

Respondents are those entities who do business with BLM; these include licensees, permittees, lessees, and contract holders. Individuals who pay one-time recreation fees will not be affected. BLM estimates that there will be 120,000 respondents the first year. The number is expected to decrease to 5,000 respondents annually after the first year, since collecting the information will be a one-time occurrence and only those newly doing business with BLM will need to supply the information. Each respondent will take an estimated 1 minute to supply the information, for a total burden hour estimate the first year of 20,000 hours; thereafter, the burden hour estimate will be approximately 83 hours.

Dated: June 9, 1998.

Carole Smith,

Information Clearance Officer.

[FR Doc. 98–15866 Filed 6–15–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[WO–640–04–4110–02 24 1a]

Resource Advisory Councils—Notice of Renewal and Reestablishment

AGENCY: Bureau of Land Management, Interior.

SUMMARY: This notice announces the renewal and reestablishment of three of the Bureau of Land Management (BLM) Resource Advisory Councils for the States of Arizona, Montana, and New Mexico by the Secretary of the Interior in accordance with the provisions of the Federal Advisory Committee Act (FACA) of 1972, 5 U.S.C. Appendix. The Secretary has determined that the Councils are necessary and in the public interest. Copies of the Council charters will be filed with the appropriate committees of Congress and the Library of Congress in accordance with Section 9(c) of FACA.

The three Councils are: Arizona Resource Advisory Council; Miles City Resource Advisory Council (Montana); and New Mexico Resource Advisory Council.

The Federal Land Policy and Management Act, as amended, requires the Secretary of the Interior to establish advisory councils to provide advice concerning the problems relating to land use planning and the management of public lands within the area for which the advisory councils are established. The Councils will provide representative counsel and advice to BLM on the planning and management of the public lands as well as advice on other public land resource issues. Council members will be residents of the State or States in which the Council has jurisdiction and will be appointed by the Secretary of the Interior.

The purpose of the Councils is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the public lands. The Councils' responsibilites include providing advice to BLM regarding the preparation, amendment, and implementation of land use plans; providing advice on long-range planning and establishing

resource management priorities; and assisting the BLM in identifying State or regional standards for ecological health and guidelines for grazing.

Council members will be representative of various industries and interests concerned with the management, protection, and utilization of the public lands. These include: (a) Holders of Federal grazing permits in the Council's jurisdiction, representatives of energy and mining development, the timber industry, transportation interests, rights-of-way interests, off-road vehicle use, commercial recreation, and developed recreation; (b) representatives of environmental and resource conservation organizations, archaeological and historic interests, dispersed recreation activities, and wild horse and burro interest groups; and (c) elected officials of State, county, or local government, representatives from a State agency responsible for natural resources, land, or water, Indian tribes in the Council's jurisdiction, academia involved in the natural sciences, and the public-at-large.

Council membership will include individuals who have expertise, education, training, or practical experience in the planning and management of the public lands and their resources and who have a knowledge of the geographical jurisdiction(s) of the respective Councils.

FOR FURTHER INFORMATION CONTACT: Melanie Wilson, Intergovernmental Affairs Group (640), Bureau of Land Management, 1849 C Street, N.W. (Room 406 LS), Washington, D.C. 20240, telephone (202) 452–0377.

Certification Statement

I hereby certify that the renewal and reestablishment of the Arizona Resource Advisory Council, the Miles City Resource Advisory Council, and the New Mexico Resource Advisory Council is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources, and facilities administered by the Bureau of Land Management.

Date Signed: June 8, 1998.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 98–15890 Filed 6–15–98; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–020–5101–00–L012; FF091732]

Availability of the Final Environmental Impact Statement (EIS) for the Golden Valley Electric Association Northern Intertie Project (EIS #97–47); Alaska

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice.

SUMMARY: Golden Valley Electric Association has applied to the Bureau of Land Management (BLM) for a Right-of-Way to construct, operate, and maintain a 230 kV transmission line from Healy, Alaska, to Fairbanks, Alaska. Pursuant to the Federal Land Policy and Management Act, as amended, the National Environmental Policy Act of 1969, as amended, and 40 CFR Parts 1500–1508, the BLM has prepared an EIS. The public comment period on the Draft EIS ended on March 5, 1998. Notice is hereby given on the availability of the Final EIS for public review and comment. Copies of the Final EIS are available by mail by contacting the BLM Northern Field Office, 1150 University Avenue, Fairbanks, Alaska, 99709, or by calling (907) 474–2339.

DATES: Written comments must be submitted or postmarked no later than July 13, 1998, or 30 days after publication in the **Federal Register** of the Environmental Protection Agency's Notice of Availability, whichever is later.

ADDRESSES: Written comments should be addressed to the Bureau of Land Management, Northern Field Office, Attn: Gary Foreman, 1150 University Avenue, Fairbanks, Alaska 99709–3899. Comments can also be entered via the internet at http://aurora.ak.blm.gov.

FOR FURTHER INFORMATION CONTACT: Gary Foreman, Project Manager, at 1–800–437–7021 or (907) 474–2339.

SUPPLEMENTARY INFORMATION: The preferred alternative identified in the Draft EIS was the Rex/South Route, Option B. Based on public input received during the comment period the preferred alternative was changed. the new preferred alternative identified in the Final EIS is the Rex/South Route, without option B.

Tom Allen,

State Director, Alaska.

[FR Doc. 98–15925 Filed 6–15–98; 8:45 am]

BILLING CODE 4310–84–JA–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–025–06–1150–04; AZA 29318]

Public Land Order No. 7341; Withdrawal of Public Land for the Clay Hills Area of Critical Environmental Concern; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 1,119.24 acres of public land from surface entry and mining for a period of 50 years for the Bureau of Land Management to protect the federally endangered Arizona cliffrose within the Clay Hills Area of Critical Environmental Concern. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: June 16, 1998.

FOR FURTHER INFORMATION CONTACT: Bob Hall, BLM Kingman Field Office, 2475 Beverly Avenue, Kingman, Arizona 86401, 520–692–4412.

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 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, to protect the Bureau of Land Management's Clay Hills Area of Critical Environmental Concern:

Gila and Salt River Meridian

T. 14 N., R. 11 W.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec 2, SE¼;
Sec 11, NE¼;
Sec 12, N½N½.
The area described contains 1,119.24 acres in Mohave County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: June 4, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–15865 Filed 6–15–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–01; COC–61890]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw approximately 2,594 acres of public land and 220 acres of public minerals for 50 years to protect the Lake Fork of the Gunnison River. This notice closes this land to operation of the public land laws including location and entry under the mining laws for up to two years. The lands have been and remain open to mineral leasing.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before September 14, 1998.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On June 4, 1998, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

New Mexico Principal Meridian, Colorado

T. 46 N., R. 3 W.,
Sec. 7, lots 8 and 9;
Sec. 18, lots 1 and 2, parcels A, B, C, D, F, and G;
Sec. 19, lot 8.
T. 47 N., R. 3 W.,
Sec. 5, NW¼, N½SW¼, and W½SE¼;
Sec. 8, E½;
Sec. 16, W½W½;
Sec. 17, E½E½;
Sec. 20, NE¼NE¼, and parcel A of the SE¼SE¼;
Sec. 21, W½W½;
Sec. 28, parcel A of the W½NW¼;
Sec. 29, parcel A of the NE¼NE¼.
T. 48 N., R. 3 W.,
Sec. 32, W½.
T. 45 N., R. 4 W.,
Sec. 1, SW¼NW¼;
Sec. 23, E½E½ (only the Federally owned land);
Sec. 24, S½SW¼SW¼;
Sec. 25, N½NW¼NW¼;
Sec. 26, lots 1 thru 3, and NE¼NE¼ (only the Federally owned land).
T. 46 N., R. 4 W.,
Sec. 13, E½E½;
Sec. 24, NE¼NE¼;
Sec. 25, SW¼NE¼, and W½SE¼NE¼;
Sec. 36, NE¼NW¼, and N½SE¼NW¼.

The areas described aggregate approximately 2,594 acres of public lands in Gunnison County.

The minerals in the following lands would be withdrawn from entry under the U.S. mining laws. The surface of these lands have been patented:

New Mexico Principal Meridian, Colorado

T. 45 N., R. 4 W.,
Sec. 2, NW¼SE¼;
Sec. 14, W½E½, and W½SE¼SE¼.

The areas described aggregate 220 acres of public domain minerals in Gunnison and Hinsdale Counties.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed action, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the **Federal Register**, these lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Bureau of Land Management will continue to manage this land.

Jenny L. Saunders,

Realty Officer.

[FR Doc. 98–15968 Filed 6–15–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Approved Collection

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of approval of information collection (1010–0071).

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, this notice informs the public and other Federal agencies of the approval by the Office of Management and Budget (OMB) of a collection of information. The Paperwork Reduction Act of 1995 (PRA) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of this collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 203, Relief or Reduction in Royalty Rates.

Abstract: On January 16, 1998, MMS published a final rule on the titled collection (RIN 1010–AC13, 63 FR 2605) with an effective date of February 16, 1998. The preamble to the final rule stated that the information collection requirement in § 203.61 would not take effect until approved by OMB. The preamble to the final rule provided the required 60-day comment period. On April 1, 1998, MMS published a notice (63 FR 15859) that we had submitted the information collection request to OMB for approval. On May 30, 1998, OMB approved all of the collection of information required in 30 CFR part 203 with an expiration date of May 31, 2001.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach (202) 208–7744.

Dated: June 8, 1998.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 98–15863 Filed 6–15–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

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

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for a series of customer surveys to evaluate OSM's performance in meeting the performance goals outlined in its annual plans developed pursuant to the

Government Performance and Results Act (GPRA).

DATES: Comments on the proposed information collection must be received by August 17, 1998, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210–SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collections that OSM will be submitting to OMB for approval. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information will be placed on the forms along with the expiration date once assigned by OMB. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Technical Evaluations Series.

OMB Control Number: 1029–NEW.

Summary: The series of surveys are needed to ensure that technical assistance activities, technology transfer activities and technical forums are useful for those who participate or receive the assistance. Specifically, representatives from State and Tribal regulatory and reclamation authorities, representatives of industry, environmental or citizen groups, or the public, are the recipients of the assistance or participants in these forums. These surveys will be the primary means through which OSM evaluates its performance in meeting the performance goals outlined in its annual plans developed pursuant to the Government Performance and Results Act.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: 26 State and Tribal governments, industry organizations and individuals who request information or assistance.

Total Annual Responses: 1,600.

Total Annual Burden Hours: 267.

Dated: June 11, 1998.

Kathryn S. O'Toole,

Acting Chief, Division of Regulatory Support.

[FR Doc. 98–15945 Filed 6–15–98; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission. Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received on or before August 17, 1998.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: *OPIC Agency Submitting Officer:* Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8563.

summary of form under review

Type of Request: Reinstatement, without change, of a previously approved collection for which approval is expiring.

Title: Application for Financing.

Form Number: OPIC–115.

Frequency of Use: Once per investor per project.

Type of Respondents: Business or other institutions; individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 3 hours per project.

Number of Responses: 300 per year.

Federal Cost: $14,796 per year.

Authority for Information Collection: Sections 231 and 234(b) and (c) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the investor's and project's eligibility, assess the environmental impact and developmental effects of the project, measure the economic effects for the United States and the host country economy, and collect information for underwriting analysis.

Dated: June 10, 1998.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 98–15922 Filed 6–15–98; 8:45 am]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Civil Division; Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Reinstatement, without change, of a previously approved collection for which approval has expired; Claims Under the Radiation Exposure Act.

The Justice Department's, Civil Division has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until August 17, 1998.

If you have any comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gerald W. Fischer, 202–616–4090, Assistant Director, Torts Branch, Civil Division, United States Department of Justice, P.O. Box 146, Ben Franklin Station, Washington, D.C. 2044–0146.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate 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) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Claims Under the Radiation Exposure Compensation Act.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: None. Radiation Exposure Compensation Unit, Constitutional and Specialized Torts Branch, Civil Division, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* None. Information is needed to determine whether an applicant is eligible for a statutory compensation payment under the Radiation Exposure Compensation Act, 42 U.S.C. 2210 note (1994). Applicants are persons who reside near the Nevada Test Site, onsite participants in an atmospheric nuclear weapons test, and persons employed in underground uranium mines.

(5) *An estimate of the total number of respondents and the amount of time estimated for average respondent to respond/reply:* 2,000 annual respondents at 2.5 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 5,000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, N.W., Washington, DC 20530.

Dated: June 10, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–15937 Filed 6–15–98; 8:45 am]

BILLING CODE 4410–12–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 11, 1998.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen (202) 219–5096 ext. 143 or by E-Mail to Owen-Todd@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1 p.m. and 4 p.m. Eastern time, Monday–Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Title: National Longitudinal Survey of Youth 97 (NLSY97).

OMB Number: 1220–0157 (Revision).

Frequency: Annually.

Affected Public: Individuals or households.

Form	Total respondents	Total responses	Average time per response	Estimated total burden hours
Youth Transcript	9,100	9,100	1 hour	9,100
Request Letters	1,800	1,800	30 minutes	900
Validation reinterview	1,300	1,300	6 minutes	130

Total Burden Hours: 10,130 Hours.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The information in this survey will be used by the Department of Labor and other government agencies to help understand the school to work

transition of young men and women in this age group.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98–15989 Filed 6–15–98; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34, 431]

The Boeing Company (Rotorcraft Division), Mesa, AZ; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 13, 1998 in response to a worker petition which was filed on April 13, 1998 on behalf of workers at The Boeing Company, Rotorcraft Division, Mesa, Arizona.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC. this 27th day of May, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–15982 Filed 6–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,477]

Eastman Kodak Company (CD Disk Worker Group), Rochester, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 20, 1998 in response to a worker petition which was filed on April 8, 1998 on behalf of workers producing rewriteable CD disks at Eastman Kodak Company, Rochester, New York.

An active certification covering the petitioning group of workers was issued on May 8, 1998 (TA–W–34,233). Consequently, further investigation in this case would serve no purpose, and the investigation resulting from this petition has been terminated.

Signed in Washington, D.C. this 11th day of May, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–15986 Filed 6–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34, 335]

Estela Tops, Huntington Park, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 16, 1998 in response to a worker petition which was filed on March 16, 1998 on behalf of workers at Estala Tops, Huntington Park, California.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 12th day of May, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–15987 Filed 6–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 26, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 26, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 18th day of May, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 5/18/98]

TA–W	Subject Firm (petitioners)	Location	Date of petition	Product(s)
34,539	Fox Point Sportswear (Wkrs)	Wynne, AR	05/01/98	Hunting Jackets, Bibs, Coveralls.
34,540	Tubed Products (Wkrs)	Freehold, NJ	05/01/98	Plastic Squeeze Tubes.
34,541	Toroplast (Wkrs)	McAllen, TX	04/28/98	Plastic Parts of Seatbelt.
34,542	Kachina Communications (Co.)	Cottonwood, AZ	05/05/98	HF/SSB Transceivers.
34,543	Asko, Inc (USWA)	West Homestead, PA	04/24/98	Shear Knives, Wearing Plates.
34,544	Turner and Minter (Co.)	Eagle Rock, VA	05/04/98	Ladies' Wearing Apparel.

APPENDIX—Continued

[Petitions instituted on 5/18/98]

TA–W	Subject Firm (petitioners)	Location	Date of petition	Product(s)
34,545	Fun Tees (Co.)	Andrews, SC	05/04/98	Tee Shirts.
34,546	VF Knitwear, Inc (Co.)	Bakersville, NC	05/01/98	Tee Shirts and Fleece.
34,547	VF Knitwear, Inc (Co.)	Kinston, NC	05/01/98	T-Shirts and Fleece.
34,548	Champlain Industries (Wkrs)	Clifton, NJ	04/30/98	Beer Yeast.
34,549	Carton Craft Corp (IAMAW)	Buffalo, NY	04/30/98	Print Greeting Cards.
34,550	FWA Drilling (Wkrs)	Midland, TX	04/28/98	Drilling—Crude Oil.
34,551	Phillips Van Hensen (Co.)	Augusta, AR	05/05/98	Men's Dress Shirts.
34,552	IEC Edinburg (Wkrs)	Edinburg, TX	05/07/98	PC Boards.
34,553	Carleton Woolen Mills (UNITE)	Winthrop, ME	05/06/98	Wool Yarn.
34,554	Ann Travis, Inc (Wkrs)	New York, NY	05/07/98	Sportswear and Dresses.
34,555	ISP Van Dyk (Co.)	Belleville, NJ	05/05/98	Sunscreen Compound.
34,556	Atlas Pressed Metals (Wkrs)	DuBois, PA	05/01/98	Bushings and Bearings.
34,557	Forte Cashmere (Co.)	Woonsocket, RI	05/07/98	Deahaired Cashmere, Camelhair.
34,558	Manpower, Inc.—Berg (Wkrs)	Dubois, PA	05/07/98	Computer Parts.
34,559	Cott Manufacturing Co (Wkrs)	West Mifflin, PA	05/05/98	In-grained Plastic Pipe Markers.
34,560	Towne and Country Mfg (Co.)	Lugoff, SC	04/23/98	Ladies' Sportswear—Contractors.
34,561	J.C. Viramontes, Inc (Wkrs)	El Paso, TX	05/05/98	Denim Apparel Garments.
34,562	Boise Cascade (WCIW)	Emmett, ID	05/05/98	Lumber, Plywood.
34,563	GI&V Black Clawson (IAMAW)	Watertown, NY	05/06/98	Paper Machine Drying Systems.
34,564	Penn Tex (Wkrs)	West Hazleton, PA	05/08/98	Cloth for Home & Business.
34,565	Sinclair Technologies (CWA)	Tonawanda, NY	04/30/98	Communications Base Station Equipment.
34,566	Rosbro Plastics (Wkrs)	Pawtucket, RI	05/06/98	Molded Containers.
34,567	VF Knitwear (Co.)	Hillsville, VA	05/11/98	T-Shirts & Fleece.

[FR Doc. 98–15980 Filed 6–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,535]

General Electric Company, Fitchburg, MA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 11, 1998 in response to a worker petition which was filed on May 11, 1998 on behalf of workers at General Electric Company, Fitchburg, Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 1st day of June, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–15981 Filed 6–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,143 and TA–W–34,143A]

Prentiss Manufacturing Company, Plants #3 and #4, and Corporate Offices/Distribution Center; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 2, 1998, applicable to all workers of Prentiss Manufacturing Company, Plant #3, Jumpertown, Mississippi. The notice was published in the **Federal Register** on March 16, 1998 (63 12831).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations will occur at Plant #4 of Prentiss Manufacturing, Booneville, Mississippi when it closes in early July, 1998. The company also reports that worker separations occurred at the subject firms' Corporate Offices/Distribution Center, also located in Booneville, Mississippi. The workers are engaged in the production of men's shirts.

The intent of the Department's certification is to include all workers of Prentiss Manufacturing Company adversely affected by increased imports of men's shirts and provide administrative office and distribution services.

Acordingly, the Department is amending the certification to cover the workers of Prentiss Manufacturing Company, Plant #4, and Corporate Offices/Distribution Center, Booneville, Mississippi.

The amended notice applicable to TA–W–34,143 is hereby issued as follows:

All workers of Prentiss Manufacturing Company, Plant #3, Jumpertown, Mississippi (TA–W–34,143), Plant #4 and Corporate Offices/Distribution Center, Booneville, Mississippi (TA–W–34,143A) who became totally or partially separated from employment on or after December 30, 1996 through February 2, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington D.C. this 22nd day of May, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–15988 Filed 6–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,409]

Wiegand Appliance (Division of Emerson Electric); Vernon, AL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 6, 1998 in response to a worker petition which was filed on behalf of workers at Wiegand Appliance, Division of Emerson Electric, Vernon, Alabama.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 29th day of May 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–15983 Filed 6–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02301]

The Boeing Company (Rotorcraft Division), Mesa, AZ; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on April 3, 1998 in response to a petition filed on behalf of workers at The Boeing Company, Rotorcraft Division, Mesa, Arizona.

In a letter dated May 22, 1998, the petitioner requested that the petition for NAFTA-Transitional Adjustment Assistance be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated. The petitioner indicated that when conditions change at the subject firm the company will reapply for NAFTA–TAA.

A trade adjustment assistance investigation (TA–W–34,431) is currently underway to determine if workers are eligible to apply for benefits under the Trade Act of 1974. The petitioner has requested that the petition be withdrawn and indicated that when conditions change at the subject firm, they will reapply for Trade Adjustment Assistance.

Signed at Washington, D.C., this 27th day of May 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–15978 Filed 6–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Acting Director of the Office Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment of after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Acting Director of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request is filed in writing with the Acting Director of OTAA not later than June 26, 1998.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Acting Director of OTAA at the address shown below not later than June 26, 1996.

Petitions filed with the Governors are available for inspection at the Office of the Acting Director, OTAA, ETA, DOL, Room C–4218, 200 Constitution Avenue, N.W. Washington, D.C. 20210.

Signed at Washington, D.C. this 29th day of May, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at governor's office	Petition No.	Articles produced
Rayovac (IAMAW)	Madison, WI	04/23/1998	NAFTA–2,342	Heavy duty battery cells.
Russell Corporation (Co.)	Milton, FL	04/16/1998	NAFTA–2,343	Sweatshirts.
Polaroid (Wkrs)	Waltham, MA	04/12/1998	NAFTA–2,344	Photographic film.
Hamricks (Wkrs)	Gaffney, SC	04/22/1998	NAFTA–2,345	Garments.
Kirby (Wkrs)	McClure, PA	04/23/1998	NAFTA–2,346	Pajamas, robes, dresses, tops, skirts.
Kunkle Foundry (USWA)	Andrews, IN	04/23/1998	NAFTA–2,347	Bronze casting.
Budd Company (The) (UAW)	Philadelphia, PA	04/23/1998	NAFTA–2,348	Automotive stampings (door, roofs, etc).
Terre Ann (Wkrs)	Terre Hill, PA	04/24/1998	NAFTA–2,349	Sportswear.
Kvaerner Metals (Wkrs)	Pittsburgh, PA	04/24/1998	NAFTA–2,350	Engineering design drawings.
Kodak Polychrome Graphics (IUE)	Clark, NJ	04/01/1998	NAFTA–2,351	Graphic arts film and chemical products.
Federal Mogul (Co.)	Mooresville, IN	04/21/1998	NAFTA–2,352	Thinwall engine/power transmission.
Justin Boot (Wkrs)	Carthage, MO	04/27/1998	NAFTA–2,353	Boots.
Gillette Stationary Products (USWA)	Janesville, WI	04/27/1998	NAFTA–2,354	Pens, ink pencils.

APPENDIX—Continued

Subject firm	Location	Date received at governor's office	Petition No.	Articles produced
Megas Beauty Care (Co.)	Sparks, NV	03/31/1998	NAFTA–2,355	Cotton balls & coils, chimneystack pads.
Escalator Handrail (Wkrs)	Orchard Park, NY	04/30/1998	NAFTA–2,356	Rubberized escalator handrails.
International Garment Finishers (Wkrs)	El Paso, TX	04/30/1998	NAFTA–2,357	Denim apparel.
Western Reserve Products (Wkrs)	Gallatin, TN	04/23/1998	NAFTA–2,358	Plastic window frames.
Meyer Tomatoes (IBT)	King City, CA	04/27/1998	NAFTA–2,359	Tomatoes.
VF Knitwear (Co.)	Hillsville, VA	05/04/1998	NAFTA–2,360	T-shirts and fleece.
Gateway Sportswear (Wkrs)	Masontown, PA	05/01/1998	NAFTA–2,361	Women's pants, skirts, and t-shirts.
Rotadyne (Wkrs)	Lancaster, NY	05/01/1998	NAFTA–2,362	Recovering of print rollers.
Sheldahl (Wkrs)	Aberdeen, SD	04/30/1998	NAFTA–2,363	Electronic circuit boards.
Paper Magic Group (The) (Wkrs)	Scranton, PA	04/30/1998	NAFTA–2,364	Halloween masks.
Breed Technologies (Co.)	Brownsville, TX	04/27/1998	NAFTA–2,365	Seat belts.
Breed Technologies (Co.)	Douglas, AZ	04/29/1998	NAFTA–2,366	Shipping, quality control for seat belts.
Independent Order of Foresters (Wkrs)	San Diego, CA	05/04/1998	NAFTA–2,367	Insurance and unsurance related products.
U.S. Timber (Wkrs)	Craigmont, ID	04/27/1998	NAFTA–2,368	Raw supply for appearance boards.
VF Knitwear (Co.)	Kinston, NC	05/04/1998	NAFTA–2,369	T-shirts.
Welbilt—Garland Commercial Industries (Co.).	Freeland, PA	05/06/1998	NAFTA–2,370	Commercial cooking equipment.
Toroplast (Wkrs)	McAllen, TX	05/05/1998	NAFTA–2,371	Plastic holders for seat belts.
Sinclair Technologies (CWA)	Tonawanda, NY	05/06/1998	NAFTA–2,372	Communications base station equipment.
EEX—Cross Timbers (Wkrs)	Athens, TX	05/06/1998	NAFTA–2,373	Oil and gas production.
Towne and Country—Dawn (Co.)	Lugo, SC	05/07/1998	NAFTA–2,374	Ladies sportswear.
Transcity Terminal Warehouse—Indiana (IBT).	Indianapolis, IN	04/06/1998	NAFTA–2,375	Warehousing.
Horton Company (The) (Co.)	Jackson, MI	04/23/1998	NAFTA–2,376	Automotive components (ride & steering).
Cott Manufacturing (Wkrs)	West Mifflin, PA	05/11/1998	NAFTA–2,377	Line identification markers.
American Lantern (USWA)	Newport, AR	04/30/1998	NAFTA–2,378	Light globes.
Boise Cascade ( )	Emmett, ID	05/07/1998	NAFTA–2,379	.
Tecnol Medical Products—Kimberly Clark (Co.).	Del Rio, TX	05/11/1998	NAFTA–2,380	Nurses caps, shoe covers & stockinnete.
Hasbro (Co.)	El Paso, TX	05/11/1998	NAFTA–2,381	Toyes and games.
Manpower—Berg (Wkrs)	Dubois, PA	05/12/1998	NAFTA–2,382	Parts for computers and phones.
Tops Malibu (Wkrs)	Eugene, OR	05/12/1998	NAFTA–2,383	Candles.
MPM Automotive Products (Co.)	Tucson, AZ	05/13/1998	NAFTA–2,384	Auto parts.
Code Alarm—Tessco (Wkrs)	Georgetown, TX	05/14/1998	NAFTA–2,385	Wire harness.
Jostens (Co.)	Webster, NY	05/13/1998	NAFTA–2,386	School day photography packages.
GL&V Black, Clawson-Kennedy Pulp & Paper (IAMAW).	Watertown, NY	05/13/1998	NAFTA–2,387	Machine paper rolls.
Paulson Gaming Supplies (Wkrs)	Las Vegas, NV	05/08/1998	NAFTA–2,388	Playing cards.
Gates Rubber Company (The) (Co.)	Jefferson, NC	05/12/1998	NAFTA–2,389	Rubber hose.
Tri Clover (IAMAW)	Kenosha, WI	05/18/1998	NAFTA–2,390	Tubular fittings.
Buena Vista—Allison (Wkrs)	Buena Vista, VA	05/14/1998	NAFTA–2,391	T-shirts, fleece sweatshirts.
Wausau Mosinee Paper (Co.)	Rhinelander, WI	05/15/1998	NAFTA–2,392	Packaging and industrial paper.
Apls Electric (USA) (Co.)	Huntington Beach, CA	03/12/1998	NAFTA–2,393	Plastic injection molding.
Oxford of Wadley (Co.)	Wadley, GA	05/18/1998	NAFTA–2,394	Mens dress and sport shirts.
Phillips Van Heusen (Co.)	Geneva, AL	05/18/1998	NAFTA–2,395	Men's dress shirts.
Phillips Van Heusen (Co.)	Augusta, AR	05/14/1998	NAFTA–2,396	Men's dress shirts.
Siebe Appliance Controls (Co.)	New Stanton, PA	05/18/1998	NAFTA–2,397	Components & controls for cooking & ref.
Americold Logistics (Wkrs)	Nampa, ID	05/13/1998	NAFTA–2,398	Store frozen french fries.
Robertshaw Controls (Co.)	Long Beach, DC	05/18/1998	NAFTA–2,399	Water heater controls.
Tri Quest Precision Plastics (Co.)	Vancouver, WA	05/18/1998	NAFTA–2,400	Plastic and components.
Stella Foods (Wkrs)	Green Bay, WI	05/18/1998	NAFTA–2,401	Cheese.
Kleinert's of Florida (Co.)	Largo, FL	05/18/1998	NAFTA–2,402	Woven playwear for infants and toddlers.
Eastman Kodak (Co.)	Rochester, NY	05/15/1998	NAFTA–2,403	Film, black & white paper products.
Hovland (Co.)	Cody, WY	05/19/1998	NAFTA–2,404	Women's denim jeans.
Price Pfister (Wkrs)	Pacoima, CA	05/21/1998	NAFTA–2,405	Plumbing products.
Koehler Manufacturing (Co.)	Marlboro	05/20/1998	NAFTA–2,406	Batteries.
G.F. Wright Steel Wire (USWA)	Worcester, MA	05/20/1998	NAFTA–2,407	Woven hardware clothes.
Willamete Industries (WCIW)	Eugene, OR	05/18/1998	NAFTA–2,408	Dimensional lumber.
JPM Company (The) (Co.)	Lewisburg, PA	05/20/1998	NAFTA–2,409	Cable assemblies and wire harnesses.
Taylor Precision Products (Co.)	Pletenar, NC	05/20/1998	NAFTA–2,410	Thermometer and weather dials.
Kowa Printing (GCIU)	Danville, IL	05/21/1998	NAFTA–2,411	Printing.
Saint Cobain (OCAW)	Keasbey, NJ	05/22/1998	NAFTA–2,412	Refractory pieces.
S.T. and E (Co.)	Punxsutawney, PA	05/26/1998	NAFTA–2,413	Transport raw materials.
Carthage Machine—Sunds Defibrator (Co.).	Watertown, NY	05/26/1998	NAFTA–2,414	Woodchippers and spare related parts.

[FR Doc. 98–15979 Filed 6–15–98; 8:45 am]

BILLING CODE 4510–30–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, June 18, 1998;
Thursday, June 25, 1998;
Thursday, July 9, 1998;
Thursday, July 16, 1998;
Thursday, July 23, 1998;
Wednesday, July 29, 1998;
Thursday, August 6, 1998;
Thursday, August 13, 1998;
Thursday, August 20, 1998;
Thursday, September 3, 1998;
Thursday, September 24, 1998.

The meetings will start at 10:00 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meetings either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: June 10, 1998.

Phyllis G. Heuerman,

Acting Chair, Federal Prevailing Rate Advisory Committee.

[FR Doc. 98–15971 Filed 6–15–98; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23247; 812–10888]

PaineWebber Incorporated; Notice of Application

June 9, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 12(d)(1), under section 6(c) of the Act for an exemption from section 14(a), and under section 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: PaineWebber Incorporated (''PaineWebber'') requests an order with respect to Exchangeable Securities Trusts and future trusts that are substantially similar and for which PaineWebber will serve as a principal underwriter (collectively, the ''Trusts'') that would (i) permit other registered investment companies, and companies excepted from the definition of investment company under sections 3(c)(1) and (c)(7) of the Act, to own a greater percentage of the total outstanding voting stock (the ''Securities'') of any Trust than that permitted by section 12(d)(1), (ii) exempt the Trusts from the initial net worth requirements of section 14(a), and (iii) permit the trusts to purchase U.S. government securities from PaineWebber at the time of a Trust's initial issuance of Securities.

FILING DATES: The application was filed on December 5, 1998. Applicant has agreed to file an amendment, the substance of which is incorporated in this notice, 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 PaineWebber with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 1, 1998, and should be accompanied by proof of service on PaineWebber, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. PaineWebber, 1285 Avenue of the Americas, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Brian T. Hourihan, Senior Counsel, at (202) 942–0526, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicant's Representations

1. Each Trust will be a limited-life, grantor trust registered under the Act as a non-diversified, closed-end management investment company. PaineWebber will serve as a principal underwriter (as defined in section 2(a)(29) of the Act) of the Securities issued to the public by each Trust.

2. Each Trust will, at the time of its issuance of Securities, (i) enter into one or more forward purchase contracts (the ''Contracts'') with a counterparty to purchase a formulaically-determined number of a specified equity security or securities (the ''Shares'') of one specified issuer,[1] and (ii) in some cases, purchase certain U.S. Treasury securities (''Treasuries''), which may include interest-only or principal-only securities maturing at or prior to the Trust's dissolution. The Trusts will purchase the Contracts from

[1] No Trust will hold Contracts relating to the Shares of more than one issuer.

counterparties that are not affiliated with either the relevant Trust or PaineWebber. The investment objective of each Trust will be to provide to each holder of Securities (''Holder'') (i) current cash distributions from the proceeds of any Treasuries, and (ii) participation in, or limited exposure to, changes in the market value of the underlying Shares.

3. In all cases, the Shares will trade in the secondary market and the issuer of the Shares will be a reporting company under the Securities Exchange Act of 1934. The number of Shares, or the value of the Shares, that will be delivered to a Trust pursuant to the Contracts may be fixed (*e.g.*, one Share per Security issued) or may be determined pursuant to a formula, the product of which will vary with the price of the Shares. A formula generally will result in each Holder of Securities receiving fewer Shares as the market value of the Shares increases, and more Shares as their market value decreases.[2] At the dissolution of each Trust, each Holder will receive the number of Shares per Security, or the value of the Shares, as determined by the terms of the Contracts, that is equal to the Holder's *pro rata* interest in the Shares or amount received by the Trust under the Contracts.[3]

4. Securities issued by the Trusts will be listed on a national securities exchange or traded on The Nasdaq Stock Market's National Market. Thus, the Securities will be ''national market system'' securities subject to public price quotation and trade reporting requirements. After the Securities are issued, the trading price of the Securities is expected to vary from time to time based primarily upon the price of the underlying Shares, interest rates, and other factors affecting conditions and prices in the debt and equity markets. PaineWebber currently intends, but will not be obligated, to make a market in the Securities of each Trust.

5. Each Trust will be internally managed by three trustees and will not have any separate investment adviser. The trustees will have no power to vary the investments held by each Trust. A bank qualified to serve as a trustee under the Trust Indenture Act of 1939, as amended, will act as custodian for each Trust's assets and as paying agent, registrar, and transfer agent with respect to the Securities of each Trust. The bank will have no other affiliation with, and will not be engaged in any other transaction with, any Trust. The day-to-day administration of each Trust will be carried out by the bank.

6. The Trusts will be structured so that the trustees are not authorized to sell the Contracts or Treasuries under any circumstances. The Trusts will hold the Contracts until maturity, at which time they will be settled according to their terms. However, in the event of the bankruptcy or insolvency of any counterparty to a Contract with a Trust, the obligations of the counterparty under the Contract will be accelerated and the available proceeds of the Contract will be distributed to the Security Holders.

7. The trustees of each Trust will be selected initially by PaineWebber, together with any other initial Holders, or by the grantors of the Trust. The Holders of each Trust will have the right, upon the declaration in writing or vote of more than two-thirds of the outstanding Securities of the Trust, to remove a trustee. Holders will be entitled to a full vote for each Security held on all matters to be voted on by Holders and will not be able to cumulate their votes in the election of trustees. The investment objectives and policies of each Trust may be changed only with the approval of a ''majority of the Trust's outstanding Securities''[4] or any greater number required by the Trust's constituent documents. Unless Holders so request, it is not expected that the Trusts will hold any meetings of Holders, or that Holders will ever vote.

8. The Trusts will not be entitled to any rights with respect to the Shares until any Contracts requiring delivery of the Shares to the Trust are settled, at which time the Shares will be promptly distributed to Holders. The Holders, therefore, will not be entitled to any rights with respect to the Shares (including voting rights or the right to receive any dividends or other distributions) until receipt by them of the Shares at the time the Trust is dissolved.

9. Each Trust will be structured so that its organizational and ongoing expenses will not be borne by the Holders, but rather, directly or indirectly, by PaineWebber, the counterparties, or another third party, as will be described in the prospectus for the relevant Trust. At the time of the original issuance of the Securities of any Trust, there will be paid to each of the administrator, the custodian, and the paying agent, and to each trustee, a one-time amount in respect of such agent's fee over its term. Any expenses of the Trust in excess of this anticipated amount will be paid as incurred by a party other than the Trust itself (which party may be PaineWebber).

Applicant's Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A)(i) of the Act prohibits any registered investment company from owning more than 3% of the total outstanding voting stock of any other investment company, and any investment company from owning in the aggregate more than 3% of the total outstanding voting stock of any registered investment company. A company that is excepted from the definition of investment company under section 3(c)(1) or (c)(7) of the Act is deemed to be an investment company for purposes of section 12(d)(1)(A)(i) of the Act under sections 3(c)(1) and (c)(7)(D) of the Act. Section 12(d)(1)(C) of the Act similarly prohibits any investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies from owning more than 10% of the total outstanding voting stock of any closed-end investment company.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1), if, and to the extent that, the exemption is consistent with the public interest and protection of investors.

3. PaineWebber believes, in order for the Trusts to be marketed most successfully, and to be traded at a price that most accurately reflects their value, that it is necessary for the Securities of each Trust to be offered to large investment companies and investment company complexes. PaineWebber states that these investors seek to spread the fixed costs of analyzing specific investment opportunities by making sizable investments in those opportunities. Conversely, PaineWebber asserts that it may not be economically

[2] A formula is likely to limit the Holder's participation in any appreciation of the underlying Shares, and it may, in some cases, limit the Holder's exposure to any depreciation in the underlying Shares. It is anticipated that the Holders will receive a yield greater than the ordinary dividend yield on the Shares at the time of the issuance of the Securities, which is intended to compensate Holders for the limit on the Holders' participation in any appreciation of the underlying Shares. In some cases, there may be an upper limit on the value of the Shares that a Holder will ultimately receive.

[3] The contracts may provide for an option on the part of a counterparty to deliver Shares, cash, or a combination of Shares and cash to the Trust at the termination of each Trust.

[4] A ''majority of the Trust's outstanding Securities'' means the lesser of (i) 67% of the Securities represented at a meeting at which more than 50% of the outstanding Securities are represented, and (ii) more than 50% of the outstanding Securities.

rational for the investors, or their advisers, to take the time to review an investment opportunity if the amount that the investors would ultimately be permitted to purchase is immaterial in light of the total assets of the investment company or investment company complex. Therefore, PaineWebber argues that these investors should be able to acquire Securities in each Trust in excess of the limitations imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C). PaineWebber requests that the SEC issue an order under section 12(d)(1)(J) exempting the Trusts from the limitations.

4. PaineWebber states that section 12(d)(1) was designed to prevent one investment company from buying control of other investment companies and creating complicated pyramidal structures. PaineWebber also states that section 12(d)(1) was intended to address the layering of costs to investors.

5. PaineWebber believes that the concerns about pyramiding and undue influence generally do not arise in the case of the Trusts because neither the trustees nor the Holders will have the power to vary the investments held by each Trust or to acquire or dispose of the assets of the Trusts. To the extent that Holders can change the composition of the board of trustees or the fundamental policies of each Trust by vote, PaineWebber argues that any concerns regarding undue influence will be eliminated by a provision in the charter documents for the Trusts that will require any investment companies owning voting stock of any Trust in excess of the limits imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C) to vote their Securities in proportion to the votes of all other Holders. PaineWebber also believes that the concern about undue influence through a threat to redeem does not arise in the case of the Trusts because the Securities will not be redeemable.

6. Section 12(d)(1) also was designed to address the excessive costs and fees that may result from multiple layers of investment companies. PaineWebber believes that these concerns do not arise in the case of the Trusts because of the limited ongoing fees and expenses incurred by the Trusts and because generally these fees and expenses will be borne, directly or indirectly, by PaineWebber or another third party, not by the Holders. In addition, the Holders will not, as a practical matter, bear the organizational expenses (including underwriting expenses) of the Trusts. PaineWebber asserts that the organizational expenses effectively will be borne by the counterparties in the form of a discount in the price paid to them for the Contracts, or will be borne directly by PaineWebber, the counterparties, or other third parties. Thus, a Holder will not pay duplicative charges to purchase securities in any Trust. Finally, there will be no duplication of advisory fees because the Trusts will be internally managed by their trustees.

7. PaineWebber believes that the investment product offered by the Trusts serves a valid business purpose. The Trusts, unlike most registered investment companies, are not marketed to provide investors with either professional investment asset management or the benefits of investment in a diversified pool of assets. Rather, PaineWebber asserts that the Securities are intended to provide Holders with an investment having unique payment and risk characteristics, including an anticipated higher yield than the ordinary dividend yield on the Shares at the time of the issuance of the Securities.

8. PaineWebber believes that the purposes and policies of section 12(d)(1) are not implicated by the Trusts and that the requested exemption from section 12(d)(1) is consistent with the public interest and the protection of investors.

B. Section 14(a)

1. Section 14(a) of the Act requires, in pertinent part, that an investment company have a net worth of at least $100,000 before making any public offering of its shares. The purpose of section 14(a) is to ensure that investment companies are adequately capitalized prior to or simultaneously with the sale of their securities to the public. Rule 14a–3 exempts from section 14(a) unit investment trusts that meet certain conditions in recognition of the fact that, once the units are sold, a unit investment trust requires much less commitment on the part of the sponsor than does a management investment company. Rule 14a–3 provides that a unit investment trust investing in eligible trust securities shall be exempt from the net worth requirement, provided that the trust holds at least $100,000 of eligible trust securities at the commencement of a public offering.

2. PaineWebber argues that, while the Trusts are classified as management companies, they have characteristics of unit investment trusts. Investors in the Trusts, like investors in a unit investment trust, will not be purchasing interests in a managed pool of securities, but rather in a fixed and disclosed portfolio that is held until maturity.

PaineWebber believes that the make-up of each Trust's assets, therefore, will be ''locked-in'' for the life of the portfolio, and there is no need for an ongoing commitment on the part of the underwriter.

3. PaineWebber states that, in order to ensure that each Trust will become a going concern, the Securities of each Trust will be publicly offered in a firm commitment underwriting, registered under the Securities Act of 1933, and resulting in net proceeds to each Trust of at least $10,000,000. Prior to the issuance and delivery of the Securities of each Trust to the underwriters, the underwriters will enter into an underwriting agreement pursuant to which they will agree to purchase the Securities subject to customary conditions to closing. The Underwriters will not be entitled to purchase less than all of the Securities of each Trust. Accordingly, PaineWebber states that either the offering will not be completed at all or each Trust will have a net worth substantially in excess of $100,000 on the date of the issuance of the Securities. PaineWebber also does not anticipate that the net worth of the Trusts will fall below $100,000 before they are terminated.

4. Section 6(c) of the Act provides that the SEC may exempt persons or transactions if, and to the extent that, the 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. PaineWebber requests that the SEC issue an order under section 6(c) exempting the Trust from the requirements of section 14(a). PaineWebber believes that the exemption is appropriate in the public interest and consistent with the protection of investors and policies and provisions of the Act.

C. Section 17(a)

1. Sections 17(a)(1) and (2) of the Act generally prohibit the principal underwriter, or any affiliated person of the principal underwriter, of a registered investment company from selling or purchasing any securities to or from that investment company. The result of these provisions is to preclude the Trusts from purchasing Treasuries from PaineWebber.

2. Section 17(b) of the Act provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the

policies of the registered investment company involved and the purposes of the Act. PaineWebber requests an exemption from sections 17(a)(1) and (2) to permit the Trusts to purchase Treasuries from PaineWebber.

3. PaineWebber states that the policy rationale underlying section 17(a) is the concern that an affiliated person of an investment company, by virtue of this relationship, could cause the investment company to purchase securities of poor quality from the affiliated person or to overpay for securities. PaineWebber argues that it is unlikely that it would be able to exercise any adverse influence over the Trusts with respect to purchases of Treasuries because Treasuries do not vary in quality and are traded in one of the most liquid markets in the world. Treasuries are available through both primary and secondary dealers, making the Treasury market very competitive. In addition, market prices on Treasuries can be confirmed on a number of commercially available information screens. PaineWebber argues that because it is one of a limited number of primary dealers in Treasuries, it will be able to offer the Trusts prompt execution of their Treasury purchases at very competitive prices.

4. PaineWebber states that it is only seeking relief from section 17(a) with respect to the initial purchase of the Treasuries and not with respect to an ongoing course of business. Consequently, investors will know before they purchase a Trust's Securities the Treasuries that will be owned by the Trust and the amount of the cash payments that will be provided periodically by the Treasuries to the Trust and distributed to Holders. PaineWebber also asserts that whatever risk there is of overpricing the Treasuries will be borne by the counterparties and not by the Holders because the cost of the Treasuries will be calculated into the amount paid on the Contracts. PaineWebber argues that, for this reason, the counterparties will have a strong incentive to monitor the price paid for the Treasuries, because any overpayment could result in a reduction in the amount that they would be paid on the Contracts.

5. PaineWebber believes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person, that the proposed transaction is consistent with the policy of each of the Trusts, and that the requested exemption is appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policies and provisions of the Act.

Applicant's Conditions

PaineWebber agrees that the order granting the requested relief will be subject to the following conditions:

1. Any investment company owning voting stock of any Trust in excess of the limits imposed by section 12(d)(1) of the Act will be required by the Trust's charter documents to vote its Trust shares in proportion to the vote of all other Holders.

2. The trustees of each Trust, including majority of the trustees who are not interested persons of the Trust, (i) will adopt procedures that are reasonably designed to provide that the conditions set forth below have been complied with; (ii) will make and approve such changes as deemed necessary; and (iii) will determine that the transactions made pursuant to the order were effected in compliance with such procedures.

3. The Trusts (i) will maintain and preserve in an easily accessible place a written copy of the procedures (and any modifications to such procedures), and (ii) will maintain and preserve for the longer of (a) the life of the Trusts and (b) six years following the purchase of any Treasuries, the first two years in an easily accessible place, a written record of all Treasuries purchased, whether or not from PaineWebber, setting forth a description of the Treasuries purchased, the identity of the seller, the terms of the purchase, and the information or materials upon which the determinations described below were made.

4. The Treasuries to be purchased by each Trust will be sufficient to provide payments to Holders of Securities that are consistent with the investment objectives and policies of the Trust as recited in the Trust's registration statement and will be consistent with the interests of the Trust and the Holders of its Securities.

5. The terms of the transactions will be reasonable and fair to the Holders of the Securities issued by each Trust and will not involve overreaching of the Trust or the Holders of Securities of the Trust on the part of any person concerned.

6. The fee, spread, or other remuneration to be received by PaineWebber will be reasonable and fair compared to the fee, spread, or other remuneration received by dealers in connection with comparable transactions at such time, and will comply with section 17(e)(2)(C) of the Act.

7. Before any Treasuries are purchased by the Trust, the Trust must obtain such available market information as it deems necessary to determine that the price to be paid for, and the terms of, the transaction is at least as favorable as that available from other sources. This will include the Trust obtaining and documenting the competitive indications with respect to the specific proposed transaction from two other independent government securities dealers. competitive quotation information must include price and settlement terms. These dealers must be those who, in the experience of the Trust's trustees, have demonstrated the consistent ability to provide professional execution of Treasury transactions at competitive market prices. They also must be those who are in a position to quote favorable prices.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–15891 Filed 6–15–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40081; File No. SR–NSCC–97–07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Changes in Membership Standards

June 10, 1998.

On August 5, 1997, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–NSCC–97–07) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on September 29, 1997.[2] Four comment letters were received.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change revises NSCC's financial membership standards

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39110 (September 22, 1997), 62 FR 50978.

[3] Letters from William C. Alsover, President, Centennial Securities Company (October 29, 1997); John G. Woodhead, President, Phelps & Woodhead, Inc. (January 8, 1998); Ronald E. Berti, Secretary-Treasurer, Wall Street Equities, Inc. (January 15, 1998); and Robert P. VanderWal, President, Peninsular Securities Company (March 2, 1998).

imposed on its broker-dealer members. Specifically, the rule change (1) increases NSCC's capital requirements for full service members from $50,000 in excess net capital to $500,000 in excess net capital except for municipal securities brokers' brokers [4] for which NSCC's capital requirement will be increased from $50,000 in excess net capital to $100,000 in excess net capital and (2) increases NSCC's capital requirements for members that clear for other broker-dealers from $50,000 in excess net capital to $1,000,000 in excess net capital.[5]

NSCC's current excess net capital requirements were implemented in 1976 when NSCC was formed. Trading volumes and the average value of securities traded have increased significantly since then. The Commission also has changed its minimum net capital requirements for most NSCC members during this time period from $25,000 to $250,000.[6]

As of the end of 1997, twenty-six out of the approximately 350 NSCC members would not have met a $500,000 standard for full service members.[7] For this reason, the $500,000 standard will become effective on September 29, 1998, which is one year after the date of publication in the **Federal Register** of the Commission's notice of this rule change.[8]

As of the end of 1997, two out of approximately one hundred NSCC members that clear for other broker-dealers would not have met a $1,000,000 standard.[9] For this reason, NSCC has agreed that the effective date of the $1,000,000 standard will be on September 29, 1998, in order to coincide with that of the $500,000 standard.[10]

[4] "Municipal securities brokers' broker" is defined in Rule 15c3–1(a)(8) under the Act. 17 CFR 240.15c3–1(a)(8).

[5] Excess net capital is the amount of net capital a broker-dealer has in addition to that required by the Commission's uniform net capital rule. The Commission's uniform net capital rule is set forth in Rule 15c3–1 under the Act. 17 CFR 240.15c3–1.

[6] 17 CFR 240.15c3–1(a)(2)(i).

[7] Telephone conversation between Peter J. Axilrod, Managing Director, NSCC, and Theodore R. Lazo, Attorney, Division of Market Regulation, Commission (February 9, 1998).

[8] The $100,000 standard applicable to municipal securities brokers' brokers also will become effective on September 29, 1998.

[9] *Supra* note 7.

[10] Conversation between Karen L. Saperstein, Deputy General Counsel, NSCC, and Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (June 9, 1998). NSCC originally intended to make the $1,000,000 standard effective on the later of six months from the date of publication in the **Federal Register** of the notice of the filing or the date of Commission approval of the rule change.

II. Comment Letters

The Commission received four comment letters. Three of the commenters stated that they believe the increase in the excess net capital requirement from $50,000 to $500,000 is unnecessarily high although one of these commenters agreed that NSCC should increase its excess net capital requirement. In addition, these three commenters stated that they settle their trades in a timely fashion and that they should not be placed in the same category of risk with unreliable firms. One of these commenters also stated that it believed that each member of NSCC should be evaluated on its own merit. The fourth commenter stated that it fully supports the increase to NSCC's excess net capital requirement and objected, as discussed below, only to the proposed effective dates.

Two of the four commenters (one that opposed the increase and the one that supported it) stated that they believe that the increase in the excess net capital requirement to $500,000 should be implemented over a longer period of time than NSCC proposed. One of these two commenters stated that the increase should take effect after twelve months notice and then be phased in over an additional twelve month period. The other commenter (the one in favor of the increase) stated that NSCC's increase in required excess net capital should be implemented in three steps over a one year period after Commission approval. None of the commenters discussed the implementation of the $1,000,000 standard for NSCC members that clear for other broker-dealers.

III. Discussion

Section 17A(b)(3)(F) of the Act [11] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. The Commission believes that NSCC's proposed rule change is consistent with its obligations under Section 17A(b)(3)(F) because it will help to ensure that only entities that are highly capitalized will be allowed to be members of NSCC. As a result, NSCC should be able to reduce the payment-related risks associated with its clearing operations.

In addition, under the standards that the Commission's Division of Market Regulation has published regarding registration of clearing agencies, a clearing agency may impose on its participants financial standards which are higher than those already imposed by applicable federal and state regulations if it deems such higher standards necessary to protect the clearing agency and its participants from unreasonable risks.[12] Because the Commission believes that NSCC's proposed rule change establishes reasonable standards of financial responsibility carefully designed to protect NSCC and its participants from unreasonable risk while still providing for broad access to its services, the Commission believes that the proposed rule change is consistent with the requirements of the Act.

Contrary to the commenters' suggestions, the Commission believes that the amount of the increase to NSCC's excess net capital requirement is reasonable and appropriate. Furthermore the Commission does not believe that NSCC should be obligated to evaluate excess net capital requirements on a case by case basis because such an evaluation could be contrary to the requirement contained in Section 17A(b)(3)(F) of the Act [13] that a clearing agency's rules not be designed to permit unfair discrimination in the admission of participants. The Commission further believes that NSCC should be permitted to institute the increase to its excess net capital requirements on a timely basis and that the rule change is being phased in over a sufficient period of time to allow NSCC's members to comply with the increased excess net capital requirements.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–97–07) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–15943 Filed 6–15–98; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920.

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3083]

State of Indiana; and Contiguous Counties in Ohio

Allen County and the contiguous Counties of Adams, DeKalb, Huntington, Noble, Wells, and Whitley in the State of Indiana, and Defiance, Paulding, and Van Wert Counties in the State of Ohio constitute a disaster area as a result of damages caused by severe storms and flooding that occurred on May 3, 1998. Applications for loans for physical damages as a direct result of this disaster may be filed until the close of business on August 3, 1998 and for economic injury until the close of business on March 3, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.000
Homeowners Without Credit Available Elsewhere	3.500
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The numbers assigned to this disaster for physical damage are 308306 for Indiana and 308406 for Ohio. For economic injury the numbers are 987900 for Indiana and 988000 for Ohio.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 2, 1998.

Paul N. Weech,

Acting Administrator.

[FR Doc. 98–15939 Filed 6–15–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3078]

State of Tennessee; Amendment #4

In accordance with a notice from the Federal Emergency Management Agency dated May 26, 1998, the above-numbered Declaration is hereby amended to include Hamblen County in the State of Tennessee as a disaster area due to damages caused by severe storms, tornadoes, and flooding beginning on April 16, 1998 and continuing through May 18, 1998.

All counties contiguous to the above-named primary county have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is June 19, 1998 and for economic injury the termination date is January 20, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 3, 1998.

Becky C. Brantley,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–15938 Filed 6–15–98; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1505).

TIME AND DATE: 9 a.m. (CDT), June 18, 1998.

PLACE: Clarksville Department of Electricity, Community Room, 2021 Wilma Rudolph Boulevard, Clarksville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on May 27, 1998.

New Business

B—Purchase Award

B1. Contract with Porter Walker, Inc., to provide nonpower hand tools for all TVA locations.

B2. Contract with Tool-Smith, Inc., to provide power tools for all TVA locations.

E—Real Property Transactions

E1. Nineteen-year commercial recreation lease to GLM, Inc., affecting approximately 83.96 acres of Kentucky Lake land in Calloway County, Kentucky (Tract Nos. XGIR–60PT and –61PT), and amendment to the Kentucky Reservoir Land Management Plan.

E2. Nineteen-year commercial recreation lease to Erwin Ehrenberg for the Cedar Point Recreation Area, affecting approximately 28.12 acres of Normandy Lake land in Coffee County, Tennessee (Tract No. XNRMR–6L).

E3. Nineteen-year commercial recreation lease to Claudia A. Holbrook, doing business as Greenlee Campground, R.V. & Marine, affecting approximately 7.21 acres of land on Cherokee Lake in Grainger County, Tennessee (Tract No. XCK–579L).

F—Unclassified

F1. Approval to file condemnation cases in connection with the acquisition of permanent easements and rights-of-way for electric power transmission lines at the Freeport-Miller Tap to Mitchell's Corner line near Olive Branch in DeSoto County, Mississippi, and the Apalachia-Ocoee transmission line in Polk County, Tennessee.

Information Items

1. Delegation of authority to the Vice President, Fuel Supply and Engineering, to extend term coal Contract No. P–87P07–115632 with Pittston Coal Sales Company for John Sevier Fossil Plant.

2. Approval to file condemnation cases: The affected transmission lines are Oneida-McCreary, McCreary County, Kentucky; Maury-Radnor No. 2 Tap to Rally Hill, Maury County, Tennessee; and Wallaceville-Chickamauga transmission line, Walker County, Georgia.

FOR MORE INFORMATION: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: June 11, 1998.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 98–16055 Filed 6–12–98; 9:38 am]

BILLING CODE 8120–08–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–24]

WTO Dispute Settlement Proceeding Regarding Canadian Export Subsidies for Dairy Products and Market Access for Fluid Milk and Cream

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (WTO), at the request of the United States, to examine Canada's provision of export subsidies on dairy products and its failure to provide market access under a tariff-rate

quota for fluid milk imports. Specifically, Canada's special milk class pricing system provides fluid milk to dairy processors at subsidized prices that circumvent the export subsidy reduction commitments undertaken by Canada as part of the WTO Agreement on Agriculture. In addition, by limiting imports of fluid milk to cross-border consumer trade, Canada administers the tariff-rate quota on fluid milk in a manner that denies market access to all commercial shipments. In this dispute, the United States alleges that the Canadian measures are inconsistent with the obligations of Canada under the General Agreement on Tariffs and Trade (GATT) 1994, the Agreement of Agriculture, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Import Licensing Procedures. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before July 8, 1998, to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to the Monitoring and Enforcement Unit, Office of the General Counsel, *Attn: Canadian Dairy Products Dispute,* Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C., 20508, (202) 395–3582.

FOR FURTHER INFORMATION CONTACT: James M. Lyons, Assistant General Counsel, Office of the General Counsel, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C., (202) 395–7350.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), the USTR is providing notice that on March 12, 1998, the United States requested establishment of a WTO dispute settlement panel to examine whether Canada's provision of subsidized fluid milk to processors and exporters of dairy products and its denial of entry to commercial shipments of fluid milk are inconsistent with Canada's obligations under the Agreement on Agriculture, the Agreement on Subsidies and Countervailing Measures, the Agreement on Import Licensing Procedures and GATT 1994. The WTO Dispute Settlement Body (DSB) considered the request at its meeting on March 25, 1998, and a panel subsequently was established. Under normal circumstances, the panel, which will hold its meetings in Geneva, Switzerland, would be expected to issue a report detailing its findings and recommendations within nine months after it is established.

Major Issues Raised by the United States and Legal Basis of Complaint

The Government of Canada is providing export subsidies on dairy products through its national and provincial pricing arrangements for milk and other dairy products without regard to the export subsidy reduction commitments undertaken by Canada. Specifically, Canada established and maintains a system of special milk classes through which it maintains high domestic prices, promotes import substitution, and provides export subsidies for dairy products going into world markets. These practices distort markets for daily products and adversely affect U.S. sales of dairy products. The relevant provisions of Canadian laws include the Canadian Dairy Commission Act, the Interprovincial Comprehensive Agreement on Special Class Pooling, the National Milk Marketing Plan, and the Dairy Products Marketing Regulations.

Canada also restricts fluid milk imports under a tariff-rate quota to cross-border purchases by Canadian consumers and disallows all commercial shipments of fluid milk into Canada under the applicable tariff-rate quota. Although Canada committed to convert its quantitative restriction on fluid milk imports to a tariff-rate quota and agreed to afford increased market access, Canada administers the tariff-rate quota so as to deny entry to all commercial shipments of fluid milk and cream.

The USTR believes that these measures are inconsistent with the obligations of Canada under several provisions of the WTO Agreements, including Articles, II, X, XI, and XIII of the GATT 1994, Articles 3, 4, 8, 9 and 10 of the Agreement on Agriculture, Article 3 of the Agreement on Subsidies and Countervailing Measures, and Articles 1, 2, and 3 of the Agreement on Import Licensing Procedures.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice. Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–24, Canadian Dairy Products Dispute) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 98–15990 Filed 6–15–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of change in agenda.

SUMMARY: The FAA is issuing this notice to advise the public of a change in the agenda for a special meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee (63 FR 8315, February 19, 1998; 63 FR 30284, June 3, 1998).

DATES: The meeting to be held on June 26, 1998, will begin at 10 a.m.

ADDRESSES: The meeting will be held at the U.S. Department of Transportation, 400 Seventh Street, SW., Room 6244–6248, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax (202) 267–5075; e-mail Jean.Casciano@faa.dot.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a change in the agenda for a meeting of the Executive Committee to be held on June 26, 1998, at the U.S. Department of Transportation, 400 Seventh Street, SW., Room 6244–6248, Washington, DC, 10 a.m. The agenda will include:

- A vote on a revised proposed task concerning Flight Time Limitations and Rest Requirements.
- A substantive review of the outline of the draft report of the Fuel Tank Harmonization Working Group.
- A discussion of proposed new harmonization tasks for Transport Airplane and Engine Issues.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by June 23, 1998, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. A copy of the revised proposed task being put to a vote or the proposed harmonization tasks may also be obtained from that person.

Issued in Washington, DC, on June 10, 1998.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–15960 Filed 6–15–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Agency Request for Emergency Processing of Collection of Information by the Office of Management and Budget; Correction

AGENCY: Federal Railroad Administration, DOT.

ACTION: Correction.

SUMMARY: The Federal Railroad Administration (FRA) issues a notice of correction regarding its request for emergency processing by the Office of Management and Budget (OMB) of a collection of information involving a survey to measure and evaluate the corporate culture of the railroad industry. This collection is part of a project intended to assist in promoting effective railroad safety culture on the major railroads.

SUPPLEMENTARY INFORMATION: FRA submitted the information collection requests (ICRs) described below to OMB for emergency processing under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). FRA requested that OMB authorize the collection of information for 180 days after the issuance of the notice published in the **Federal Register**. *See* 63 FR 17478, April 9, 1998. OMB approved the ICRs and assigned approval number 2130–0546 for the collection of information.

A copy of these ICRs, with applicable documentation, may be obtained by telephoning FRA's clearance officers, Robert Brogan (telephone number (202) 632–3318) or Maryann Johnson (telephone number (202) 632–3226). Questions about the ICRs should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for FRA, Washington, DC 20503.

In the previous notice, the ICRs were described as follows:

Title: Railroad Safety Culture Survey

OMB Number: 2130–new.
Frequency: One-time.
Affected Public: Railroad workers.
Number of respondents: 1100.
Estimated Time Per Respondent: 20 minutes.
Total Burden: 367 hours.

Title: Railroad Safety Culture Survey—Focus Group Sessions

OMB Number: 2130–new.
Frequency: One-time.
Affected Public: Railroad workers.
Number of respondents: 420 employees attending 28 session groups.
Estimated Time Per Respondent: 2 hrs.
Total Burden: 840 hours.

Title: Railroad Safety Culture Survey—Key Interviews

OMB Number: 2130–new.
Frequency: One-time.
Affected Public: Railroad managers.
Number of respondents: 16.
Estimated Time Per Respondent: 1 hr.
Total Burden: 16 hours.

This information correctly represented the ICRs approved by OMB. FRA welcomes the participation of railroad management, labor organizations, and individual employees in this culture survey, which seeks to identify and help develop strategies to address any barriers to effective railroad safety culture on the major railroads. Accordingly, FRA corrects the element entitled ''Description'' to read as follows:

Description: These ICRs are intended to (i) identify characteristics of the safety cultures of the four selected Class I railroads; and (ii) identify any outstanding operational safety culture issues that could be addressed through on-going efforts in partnership with FRA.

Authority: 44 U.S.C. §§ 3501–3520.

Issued in Washington, DC on June 9, 1998.

Marie S. Savoy,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 98–15895 Filed 6–15–98; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board, Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 11:00 a.m., on Wednesday, June 24, 1998, at the Rosemont Suites Hotel, 5500 North River Road, Rosemont, Illinois. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than June 19, 1998, Marc C. Owen,

Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, S.W., Washington, D.C. 20590; 202–366–6823.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, D.C. on June 11, 1998.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 98–15944 Filed 6–15–98; 8:45 am]

BILLING CODE 4910–61–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33602]

Bethlehem Steel Corporation—Control Exemption—Brandywine Valley Railroad Corporation and Upper Merion and Plymouth Railroad Company

Bethlehem Steel Corporation (BSC), a noncarrier, has filed a notice of exemption to indirectly control two Class III railroads, Brandywine Valley Railroad Corporation (BVRY) and L I Acquisition Corp. (doing business as Upper Merion and Plymouth Railroad Company) (UMP),[1] operating in Pennsylvania, that are currently indirectly controlled by Lukens, Inc. (Lukens), upon the acquisition by BSC of the stock of Lukens.

BSC currently owns all of the outstanding stock of six Class III railroads: Philadelphia, Bethlehem and New England Railroad Company; Steelton & Highspire Railroad Company; Cambria & Indiana Railroad Company; and Conemaugh & Black Lick Railroad Company, operating in Pennsylvania; South Buffalo Railway Company, operating in New York; and, Patapsco & Back Rivers Railroad Company, operating in Maryland. BSC will control BVRY and UMP in common with its other subsidiary railroads through its acquisition of control of BVRY's and UMP's corporate parent Lukens.

BSC intended to acquire control of Lukens on or about May 29, 1998.

BSC states that: (1) these railroads do not connect with each other; (2) the acquisition of control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in its corporate family; and (3) the transaction does not involve a Class I rail carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C.10502(g), the board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III railroad carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33602, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P. O. Box 796, West Chester, PA 19381–0796.

Decided: June 9, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–15854 Filed 6–15–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33599]

Consolidated Rail Corporation—Trackage Rights Exemption—Delaware and Hudson Railway Company, Inc.

Delaware and Hudson Railway Company, Inc. (DHC) has agreed to grant overhead trackage rights to Consolidated Rail Corporation (Conrail) over certain railroad trackage, being a portion of the Taylor Secondary, Keyser Valley Industrial Track, and Wye Track, in Lackawanna County, PA, as follows: (1) the railroad tracks and appurtenant devices and facilities on the Taylor Secondary in Taylor Yard between Railroad Valuation Station Nos. 7762 + 04.5 and 7807 + 97, and on the Keyser Valley Industrial Track between Railroad Valuation Station Nos. 7767 + 46.2, 7786 + 32.2 and 7789 + 48, identified as a portion of Track No. 248 and Track Nos. 249, 696, 697, 698, and 699; and (2) the trackage rights also include any additional operating rights needed to make a continuous railroad route to connect the Taylor Secondary at Minooka Jct., which runs from Minooka Jct. to Pittston, with the Keyser Valley Industrial Track and existing trackage rights over DHC running between Taylor Yard and Bridge 60 in Scranton.[1]

While the exemption in STB Finance Docket No. 33599 became effective on June 3, 1998 (7 days after the notice was filed with the Board), the trackage rights transaction will not be able to be consummated until DHC receives Board approval for the exemption sought in STB Finance Docket No. 33595 to acquire the lines over which DHC would grant trackage rights in this proceeding.[2]

The purpose of the trackage rights is to allow Conrail, or its successor, to continue to access its customers on the Keyser Valley Industrial Track, and its customers and connections reached via Bridge 60 in Scranton.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33599, must be filed with

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[1] *See Lukens, Inc. and Sponsor's Plan Asset Management, Inc.—Continuance in Control Exemption—L I Acquisition Corp.*, Finance Docket No. 31587, (ICC served Jan. 22, 1990).

[1] On June 8, 1998, DHC filed a petition for exemption in STB Finance Docket No. 33595, *Delaware and Hudson Railway Company, Inc.—Acquisition and Operation Exemption—Consolidated Rail Corporation*, to acquire from Conrail the trackage over which DHC would then grant back to Conrail the trackage rights that are the subject of this notice. That petition will be addressed by the Board in a separate decision.

[2] Conrail previously conveyed to the Reading, Blue Mountain & Northern Railroad (RBMN) all of its property and operating rights in the vicinity of Taylor Yard, including the Taylor Secondary, Keyser Valley Industrial Track, and the trackage rights to Bridge 60 in Scranton, and has leased to RBMN all of its rights to the tracks in Taylor Yard which DHC is acquiring in STB Finance Docket No. 33595. *See Reading Blue Mountain & Northern Railroad Company—Acquisition and Operation Exemption—Consolidated Rail Corporation*, STB Finance Docket No. 33004 (STB served Aug. 30, 1996). The parties intend that, once DHC receives Board approval of its exemption in STB Finance Docket No. 33595 and the trackage rights in this proceeding become effective, the lease of Conrail's rights in Taylor Yard will terminate, and these trackage rights will be assigned to RBMN.

the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John J. Paylor, Esq., Consolidated Rail Corporation, 2001 Market Street, 16A, Philadelphia, PA 19101–1416.

Decided: June 10, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–15974 Filed 6–15–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

[General Counsel Designation No. 237]

Appointment of Members to the Legal Division Performance Review Board

Under the authority granted to me as General Counsel of the Department of the Treasury by 31 U.S.C. 301 and 26 U.S.C. 7801, Treasury Department Order No. 101–5 (Revised), and pursuant to the Civil Service Reform Act, I hereby appoint the following persons to the Legal Division Performance Review Board:

(1) For the General Counsel Panel—

Neal S. Wolin, Deputy General Counsel, who shall serve as Chairperson;

Roberta K. McInerney, Assistant General Counsel (Banking & Finance);

Stephen J. McHale, Chief Counsel, Bureau of Alcohol, Tobacco & Firearms;

Kenneth R. Schmalzbach, Assistant General Counsel (General Law and Ethics);

Debra N. Diener, Acting Assistant General Counsel (Enforcement); and

Elizabeth B. Anderson, Chief Counsel, United States Customs Service.

(2) For the Internal Revenue Service Panel—Chairperson, Deputy Chief Counsel, IRS; Deputy General Counsel; Two Associate Chief Counsel, IRS; and Two Regional Counsel, IRS.

I hereby delegate to the Chief Counsel of the Internal Revenue Service the authority to make the appointments to the IRS Panel specified in this Designation and to make the publication of the IRS Panel as required by 5 U.S.C. 4314(c)(4).

Dated: June 10, 1998.

Edward S. Knight,

General Counsel.

[FR Doc. 98–15941 Filed 6–15–98; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Customs Service

Procedures if the Generalized System of Preferences Program Expires

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: The Generalized System of Preferences (GSP) is a renewable preferential trade program that allows the eligible products of designated developing countries to directly enter the United States free of duty. The GSP is currently scheduled to expire at midnight on June 30, 1998, unless its provisions are extended by Congress. This document provides notice to importers that claims for duty-free treatment under the GSP may not be made for merchandise entered or withdrawn from a warehouse on or after July 1, 1998, if the program is not extended before that date. This document also sets forth mechanisms to facilitate refunds, should the GSP be renewed with retroactive effect.

DATES: The plan set forth in this document will become effective as of July 1, 1998, if Congress does not extend the GSP program before that date.

FOR FURTHER INFORMATION CONTACT: For specific questions relating to the Automated Commercial System: Arthur Versich, Office of Automated Commercial System, 703–921–7117.

For general operational questions:

Formal entries—John Pierce, 202–927–1249;

Informal entries—Thomas Wygant, 202–927–1167;

Mail entries—Robert Woods, 202–927–1236;

Passenger claims—Michael Perron, 202–927–1325.

SUPPLEMENTARY INFORMATION:

Background

Section 501 of the Trade Act of 1974 (the Act), as amended (19 U.S.C. 2461), authorizes the President to establish a Generalized System of Preferences (GSP) to provide duty-free treatment for eligible articles imported directly from designated beneficiary countries. Beneficiary developing countries and articles eligible for duty-free treatment under the GSP are designated by the President by Presidential Proclamation in accordance with sections 502(a) and 503(a) of the Act (19 U.S.C. 2462(a) and 2463(a)). Pursuant to 19 U.S.C. 2465(a), as amended by section 981 of Public Law 105–34, 111 Stat. 902, duty-free treatment under the GSP is presently scheduled to expire on June 30, 1998.

Congress is currently considering whether to extend the GSP program. If Congress does not pass legislation renewing the GSP before midnight, June 30, 1998, no claims for duty-free treatment under the program will be allowed on entries made after that time. If legislation is enacted but does not become effective before the GSP expires, language may beincluded that could renew the GSP with retroactive effect back to the date of its present expiration.

Recognizing the effect that renewing GSP duty treatment with retroactive effect has on both importers, who must request refunds of duties deposited, and Customs, which must liquidate or reliquidate eligible entries, Customs developed a mechanism to facilitate certain refunds. Set forth below is Customs plan that will be implemented on July 1, 1998, if the GSP has not been extended by that date.

Formal Entries

Claims—Duties must be deposited

No claims for duty-free treatment under the GSP may be made for merchandise entered, or withdrawn from warehouse for consumption on or after July 1, 1998. Duties at the most-favored-nation rate must be deposited, or a claim may be made under another preferential program for which the merchandise may qualify (for example, the Andean Trade Preference Act or the Caribbean Basin Economic Recovery Act).

When the GSP expires, Customs will employ an electronic mechanism that will allow the timely processing of refunds of duties deposited on eligible entries without requiring further action by the electronic filer. Entry summaries filed after June 30, 1998, with the Special Program Indicator (SPI) for the GSP (the letter ''A'') used as a prefix to the tariff number for all merchandise that would qualify for the GSP were the GSP still in effect will be accepted with deposited duties, and should the GSP be renewed with retroactive effect, the duties deposited with these entries will be refunded without further action by the filer. In effect, use of the SPI ''A'' will constitute an importer's request for a refund of duties paid for GSP line items should the GSP be renewed with retroactive effect.

Although the Customs Automated Commercial System (ACS) will be reprogrammed to accept the use of the SPI ''A'' with the payment of duty, the Automated Broker Interface (ABI) with the ACS will not be so reprogrammed. Accordingly, those filers that utilize the ABI who wish to continue utilizing the

SPI ''A'' for purposes of receiving an automatic GSP refund should the GSP be renewed with retroactive effect will have to reprogram their software to accept the submission of estimated duties with the SPI ''A'' designation on entries. (ABI filers who do not wish to reprogram their software will be required to request refunds in writing to the appropriate port director identifying the affected entry numbers if the GSP is renewed with retroactive effect). While reprogramming is strictly voluntary, continued use of the SPI ''A'' has some benefits: one already mentioned is that the filer will not have to request a refund of deposited duties in writing should the GSP be renewed with retroactive effect; another is that ACS will perform its usual edits on the information transmitted by the filer, thereby ensuring that GSP claims are for acceptable country/tariff combinations and eliminating the need for numerous statistical corrections.

Importers may not use the SPI ''A'' if they intend to later claim drawback. To claim both this refund and drawback would be to request a refund in excess of duties actually deposited. Importers who are unsure as to whether they will claim drawback are advised not to use the SPI ''A''. If the GSP is renewed with retroactive effect, and they have not yet claimed drawback, they may request a refund by writing to the port director at the port of entry. If the GSP is not renewed with retroactive effect, they will still have the option of filing a drawback entry.

Refunds

1. Automatic

Should the GSP be renewed with retroactive effect, then Customs will liquidate or reliquidate all affected ABI entry summaries with a refund for the GSP line items. If an ABI entry summary was filed with the SPI ''A'', then no further action need be taken by the filer to request a refund.

2. Need for written request

If an ABI entry summary was filed without the SPI ''A'', then the request for a refund must be in writing. Further, all non-ABI filers must request refunds in writing. Instructions on how to request a refund in writing will be issued if the GSP is renewed with retroactive effect.

Informal Entries

Refunds on informal entries filed through the ABI with the SPI ''A'' designation will be processed in accordance with the automatic refund procedure outlined above.

Baggage declarations and non-ABI informals

When merchandise is presented for clearance, travelers and importers will be advised verbally or by a written notice that they may be eligible for a refund of GSP duties. Travelers/importers may write a statement directly on their Customs declarations (CF 6059B) or informal entries (CF 363) indicating their desire for a refund. Then should the GSP be renewed with retroactive effect, no further action need be taken by the importer to request a refund. Failure to request a refund at this time and in this manner does not operate to bar a written request in the future.

Mail entries

Should the GSP be renewed with retroactive effect, those addressees who received GSP eligible merchandise (identified on the CF 3419A, (Mail Entry)) may be eligible for a refund of GSP duties and should submit a separate written claim for a refund. The request for the refund and a copy of the CF 3419A should be submitted to the appropriate International Mail Branch identified at the bottom right-hand corner of the CF 3419A. (The copy of the CF 3419A must be included with the request, as the information contained on the form will be the only record of the GSP merchandise entered and whether the duties and fees were paid).

Dated: June 10, 1998.

Louis E. Samenfink,

Acting Assistant Commissioner, Field Operations.

[FR Doc. 98–15883 Filed 6–15–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–3–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–3–91 (TD 8456), Capitalization of Certain Policy Acquisition Expenses (§§ 1.848–2(g)(8), 1.848–2(h)(3), and 1.848–2(i)(4)).

DATES: Written comments should be received on or before August 17, 1998 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: Capitalization of Certain Policy Acquisition Expenses.

OMB Number: 1545–1287.

Regulation Project Number: FI–3–91.

Abstract: Internal Revenue Code section 848 provides that insurance companies must capitalize ''specified policy acquisition expenses.'' In lieu of identifying the categories of expenses that must be capitalized, section 848 requires that a company capitalize an amount of otherwise deductible expenses equal to specified percentages of net premiums with respect to certain types of insurance contracts. Insurance companies that enter into reinsurance agreements must determine the amounts to be capitalized under those agreements consistently. This regulation provides elections to permit the parties to a reinsurance agreement to shift the burden of capitalization for their mutual benefit.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,070.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 2,070.

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: June 10, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–15991 Filed 6–15–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–952–86]

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 notice of proposed rulemaking and temporary regulation, INTL–952–86 (TD 8228), Allocation and Apportionment of Interest Expense and Certain Other Expenses (§§ 1.861–9T, and 1.861–12T).

DATES: Written comments should be received on or before August 17, 1998 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 regulations should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Allocation and Apportionment of Interest Expense and Certain Other Expenses.

OMB Number: 1545–1072.

Regulation Project Number: INTL–952–86.

Abstract: Section 864(e) of the Internal Revenue Code provides rules concerning the allocation and apportionment of interest and certain other expenses to foreign source income for purposes of computing the foreign tax credit limitation. These regulations provide for the affirmative election of either the gross income method or the asset method of apportionment in the case of a controlled foreign corporation.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents/Recordkeepers: 15,000.

Estimated Time Per Respondent/Recordkeeper: 15 minutes.

Estimated Total Annual Reporting/Recordkeeping Hours: 3,750.

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: June 9, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–15992 Filed 6–15–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Regulation Section 1.6001–1]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, regulation section 1.6001–1, Records.

DATES: Written comments should be received on or before August 17, 1998 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 regulation section should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Records.

OMB Number: 1545–1156.

Regulation Project Number: Regulation section 1.6001–1.

Abstract: Internal Revenue Code section 6001 requires, in part, that every person liable for tax, or for the collection of that tax, keep such records and comply with such rules and regulations as the Secretary (of the Treasury) may from time to time prescribe. It also allows the Secretary, in his or her judgement, to require any person to keep such records that are sufficient to show whether or not that person is liable for tax. Under regulation section 1.6001–1, in general, any person subject to tax, or any person required to file an information return, must keep permanent books of account or records, including inventories, that are sufficient to establish the amount of gross income, deductions, credits or other matters required to be shown by such person in any tax return or information return. Books and records are to be kept available for inspection by authorized internal revenue officers or employees and are to be retained so long as their contents may become material in the administration of any internal revenue law.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

The recordkeeping burden in this regulation is already reflected in the burden of all the tax forms.

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: June 10, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–15993 Filed 6–15–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Scientific Review and Evaluation Board for Health Services Research and Development Service, Notice of Meeting

The Department of Veterans Affairs, Veterans Health Administration, gives notice under Pub. L. 92–463, that a meeting of the Scientific Review and Evaluation Board for Health Services Research and Development Service will be held at the Embassy Suites Hotel, 1250 22nd Street, NW, Washington, DC, from June 23 through June 26, 1998. On June 23, the meeting will begin at 7:00 p.m. until 9:00 p.m. and on June 24 through June 26, 1998, from 7:30 a.m. until 5:00 p.m. each day. The purpose of the meeting is to review research and development applications concerned with the measurement and evaluation of health care systems and with testing new methods of health care delivery and management. Applications are reviewed for scientific and technical merit. Recommendations regarding their funding are prepared for the Chief Research and Development Officer (12).

This meeting will be open to the public at the start of the June 23 session for approximately one-half hour to cover administrative matters and to discuss the general status of the program. The closed portion of the meeting involves discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols and similar documents. During this portion of the meeting, discussion and recommendations will deal with the qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would be likely to frustrate significantly implementation of proposed agency action regarding such research projects. As provided by the subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Those who plan to attend the open session should contact Mr. E. William Judy, MSHA, Review Program Manager (124F), Health Services Research and Development Service, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC, at least five days before the meeting. For further information, he can be reached at (202) 273–8254.

Dated: June 9, 1998.

By Direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–15917 Filed 6–15–98; 8:45 am]

BILLING CODE 8320–01–M

federal register

Tuesday
June 16, 1998

Part II

Department of the Treasury

Customs Service

19 CFR Part 19 et al.
Recordkeeping Requirements; Rule

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 19, 24, 111, 113, 143, 162, 163, 178 and 181

[T.D. 98–56]

RIN 1515–AB77

Recordkeeping Requirements

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, proposed amendments to the Customs Regulations to reflect changes to the Customs laws regarding recordkeeping requirements, examination of records and witnesses, regulatory audit procedures, and judicial enforcement contained in the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act. The final regulatory texts include detailed provisions regarding what records must be maintained, who must maintain them, and how they must be maintained and made available for examination by Customs. The final regulations also provide for electronic or other alternate methods for storage of records, set forth penalties for failure to maintain or produce certain records, and establish a voluntary recordkeeping compliance program as an alternative to penalties.

EFFECTIVE DATE: July 16, 1998.

FOR FURTHER INFORMATION CONTACT: For questions relating to recordkeeping in general and the voluntary Recordkeeping Compliance Program, call Stan Hodziewich, Regulatory Audit Division, Washington, D.C. (202–927–0999), or Howard Spencer, Regulatory Audit Division, Atlanta Branch (770–994–2273, Ext.158).

For questions relating to the Appendix ((a)(1)(A) list) and its underlying documents and other entry records, call Jerry Laderberg, Office of Regulations and Rulings (202–927–2269).

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, the President signed into law the North American Free Trade Agreement Implementation Act (the ''NAFTA Implementation Act''), Public Law 103–182, 107 Stat. 2057. Title VI thereof contained provisions pertaining to Customs Modernization and thus is commonly referred to as the Customs Modernization Act or ''Mod Act''. Sections 614, 615 and 616 within the Mod Act amended sections 508, 509 and 510 of the Tariff Act of 1930, as amended (19 U.S.C. 1508, 1509 and 1510) which pertain to recordkeeping requirements applicable to importers and others. In addition, within Title II of the NAFTA Implementation Act, entitled ''Customs Provisions'', section 205 amended sections 508 and 509 of the Tariff Act of 1930 to include recordkeeping requirements for exportations to Canada and Mexico for purposes of the United States-Canada Free Trade Agreement and the NAFTA.

Before its amendment by the Mod Act, section 508 of the Tariff Act of 1930 limited recordkeeping requirements to any owner, importer, consignee, or agent thereof who imported, or knowingly caused to be imported any merchandise into the Customs territory of the United States. Section 614 of the Mod Act amended these requirements and expanded the parties subject to Customs recordkeeping requirements to include parties who file an entry or declaration, transport or store merchandise carried or held under bond, file drawback claims, or cause an importation, or transportation or storage of merchandise carried or held under bond. Section 614 of the Mod Act further amended section 508 of the Tariff Act of 1930 to clarify that all parties who must keep records for Customs purposes are subject to recordkeeping requirements. In addition, in order to reflect the current electronic environment in which both Customs and the importing and exporting community operate, section 614 of the Mod Act expanded the concept of ''records'' set forth in section 508 of the Tariff Act of 1930 to include information and data maintained in the form of electronically generated or machine readable data.

The Mod Act amended various provisions of the Customs laws to grant to Customs authority not to require the presentation of certain documentation or information at time of entry; these amendments were intended to permit a reduction of the documentation and information requirements at time of entry, thereby facilitating the entry process. However, in exchange for not requiring presentation of documents at the time of entry, and in order to not jeopardize the ability of Customs to obtain those records at a later date, section 615 of the Mod Act amended section 509 of the Tariff Act of 1930: (1) to authorize Customs to examine, or to require the production of, *inter alia*, any records which are required by law for the entry of merchandise, whether or not Customs required their presentation at the time of entry; (2) to provide for the imposition of substantial administrative penalties for a failure to comply, within a reasonable time, with a demand for production of such entry records; and (3) to require Customs to identify and make available to the importing community, by publication, a list of all such entry records or information (referred to as the ''(a)(1)(A) list'' based on the paragraph within 19 U.S.C. 1509 which specifically concerns such records). Thus, the Mod Act amendments resulted in a statutory distinction between those business, financial or other records that pertain to activities listed in section 508 of the Tariff Act of 1930 and are maintained in the normal course of business and those that are required for the entry of merchandise and are required to be identified in the ''(a)(1)(A) list'' and as to which penalties may apply for a failure to produce if demanded by Customs. In addition, section 615 of the Mod Act amended section 509 of the Tariff Act of 1930: (1) to set forth procedures applicable to regulatory audits conducted by Customs; and (2) to provide for a voluntary recordkeeping compliance program under which program participants might be eligible for alternatives to penalties for a failure to produce demanded entry records and information.

Section 205 of the Mod Act amended section 508 of the Tariff Act of 1930, *inter alia*, to provide (1) that any person who completes and signs a NAFTA Certificate of Origin for a good for which preferential treatment is claimed under the NAFTA shall make, keep, and render for examination and inspection all records relating to the origin of the good (including the Certificate or copies thereof) and the associated records and (2) that such records shall be retained for at least 5 years from the date of signature of the NAFTA Certificate of Origin. Section 205 of the Mod Act also made a conforming amendment to section 509 of the Tariff Act of 1930 regarding persons to whom a summons may be issued, involving the addition of a reference to persons who exported merchandise, or knowingly caused merchandise to be exported, to a NAFTA country or to Canada during such time as the United States-Canada Free Trade Agreement is in force. Section 616 of the Mod Act amended section 510 of the Tariff Act of 1930 by adding the assessment of a monetary penalty as a sanction that may be applied by a U.S. district court if a person does not comply with a summons issued by Customs under section 509 of the Tariff Act of 1930.

On April 23, 1997, Customs published in the **Federal Register** (62 FR 19704) a notice setting forth proposed

amendments to the Customs Regulations to implement the changes to the statutory recordkeeping provisions effected by the NAFTA Implementation Act as summarized above. Customs stated in that notice of proposed rulemaking that a new, separate part within the Customs Regulations, dealing solely with recordkeeping and related requirements, would be the appropriate approach. Accordingly, the notice proposed to add a new Part 163 (19 CFR Part 163) entitled ''Recordkeeping'' which would contain the recordkeeping and related provisions previously set forth in Part 162 of the Customs Regulations (19 CFR Part 162) and would also reflect the amendments to sections 508, 509 and 510 of the Tariff Act of 1930 effected by sections 205, 614, 615 and 616 of the NAFTA Implementation Act. In addition, that notice: (1) set forth, as an appendix to proposed new Part 163, the (a)(1)(A) list that had been previously published in the Customs Bulletin on January 3, 1996, as T.D. 96–1 and in the **Federal Register** on July 15, 1996, at 61 FR 36956; and (2) included proposed conforming or collateral amendments to various provisions within Parts 24, 111, 143 and 162 of the Customs Regulations (19 CFR Parts 24, 111, 143 and 162). The notice of proposed rulemaking made provision for the submission of public comments on the proposed regulatory changes for consideration before adoption of those changes as a final rule, and the prescribed public comment period closed on June 23, 1997. A correction document pertaining to the April 23, 1997, notice of proposed rulemaking was published in the **Federal Register** on May 5, 1997 (62 FR 24374).

Discussion of Comments

Twenty-three commenters responded to the solicitation of comments in the April 23, 1997, notice of proposed rulemaking referred to above. The comments submitted are summarized and responded to below.

Treatment of Express Consignment Carriers

Comment: Two commenters complained that the proposed regulations do not adequately reflect, nor address, the unique role that express consignment carriers play in the import process. These commenters noted that express consignment carriers, as nominal consignees, have the right under 19 U.S.C. 1484 to designate a customs broker to make entry of merchandise and that, in order to deliver an integrated service, they frequently designate their own brokerages which make entry in their own names; thus, express consignment carriers play multiple roles with regard to customs processing as a carrier, broker, and importer of record, and they also operate as transporters and storers of merchandise carried or held under bond. The proposed regulations, on the other hand, simply list together all of the different parties required to make, keep, and produce records without making any clear distinction between those parties with reference to the roles they play in the import process (for example, the distinction between an express consignment carrier and the actual importer or consignee). Thus, under the proposed regulations an express consignment carrier would be required to make, keep, and produce records for each of its import-related activities, including, as nominal consignee, every document that accompanies a shipment and is identified in the (a)(1)(A) list as being necessary for the entry of merchandise. The commenters further asserted that the burden imposed by the regulatory proposals is accentuated in the case of express consignment carriers by virtue of the very large volume of shipments that they handle.

In addition to the above general comments regarding the unique nature of the express consignment industry, these two commenters made the following specific recommendations or observations:

1. In order to avoid redundancy and unnecessary burdens in the recordkeeping requirements, separate and distinct recordkeeping requirements should be established for express consignment carriers and that those requirements should appear in Part 128 of the Customs Regulations (19 CFR Part 128) which sets forth requirements and procedures for the clearance of imported merchandise carried by express consignment operators and carriers. These commenters suggested that there is precedent for this approach in that separate sections dealing with recordkeeping responsibilities appear in the Part 111 regulations governing customs brokers.

2. In order to avoid rendering meaningless the benefits provided under current Part 128 and also to reflect what records are in fact kept in the ordinary course of business, express consignment carriers should only be required to keep and produce, as (a)(1)(A) records, those records presently prescribed for entry purposes in Part 128: for letter and document shipments (express consignment carrier acts as carrier), the summary manifest or manifest; for shipments that may be entered free of duty under 19 U.S.C. 1321 and 19 CFR 10.151 (express consignment carrier acts as carrier/broker), the manifest; for shipments covered by an informal entry (express consignment carrier acts as broker), the manifest or Customs Form 3461 and the invoice and Customs Form 7501 or, if a consolidated informal entry, the manifest and consolidated Customs Form 7501; and for shipments covered by a formal entry (express consignment carrier acts as broker), the manifest or Customs Form 3461 and the invoice and Customs Form 7501, together with a power of attorney if entry is made in the name of the express consignment carrier's customer and certain records required for the entry of specific categories of merchandise. All other records pertaining to a particular import (for example, air waybills, commercial invoices) should be kept and produced by the recipient of the shipment, that is, the actual importer.

3. Requiring the retention of more than the records mentioned at point 2 above in the case of express consignment carriers neither makes economic sense nor provides an enforcement benefit to Customs because (1) while the value of an express consignment shipment is not typically very high, the retention of additional records would be extremely costly to the express consignment carrier given the volume of shipments involved and (2) compliance assessment (including document review) for express consignment shipments is performed either at the time of entry by on-site Customs inspectors at express carrier facilities or, particularly in the case of informal entries where enforcement risks are minimal, not at all.

4. While express consignment carriers generally maintain the consolidated Customs Form 7501 for informal entries, Customs might consider eliminating this requirement since the document contains very little information other than totals on duties and number of entries.

5. It should be clarified up front that the monetary penalties provided for in 19 U.S.C. 1509(g) and in proposed § 163.6(b) are inapplicable to express consignment carriers because the documentation or information that the express consignment industry should be required to maintain will be presented at the time of entry. In support of this position, it was pointed out that, in House Report No. 361, 103d Congress, 1st Session (1993), it was noted that those penalties should not be imposed where the ''information demanded has been presented to and retained by the Customs Service at the time of entry.''

Moreover, with reference to the role that express consignment carriers often play as customs brokers, it was pointed out that the same House Report recognized that while customs brokers may be recordkeepers under section 1509 and may act as importers of record in certain cases, ''their status as 'brokers'' does not change because of this and failure to maintain the records as specified in section 615 should not automatically subject them to penalties set forth in subsection (g)''; rather, the House Report indicated that Customs should proceed against customs brokers for recordkeeping violations under 19 U.S.C. 1641 and only under section 1509(g) in exceptional circumstances such as where there is ''an egregious, flagrant or willful violation of the requirements of section 1509, or when there is a pattern or practice of abuse occurring over a sustained period of time, also in willful disregard of those recordkeeping requirements.''

Customs response: Customs disagrees with the implication of the above general comments, that is, that express couriers should be excepted from these recordkeeping regulatory requirements. While it is true that express couriers not only act as carriers but also at times as brokers and consignees, the fact remains that these separate functions constitute activities that trigger recordkeeping responsibilities under section 508(a). Customs does not believe that, merely because express couriers act in these varied roles, they are so unique that special recordkeeping requirements should apply to them. Moreover, Customs notes that express couriers do not always exercise unique control because some express companies have multiple brokers.

1. For the reasons stated above in response to the general comments, Customs disagrees that separate recordkeeping requirements should be created for express couriers.

2. Customs disagrees with the suggestion that the Part 163 texts would have the effect of rendering meaningless the benefits provided by Part 128. The scope and benefits of Part 128 go far beyond recordkeeping requirements. Moreover, the Part 163 texts of necessity reflect recordkeeping requirements that apply to express couriers for all roles that couriers play in international transactions. The parties listed in proposed § 163.2(a) as being required to maintain records are specifically required by § 163.3 to maintain ''(a)(1)(A)'' records, that is, those records required for entry. Since each import transaction/entry is unique and may require different (a)(1)(A) documents depending upon a number of factors, it would be impossible to limit the (a)(1)(A) records for each party listed in § 163.2(a). This is especially true for express couriers whose role may change from transaction to transaction.

However, in the light of the points made by these commenters, Customs has reconsidered this matter and now believes that, for purposes of prescribing a minimum period during which records must be retained, there is a valid basis for making an exception to the normal rule in the following cases: (1) Where an informal entry is filed by a customs broker appointed by a consignee who is not the owner or purchaser of the imported merchandise; and (2) where the records either relate to bona fide gifts and other articles admitted free of duty and tax under 19 U.S.C. 1321(a)(2) and §§ 10.151–10.153 of the Customs Regulations or consist of carriers' records pertaining to manifested cargo that is exempt from entry under the Customs Regulations (for example, records, diagrams and data covered by General Note 16(c) of the Harmonized Tariff Schedule of the United States (HTSUS), and undeliverable articles described in General Note 16(e), HTSUS, which are exempt from entry under § 141.4(b)(1) of the Customs Regulations). In such cases, Customs believes that a 2-year record retention period (rather than the normal 5-year period) is appropriate because compliance measurement most often takes place at the time of importation or entry (and rarely, if ever, more than two years thereafter) and because, in the case of informal entries filed by customs brokers at the behest of consignees, the most important records (that is, the entry records) would still have to be maintained and made available to Customs by the broker for the normal 5-year period. Accordingly, § 163.4(b), which lists exceptions to the 5-year record retention rule, has been modified as set forth below by the addition of two new subparagraphs (3) and (4) to reflect these considerations.

3. Customs disagrees with this statement. Given the concerns of Customs regarding misdeliveries within the express courier industry, Customs deems the information on even informal entries crucial for post-audit and compliance measurement purposes at least during the 2-year period that might apply to an express courier under the modified § 163.4(b) text as discussed above in the point 2 comment response. The modified § 163.4(b) text, together with the provision for alternative storage of records in § 163.5, serve in part to address the issue of the burden of maintaining a large volume of documents.

4. Customs disagrees for the reasons stated in the point 3 response above.

5. Customs agrees, and proposed § 163.6(b)(4)(iii) made clear, that where (a)(1)(A) documents are presented to and retained by Customs, no recordkeeping penalties will be issued. The position of Customs is that recordkeeping violations by customs brokers will be handled either under 19 U.S.C. 1641 and Part 111 of the Customs Regulations or under 19 U.S.C. 1509(g) and Part 163 of the Customs Regulations, depending on the nature and circumstances of the violation.

Section 111.21(b)—Applicability of Part 163 to Customs Brokers

Comment: One commenter took issue with proposed new paragraph (b) of § 111.21 which provides that a customs broker shall comply with the provisions of Part 163 when maintaining records that reflect on his transactions as a broker. This commenter stated that the regulatory text is too broad, and could give rise to uncertainty on the part of Customs and a broker when an audit is being performed, because it does not differentiate between the different functions and responsibilities of brokers. While conceding that a broker acting as importer of record would assume the recordkeeping responsibilities of Part 163, this commenter argued that § 111.21(b) should be limited to brokers acting in that capacity and should not apply to other broker functions authorized under 19 U.S.C. 1641.

Customs response: Customs disagrees. The requirements and procedures governing the retention and subsequent production of records under sections 508 and 509 are contained in Part 163, and proposed new § 111.21(b) was included to reflect this fact. Thus, the ''provisions'' referred to in § 111.21(b) clearly would apply to customs brokers whether they act solely as an agent on behalf of the importer of record or list themselves as the importer of record or file a drawback claim on behalf of the importer or transport goods on behalf of the importer or carry on any activity of a broker authorized under 19 U.S.C. 1641 and which is also described in section 508(a) and in § 163.1(a).

Customs notes that present § 111.21 (the text of which was redesignated as paragraph (a) in the proposed regulatory amendments) requires a broker to keep ''records of account reflecting all his financial transactions as a broker''; this provision has always been intended to include, among other things, financial records pertaining to client accounts (billing records, payment of Customs duty refunds to clients where the broker

was importer of record, etc.) which, even if they are not records required to be maintained under section 508, are nevertheless records that pertain to the conduct of ''customs business'' as that term is defined in section 1641. For purposes of consistency and in order to clarify the broad scope of amended § 111.21 as regards the maintenance of records, the following changes have been included in the final regulatory amendments set forth below: (1) The proposed amendment to the definition of ''records'' in § 111.1 (which involved a simple cross-reference change) has been replaced by an amendment setting forth a new definition text which refers to ''documents, data and information referred to in, and required to be made or maintained under, this part and any other records, as defined in § 163.1(a) of this chapter, that are required to be maintained by a broker under part 163 of this chapter''; and (2) the text of new § 111.21(b) has been modified to refer to the provisions of ''this part and part 163 of this chapter''.

Again with reference to newly designated § 111.21(a), Customs further notes that the second sentence thereof requires a broker to maintain, among other things, ''a copy of each entry made by him with all supporting records, except those documents he is required to file with Customs''; this simply reflects a requirement imposed on a broker by sections 508 and 509, whether the broker is acting as importer of record or as an agent for the importer of record. In view of the addition of paragraph (b) of § 111.21 which refers to Part 163, and consistent with the specific coverage of sections 508 and 509 with regard to records pertaining to the entry process, Customs believes that the regulatory provisions of Part 163 should control in this context. Accordingly, the amendments to § 111.21 have been modified as set forth below to include the removal of these words from the second sentence of newly designated paragraph (a).

Section 111.21(c)—Designation of Recordkeeping Officer and Backup

Comment: Six comments were received on proposed new paragraph (c) of § 111.21 which requires a customs broker to designate a knowledgeable company employee to be the broker's recordkeeping officer as well as a back-up recordkeeping officer. The points made by these commenters were as follows:

1. One commenter supported the proposed regulatory provision as being in accord with the Customs principle of ''People, Processes and Partnership'' by creating a primary point of contact. This commenter, however, suggested that the word ''manager'' be used in place of ''officer'' in the regulatory text so that a broker could designate a non-corporate officer to handle these responsibilities.

2. Four commenters argued that the provision should be eliminated entirely on the grounds that it is unnecessary and overly intrusive. These commenters pointed out that, contrary to the case of a regular importer, a customs broker is already required under Part 111 of the regulations to have on record with Customs an individually licensed broker who is responsible for the supervision and control of the broker's customs business (including recordkeeping requirements). In addition, brokers are different from importers in that a broker can be penalized (by monetary fines or by suspension or revocation of its license) under the broker statute and regulations for a failure to meet its recordkeeping responsibilities, whereas after certification an importer would merely have its privilege suspended or terminated. Moreover, brokers are licensed and thus should be aware of their obligations regarding recordkeeping, and the appointment of recordkeeping officers would not in itself ensure greater compliance. It should be sufficient for a broker, if necessary, to simply provide a contact name to Customs when needed, without prescribing in the regulations how a broker should organize its business.

3. One commenter suggested that, rather than requiring an express designation of a recordkeeping officer, the licensed qualifying officer of the broker should automatically serve as the recordkeeping officer unless the broker makes an alternative designation. This commenter also recommended that the requirement of a back-up recordkeeping officer be eliminated for small brokers having less than 25 employees.

Customs response: While Customs does not agree that the regulatory provision at issue should be eliminated entirely, Customs is in substantial agreement with the above comments regarding the sufficiency of a mere recordkeeping contact (and without a required back-up) within the brokerage, because Customs requires only the existence of a designated individual responsible for recordkeeping compliance in the case of the Recordkeeping Compliance Program. Section 111.21(c) as set forth below has been modified accordingly. In addition, in the revised text the word ''entry'', which was used in the proposed text, has been replaced by ''customs business'' to reflect the broad scope of § 111.21 as discussed above in the comment response regarding § 111.21(b).

Section 111.22—Additional Record of Transactions

Comment: A commenter supported the proposed amendment to § 111.22 which would transfer, from the port director to the Field Director of Regulatory Audit responsible for the geographical area in which the broker's designated recordkeeping officer is located, the authority to exempt a broker from the recordkeeping requirement set forth in that section. This commenter opined that this proposed change recognizes changing industry trends and should shorten approval times and improve lines of communication between brokers and Customs.

Customs response: While the changes to § 111.21(c) discussed in the comment response immediately above would appear to affect the wording of the proposed changes to § 111.22, Customs has reconsidered the need for § 111.22 as a whole. In light of the fact that numerous requests for exemptions from the requirements of this section are granted yearly by Customs, and since approval authority has been granted to Regulatory Audit which utilizes a new audit approach, Customs believes that § 111.22, and the recordkeeping burden imposed thereby, are no longer necessary. Accordingly, the final regulatory amendments set forth below include the removal of § 111.22 in its entirety.

Section 111.23(a)(1)—Consolidation of Records

Comment: Four comments were received on the proposed revision of § 111.23(a)(1) which would permit the consolidation of records with the approval of the Field Director of Regulatory Audit responsible for the geographical area in which the broker's designated recordkeeping officer is located. Two of the commenters stated their agreement with the general principle of allowing the consolidation of records. However, all four commenters made the following complaints or suggestions with regard to the proposed regulatory text:

1. There should be no provision for review and approval by the local Field Director of Regulatory Audit; all that should be required is that the Field Director of Regulatory Audit be notified of the storage location. Moreover, the proposed regulatory text could lead to inconsistent treatment of requests since the text allows for the rejection of a request without requiring a reason or justification. Accordingly, the proposed text should be modified (1) to set forth

the reasonable requirements for consolidation that the broker must meet, (2) to provide for a certification from the broker that it meets those requirements, and (3) to provide for issuance of an acknowledgment from the Field Director of Regulatory Audit to the broker showing receipt of the consolidation plan.

2. A broker should only be required to notify Customs of consolidation of records, and such notification should be provided to Customs Headquarters rather than to a field office. The approach taken in the Federal Maritime Commission regulations in 15 CFR 762.5 should be followed.

3. While one commenter read the proposed text as permitting consolidation of records in multiple locations, another commenter recommended that the text specifically provide that brokers can consolidate records in one or more (regional) locations.

4. The regulatory text should provide that, where electronic data storage or imaging is being used, the term ''consolidate'' covers a computer system that may have a distributed database.

5. Brokerage firms having multiple district permits could possibly have, if required, a recordkeeping officer located in a different geographic area than its home district where its licensed qualifying officer is located, thus creating confusion over authorities and responsibilities.

6. The regulatory text should specifically provide that for brokers for which multiple district permits have been issued, only one application and approval to consolidate records would be required for use in all permitted districts.

Customs response: 1 and 2. While Customs has reconsidered the proposed provision and agrees with the commenters both that brokers need only notify Customs in advance of the decision to consolidate their records and that such notification should go to a single, centralized location, Customs does not agree that such notification should go to Customs Headquarters. Rather, Customs believes that the Miami regulatory audit field office is the appropriate location for submission of the written notice of consolidation because the Miami office houses the field audit specialist on recordkeeping requirements and also houses the staff that will be responsible for creating Customs-wide recordkeeping information data bases and entering the data therein. The proposed regulatory text in question (redesignated in this document as paragraph (b)(2) of § 111.23 as discussed below) has been modified accordingly.

Based on the agreement of Customs to dispense with the proposed requirement for Customs approval of consolidation of records, and in view of the changes to the Part 111 proposed amendments already discussed above, the § 111.23 amendments as set forth below incorporate some other changes not reflected in the amendments as originally proposed. The following points are noted in this regard: (1) In paragraph (a)(1), reference is simply made to ''records'' (the meaning of which should be clear from the new definition thereof in § 111.1), the reference to Customs approval and the last sentence regarding appeal of a denial of approval have been removed, reference is made to consolidation at ''one or more'' locations (to clarify that the intent was not to restrict consolidation to one location, so that a broker could, for example, opt to keep all entry records at one location and all client financial account records at another location), and the reference to the geographical location of the broker's recordkeeping officer has been removed in favor of a simple reference at the end of the text to the subparagraph which sets forth the notification procedures (formerly paragraph (e)); (2) proposed new paragraph (b) has been omitted (because it adds nothing that is not already stated in new § 111.21(b) and because the reference in the proposed text to only Part 163 failed to reflect that some records required to be maintained under the Part 111 texts are not records covered by Part 163) and, consequently, former paragraph (e) has been redesignated as (b) (rather than as (c)); (3) within newly designated paragraph (b), the word ''financial'' has been removed from subparagraphs (1) and (2)(ii) and the word ''accounting'' has been removed from the first sentence of subparagraph (2)(i) in order to reflect that consolidation applies to all records (that is, those required under Part 111 and those required to be maintained under Part 163), and new language regarding where notice of consolidation is to be given, as discussed above, has been included in the introductory text of subparagraph (2); (4) former paragraph (b) has been removed (because it will not be replaced by a new paragraph (b) text as originally proposed and, as with the other paragraphs removed from this section, is superseded by the Part 163 texts); and (5) paragraph (f) (which was inadvertently not redesignated or otherwise mentioned in the proposed § 111.23 amendments) has been removed because its substance is adequately covered by other provisions within § 111.23 and Part 163.

3. Customs agrees, and the modified § 111.23(a)(1) text, as discussed above and set forth below, now makes this clear.

4. Customs disagrees. The issue raised by this comment in effect concerns alternate methods for storage of records and is adequately and more properly addressed in § 163.6.

5. While Customs agrees with this commenter's observation, it is essentially rendered moot by the changes to §§ 111.21 and 111.23 as discussed above and set forth below.

6. The substance of this comment has been addressed by the regulatory text changes discussed above and set forth below.

Section 143.35—Procedure for Electronic Entry Summary

Comment: With regard to the proposed revision of § 143.35 which provides that documentation submitted before being requested by Customs will not be accepted or retained by Customs, a commenter requested that the regulatory text be modified to provide that any such documents will be promptly returned to the filer.

Customs response: Customs disagrees with the requested change. Documents submitted before being requested by Customs will not be accepted by Customs, thus obviating the need to return them.

Section 143.36(c)—Retention and Submission of Invoice

Comment: Two comments were received on the proposed changes to § 143.36(c) which would provide (1) that the invoice is to be retained by the filer unless requested by Customs and (2) that Customs will not accept or retain an invoice submitted by a filer before a request is made by Customs.

One commenter claimed that the refusal of Customs to accept and retain the invoice will impose an unreasonable burden on broker-filers in cases where the broker knows that the entry summary may later be used in connection with a drawback entry. This commenter stated that it already has been overwhelmed in some cases when Customs requested copies of entry summaries and related documents for paperless entries because a drawback claim was later filed by the importer or exporter, pointing out that the request from Customs usually is not for a single entry summary but rather for dozens at a time. This commenter therefore suggested that a broker should be allowed the option of filing such

documents at the time of entry summary while its files are at hand, rather than be forced to assume the time and expense of retrieving documents from a storage location.

The second commenter argued that, where Customs refuses to accept and retain an invoice filed without a request for it having been made, the regulatory text should provide for a prompt return of the document to the filer.

Customs response: Customs disagrees. As regards the first comment, section 615 of the Mod Act and the subsequent proposed recordkeeping regulations were written in order to reduce the burden of filing other documents with the entry or entry summary because Customs frequently did not need the documents to process the entry or entry summary. The decision of whether Customs needs the documentation either at or after the time of entry is a decision best left to Customs. If the broker knows that certain entry summaries and supporting documentation will be used for a subsequent claim for drawback, the broker could maintain those records separately and thus forego any time or expense for future retrieval. The substance of the second comment has been addressed above in the comment response regarding § 143.35.

Section 143.37(a)—Retention of Records

Comment: With regard to the reference to records that must be retained by a broker, a commenter requested clarification on whether or not a Customs electronic response to a broker transmission must be maintained.

Customs response: Since a Customs electronic response to a broker transmission is not one of the documents or data elements covered by sections 508 and 509 and by the definition of ''records'' in § 163.1(a), there is no regulatory requirement that such electronic responses be maintained; however, a prudent broker might want to retain them for other purposes.

Also with regard to § 143.37, as a result of a further internal review of the proposed regulatory amendments to paragraphs (c) and (d), Customs has concluded that these two paragraphs should be removed rather than merely amended as proposed. As regards paragraph (c), which concerns consolidation of electronic entry records, the issue of consolidated records is specifically covered for brokers in amended § 111.23(a) because that provision also sets forth a basic standard for where records are to be maintained in the absence of consolidation; however, in the case of other entry filers, consolidation of records lacks a regulatory context because the regulations have never prescribed (and the proposed new Part 163 texts did not mention) a basic records location standard to which consolidation would have reference. Thus, the removal of paragraph (c) would allow Parts 111 and 163 to control and would have the added benefit of avoiding an unnecessary distinction between electronic entry records (for which consolidation was specifically mentioned under the proposed texts) and other records (for which no consolidation standards were proposed). As regards paragraph (d), which concerns the condition in which supporting documentation must be retained, Customs notes that the substance of this provision is also the subject of proposed § 163.5; thus, in view of the cross-reference to Part 163 in amended § 143.37(a), paragraph (d) no longer serves any necessary or useful purpose. Accordingly, the regulatory amendments set forth below include the removal of paragraphs (c) and (d) of § 143.37.

In addition, also based on a further internal review, Customs has determined that present § 143.38, which concerns the retrievability of supporting documentation regarding electronic transactions (and which was not affected by the proposed regulatory amendments), duplicates, or is inconsistent with, the new Part 163 provisions. Since Customs believes that the Part 163 provisions should control, the regulatory amendments set forth below also include the removal of this section.

Section 143.39—Penalties

Comment: Four comments were received on the proposed revision of § 143.39 which refers to brokers and importers unable to produce documents requested by Customs within a reasonable time and provides that such brokers will be subject to penalties pursuant to Parts 111 and/or 163 and that such importers will be subject to penalties pursuant to Part 163. The points made by these commenters were as follows:

1. One commenter argued that the maximum period for production of records is much too short for large companies with centralized payment offices and that, thus, it is unreasonable to penalize an importer for a failure to produce documents within a ''reasonable time''. Noting that there are currently no administrative penalties for failure to keep and produce required records for examination, this commenter complained that, under the proposed rule, recordkeepers that fail to comply could find themselves held in contempt by a district court, subject to monetary penalties fixed by the court, and could be prohibited from importing until they comply.

2. One commenter argued that brokers should not be liable for penalties under both Part 111 and Part 163 because this could represent double liability for one error. This commenter suggested limiting liability for brokers to Part 111 which subjects a broker to the greatest potential liability, that is, loss of its license.

3. One commenter stated that since broker records are retained by a broker only because of the requirements of Part 111, brokers should be subject to penalties only under Part 111 (and not under Part 163) unless the broker is also the importer of record or unless the broker is a certified recordkeeping agent for one or more of its clients. Similarly, another commenter requested clarification on its assumption that penalties under Part 163 would apply to a broker only when the broker acts as importer of record and that penalties under Part 111 would apply in all other cases.

Customs response: 1. Customs has extensively modified proposed § 163.6(a), as discussed below in connection with the comments received on that provision, and the regulatory text, as so modified, addresses the substance of this comment.

2 and 3. Customs agrees with these comments only in regard to the issue of double liability: Whether a broker on a Customs transaction was acting as the importer of record or only as an agent for the importer of record, if disciplinary action (including the assessment of monetary penalties) under 19 U.S.C. 1641 and Part 111 of the Customs Regulations is taken against the broker for a recordkeeping violation, no additional penalties under 19 U.S.C. 1509(g) and Part 163 of the Customs Regulations can be assessed; this is made clear by the text of proposed § 163.6(b)(5)(ii) (redesignated as § 163.6(b)(4)(ii)) as set forth below. On the other hand, whenever a broker engages in an activity (such as filing an entry as importer of record or as an agent for the importer of record) that triggers the record maintenance and production requirements of 19 U.S.C. 1508 and 1509 and Part 163 of the Customs Regulations, Customs may, in response to a recordkeeping violation by that broker and depending on the nature and circumstances of the violation, opt for imposition of a section 509/Part 163

penalty in lieu of taking disciplinary action under section 641/Part 111.

Based on a further internal Customs review of the proposed regulatory amendments, the following clarifying changes have been included in the text of revised § 143.39 as set forth below: (1) in paragraph (a) and paragraph (b), the word ''documents'' has been replaced by ''records'' for purposes of terminology consistency vis-a-vis Parts 111 and 163, and the words ''within a reasonable time'' have been removed in light of the changes made to the record production requirements of § 163.6(a) as discussed below; and (2) in paragraph (a), reference is made to ''disciplinary action or'' penalties, and reference is made to part 111 ''or'' part 163 (rather than ''and/or'', for the reason stated in the points 2 and 3 comment response immediately above).

Section 163.1(a)—Definition of ''Records''

Comment: In the definitions of ''records'' and ''activities'' it should be specified that records either are, or need not be, kept for imports where no entry or record of importation needs to be filed by a customs broker. This should be clarified for informal entries, importations of merchandise under $250 where no entry is required, all forms of in-bond entries and the like. Without such clarification the importing community will not know whether those documents fit under the definition.

Customs response: Customs disagrees. The meanings of the terms ''records'' and ''activities'' are quite specific and, in the case of the latter, are provided by statute. Whether or not a particular importation is subject to formal entry or informal entry, or is exempt from entry, the transaction would still fall within the scope of either an ''importation'' or the requiring of a ''declaration'' and therefore there must be records, documents or data associated with that importation or declaration and they must be maintained. In all cases, the activities described in the comment (informal entry, exemption from entry, and movement under bond) are all subject to the recordkeeping requirements. The sole exception would be for declarations made by arriving travelers as provided for in proposed § 163.2(g) (redesignated as § 163.2(e) as set forth below).

Comment: In the introductory text of proposed § 163.1(a), Customs has included the words ''directly or indirectly'' although the concept of ''indirectly'' pertaining to an activity is nowhere specified in the statute itself. Thus, this is a ''stretch'' not sanctioned by law.

Customs response: Customs agrees that these words should be removed from the text. Section 163.1(a) as set forth below has been modified accordingly.

Comment: With regard to subparagraph (1)(ii) of the proposed definition, which refers to shipments carried under bond, a commenter noted that, under the anticipated remote location filing program, goods will move to designated examination sites under the importer's bond and it is likely that carriers will not be aware that such movements are under bond and thereby potentially be in violation. This commenter stated that clarity is needed regarding what constitutes ''under bond'' and suggested doing this either by simply referring to 19 CFR Part 18 or by exemption in the case of movements covered by the bond provisions set forth in 19 CFR 113.62, because a carrier should not be required to be aware of or be required to keep records related to goods moving to a designated examination site under the remote location filing program.

Customs response: There are no regulations in place concerning remote entry filing, and creation of special language in this provision in anticipation of possible future regulations under the entry procedure therefore would be inappropriate. If and when such provisions are created which may cause a conflict or confusion with the recordkeeping provisions, amendments can be made at that time.

Comment: With regard to subparagraph (2) of the proposed definition, which sets forth examples of information which are considered records, a commenter took issue with the reference to ''computer programs necessary to retrieve information in a usable form''. This commenter asserted that under no circumstances should Customs seek to obtain from an importer or other affected party the source or object code or any other program information that would permit Customs, as contrasted with the affected party, to retrieve data independent of production by the affected party. Customs has the right to ask for the production of records and, if the records are not produced, Customs may take such steps as are within the scope of 19 U.S.C. 1509 to obtain production.

Customs response: The requirement in question is not new but rather has been in the Customs Regulations since 1979 when Part 162 was first adopted. The inclusion of language to cover computer programs was intended to ensure that recordkeepers who store documents/information electronically would also maintain the programming necessary to retrieve the documents/information in a format which could be read by Customs. The substantive interest of Customs lies not in the programming *per se* but rather in the data stored with the use of that programming. Without this requirement, it could be argued that the submission to Customs of corrupted or encrypted data, or data produced by obsolete programs, would satisfy the statutory and regulatory record maintenance and production requirements.

Based on a further internal Customs review of the proposed definition of ''records'', the text of § 163.1(a) as set forth below has been modified to incorporate some changes in addition to the change discussed above. Aside from minor editorial-type wording changes, these changes are as follows:

a. The proposed introductory text has been designated as subparagraph (1), subparagraph (2) of the proposed text (examples) has been moved into the text of new subparagraph (1), and subparagraph (1) of the proposed text (activities) has been redesignated as subparagraph (2). These organizational changes will improve the clarity of the text by placing the examples next to the part of the text to which they directly relate.

b. The word ''Further'' has been removed from the beginning of the second sentence of the definition in order to avoid any appearance that what is mentioned in that sentence is in addition to, rather than within the scope of, the first sentence (in other words, what is mentioned in the second sentence is subject to the basic first sentence ''normally kept in the ordinary course of business'' standard which reflects a basic requirement of section 508(a)).

c. The words ''electronically stored or transmitted information or data'' have been added to the examples in the text in order to (1) ensure coverage of what is referred to in section 509(g)(1) and (2) facilitate removal of all references to ''information'' elsewhere in the Part 163 texts (*e.g.*, in the term ''records/information'' used in § 163.5 and in referring to demanded ''information'' in § 163.6) when the regulatory text clearly is attempting to address ''records.'' With regard to the second point, Customs now recognizes that the proposed texts had the improper effect of introducing an undefined term (''information''), or of joining that undefined term with a defined term (''records'') by means of a slash (thereby creating another undefined term ''records/information''), into substantive text, thereby creating

potential confusion regarding the coverage of the regulatory texts and frustrating the purpose behind the adoption of the regulatory definition of ''records'' (which was to bring together in one all-inclusive definition all the different statutory terms and contexts that are subject to the maintenance and production requirements of sections 508 and 509). Accordingly, in addition to the above-described addition to the definition of ''records,'' the Part 163 texts as set forth below have been modified by removing all references to ''/information'' and by replacing all references to ''information'' by the term ''records'' wherever the context clearly relates to records as defined in § 163.1(a).

d. Subparagraph (iv) in the list of activities has been modified to refer to the ''completion and signature of a NAFTA Certificate of Origin'' (rather than only to ''any exportation to a NAFTA country'') in order to conform to the terms of the statute (section 508(b)(2)(A)). A similar conforming change has been made to the text of § 163.2(c) as set forth below.

e. In subparagraph (v) within the list of activities, a reference to ''duties'' has been added to ensure consistency with the statutory (section 509) and regulatory (§ 163.6) record examination authority, and the text has been rearranged for purposes of clarity.

Section 163.1(d)—Definition of ''Certified Recordkeeper''

Comment: Three comments were received on the proposed § 163.1(d) definition as it relates to customs brokers. The points made by these commenters were as follows:

1. One commenter requested confirmation of its understanding that the ''agent'' referred to as a certified recordkeeper would be a broker acting as importer of record and would not apply when entry is made in the name of the actual importer.

2. Another commenter proposed, as in the case of § 111.21(c) discussed above, that the certified recordkeeper automatically be the licensed qualifying officer of a broker unless the broker makes an alternate designation.

3. The third commenter took issue with that portion of the § 163.1(d) definition that provides that a customs broker ''may be a certified recordkeeper's agent in its own name and on its own account for records required by § 111.21 without client participation.'' This commenter asserted that: (1) The purpose of § 111.21 is to ensure that the broker will maintain records which support the entry and that such records are available to Customs officials; (2) until the passage of the ''Mod Act'' provisions allowing electronic entries and entry summaries, relevant importer documents were routinely submitted to Customs and the broker did not have to retain copies; (3) with paperless entries, the importer is required to maintain those documents required for release of a shipment (the ''(a)(1)(A) list'') and, to the extent that these documents are not submitted with the entry, they must also be retained by the broker; and (4) the failure of a broker to submit the paper entry documents is solely a violation of 19 U.S.C. 1641, punishable either by monetary fine or by license suspension or termination. This commenter further stated that, in contrast, the purpose of participation in the ''certified recordkeeper'' program under proposed § 163.14 is the avoidance or reduction of penalties under 19 U.S.C. 1509 for failure to produce (a)(1)(A) documents when requested by Customs. Since § 111.21 is unrelated to the provisions for maintaining the (a)(1)(A) records, for which brokers may be liable for penalties under section 1641, there is no reason for a broker to seek certification, as an ''agent'' or otherwise, for § 111.21 records unless it is the intention of Customs to grant the same relief to brokers in connection with a section 1641 violation (*i.e.,* avoidance of a section 1641 penalty). Accordingly, this commenter requested that the provision at issue be deleted from the § 163.1(d) text.

Customs response:

1. This commenter is generally correct regarding its understanding of the intent of the proposed regulatory text.

2. Since it is the brokerage firm that is a recordkeeper and that would be certified, Customs sees no point in referring to a certified recordkeeper as an individual holding a license or someone designated by the broker. Notwithstanding the designation of a recordkeeping contact under amended § 111.21(c) as discussed above and set forth below, Customs would still hold the firm responsible.

3. Customs does not agree with all of the statements in this comment, in particular as regards the relationship between the broker statute/regulations and sections 508/509/Part 163. Section 111.21, as discussed above and as set forth in part below, clearly has reference, *inter alia,* to records required to be maintained and produced under sections 508 and 509 and Part 163; therefore, a failure to comply with § 111.21 as it relates to Part 163 record maintenance requirements could result in penalties under section 509/Part 163 (in which case, as stated above, disciplinary action under section 641/Part 111 could not be taken). A broker can be a certified recordkeeper in his own name and on his own account and as such might be able to obtain relief from section 509/Part 163 penalties; however a broker's status as a certified recordkeeper would afford no basis for relief if Customs opted for disciplinary action under section 641/Part 111 in lieu of penalty action under section 509/Part 163.

In view of the uncertainty reflected in the above comments regarding the role of agents/brokers as certified recordkeepers, and based on a further internal review of the proposed text, Customs believes that the proposed text should be changed to simply parallel the statute (section 509(f)) as regards participation in the Recordkeeping Compliance Program. Accordingly, the proposed definition of ''certified recordkeeper'' in § 163.1(d) has been modified, as set forth below, by removing the last two sentences and by revising the remaining first sentence to refer simply to a person who is required to keep records under the Customs Regulations and who is a participant in the Recordkeeping Compliance Program (the section within Part 163 dealing with eligibility for that Program identifies the eligible participants specifically as persons described in § 163.2(a), that is, persons required to keep records under section 508(a)). Thus, under the statute and under the regulatory texts as set forth below, the eligibility of brokers and other persons to apply to become certified recordkeepers is simply a function of their obligation (based on their activities either as a principal or as an agent) to maintain records under section 508(a).

Comment: A commenter referred to ISO9000 which was described as an internationally recognized system that by definition is a minimum system requirement which helps ensure items are provided in accordance with good management practice and which includes documentation of the system, control of documents and both internal and external auditing. In order to achieve the benefits of a certified, audited recordkeeping program without asking importers to expose more information than they feel comfortable, this commenter recommended that importers who become registered to the ISO9000 standard be considered automatically a ''certified recordkeeper''.

Customs response: Customs disagrees. While the ISO9000 standard is a rigorous one, it certainly applies to a number of areas other than recordkeeping. The fact that an importer

meets those standards is a factor, and admittedly a significant factor, to be considered in the certification process under the Recordkeeping Compliance Program, but it cannot and should not be the sole criterion.

Section 163.1(e)—Definition of ''Certified Recordkeeper's Agent''

Comment: Customs should consider either expanding the proposed definition of a certified recordkeeper's agent (that is, beyond an importer of record or a customs broker) or creating a new class of agent (an Independent Certified Recordkeepers Agent, or ICRA) to include only those who utilize alternative storage methods, such as CD ROM and optical disk, to maintain records. The ICRA would essentially be a specialized service bureau that scans paper documents, appropriately indexes and permanently stores the scanned images on CD ROM or optical disk; the ICRA would be independently certified by Customs but such certification would be limited in scope to certification of alternative recordkeeping methods as provided for in proposed § 163.5(b) and would not relieve the primary recordkeeper from certification requirements set forth in proposed § 163.14. The ICRA would ''team up'' with a certified recordkeeper to provide the conversion, indexing, storage and retrieval portion of the overall certification program. This commenter argued that adding a provision for an ICRA would result in the following benefits for Customs and the importing community: (1) It would expedite the certification process for Customs and the party wishing to become a certified recordkeeper who uses alternative storage methods because the ICRA would have established standards regarding conversion techniques, the system of storage to be used and the security safeguards to prevent alteration of the stored images, and thus Customs would only have to review the ICRA standards once; (2) it would make it easier and more convenient for a primary recordkeeper to become a certified recordkeeper and thus would encourage more recordkeepers to become certified; (3) by independently certifying an ICRA, the proposed § 163.5(c)(3) standard for alternative record storage (*i.e.*, vendor specifications/documentation and benchmark data regarding the storage medium) would already have been made available to Customs and would be the same for each certified recordkeeper that the ICRA represents; (4) it would automatically provide for segregation of duties between those responsible for maintaining and producing the original records and those responsible for the transfer process, as required in proposed § 163.5(c)(9); and (5) it would expedite the quarterly internal sampling-exception-reporting/testing required by proposed § 163.5(c)(10) because the ICRA would perform the testing and file the necessary reports on behalf of each certified recordkeeper it represents, using standardized procedures and reporting which would facilitate the Customs review process.

Customs response: Customs does not agree with this suggestion. As pointed out above in the discussion of the definition of ''certified recordkeeper'', Customs may certify under section 509(f) only persons who are required to keep records under section 508(a); thus, Customs has no authority to certify persons who do not have a recordkeeping responsibility under the applicable Customs laws and regulations, and it was never intended that such persons would be covered by the ''certified recordkeeper's agent'' definition. In this light and in view of the modified text of the definition of ''certified recordkeeper'' as discussed above and set forth below, Customs has reconsidered this matter and no longer believes that it is necessary or appropriate either to retain the definition of ''certified recordkeeper's agent'' or to include any references to a certified recordkeeper's agent in the operative provisions dealing with the Recordkeeping Compliance Program. The Part 163 texts as set forth below have been modified accordingly.

Section 163.1(f)—Definition of ''Compliance Assessment''

Comment: A commenter suggested that the last sentence of this proposed definition be made a part of proposed § 163.1(c) (definition of ''audit''), because the § 163.1(f) definition both states what a compliance assessment is and then goes on to note that a compliance assessment can be expanded into a ''detailed audit''.

Customs response: This suggestion should not be adopted. The last sentence of the proposed ''compliance assessment'' definition was considered necessary in that specific context in order to indicate that there is a distinction between compliance assessment procedures and more detailed ''audit'' (as defined in paragraph (c)) procedures.

However, based on this comment and as a result of a further internal review of the proposed regulatory texts, Customs no longer believes that a compliance assessment should be specifically defined as the first phase of an audit. Customs notes in this regard that (1) in many cases compliance assessments are concluded without the need to expand the inquiry into a detailed audit and (2) in some cases an audit may be initiated without having been preceded by a compliance assessment. Accordingly, the definition of ''compliance assessment'' (redesignated below as paragraph (e) of § 163.1) has been revised to more precisely describe a compliance assessment as a type of importer audit and to more succinctly describe the procedures and purposes of a compliance assessment.

Comment: A commenter took issue with the statement in this proposed definition that in the compliance phase of an audit Customs will review ''* * * internal controls, operations, and procedures to ensure compliance. * * *'' While a review of an importer's systems (*i.e.*, controls, operations and procedures) may be a reasonable way for Customs to test for accuracy of records and may be appropriate in some circumstances, this commenter stated that it was aware of no provision of law requiring an importer to subject its ''systems'', as distinguished from its required records, to Customs scrutiny, noting in particular that 19 U.S.C. 1508 merely identifies those records which an importer shall make, keep, and render for examination and that 19 U.S.C. 1509 merely sets forth rules for the examination of such records. This commenter stated that the proposed definition should be amended accordingly and suggested, as a minimum, the addition of the words ''and may, in appropriate circumstances, review'' before the words ''internal controls, operations, and procedures''.

Customs response: Notwithstanding the revision of the proposed definition of ''compliance assessment'' as discussed above, Customs disagrees with the basic premise of this comment. A compliance assessment is designed to test exactly those areas referred to by this commenter. It should be noted that records and recordkeeping systems are a part of compliance, not its sole purpose. In this regard, see the second sentence of § 163.0 which spells out the various purposes of compliance assessments, audits and other inquiries.

While considering the above issues regarding the definitions of ''audit'' and ''compliance assessment'', Customs noted that whereas the statute (section 509) makes the basic distinction between an ''investigation'' and an ''inquiry'', the proposed § 163.1 definitions did not address this distinction. It is clear that, in the

context of section 509, the broad term ''inquiry'' is intended to cover any request for information by a Customs officer that does not constitute an investigation (and thus would encompass, for example, compliance assessment and other audit procedures and more informal procedures such as requests for information made by telephone or on Customs Form 28). In order to address this point, § 163.1 has been modified as set forth below by the addition of a new paragraph (g) definition of ''inquiry'', and additional editorial changes have been made elsewhere in the Part 163 texts as set forth below to conform those texts to the principle reflected in this new definition.

Section 163.1(h)—Definition of ''Original Records'' and ''Original Information''

Comment: Ten comments were received on the concept of ''original'' records and information, in some cases not only with reference to the definition in proposed § 163.1(h) but also with reference to the basic requirement in proposed § 163.5(a) that records be retained in their original formats. The points made by these commenters were as follows:

1. One commenter referred specifically to the first sentence of the § 163.1(h) definition which mentions ''paper documents or electronic data retained in the condition they were received by the party responsible for maintaining records pursuant to 19 U.S.C. 1508.'' This commenter complained that this requirement as it reads is open-ended and suggests that all original records and original information received by an importer are covered, whether or not the record or information is one normally kept in the ordinary course of business or is one required to be maintained by statute or is identified as one listed on the (a)(1)(A) list. This commenter argued that the recordkeeping statute does not require maintenance of every piece of paper or electronic data received by an importer and that, therefore, original records and electronic data should be limited in the regulatory text to such records and electronic data received and normally kept in the ordinary course of the importer's business and such records and electronic data that are required to be maintained by statutory fiat or that are included on the (a)(1)(A) list.

2. Three commenters complained that the proposed definition does not adequately distinguish between documents and data and thus does not accurately reflect the way that companies do business, particularly with regard to how they receive and process electronic information. One of these commenters pointed out that some importers receive shipment data from the foreign seller in a proprietary electronic data interface (EDI) format as enormous strings of raw data in a preliminary record layout form which, as such, is not used for commercial purposes and is not transmitted as such to a customs broker for filing with Customs; this raw EDI data must undergo system edits to test its reliability, and only after the data has been processed through the importer's system (and thus is no longer raw data) can it be used for commercial and entry purposes. Thus, although the entry information transmitted to Customs would not match the original record layout data as transmitted by the foreign seller, the information transmitted to Customs is the most accurate information and, from a practical and legal standpoint, it is ''original'' data for purposes of conducting business and making the proper declarations to Customs. Another commenter stated that when paper documents are involved, often they are a result of data acquired through a chain of computer activities (purchase order, pick lists, invoice, shipping data, etc.); the regulatory texts, by not including a reference to ''electronic documentation'', place too much emphasis on the original paper and the retention thereof, where, in fact, the information should be the focus. Moreover, imaging is increasingly becoming a standard for preservation of data because it facilitates workflow and storage management (particularly for large customs brokers and importers who handle large volumes of paper), and thus paper documents are routinely scanned into a computer upon receipt and facsimile transmissions are received directly into the image system without making ''hard copies'' unless requested by Customs. The third commenter noted that an importer or other required recordkeeper probably will not receive records only in a single format but rather will receive them in more than one format, such as an EDIFACT electronic invoice, a facsimile transmission of the same invoice, a carbon copy air waybill, and an original hard copy truck bill of lading for delivery; while under the proposed rule the importer would be maintaining these records in at least two formats, it would be more realistic for the importer to be able to keep them all in hard copy or all electronically, instead of in a combination of methods based on how they were received, without having to obtain specific approval from Customs so long as certain basic requirements are met. In addition to these observations, the commenters made the following specific suggestions:

a. The recordkeeping requirements and definition at issue should be revised to allow importers' systems data, as described above, to be considered as ''original''. This could be done by adopting the standard in Rule 1001 of the Federal Rules of Evidence which states that ''[i]f data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an 'original'.''

b. The regulations should recognize that, in addition to photocopies and facsimile, a printout of an image from a computer may be considered an original in satisfying all Customs requirements.

c. The first sentence of § 163.1(h) should be amended to read ''[t]he terms 'original records' or 'original information' mean paper documents or electronic documentation or data retained in the condition they were received * * *''.

d. In the first sentence of § 163.1(h), ''and/or'' should be used in place of ''or'' between the terms ''paper documents'' and ''electronic data''.

3. Four commenters stated that the fifth sentence in the § 163.1(h) definition may create some confusion with regard to maintaining multi-part or carbon copy (multiple impression) forms (for example, delivery orders or bills of lading), photocopies and facsimile copies. One of these commenters noted that, in the case of multi-part or carbon copy forms, the originals are often separated and information or notations are placed on one copy only or only on the top copy, thus raising the question of which copy is the true original copy; this commenter stated that the regulations should be more specific as to what constitutes an original record. Another commenter noted that whereas an original hard copy record may, for example, be submitted to a bank and the importer, broker or other person may only have a copy, the importer, broker or other person would be considered to have an ''original'' record within the definition so long as the copy is ''retained in the condition received * * *''; this commenter questioned whether the definition was necessary, suggesting that it would be as easy to revise proposed § 163.5(a) to require the party responsible for maintaining records pursuant to 19 U.S.C. 1508 to retain the record in the condition received unless an alternative method was approved

under § 163.5(b). The third and fourth commenters suggested that the reference in the definition to copies and multi-part forms should be clarified since the record/information received as a copy is acceptable under the definition; one of these commenters also questioned whether the fifth sentence was necessary if the importer is obligated to retain the record in the condition received, and both commenters believed that the reference to ''a certified copy'' in the sixth sentence of the definition should be clarified as to who would be the certifier, one commenter suggesting that it would have to be the importer because of what is stated in the next sentence.

4. With reference to the overall effect of proposed § 163.1(h) and 163.5 and in particular the requirement of obtaining Customs approval before converting records to another format for storage and retrieval, a commenter requested clarification as to whether the regulatory texts mean that every system that an importer may use to maintain records (microfiche, CD–ROM, etc.) must be approved in advance by Customs when such systems are part of a company's normal course of business. This commenter further questioned whether Customs has the staffing necessary to certify these systems for importers.

5. A commenter referred to the provision in proposed § 163.1(h) that electronically received data will be considered the original record even though it is converted to paper upon request by Customs. This commenter stated that it expects to obtain authority to convert paper documents into an electronic storage medium, and reasonably soon thereafter, to be allowed to destroy the original paper documents. This commenter suggested that § 163.1(h) should include provision for exemption which may be granted under § 163.5; under the exemption, such a converted document may, upon the request of Customs, be certified to be a true copy of the original record or document.

Customs response:

1. Customs disagrees. Proposed § 163.1(h) was merely intended to define what is meant by the term ''original records/information''. Which records or information are to be maintained is properly the subject of other provisions of Part 163.

2. The raw EDIFACT feed is original information from which other forms of the data are created; putting it in a readable form is acceptable. Customs agrees that it is the information that is the focus of the Part 163 retention and production provisions, provided that the information in question falls within the § 163.1(a) definition of ''records'' (see the above discussion of the changes made to that definition and the below discussion of the changes to the definition at issue here). Although alternate storage is the subject of § 163.5 and is discussed below in that context, Customs notes that where originals are in different formats and importers wish to use a single format for storage, the alternative storage provisions of § 163.5 are intended to accommodate that. The following are the Customs responses to the specific suggestions of these commenters:

a. Customs disagrees. The standard cited from Federal Rules of Evidence provides a very limited guideline which would not qualify as a proper definition encompassing a wide variety of situations. Customs believes that the approach in the proposed definition is sufficient to cover advances in technology.

b. Customs agrees in part. Photocopies and facsimiles, if originally received in that format, would be considered to be original documents. A computer printout, however, is a secondary source or copy because the electronic data stored in the computer is the original data. While not considered as an original, the printout may in fact satisfy Customs requirements for production of the record since it would qualify as a ''facsimile paper format'' or possibly as a ''hardcopy spreadsheet''.

c. The substance of this comment has already been addressed above.

d. This comment is obviated by the changes made to the proposed definition as discussed below.

3. Customs disagrees generally with the comments. In the case of a multi-part form or document, the first copy where the initial impression occurs could be considered the ''original'' and the subsequent carbon copies could be considered ''copies''. Recognizing that other entities such as carriers or banks may remove and keep the ''original'' (top) copy, the proposed regulatory text provided for the acceptability of a carbon copy form, a facsimile copy and a photocopy in lieu of the original (top copy) page, thus rendering moot the question of which copy is the ''original''. The provisions regarding alternative storage methods (§ 163.5) are not the proper context for dealing with this issue. Moreover, the phrase in the first sentence ''retained in the condition they were received'' does not answer the question and obviate the need for the sentence regarding multi-part forms because the importer could be the person who created the form to begin with or who received the form from a third party and removed a copy and then forwarded the form; in those cases, the ''original'' form issue is not addressed by the words ''condition . . . received''. With regard to the last two sentences of the proposed definition, Customs believes that, in view of the overall subject matter of Part 163 which is the maintenance and production of records, it should be sufficiently clear that the person who would certify the copy can only be the person who has the statutory and regulatory responsibility for maintaining and producing the record (and who thus knows what happened to the ''original'').

4. The concerns of this commenter are addressed in the changes which have been made to proposed § 163.5 as discussed below in connection with the comments received on that section.

5. Customs disagrees with this suggestion. Substantive requirements regarding storage methods are set forth in § 163.5 and thus are inappropriate for this definitional provision.

In consideration of the comments received and based on a further review of the regulatory text, Customs has determined that some changes should be made to the definition as proposed. In addition to some minor, editorial changes, the text of the § 161.1(h) definition as set forth below incorporates the following changes:

a. The defined term has been changed to read simply ''original'', for four reasons. First, the term defined in the proposed text was not used as such in the text of the proposed provision to which it had the most direct relevance (that is, § 163.5(a) which used the words ''original formats''). Second, inclusion of the word ''records'' in the defined term is unnecessary and inappropriate because ''records'' has already been defined (and thus cannot have a new meaning here). Third, use of the word ''information'', thereby implying something different from ''records'', is inappropriate for the reasons stated above at the end of the comment discussion concerning § 163.1(a). Finally, based on the proposed definition and the proposed Part 163 texts as a whole, it seems clear that the proposed definition was in essence merely trying to establish the concept of ''original''.

b. As a companion to the change in the term that is defined, the proposed first sentence of the definition has been modified to refer to the specific context in which the defined term is used within Part 163 (that is, in the context of maintenance of records). In addition, this text, as modified, refers to records that are in the condition in which they were ''made or'' received, because

section 508 refers to the making and keeping of records and some records that are required to be kept by section 508 and Part 163 are made (rather than merely received) by the person required to keep them (compare this textual change to the change to the introductory text of § 163.2(a) discussed below at the end of the Customs responses to the comments on that section). Finally, the first sentence of the proposed definition has been changed into an introductory text and, except as otherwise stated in point c immediately below, the remaining text of the proposed definition has been set forth as a list of four subparagraph exemplars of original records covered by the general definition in the introductory text.

c. The third sentence in the proposed text (regarding when original electronic information or paper documents must be provided to Customs) and a portion of the language in the sixth sentence of the proposed text (that is, regarding the assessment of penalties) have been omitted from the modified definition because they are not appropriate for a definitional text and merely repeat what is more appropriately covered in § 163.6.

d. In the first exemplar of the modified definition text (which corresponds to the second sentence of the proposed text), a reference to ''other electronic records'' has been included to clarify that electronic information may be used to develop not only paper documents but also other records set forth and maintained in an electronic format.

e. Finally, in the fourth exemplar of the modified definition text (which corresponds to the last two sentences of the proposed text), provision is made for submission of a signed certifying statement only if required by Customs (rather than in all cases covered by that exemplar).

Section 163.1(k)—Definition of ''Third-Party Recordkeeper''

Comment: With regard to accountants as third-party recordkeepers, a commenter contended that the definition should state that accountants are not empowered to conduct ''customs business'' as statutorily defined.

Customs response: Customs disagrees. The regulatory text in question (redesignated below as § 163.1(l)) merely provides a definition of a third party recordkeeper in the context of Part 163 which concerns recordkeeping. The concept of ''customs business,'' and the rules regarding who may engage in customs business, are established under the customs broker statute and regulations (19 U.S.C. 1641 and 19 CFR Part 111) and are not relevant to these recordkeeping regulations.

With regard to the § 163.1 definitions, an internal Customs review of the proposed regulatory texts disclosed that the terms ''party'' and ''person'' were used throughout the proposed Part 163 texts without the appearance of any clear rationale for using one term or the other in a given context (except as regards references to a ''third party recordkeeper'' which is a statutory expression), and it is noted that sections 508 and 509 are similarly inconsistent in the use of these terms. In order to avoid the impression that a different meaning is intended when one term is used and not the other, and because Customs does not believe that any such difference in meaning was intended in the applicable statutory provisions, Customs has modified the Part 163 texts as set forth below (1) by adding a new definition of ''party/person'' as § 163.1(i) and (2) by using the term ''person'' throughout the Part 163 texts except where the expression ''third party recordkeeper'' appears. The new definition is similar to what is found in other parts of the Customs Regulations (see, for example, 19 CFR 177.1(c)) except that ''natural person'' is used in place of ''individual'' because that term is used in the Part 163 service of summons provisions.

Section 163.2—Parties Required To Maintain Records

Comment: Two commenters complained about the absence from this proposed section of any specific mention of recordkeeping requirements for express consignment operators and couriers who operate under Part 128 of the regulations. One of these commenters stated that there are unique situations under Part 128 that should be addressed, especially regarding manifest entries and consolidated informal entries. The other commenter, noting the large number of shipments carried by express consignment courier companies and the fact that they or their agents act as importer of record, suggested the addition of a new paragraph (f) to § 163.2 to read as follows: ''(f) *Recordkeeping required for express consignment operators and carriers.* Each courier, express consignment operator or carrier shall maintain records of all documents, entries and clearances associated with international import shipments in accordance with 163 of this chapter.''

Customs response: Customs does not agree that the suggested new text is necessary. As in the case of the underlying statute, the proposed text of § 163.2 adequately covers the activities of express consignment operators and couriers.

Section 163.2(a)—General Recordkeeping Obligation

Comment: Five comments were received on proposed § 163.2(a) which sets forth the basic categories of persons required to make and keep records and render them for examination and inspection. The points made by these commenters were as follows:

1. The proposed regulatory text expands the recordkeeping requirement to include those who cause an importation, anyone who files an entry or declaration, drawback claimants, customs bonded carriers and cartmen, bonded warehouse proprietors, and foreign trade zone operators. Importers must also keep all information and documents required by law for the entry of merchandise. The proposed rule would require many importers that do not receive and retain all entry documents in their business process to set up recordkeeping systems to capture and retain those documents. This places an undue hardship on many importers.

2. A commenter complained that Customs proposes that persons who ''knowingly cause merchandise to be imported'' will be subject to recordkeeping requirements and that Customs includes within this group persons who ''control the terms and conditions of the importation'' and persons who supplied the importer with ''technical data, molds, equipment, other production assistance, material, components, or parts * * * with knowledge that they will be used in the manufacture or production of the imported merchandise.'' This commenter stated that this proposal will result in some companies being required to maintain documents which normally would be discarded in the ordinary course of business. The commenter referred specifically to companies that have established so-called L/C ''direct import'' programs under which a U.S. company's foreign vendor sells merchandise directly to the company's domestic customer (for example, a retailer or mass merchandiser) which acts as importer of record and as such assumes responsibility for customs duty payments and entry requirements, and under which the U.S. company may be responsible for designing imported merchandise, providing equipment used in the production process, or supplying the foreign vendors with materials, components or parts; these L/C programs benefit all concerned by reducing costs to the U.S. customers and the ultimate consumers, and they allow the mass merchandiser, which is more

knowledgeable regarding Customs rules and regulations (including the need to maintain records and thus obtain any relevant documents from the U.S. company that may be necessary), to assume responsibility for Customs requirements by acting as importer of record. This commenter argued that ''legal'' responsibility to maintain records should rest with the importer of record and that a non-importing party should not be required to maintain a second set of such records which constitutes an unnecessary burden on the public without enhancing the ability of Customs to effectively administer the laws it is charged with enforcing. Accordingly this commenter urged Customs to modify the proposed regulations to provide that persons who do not themselves act as importers of record will not be subjected to recordkeeping requirements merely because they may knowingly cause merchandise to be imported. Alternatively, this commenter requested that the regulations be clarified to provide that: (1) persons who do not act as importers of record are not required to make, keep and render for examination and inspection any records which they do not otherwise maintain in the ordinary course of business; and (2) Part 163 does not impose on a party which does not itself act as importer of record any requirements to maintain any records which the party does not otherwise maintain in the ordinary course of business for reasons not relating to customs laws and regulations.

3. By mentioning an ''entry filer'' (subparagraph (1)) and an ''agent'' (subparagraph (2)), proposed § 163.2(a) requires that, where a customs broker acts as importer of record, both the actual importer and the broker are required to maintain all records, including those specified in the (a)(1)(A) list. If this reading is correct, the proposed regulation will have a chilling effect on when a broker will choose to act as the importer of record (currently, that decision is made based on convenience to the importer and because of the need to expedite the release of the goods).

4. In subparagraph (1), the term ''entry filer'' should be replaced by ''customs broker'' because the only filers are customs brokers and importers handling their own transactions and importers are already specifically mentioned. In this context ''entry filer'' is confusing.

5. A customs broker serving as importer of record will almost never be in possession of all of the records defined in proposed § 163.1(a), because the broker will not have caused the importation or subsequent uses of imported goods. A broker when also serving as importer of record should only be required to maintain records which support the entry/entry summary declarations.

Customs response:

1. Customs disagrees. The proposed regulatory text merely reflects the relevant statutory provisions as amended by the Mod Act. Moreover, Customs notes that the provision for recordkeeping by importers, including maintenance of entry records, is not new but rather was in existence prior to the Mod Act changes (19 U.S.C. 1508 and 19 CFR Part 162, Subpart A).

2. Customs disagrees with the basic complaint of this commenter. Customs did not create the language ''knowingly causes the importation.'' That language comes directly from the statute (section 508(a)(1)(B)) as modified by the Mod Act, and Customs does not have authority to promulgate regulations that are inconsistent with the statutory requirements. Customs is not able to respond to the example of the ''L/C direct import program'' because the paucity of information regarding the role of the U.S. firm makes it impossible to determine whether or not it ''knowingly caused the importation.'' Customs also disagrees with the two specific suggested clarifications because the first one is already provided for in the Part 163 texts and the second one would be in direct opposition to the statute.

3. Customs agrees with the commenter's reading of these provisions. As regards the alleged effect on a broker's decision whether to act as importer of record, Customs notes that such a decision is merely one of the business decisions that each broker must make when conducting customs business.

4. Customs disagrees. The term ''entry filer'' reflects the statutory language. The fact that a party could be mentioned twice (for example, an owner/purchaser is usually the importer) is not the issue here. Customs does not have authority to promulgate regulations that are inconsistent with the statutory requirements.

5. Customs disagrees. When a customs broker is listed as the importer of record, the broker is responsible for all the records listed in § 163.1(a) along with any additional duties or taxes determined to be due and any other requirements placed on the party shown as the importer of record.

Based on a further internal review of the proposed texts, Customs has determined that the introductory text of § 163.2(a) should only reflect the requirement to maintain (rather than also ''make'') records for the following reasons: (1) Maintenance of records is the thrust of § 163.2 as a whole; and (2) while it is true that section 508 reflects an obligation to ''make'' records, that obligation is reflected throughout the Customs Regulations according to the specific substantive context to which the records relate (for example, basic entry record requirements are prescribed in Parts 141–143, and drawback record requirements are prescribed in Part 191) and thus does not have to be, nor should be, reflected in the more general Part 163 texts.

Section 163.2(b)—Exclusion of Domestic Transactions

Comment: The words ''who does not knowingly cause merchandise to be imported'' should be eliminated from the introductory text of this proposed section, because often a person in a domestic transaction is aware that the goods ordered from an importer have been, or will be, imported but the buyer's purchase and sale is domestic and is not connected directly or indirectly with the import transaction; such a domestic buyer should not be required to maintain records on the import transaction just because he knows that the goods are imported. With this suggested change, a person ordering merchandise from an importer in a domestic transaction, whether or not that person knows that the goods are to be imported, will not be required to maintain records unless the person controls the import transaction or is involved with the production of the goods by furnishing assists.

Customs response: Customs disagrees. The regulatory language in question reflects the statute, and Customs does not have authority to promulgate regulations that are inconsistent with the statutory requirements. Further, the regulatory text gives two examples which clearly demonstrate that the domestic buyer who simply knows that the goods are imported is not, by that fact alone, encompassed within the concept of knowingly causing merchandise to be imported.

Based on a further internal review of the proposed § 163.2(b) text, Customs has discovered that the text (which was based on present § 162.1b(b)), included in the introductory text the addition of the word ''who'' before the words ''does not knowingly * * *''; the addition of this word, from a grammatical standpoint and with reference to the rest of the text, had the unintended effect of creating a new class of persons required to maintain records that was not listed in the general provisions of § 163.2(a).

The wording of introductory text of § 163.2(b) as set forth below has been appropriately modified to correct this and clarify that the provision specifically relates to the class of persons listed in § 163.2(a)(1)(ii).

Section 163.2(d)—Recordkeeping Required for Customs Brokers

Comment: Irrespective of whether the broker acts as the importer of record, the (a)(1)(A) recordkeeper under section 1509 is always the actual importer, and that statutory provision is worded so that Customs may always require the importer to produce the (a)(1)(A) records. Accordingly, § 163.2(d) should reflect that, when the broker acts as the importer of record, the broker is only subject to the provisions of section 1509(g) relating to assessment of additional duties, but is never liable for ''penalties'' for failure to produce the (a)(1)(A) records.

Customs response: Customs disagrees and notes that the substance of this comment has been addressed above in the Customs response to the comments on § 143.39.

Based on a further internal review of proposed § 163.2, Customs now believes that paragraph (e) (which concerned recordkeeping required for parties filing drawback claims) and paragraph (f) (which concerned recordkeeping required for other activities) are not needed. Customs notes in this regard that these two paragraphs merely repeat what has already been provided for in the § 163.1(a) definition of ''records'' and in paragraph (a) of § 163.2. Accordingly, these two paragraphs have been removed from the text of § 163.2 as set forth below and proposed paragraph (g) has been redesignated below as paragraph (e).

Section 163.2(g)—Recordkeeping Required for Travelers

Comment: A commenter claimed that this proposed section sets up a bifurcated recordkeeping requirement that almost no returning traveler will know exists and that flies in the face of the mandate to make regulations truly meaningful: a traveler does not have to maintain records either before entering or while physically within a Customs facility, but the traveler would have to keep records for merchandise acquired abroad that exceeds the personal exemption or the flat rate of duty. This commenter asked whether a traveler could not make a declaration that all merchandise acquired abroad was within the personal exemption and flat rate, pay no duty, and then take the position that no recordkeeping obligation existed. The commenter noted that while it is probably best that returning travelers be required to produce records of all purchases abroad, once they clear the Customs facility (even after having made a misdeclaration of value while having on their persons records showing the true value of the purchases) there is little likelihood that Customs will catch up with them.

Customs response: Customs disagrees. This provision is not radically different from existing provisions or practices. Customs may or may not ask for supporting documentation (purchase receipts or invoices) at the time the declaration is made. After clearance, Customs in the vast majority of cases would have no further interest in the declaration and, consequently, in the supporting documentation. In other words, any questions are usually resolved at the time of presentation or declaration as Customs normally does not go back and review declarations. The net effect of proposed § 163.2(g) (redesignated below as § 163.2(e)) was to provide that for most travelers bringing in non-commercial merchandise valued at no more than $1,400 (that is, the $400 personal exemption amount for returning residents plus $1,000 to which the flat rate of duty applies) per traveler, no supporting documents will be required to be maintained; for commercial importations or declarations over $1,400, supporting documents must be maintained. It should be noted that application of the personal exemption and flat rate of duty dollar limits (and thus application of the recordkeeping exemption) is a function of the actual value of the imported merchandise and thus does not, as a matter of law, depend solely on what value the traveler chooses to declare to Customs.

Section 163.3—Entry Records

Comment: Four commenters made observations on proposed § 163.3 which sets forth general requirements regarding the production of records required by law or regulation for the entry of merchandise (the ''(a)(1)(A)'' list). The points made by these commenters were as follows:

1. One commenter approved of the language giving general time standards for the production of documents but expressed concern that local Customs offices would focus on the table under § 163.6, to the exclusion of the § 163.3 legal guidelines. This commenter therefore stated that the § 163.3 language should be moved to § 163.6 where it is more appropriate.

2. One commenter noted that, because under § 163.2(a) recordkeepers include companies that do not act as importers of record but that knowingly caused merchandise to be imported, § 163.3 could be interpreted to mean that persons other than importers of record are required to maintain (a)(1)(A) records. Given the substantial penalties which may be imposed for a failure to produce those records on demand, and given the fact that those penalties were only intended to apply to importers of record who no longer will be required to submit certain specified information to Customs at the time of entry, this commenter requested that Customs modify the regulations to expressly provide that responsibility for producing (a)(1)(A) list records is limited to the importer of record who is responsible for filing (or expressly authorizing the filing of) a Customs Form 7501 (entry summary) and commercial invoice with Customs at the time of entry.

3. Two commenters objected to the requirement to retain copies of records when the records have been given to Customs. One of these commenters referred specifically to cases in which the records are returned by Customs, stating that this places an unreasonable burden of proof on the party to whom the records are allegedly returned because there would otherwise be no proof of such return and/or receipt. The other commenter stated that customs brokers should not be required to maintain any record that has already been tendered to Customs, and this commenter further asserted that this requirement is contradicted by § 163.6(b)(4)(iii).

Customs response: 1. Customs does not agree that Customs personnel would overlook, and thus fail to apply, a clear regulatory standard, and it is noted that the § 163.3 guidelines referred to by this commenter were also reflected in the proposed § 163.6(a) text. However, on further reflection, Customs believes that it is not necessary to state in § 163.3 the general standard by which entry records must be produced because § 163.6 is more appropriate for that purpose. Accordingly, § 163.3 as set forth below has been modified by removing all statements regarding the manner in which entry records should be produced and by adding a simple reference to the production of entry records ''in accordance with § 163.6(a)''.

2. Customs disagrees. Each party specified in section 1508(a) is individually required to ''* * * make, keep, and render for examination and inspection records * * *'' that pertain to an activity described in section 508(a) and that are normally kept in the ordinary course of business; thus, under

the terms of the statute, the fact that one party mentioned in the statute is subject to a particular recordkeeping requirement cannot have the effect of precluding application of that recordkeeping requirement to another party covered by the statute. Since the (a)(1)(A) records referred to by this commenter are entry records and thus are covered by the statute, adoption of this commenter's suggested change to § 163.3 would represent an improper limitation of the statutory terms.

3. Customs disagrees with the first comment. The purpose of the statutory and regulatory changes is to reduce the number of documents/information filed at time of entry so that Customs would request and retain only those documents that are needed. All other documents should therefore be retained by the responsible party. Customs may simply review a document and return it to the responsible party. That party must maintain the document/information in the event Customs returns to the entry or issue. Customs also disagrees that proposed § 163.6(b)(4)(iii) contradicts § 163.3 because the former section involves a different regulatory context (that is, the liability for penalties).

Section 163.4—Record Retention Period

Comment: A commenter stated that the general 5-year record retention period requirement set forth in proposed paragraph (a), on its face, would require that any importer, person involved in the import transaction, or person supplying technical assistance to the manufacturer maintain every piece of paper, every fax and every E-mail or voice-mail communication for a period of 5 years from entry, notwithstanding that in the ordinary course of business the particular record would normally be destroyed immediately upon receipt. On the assumption that Customs did not intend to impose such an onerous requirement on the importing community in contravention of its obligation to impose a minimum burden on the public it is serving, this commenter requested that Customs confirm that: (1) the only records which must be maintained are those records which the company usually maintains in the ordinary course of business; and (2) the Customs recordkeeping requirements do not impose upon a person an obligation to maintain faxes, E-mail or voice-mail communications which are normally discarded after receipt or upon completion of a transaction and which do not constitute normal business records otherwise required to be maintained for commercial purposes.

Customs response: While Customs agrees that the only records that are required to be maintained under section 508(a) are those that are normally kept in the ordinary course of business, Customs disagrees with the other statements of this commenter. Section 163.4 does not set forth a new requirement: While the parties listed in § 163.2 represent an expansion over those listed in the present regulation (19 CFR 162.1(b)) as a result of changes made to section 508 by the Mod Act, the parties mentioned by the commenter have since 1978 been required to maintain records for five years. As regards the second point on which confirmation was requested, Customs notes that the proposed definition of ''records'' in § 163.1(a) included a reference to ''information pertaining directly or indirectly to any information element set forth in a collection of information required by the Tariff Act of 1930, as amended, in connection with any activity listed in paragraph (a)(1) of this section.'' Clearly, this could include faxes, E-Mail and similar records, depending on prevailing business requirements and practices, because the nexus between a particular record and the requirement to maintain it is the activity to which the record relates: If the record pertains to an activity specified in section 508(a) and is normally kept in the ordinary course of business, it must be maintained for the applicable period specified in the statute and regulations.

The observations made by this commenter demonstrate the need for a clear statement of the position of Customs regarding the relationship between sections 508(a) and 509 and the meaning of the statutory expression ''normally kept in the ordinary course of business'', in particular as concerns ''(a)(1)(A)'' records. Section 508(a) requires making and keeping and rendering for examination and inspection those records that pertain to specified activities and that are normally kept in the ordinary course of business. Section 509 on the other hand sets forth specific standards for the examination of records by Customs, including special rules under paragraph (a)(1)(A) for records that are required by law or regulation for the entry of merchandise (the so-called ''(a)(1)(A)'' records, also referred to in the Part 163 texts as ''entry'' records). Central to the operation of section 509 is the assumption that the records to be produced under that section have been made and maintained in accordance with section 508(a) (in other words, if a record, including an (a)(1)(A) record, is not required to be made and maintained, there can be no requirement to produce it under section 509). Thus, whereas not all section 508(a) records are (a)(1)(A) records, all (a)(1)(A) records are covered by section 508(a).

As regards (a)(1)(A) records, it is the position of Customs that they meet the two essential tests that define the coverage of section 508(a), that is, they pertain to an activity specified in the statute and they are normally kept in the ordinary course of business. As regards the first test, the fact that they relate to the entry process clearly means that they pertain to the actions of an owner, importer, consignee, importer of record, entry filer, or other party who imports, or knowingly causes the importation of, merchandise into the customs territory of the United States, as provided in section 508(a)(1)(A) and (B). With regard to the second test, the fact that a record is required by law or regulation for the entry of merchandise means that it is, by definition, normally kept in the ordinary course of business (in other words, the legal requirement for the existence of the record is sufficient to meet the statutory test); if this were not the case, no record that is prescribed by a provision of the Customs Regulations would have to be maintained under section 508(a) or produced under section 509 unless the person identified in section 508(a) chose of his own volition to maintain it for business purposes, and this would render any such regulatory requirement essentially unenforceable and thus useless. Thus, contrary to the position implicit in this commenter's assertions, what constitutes a record ''normally kept in the ordinary course of business'' is not exclusively a function of what a businessman may choose to create and maintain.

Comment: A commenter suggested that Customs should consider different (*i.e.*, shorter) record retention periods for express consignment carrier shipments (for example, letter and document shipments, shipments that may be entered free of duty under 19 U.S.C. 1321, and shipments covered by an informal entry). This commenter argued that in such cases, where the cost of record retention is high due to the large number of shipments and enforcement or compliance measurement normally is performed at the time of entry, there is little justification for lengthy record retention periods.

Customs response: The substance of this comment has been addressed in significant part by the addition of new subparagraphs (3) and (4) to the § 163.4(b) text as discussed above in the

Customs responses to the comments regarding the treatment of express consignment carriers.

Comment: With regard to the proposed paragraph (b)(1) exception to the 5-year rule in the case of drawback claims, a commenter referred to the May 5, 1997, correction document which clarified the Background section of the April 23, 1997, notice of proposed rulemaking with regard to the (maximum) length of time that drawback records could have to be maintained under the proposed regulatory text, that is, ''a period of about eleven years from the date of importation''. Noting that the correction document assumed a payment under the accelerated payment program, this commenter asserted that the retention period in fact could be considerably longer when the accelerated payment program is not used because payment in such cases is made at the time of liquidation of the drawback claim and there is no deadline imposed on Customs for the liquidation of drawback claims (the commenter alleged that there have been many instances in which Customs liquidated a drawback claim more than five years after the claim date). Assuming that manufactured goods are exported five years after importation of the drawback merchandise and a drawback claim is filed three years after export, liquidation may take place ten to twelve years after importation, thus creating a record retention period of from thirteen to fifteen years. This commenter further asserted that the recently published proposed revision of the drawback regulations would impose new, stringent requirements for the accelerated payment ''privilege'', thus leading to increased record retention periods because a larger percentage of drawback claimants will receive payment at the time of liquidation.

Customs response: The published statement was correct under the stated facts. However, the commenter is also correct that if a claimant is not paid under the accelerated payment program and liquidation is delayed, the recordkeeping period is necessarily extended.

Comment: With regard to the proposed paragraph (b)(2) exception to the 5-year rule in the case of packing lists, two commenters stated that there should be no requirement to retain a packing list for any period of time. These commenters argued that a packing list is a temporary, transition document that has no use, and thus is discarded, once the shipment is unloaded or released.

Customs response: Customs disagrees. Customs finds packing lists to be very useful in performing examinations of cargo, in verifying invoice data, and in verifying inventory receipts.

Based on a further internal review of the proposed regulatory texts, the words ''whichever is later'' have been added at the end of the first part of the § 163.4(b)(2) text as set forth below in order to remove a possible ambiguity in determining the applicable 60-day period for retention of packing lists following a release or conditional release period.

Section 163.5(a)—Original Format Record Storage

Comment: Four comments were received on proposed § 163.5(a) which provides for the maintenance of all required records in the original formats unless alternative storage methods have been approved by Customs. The points made by these commenters were as follows:

1. It is unclear from the proposed text whether or not electronic ABI records serve the same purpose as the hardcopy Customs forms. If stored electronically, this commenter asked whether the trade would be required to produce the information in the format of the current hardcopy records (*i.e.*, Customs Form 3461, 7501) or whether the electronic data would suffice. This commenter stated its desire to store the records in the electronic ABI formats and to eliminate the requirement to store paper records, suggesting that for audit purposes the electronic data could easily be linked to its accounts payable records through the entry number.

2. The term ''original formats'' in this section is too limiting and unmanageable because it does not comport with modern business practices. If the normal course of business is to take paper documents and scan them directly into a computer image system, then, practically, once there are assurances that the image meets Customs standards, the paper should be allowed to be discarded.

3. A commenter suggested that the text of the section be revised to read simply as follows: ''All parties listed in § 163.2 must maintain all records required by law and regulation for the required retention periods. The records must be capable of being retrieved on request or demand by Customs.'' This commenter argued that this shortened version states the basic requirement of the law and also eliminates reference to prior approval of the recordkeeping program (the latter point is addressed more fully in the § 163.5(b) comment discussion below).

4. There should be no requirement for Government approval of alternative storage methods.

Customs response:

1. Customs agrees that the electronic data would suffice. Clearly, the ABI data could qualify as ''original'' records. The definition of ''original'' in § 163.1(g) as discussed above and as set forth below includes ''electronic information which was used to develop paper documents''.

2. Customs does not believe the proposed reference to ''original formats'' would be limiting, and it is further noted that use of alternative storage methods would allow for discarding the original paper documents. In consideration of the decision to define ''original'' in § 163.1(h) rather than ''original records/information'' as discussed above, the first sentence of § 163.5(a), as set forth below, has been modified by replacing the words ''in the original formats'' by ''as original records'' as regards how records generally are to be maintained.

3. Customs agrees with the basic principle reflected in this comment and therefore, on further reflection, has concluded that the requirement for advance approval of alternative storage methods is unnecessarily onerous and thus should be eliminated. Accordingly, § 163.5(a), as set forth below, has been modified by removing the words ''approved in writing by the director of the regulatory audit field office who has responsibility for the geographical area in which the designated requestor's recordkeeping officer resides'' and adding in their place the words ''adopted in accordance with paragraph (b) of this section''. See also the related changes to the text of § 163.5(b) noted below in the Customs response to the comments on that section.

4. Customs agrees. The substance of this comment has been addressed in the comment response immediately above.

Section 163.5(b)—Alternative Storage Method Approval

Comment: Five comments were received on proposed § 163.5(b) which sets forth the procedures for approval by Customs of alternative methods (formats) for storing records. One of these commenters supported the proposed text, stating that the approval process is sound and will allow the trade to employ consistent procedures for the entire recordkeeping system and will eliminate port-to-port differences and will reduce the cycle time for approval and implementation of alternative storage methods. The other four commenters made the following negative comments or suggestions regarding the proposed text:

1. The requirement for written authorization from Customs to maintain records and information in alternative formats is contrary to the Mod Act which in section 614 amended 19 U.S.C. 1508(a) to allow importers to maintain records in electronically generated or machine readable data formats, and this was a self-implementing amendment. Thus, the Mod Act amendment gives the option to engage in electronic recordkeeping as an unencumbered right, not as a ''privilege'' as stated in proposed § 163.5(i). While Customs may audit or review the electronic recordkeeping systems of an importer to determine compliance, it may not make review a prerequisite to the establishment of an electronic recordkeeping system.

2. The last sentence should be reworded to read as follows: ''If the applicable director of the regulatory audit field office needs additional information on the alternative method of storage, or disapproves of the method proposed, he or she will contact the requesting party within 30 calendar days of receipt; if not, the request is deemed approved.'' The reason for this suggested change is that the regulations as proposed could cause hundreds or thousands of parties to contact regulatory audit seeking approval of their proposed methods and, given the standards in proposed § 163.5(c), such requests could be voluminous. In order to ease the burden on Customs and the importing public, Customs needs to adopt a set of standards and guidelines and then allow parties subject to recordkeeping requirements to establish programs that meet those standards and guidelines, and acceptance of the proposed method would be assumed unless some information is missing or there are serious flaws in the proposal. This commenter argued that this approach is consistent with ''informed compliance'' in that Customs would provide the information and set the standards and recordkeepers would have to establish programs to comply. In addition, Customs can periodically check to ensure that the recordkeeper is continuing to follow the standards, with authority to impose sanctions or hold the recordkeeper to a corrective action plan if the standards are not being followed.

3. In the case of customs brokers, the requirement for ''approval'' is unnecessary. A more enlightened and reasonable approach can be found in the Department of Commerce regulations at 15 C.F.R. 762.5 which requires neither notice to, nor advance approval by, the Department of Commerce but rather sets forth the requirements for which compliance is expected, and the same should be true for Customs. If a broker cannot produce the ''original'' or a ''copy'' of a document, which it is required to maintain under § 111.21, it is in violation of 19 U.S.C. 1641 and is subject to a penalty. The fact that a broker received permission from Customs to make copies using a particular method will not aid the broker when it cannot produce a requested record.

4. There should be provision for grandfathering-in existing programs for alternative record storage methods that meet the standards of these regulations.

Customs response: Customs does not entirely agree with the comment made at point 1 above. In order to capture or encompass all possible records, section 508(a) had to refer to ''electronically generated or machine readable data'' along with other possible documents and information. This does not *per se* constitute an approval of those formats, nor does it constitute express authority to alter original paper documents, records or information into such formats; it is merely a recognition of existing data technology rather than an expression of an unencumbered right regarding records maintenance methodology. However, as stated above in connection with § 163.5(a), Customs does agree that, as a general principle, advance review and approval by Customs should not be a prerequisite of alternative storage methods. In order to accommodate this principle and also enhance the clarity of the proposed text, § 163.5, as set forth below, reflects the following modifications in structure and content:

a. It is noted that, with the exception of paragraph (a) which sets forth the basic rule regarding maintenance of original records, the text of proposed § 163.5 (that is, paragraphs (b) through (j)) related entirely to alternative records storage which operates as an exception to the paragraph (a) rule. In order to more clearly reflect the relationship between these provisions, § 163.5 has been reorganized into two paragraphs, with paragraph (a) corresponding to proposed paragraph (a) and with paragraph (b) entitled ''alternative method of storage'' and covering the remainder of proposed § 163.5 but with a number of additional substantive changes as noted below.

b. Paragraph (b)(1) corresponds to proposed paragraph (b) and thus sets forth general provisions regarding alternative storage methods. The modified text, except in the case of records required to be maintained as original records under laws and regulations administered by other Federal government agencies (which requirements may not be obviated by the Customs Regulations), (1) allows use of an alternative method for records storage so long as the recordkeeper provides written notification thereof to the Miami regulatory audit field office (Customs believes that a single, centralized location should be used for this purpose and that it should be the Miami office, for the same reasons stated above as regards notification of consolidation of broker records under § 111.23) at least 30 calendar days before implementation of the alternative method, (2) provides that the written notice must identify the type of alternative storage method to be used and must state that the alternative storage method complies with the standards of paragraph (b)(2), and (3) provides for an exception to alternative storage under certain circumstances if Customs at any time instructs the recordkeeper in writing that records described therein must be maintained as original records (this exception is necessary, for example, to ensure consistency in the form, identification and custody of records and could be applied whenever the records are relevant to an ongoing inquiry or investigation or administrative or judicial proceeding). Thus, there is no longer any reference to a formal request and approval process, and the reference to the location of a recordkeeping officer has been eliminated (see the changes reflected in new paragraph (b)(2) as discussed below in connection with the comments on proposed § 163.5(c)).

c. As a consequence of the removal of the request/approval process and based on a further internal review of the proposed texts, Customs believes that it is neither necessary nor appropriate to retain the following paragraphs of proposed § 163.5: (1) proposed paragraph (e), which concerned retrievability of records and is adequately covered by § 163.6; (2) proposed paragraph (g), which concerned notification of noncompliance with the agreed-upon alternative storage method and is no longer necessary since there will be no such specific agreement between Customs and the recordkeeper; (3) proposed paragraph (i), which concerned revocation of the alternative storage method privilege and thus is no longer relevant; and (4) proposed paragraph (j), which concerned appeal procedures for denial or revocation of the alternative storage method privilege and thus also is no longer relevant. As a result of the removal of these four proposed paragraphs and the

reorganization of § 163.5 as discussed above, proposed paragraphs (f) and (h) have been redesignated as paragraphs (b)(3) and (b)(4) and, for purposes of consistency with the notice procedures under modified paragraph (b)(1) as discussed above, the new paragraph (b)(3) text as set forth below has been modified to provide that notice of changes to alternative recordkeeping procedures must be given to the Director of the Miami regulatory audit field office. In addition, as a consequence of the removal of the request/approval process, newly designated paragraph (b)(4) has been modified as set forth below by the removal of all references to requesting, granting and revoking alternative storage method privileges. See also the below discussion of the comments on proposed § 163.5(c) for the treatment in this document of proposed paragraphs (c) and (d). Finally, a new paragraph (b)(5) has been added to provide that Customs may instruct a recordkeeper in writing to discontinue its use of an alternative storage method if the recordkeeper fails to comply with the conditions and requirements for alternative storage set forth in § 163.5 (this new paragraph is addressed in more detail below in the comment discussion regarding proposed § 163.5(i)).

The substance of the comments made in points 2, 3, and 4 above have been addressed by the changes described above.

Section 163.5(c)—Standards for Alternative Storage Methods

Comment: Seven commenters made general observations regarding the approach of proposed § 163.5(c) which provides examples of commonly used methods for storage of records, sets forth a general rule regarding what storage methods will satisfy Customs requirements, and prescribes minimum standards that Customs will consider in evaluating proposals for alternative storage methods. The points made by these commenters were as follows:

1. One commenter stated that the examples of storage methods in the first sentence of the introductory text of the section should be expanded to include disc access storage devices (DASD) used for the capture and storage of electronic transmissions, image storage devices such as CD ROM juke boxes, voice recordings and full motion video in computerized files.

2. One commenter stated that the § 163.5(c) standards are too intrusive in that they impose on private industry new sets of procedures regarding business records. This commenter argued that since companies regularly undergo independent financial audits that test business record integrity and because the Mod Act was not intended to hinge industry efficiencies on the good graces of Customs, importers should not need Customs approval to use alternative storage techniques for records kept in the ordinary course of business.

3. Four commenters objected to the minimum standards that Customs will use to evaluate alternative storage proposals, arguing that the proposed regulatory standards are too detailed and burdensome, are not achievable by the great majority of importers and thus will discourage use of alternative storage methods, are difficult to understand and follow, and will lead Customs to micro manage the recordkeeping programs of importing parties. Three of these commenters further questioned whether Customs would have the resources necessary to manage such alternative recordkeeping standards, and two of these commenters also noted that Customs has permitted alternative methods or storage in the past without imposing ''minimum standards'' and without major problems arising therefrom. In order to address these problems, one of the four commenters specifically recommended removal of the last sentence of the introductory text of the section and removal of subparagraphs (1) through (12) and inclusion of the substance of subparagraph (13) as a second unnumbered paragraph, arguing that the resulting text would represent a concise summary of the recordkeeping program requirements for which no further detail is required.

4. One commenter argued, with specific reference to customs brokers, that some of the ''minimum standards'' (*i.e.*, subparagraph (9) regarding segregation of duties and subparagraph (11) regarding continuing surveillance over the medium transfer system), while well suited to the handling and storage of ''top secret'' documents, are largely inapplicable to a broker's customs records.

Customs response:

1. Customs disagrees. The specific storage methods listed are intended to be illustrative rather exhaustive; therefore, Customs sees no reason to add to that list. However, language has been added to the first sentence of the text (redesignated as paragraph (b)(2) as set forth below as part of the structural changes to § 163.5 discussed above in connection with the comments regarding proposed § 163.5(b)) to clarify that the listed items are not all-inclusive.

2. Customs disagrees, except as regards the issue of needing Customs approval as already discussed above in connection with proposed § 163.5(b). It is noted that alternative storage is voluntary and not a requirement. Furthermore, alternative storage is concerned with only those records involving Customs matters and accordingly does not impose any additional burden on business as regards other records.

3. Based on these comments and the comments below regarding individual standards for alternative storage methods (proposed paragraphs (c)(1)–(13)), and as a result of further internal review of the proposed paragraph (c) text, Customs has determined that a number of additional changes should be made to the text of proposed paragraph (c) of § 163.5. These changes, as reflected in the text of redesignated paragraph (b)(2) set forth below, are as follows:

a. In the last sentence of the introductory text of the paragraph, the reference to minimum standards that will be considered by Customs in evaluating proposals for alternative storage methods has been replaced by a reference to standards that must be applied by recordkeepers when using alternative storage methods, in order to reflect the decision discussed above to do away with the requirement for advance review and approval by Customs.

b. In order to simplify the procedures to be followed by, and thus reduce the burden on, recordkeepers who choose to use alternative storage methods, and in other cases in order to reduce the complexity of the text where the proposed text in effect added nothing of substance to the basic obligation to maintain records and make them available to Customs, the following provisions that were contained in proposed paragraph (c) have been entirely eliminated from new paragraph (b)(2) as set forth below: Subparagraph (1), which concerned recordkeeping officer designation; subparagraph (4), which concerned documentation of data retention and transfer procedures; subparagraph (5), which referred to a data transfer audit trail; subparagraph (6), which provided for the integrity and nonerasability of the storage medium; subparagraph (7), which concerned the maintenance of papers regarding the transfer process; subparagraph (9), which concerned internal control systems covering persons responsible for maintaining, producing or transferring records; subparagraph (11), which concerned medium transfer system surveillance and availability of

internal review files; and subparagraph (12), which concerned procedures for preventing the destruction of hard copy records.

c. Proposed paragraphs (c)(2) and (c)(3) have been combined and redesignated as paragraph (b)(2)(i), and the new text no longer contains the proposed provisions concerning documentation of the electronic media used and life cycle and disposition procedures, certification regarding documents required by other agencies, and showing that the medium to which the transfer will occur is reliable. In addition, in the provision regarding having in place operational and written procedures ''to ensure that the imaging and/or other media storage process preserves the integrity, readability, and security of the original records'', the words ''the information contained in'' have been added before ''the original records'' in order to clarify that in an alternative storage context the standard relates to what is alternatively stored.

d. Proposed paragraph (c)(8) has been redesignated as paragraph (b)(2)(ii) and the text has been modified to simply provide for an effective labeling, naming, filing, and indexing system (thus, the references to permitting easy retrieval in a timely manner and to where the finding aids must be located have been eliminated).

e. Proposed paragraph (c)(10) has been divided into two new paragraphs (b)(2)(iii) and (b)(2)(iv) which incorporate the following changes to the proposed paragraph (c)(10) text: (1) in new paragraph (b)(2)(iii), the requirement for maintenance of all original records for a minimum of one year after the date of transfer has been replaced by a requirement for maintenance of entry records (except packing lists which, under § 163.4(b)(2), do not have to be retained in any format beyond 60 calendar days) in their original formats for 120 calendar days, with the start of the 120-day period determined in the same manner as in the case of that 60-day packing list retention period; and (2) new paragraph (b)(2)(iv) merely provides that an internal testing of the system must be performed on a yearly basis (thus, the new text eliminates the quarterly testing standard and the prohibition against destruction of original records after one year in the absence of proof of accurate transfer of records).

f. Proposed paragraph (c)(13) has been redesignated as paragraph (b)(2)(v) and the text has been modified by removing the reference to parties who requested and were granted permission to use alternative storage methods.

g. Finally, proposed paragraph (d) has been moved into paragraph (b) as paragraph (b)(2)(vi) and the text has been modified as follows: (1) the reference to parties who requested and were granted permission to use alternative storage methods has been eliminated; and (2) the requirement for retaining and keeping available two copies of the records on approved media at different locations has been replaced by a requirement for retaining and keeping available one working copy and one back-up copy stored in a secure location.

4. The changes to the proposed texts discussed under point 3 above effectively address the substance of this comment.

Section 163.5(c)(1)—Recordkeeping Officer and Back-Up Officer

Comment: The requirement to designate a recordkeeping officer and a back-up officer should not apply to customs brokers who are licensed and thus should be aware of their obligations regarding recordkeeping.

Customs response: The substance of this comment has been addressed by the changes made to proposed § 163.5(c) as discussed above.

Section 163.5(c)(2)—Operational and Written Procedures

Comment: A commenter stated that the purpose and intent of the second sentence of this proposed section is unclear, asking in this regard whether it is intended to require that other agency documents required for Customs purposes be stored using the same procedures, or whether it is intended to require that every recordkeeper in every department of a corporation keep records using exactly the same software, hardware and procedures. This commenter argued that if the latter is the intent, the requirement is unreasonable and will prevent any corporation of significant size from using an alternative storage process.

Customs response: The substance of this comment has been addressed by the changes made to proposed § 163.5(c) as discussed above.

Section 163.5(c)(6)—Integrity of the Storage Medium

Comment: A commenter noted that during the life cycle of a document management program, documents and data hopefully will evolve as time passes from on-line to near-line and ultimately to tape storage, and current documents and data will be kept on-line for quick access. This commenter stated that proposed § 163.5(c)(6) seems to provide that hard-drive disk space cannot be reused when documents or data are moved to tape storage and that, if so, the requirement is unacceptable and unnecessary. This commenter questioned why Customs cares what happens to the medium if the recordkeeper has a process in place to ensure that the documents or data are not destroyed, discarded or written over.

Customs response: The substance of this comment has been addressed by the changes made to proposed § 163.5(c) as discussed above.

Section 163.5(c)(10)—One-Year Retention of Original Records

Comment: Ten comments were submitted on proposed § 163.5(c)(10) which provides that all original records be maintained for a minimum of one year after the date of transfer, that internal sampling-exception-reporting/testing of accuracy and readability must be performed on a quarterly basis, and that no original records will be destroyed after a year unless there is acceptable proof that the records are being accurately transferred. The comments concerned primarily the 1-year retention requirement and all commenters were opposed to the requirement which they felt was excessively long, commercially unrealistic, unnecessary, burdensome, costly, redundant and unreasonable and thus should be removed. The following additional arguments were made by these commenters in opposition to the proposed provision:

1. If a failure to comply with recordkeeping requirements should arise, Customs and the courts can impose penalties for failure to maintain or produce records, and these avenues would seem to provide Customs with more than adequate protection.

2. If the internal sampling-exception-reporting/testing of accuracy and readability are performed, the records should be eligible for destruction immediately after capture or at most after a 30-day retention period.

3. It is not possible to comply with this provision as written. Almost all forms of media can be destroyed. The requirements for alternative media should be no more restrictive than for the media being copied (paper).

4. There will always be, at a minimum, at least three copies of the records available to Customs: the first copy will be records stored by the alternative storage medium; the second copy will be the back up of the alternative storage system; and the third copy will be the copy maintained by the broker. Thus, there is no value in requiring the importer to maintain the

hard copy version of the records when alternative storage media are employed.

5. The requirement to test accuracy and readability on a quarterly basis will also be burdensome to the trade. If the approved system is reliable, a year-end check will suffice.

6. The guidelines and standards presented in § 163.5 provide stringent procedures for alternate storage methods in order to meet the expectations of Customs, and those guidelines and standards should be sufficient so as to obviate the redundant requirement of maintaining the original records, the cost of which would be (for this one commenter) approximately $32,000 per year. Therefore, § 163.5(c)(10) should be revised to read as follows: ''Upon receiving written approval for alternate storage methods by the director of the regulatory audit field office, original documents are not required to be maintained once the transfer process has been successfully completed. Quarterly sampling, exception reporting and testing of accuracy and readability must be performed and documented.''

7. There should be no requirement to maintain paper documents in addition to electronic records because: (1) section 637 of the Mod Act states that electronic transmission of data must be certified by the importer of record as to its accuracy and truth and thus each certified transmission is as binding, and has the same force and effect, as a signed paper document; (2) the proposed section assumes that paper documents are the basis for all business transactions, but this is not the case; and (3) if the purpose of maintaining hard copies is to ensure that the electronic records are backed up, there are already sufficient back-up procedures in that under § 163.5(c)(13) there must be a capability to make hard copies and under § 163.5(d) two copies of the records must be maintained in two separate locations.

8. If an electronic image of an invoice is satisfactory for Customs purposes 366 days after the transfer from paper, then it should be acceptable even one day after transfer.

9. If the purpose of the 1-year document retention requirement is to permit quarterly testing and sampling, the requirement is inappropriate. In a professionally managed imaging process, documents are checked for quality more frequently than once a quarter. Typically, one out of ten documents is checked for quality during the scanning process so that, if a quality problem exists, no more than ten documents need to be rescanned.

10. If the regulatory provision at issue cannot be deleted in its entirety, it should at least be modified to permit the destruction of paper documents sooner for those importers who exceed the quarterly quality testing standard.

Customs response: The concerns reflected in these comments have been largely addressed by the changes made to proposed § 163.5(c) as discussed above.

Section 163.5(d)—Retention of Approved Media Records

Comment: Three commenters objected to proposed § 163.5(d) which provides that parties who were granted permission to use alternative storage methods shall retain and keep available two copies of the records/information on approved media at different locations. One of these commenters stated that the requirement is too intrusive, another commenter questioned the need to retain two copies in a paperless environment, and the third commenter alleged that the proposed provision is so burdensome that it will discourage customs brokers from electing to use alternative storage methods.

Customs response: The changes to the text of proposed § 163.5(d) (redesignated as § 163.5(b)(2)(vi) as set forth below) that are discussed above in connection with § 163.5(c) include removal of the requirement to retain copies at different locations. As regards the requirement to retain two copies, Customs believes that retention of a working copy and a back-up thereof is essential and consistent with prudent business practice.

Section 163.5(e)—Retrievability of Records

Comment: One comment was received in regard to that portion of proposed § 163.5(e) that provides that a ''certified hardcopy'' may be used when information is received and stored electronically for Customs requests for information. This commenter argued that this requirement is unreasonable because electronically-stored data is now printed out in hard copy from mainframe systems every day for Customs without certification being required, noting that Customs will have the same remedies it now has (i.e., penalties, rate advances, investigations) if the hard copy provided to Customs is incorrect. The commenter also complained that the regulations do not set forth the certification process and objected that any such process will add to the expense of producing hard copies.

Customs response: The elimination of proposed § 163.5(e), as discussed above in connection with the comments on § 163.5(b), effectively addresses this comment.

Comment: Three commenters objected to the last sentence of proposed § 163.5(e) that provides that records shall be kept of the frequency and to whom copies of the records were given. The points made by these commenters were as follows:

1. The provision could be interpreted to mean that a separate tracking and measuring system must be maintained. Typically, a customs broker receives numerous and multiple requests for records from the importer and/or Customs, and some requests are as simple as asking for a copy of the import invoice to enable the importer to place the broker's bill in line for payment. To maintain a separate tracking system outside of an entry summary notation system for this type of request is onerous and not economically justifiable and is an unnecessary level of detail.

2. The reason or rationale for this requirement should be explained. There is no such requirement for paper documents and, clearly, it would be extremely burdensome and costly to the recordkeeper with no apparent benefit to Customs or anyone else.

3. The requirement does not seem to have any usefulness to any parties and would be excessively burdensome, particularly on customs brokers operating from multiple locations. Customs should only be interested in obtaining the documents it seeks in a timely manner. A confidentiality requirement in the case of brokers already exists in § 111.24.

Customs response: Again, the elimination of proposed § 163.5(e) effectively addresses these comments.

Section 163.5(f)—Changes to Alternate Storage Procedures

Comment: It is unreasonable to require the approval of Customs before making any changes to the alternative recordkeeping procedures, and Customs will end up micro managing every one of these programs without having the requisite resources for doing this. Significant changes should be reported to Customs but, while it might be preferable to report the changes before implementation, realistically there will be times when this will not occur (what will happen when an importer must make a change to ensure continued compliance, but Customs cannot respond in a timely manner?). In the past, Customs tried to impose the same type of procedure in the Foreign Trade Zone Procedure Manual and found that it could not review and approve changes in a timely or effective manner; as a result, the requirement was changed to provide that the zone operator keep an

up-to-date manual available for Customs review. This is a more practical and realistic approach.

Customs response: Customs agrees with regard to the issue of advance Customs approval of changes, for the same reason that Customs has agreed that initial advance approval of the use of alternative recordkeeping methods is not necessary. However, as in the case of an initial decision to use alternative storage methods, Customs believes that advance notice to Customs is necessary when a change in alternative storage procedures is made. Accordingly, the proposed regulatory text (redesignated in this document as § 163.5(b)(3) as discussed above) has been modified to require written notification of the change at least 30 calendar days before implementation of the change.

Section 163.5(g)—Notification of Noncompliance

Comment: Five comments were received on proposed § 163.5(g) which provides that written notification of noncompliance with the agreed upon alternative storage methods must be made to Customs within 10 business days and that the notification must detail what corrective action will take place. The points made by these commenters were as follows:

1. This regulation makes little sense in light of the fact that proposed § 163.5(f) will prove to be unworkable (*viz*. the above comment on that section). Customs will be unable to approve every change to these programs, and the burden on even the most diligent recordkeeper will be wholly out of proportion to the benefit to be derived by Customs. Customs and importers only are interested in the failure to produce documents or data requested by Customs, and the mission of Customs is to protect the revenue and ensure compliance with the laws enacted by Congress. The proposed regulation creates an unnecessarily stringent requirement which will likely result in unnecessary disputes over whether notification was required in certain situations and which will simply result in a waste of the resources of importers and Customs without a counterbalancing benefit to either side.

2. The absolute requirement of notification to Customs regarding noncompliance gives rise to the concern that Customs is conceivably requiring self-incrimination for criminal violations.

3. The 10-day requirement for notification to Customs is unnecessarily short because, regardless of the time period specified for notification, none of the newly generated records will be destroyed since original records are to be maintained for at least one year under proposed § 163.5(c)(10). Since it may take much longer than ten days to find out the scope of the problem and to determine what corrective action to take, thirty (30) days would be a more appropriate time period.

4. Two commenters stated that the required notification period should run from the ''date of discovery'' by the recordkeeper.

Customs response: The elimination of proposed § 163.5(g), as discussed above in connection with the comments on § 163.5(b), effectively addresses these comments.

Section 163.5(i)—Revocation of Privilege To Maintain Alternative Records

Comment: Two comments were received on proposed § 163.5(i) which provides for revocation of the privilege to use alternative storage methods for failure to meet regulatory conditions and requirements, states that the revocation is effective on the date of issuance of the written notice of revocation and shall remain in effect pending any appeal, and in the last sentence provides that revocation requires the party immediately to begin to maintain original records and subjects the party to penalties under § 163.6 for failure to do so. The points made by these commenters were as follows:

1. Taking a recordkeeper off the alternative method of storage pending appeal is too restrictive and gives too much authority to a field officer (the applicable regulatory audit field office director). Customs should decide on a case-by-case basis whether the recordkeeper should be taken off the program pending appeal and the decision to do so should be made at Customs Headquarters, because often these are nationwide programs involving tremendous investment.

2. With regard to the last sentence of the proposed text, proposed § 163.5(c)(10) already requires the maintenance of (original) records. Since the effect of revocation will be to deny a party the right to destroy records in favor of the alternative method of storage, the last sentence should be revised to read as follows: ''Revocation requires the party immediately to cease to destroy original records and will subject such person to penalties provided for in § 163.6 for failure to do so.''

Customs response: While the elimination of proposed paragraph (i) of § 163.5, as discussed above, renders moot some of the specific points made by these commenters, Customs believes that there must be provision for preventing a recordkeeper from continuing to use alternative storage procedures when the recordkeeper has failed to comply with the regulatory standards for alternative storage, because those regulatory standards have ongoing, rather than only initial, relevance; new paragraph (b)(5) of § 163.5 as mentioned above was added for this specific purpose. The new paragraph (b)(5) text uses the word ''may'' in order to ensure that written instructions to discontinue alternative storage are issued on a case-by-case basis. However, Customs remains of the view that any appropriate Customs office should have authority to make the determination as to whether such an instruction is necessary, similar to the procedure reflected in the modified paragraph (b)(1) text discussed above and set forth below. The new text does not set forth an appeal procedure but rather refers to the availability of a more direct and expeditious procedure (that is, the recordkeeper may give to Customs the 30-day notification of [re-]initiation of alternative storage under paragraph (b)(1) once the noncompliance situation has been rectified). As regards the last comment, Customs believes that neither the proposed text nor the replacement text suggested by the commenter is necessary.

Section 163.6(a)(1)—Production of Entry Records

Comment: Ten commenters made observations on proposed § 163.6(a)(1) which provides for written, oral, or electronic requests by Customs for entry records, requires a written follow-up to an oral request, provides for timely production of such records taking into consideration the number, type and age of the item, sets forth a table containing guidelines as to the maximum time Customs expects to wait for the records (maximum period in business days, with reference to the age of the entry/entry summary), and provides for the recordkeeper to notify Customs if the recordkeeper believes that he will not be able to meet the applicable production time period. All of the commenters were concerned with the effect of the time limits on a recordkeeper's ability to properly comply with a Customs request for records. The various specific points made by these commenters were as follows:

1. While the time periods specified in the table for producing records might be suitable in the case of requests for single records or small numbers of records, a large volume of records would require

more time to produce; thus, the time periods set forth in the table, which are tied to the date of the entry/entry summary, are not suitable when large numbers of records are involved. One commenter suggested that large requests will increase as Customs moves toward an audit basis of review and gave, as an example, a request for all files for a specific product over a period of several years, which could involve generating a program to search for particular files and printing a list of those files and identifying them with entry numbers and file numbers and then going to several locations to pull the information, possibly involving hundreds of files.

2. Although the timetable set forth in the table is characterized in the regulatory text as ''general guidelines'', experience shows that this table would be treated by Customs field officers as a mandatory and inflexible rule.

3. In the case of an entry/entry summary not more than one month old, the 5-day period for producing a record is not enough time because in the case of mailed written requests the postal delivery/receipt process will consume most or all of that time. Also, the proposed regulatory text is unclear as to whether the requested records must be merely sent to, or be actually received by, Customs within the 5-day period.

4. Where a request is made orally, the text should state (1) that the oral request ''must'' (rather than ''will'') be followed by a written request and (2) that the time period for producing the record runs from the date of the written request as is the current practice with Customs Forms 28 and 29.

5. Customs brokers in many instances receive requests for records covering a year or more without reference to particular entry numbers (*e.g.*, a request for copies of all entries filed by an importer during a particular time period), and brokers may also receive requests from several Customs sources at the same time. Thus, guidelines are needed to grant brokers substantially more time than the periods set forth in the proposed regulation.

In addition, the following specific recommendations were made by some of these commenters to address the general points made above:

a. The fourth sentence of the text and the table should be removed.

b. A uniform production date of 30 days should be established for all documents except where extenuating circumstances require a shorter or longer period.

c. The word ''maximum'' in the second column of the table should be changed to read ''suggested''.

d. The word ''maximum'' in the second column of the table should be changed to read ''normal''.

e. The word ''maximum'' in the fourth sentence of the text and in the second column of the table should be changed to read ''expected''.

f. Increase the 5-day period in the table to ten days.

g. If the 5-day period in the table is to be retained, it should run from the date a properly addressed request is received, and a minimum of three days should be added to effect a response to a request delivered by mail.

Customs response: 1. Customs agrees with the substance of this comment and therefore has modified the proposed text (redesignated in this document as paragraph (a) of § 163.6 as a result of the removal of proposed paragraph (a)(2) as discussed below) as follows: (1) by removing the table at the end; (2) by specifying in the text a general 30-day maximum period for the production of the records unless Customs prescribes a shorter period when the records are needed in connection with a determination regarding the release or admissibility of merchandise; and (3) by replacing the last sentence (regarding written notice of an inability to meet the record production deadline) with a text setting forth a procedure whereby a recordkeeper may make a written or electronic request for approval of an additional period of time to produce the entry records if the recordkeeper encounters a problem in timely complying with the demand, which Customs would either approve or deny based on the circumstances of the individual case. It should be noted that in a case involving an admissibility or release issue, a failure to produce the records within the period set by Customs may result in a refusal by Customs to release the merchandise (or issuance of a demand for return to Customs custody if release has taken place). Moreover, it should be noted that, under the modified text, the mere act of submitting a request to Customs for additional time to produce entry records would preclude the imposition of monetary penalties or other lawful sanctions for failure to comply with the original demand only if the request for additional time is approved by Customs. Finally, the word ''demand'' has been inserted in place of ''request'' throughout the paragraph (a) text in order to align on the terminology used in the statute in the case of entry records.

Customs believes that the general 30-day response time, coupled with the opportunity to obtain additional time to produce the entry records if such additional time is warranted by the circumstances, provides a more appropriate framework for the flexible approach that Congress had in mind when the section 509 amendments were enacted, in particular as regards the requirement in section 509(a)(1)(A) to produce an entry record ''within a reasonable time after demand for its production is made, taking into consideration the number, type, and age of the item demanded.'' In this regard, Customs notes the following statement contained in the relevant legislative history (H. Rep. 103–361, 103d Cong., 1st Sess., at 116):

> The Committee believes that the statute is relatively clear on how factors such as ''number, type, and age of the item demanded'' will impact on the obligation to produce. A single request for a single page document associated with a six-month old entry should be produced within a matter of days. In contrast, the production of 50 commercial invoices from an equal number of entries that were filed more than two years preceding the date of the demand obviously will take longer to produce, and may take as much as two to four weeks, depending on whether the records had to be retrieved from storage and the method of storage. Again, if the Informed Compliance Program works as the Committee intends, the Customs Service and the importing public should be able to develop document production schedules that do not impact adversely on the current business at hand, but at the same time permit the Customs Service to verify the accuracy of information directly related to one or more import transactions.

It is expected that, as a result of experience gained while working with the trade in applying the modified § 163.1(a) text discussed above and set forth below, Customs will be able to develop more detailed guidelines for inclusion in an appropriate informed compliance publication to further assist the public in this area.

2 and 3. The elimination of the table and the adoption of the 30-day period, as discussed above, effectively addresses these comments.

4. Customs agrees with the first point and has replaced ''will'' by ''shall'' to clarify the mandatory nature of the text. Customs disagrees with the second point because the date of initial communication of the demand (whether oral or otherwise) should control. In addition, the text has been modified to permit an ''electronic'' demand as a follow-up to an oral demand.

5. Customs believes that the concerns reflected in this comment have been addressed by the revised text as discussed above and set forth below.

Finally, Customs believes that the changes to the text discussed above and reflected below effectively address the

specific recommendations made by these commenters.

Section 163.6(a)(2)—Previously Requested Records

Comment: Four comments were received on proposed § 163.6(a)(2) which concerns requests for records that include records previously requested and provided to Customs and which requires that a recordkeeper provide specific information regarding the record previously requested and provided. The points made by these commenters were as follows:

1. The word ''entry'' must be added to the text to modify the words ''record'' and ''records''.

2. The regulatory text should make clear that entry records previously filed with Customs, irrespective of whether they were specifically requested, are exempt from the new production request.

3. One commenter stated that the text needs to be restructured because, although it requires the recordkeeper to provide a copy of the Customs notice letter pertaining to the previous request, the beginning of the text does not specify that the request by Customs must be in writing. Three commenters argued that this provision places an unnecessary burden on importers (including the need to review all requests to see if a particular requested record had been previously provided) and that the recordkeeper should not be required to ensure that Customs coordinates effectively by providing Customs with a copy of the letter which originally requested the record or the date it was provided to Customs: the name and address of the Customs officer to whom the record was provided should suffice.

Customs response: 1 and 3. Based on the comments received and as a result of further internal review of the proposed texts, Customs agrees that paragraph (a)(2) of proposed § 163.6 is overly burdensome and should be removed, and § 163.6 as set forth below has been modified accordingly. Thus, the textual changes suggested by these commenters have been rendered moot by the removal of the paragraph.

2. Notwithstanding the removal of proposed paragraph (a)(2) as discussed above, Customs must emphasize its disagreement with the statement of this commenter. Entry records previously filed but returned by Customs to the broker/importer are not exempt from the production requirement. Moreover, whereas penalties under section 509(g) for a failure to produce demanded entry records may be avoided if the records were presented to and retained by Customs at the time of entry or were submitted to Customs in response to an earlier demand, the avoidance of penalties does not affect the basic statutory requirement to produce demanded entry records and Customs has other enforcement tools that may be used in cases where section 509(g) penalties are not applicable.

Section 163.6(b)—Penalties for Failure To Maintain or Produce Entry Records

Comment: Three commenters submitted observations on this proposed section. The points made by these commenters were as follows:

1. The word ''entry'' should modify the word ''record'' throughout the text since that is the term of reference, and the reference to ''paragraph (b)(2)'' in paragraph (b)(1) should read ''paragraph (b)(4)''.

2. The final regulations should confirm (1) that (a)(1)(A) list records are the only documents whose nonproduction can result in § 163.6 penalties, (2) that importers of record (or designated recordkeepers) are the only persons required to maintain (a)(1)(A) list documents, and (3) that importers of record (or designated recordkeepers) are the only persons who can be subjected to § 163.6 penalties.

3. Sliding scale guidelines are needed in this area. For example, if a document is insignificant and satisfactory information can be provided by other means to satisfy the production requirement, there should be no penalty.

4. There is a danger that Customs officers will construe this proposed section as a license to assess the maximum penalties specified by law whenever (a)(1)(A) list documents are not produced within the time periods specified in § 163.6(a), including in instances in which a failure to comply with a lawful request for documents resulted from non-negligent inadvertence, including a failure on the part of Customs to notify the person in the company primarily responsible for recordkeeping and to impress upon the company the importance of the request. In order to avoid these problems, before a penalty is assessed Customs should establish clearly defined procedures ensuring that the demand for documents was properly made and received and that the company recognizes the severe consequences of noncompliance; these guidelines should be codified in the regulations, and if Customs does not follow the specified procedures it should be precluded from penalizing a company for failure to produce records in a timely manner. In addition, the regulations should provide that any penalties assessed will be mitigated to nominal amounts, as specified in the regulations, if the records are provided to Customs during the course of the penalty proceeding; it is critical for Customs to distinguish situations in which the information was not maintained from situations in which the required information was maintained but for one reason or another not presented to Customs in a timely manner, similar to the way that Customs has published guidelines for mitigating ''late filing'' penalties.

5. With regard to proposed paragraph (b)(2) which permits reliquidation and denial of special (column 1) rate of duty status for an entry liquidated within two years of a demand for a record that was not properly produced, one commenter requested that this provision be removed and made the following specific observations in this regard: (1) the proposed text must be consistent with NAFTA claims since denial of NAFTA status requires the United States to adhere to the NAFTA Agreement and NAFTA regulations, and Customs recordkeeping requirements clearly cannot override U.S. international obligations; and (2) the (a)(1)(A) list includes ''GSP declaration (plus supporting documentation)'' but without defining the supporting documentation so that Customs has total discretion as to the nature of documents necessary to support GSP claims, and thus Customs has effectively rendered meaningless the liquidation of entries of merchandise at the special GSP duty rate.

6. Also with regard to proposed paragraph (b)(2), a commenter referred to a situation in which an entry was liquidated as entered and the entered classification did not involve a column 1 special rate of duty and, after a demanded record is produced, Customs finds a misclassification of the goods; this commenter asked whether Customs could reliquidate the entry for the change in classification.

7. With regard to proposed subparagraph (b)(4)(iv), it is too restrictive to provide an exemption from these heavy penalties for just the first willful violation because in some cases there can be multiple violations arising out of one general negligent act. In addition, provision should be made for the volume of records required to be kept, with more room for error being given to very large firms with multiple locations. Moreover, there should be a time limit allowing renewal of exempt status, such as allowing one mistake every year or every two years depending on the size of the recordkeeper.

Customs response: 1. Customs agrees. The word ''entry'' has been added throughout § 163.6(b) and elsewhere in the Part 163 texts as set forth below wherever the context clearly relates to entry records, and the erroneous reference to paragraph ''(b)(2)'' has been corrected.

2. Customs disagrees with the suggested changes. The regulations already provide for penalties *only* for nonproduction of entry records. Importers of record are not the only parties required to maintain and produce entry records, nor are they the only parties who may be subject to § 163.6 penalties. Customs does not have the authority to promulgate regulations that are inconsistent with the statutory requirements.

3. Customs disagrees. The ''sliding scale guidelines'' are more appropriate to mitigation guidelines. As regards the example provided, it was reflected in proposed § 163.6(b)(4)(ii) (§ 163.6(b)(3)(ii) as set forth below) as one of the bases for avoidance of penalties.

4. The reason for the substantial statutory penalties is to impress upon recordkeepers the importance of maintaining and producing records and speaks more eloquently to the issue than any narrative attempt by Customs. Customs Headquarters will exercise tight control over the imposition of recordkeeping penalties and, until Customs gains some experience in administering this penalty provision, no such penalty will be issued without prior Headquarters review and approval. Customs is preparing mitigation guidelines to cover recordkeeping penalties; however, Customs does not have authority to promulgate regulations that are inconsistent with the basic statutory requirements to maintain entry records and produce them pursuant to a demand from Customs. Finally, the changes to § 163.6(a) discussed above will eliminate much of the source of the concerns reflected in this comment.

5. Customs agrees that regulations, standing alone, cannot override U.S. international obligations, but Customs does not agree that these recordkeeping regulations override the NAFTA and the regulations thereunder in any respect. Moreover, even if there were a conflict between the NAFTA and the Part 163 provisions, the latter would prevail to the extent that they reflect the requirements of sections 508 and 509 (see 19 U.S.C. 3312(a)). As regards the GSP, the Customs requirements regarding evidence to support a claim for free entry under the GSP are contained in §§ 10.171–10.178 of the Customs Regulations and continue in effect. Neither the Part 163 regulatory texts nor the (a)(1)(A) list would have the effect of amending or superseding those regulations. The (a)(1)(A) list is merely a convenient summary list of existing entry requirements.

6. Since the record in the example was produced, the provisions of § 163.6(b)(2) would not apply. As to whether Customs could reliquidate the entry to correct the classification error, it would depend on whether the liquidation was final. If it was, the government could only collect increased duties pursuant to 19 U.S.C. 1592(d) and only if a violation of 19 U.S.C. 1592(a) was involved.

7. Customs does not agree that the subparagraph is too restrictive, and it is noted in this regard that the regulatory text reflects the terms of the statute (section 509(g)(7)(A)). Nor does Customs believe that a graduated scale should be made for the volume of records required to be kept by large firms with multiple locations. It is noted that the statute (section 509(a)(1)(B)) provides that a person ''may be subject to penalty under subsection (g)'' if the person fails to comply with a demand for entry records. The statute and the legislative history relating thereto make it clear that imposition of penalties for failure to comply with a demand for entry records is discretionary with Customs, not mandatory.

In addition to the changes discussed above, the following changes have been made to the text of § 163.6(b) as set forth below:

a. Paragraphs (2) and (3) have been merged into one paragraph (2), with proposed paragraph (2) set forth as subparagraph (2)(i) and titled ''general'' and proposed paragraph (3) set forth as subparagraph (2)(ii) and titled ''exception,'' and proposed paragraphs (4)–(7) have consequently been redesignated as paragraphs (3)–(6).

b. In redesignated subparagraph (3)(iv), which concerns avoidance of penalties by persons who participate in the Recordkeeping Compliance Program, a reference to being ''generally in compliance with * * * that program'' has been added to reflect the terms of the statute (section 509(g)(7)(A)(ii)).

c. Redesignated paragraph (6) has been redrafted to more closely reflect the terms of the statute (section 509(g)(6)) as regards the relationship between the imposition of penalties and the issuance of a summons and in order to avoid the impression given by the proposed text that the issuance of a summons is in the nature of a sanction.

Section 163.6(c)(2)—Notice of Examination of Records

Comment: This proposed section states that the notice of intent to examine records may be provided ''electronically, orally or in writing''. However, when notice is provided orally, provision must be made for the oral request to be followed by a written request.

Customs response: Customs does not agree with this suggestion in the case of non-entry records because the need to examine specific records under § 163.6(c)(2) could arise during the course of an on-site inquiry, compliance assessment, audit or investigation, in which case the requirement for a written follow-up notice would be impractical. However, Customs agrees with the suggestion insofar as entry records are concerned because there is no basis under the statute for making a distinction in this regard between entry records demanded under paragraph (a) and entry records examined under paragraph (c) (see the below discussion of the changes that Customs has made to the text of § 163.6(c)(2)).

Based on a further internal review of the proposed text, Customs has made the following substantive changes to the text of § 163.6(c)(2) as set forth below:

a. A reference to ''entry or other'' records has been added to clarify that, consistent with the statutory provision on which § 163.6(c) is based (that is, section 509(a)), the examination of records applies equally to entry records.

b. The words '', statements, declarations, or other documents'' have been removed after the word ''records'' because they are covered by the § 163.1(a) definition of ''records'' and thus are redundant.

c. The word ''reasonable'' has been added as a modifier of ''notice'' in order to reflect a basic standard contained in the statute (that is, section 509(a)(1)).

d. A new sentence has been added at the end to clarify that the notice and production procedures under paragraph (a), and the penalties or other actions under paragraph (b) for failure to produce, apply to the examination of entry records under this provision.

Section 163.10(e)—Stay of Summons

Comment: The proposed text did not explain the process by which an owner, importer, etc., would issue a stay of a summons. The procedure should be described in detail so that the affected persons will know how to issue such a stay.

Customs response: The procedures whereby an owner, importer, etc. would issue a stay of compliance with a

summons were clearly set forth in paragraph (c) of proposed § 163.10 (which has been redesignated as § 163.8 as discussed below). In order to clarify the application of the regulatory texts, the paragraph (e) text as set forth below has been modified by the addition of a reference to issuance of a stay ''in accordance with paragraph (c) of this section''.

Based on a further internal review of the summons and related provisions of proposed §§ 163.7–163.12, Customs has determined that the following changes should be made to the proposed texts:

a. Although proposed §§ 163.7–163.9 followed the 3-section approach of present Part 162, Customs now believes that it would be preferable to combine these three sections into one section for the following reasons: (1) The three sections all deal with various aspects of essentially one subject, that is, the basic procedures regarding the issuance and execution of a summons; and (2) a single-section approach will assist in drawing the necessary distinction between these normal procedures and the special procedures for third-party recordkeepers covered by the next section. Accordingly, the three proposed sections have been redesignated in the Part 163 texts set forth below as § 163.7, with proposed § 163.7 covered by paragraph (a), proposed § 163.8 covered by paragraph (b), and proposed § 163.9 covered by paragraph (c). In addition, because paragraph (b) of proposed § 163.7 (which concerns the transcript of testimony under oath) was clearly out-of-place (context), it has been moved to the end of new § 163.7 as paragraph (d). As a consequence of the adoption of the one-section approach for proposed §§ 163.7–163.9, the remaining sections of Part 163 (that is, §§ 163.10–163.15) have been redesignated below as §§ 163.8–163.13.

b. In paragraph (a) of new § 163.7: (1) The first sentence of the introductory text has been modified by the addition of a reference to issuance of a summons requiring a person ''within a reasonable period of time to appear before the appropriate Customs officer,'' in order to more closely reflect the terms of the corresponding statutory provision (section 509(a)(2)); and (2) in subparagraph (2), the words ''Canada or Mexico pursuant to the North American Free Trade Agreement Implementation Act (19 U.S.C. 3301(4)'' have been replaced by ''a NAFTA country as defined in 19 U.S.C. 3301(4),'' again in order to more closely track the corresponding statutory provision (section 509(a)(2)(A)(ii)).

c. In paragraph (b) of new § 163.7, subparagraph (1)(ii) has been modified by the addition of a reference to the address ''within the customs territory of the United States,'' in order to reflect the terms of the statute (section 509(a)(2)).

d. The text of paragraph (a) of redesignated § 163.8 (third-party recordkeeper summons) has been modified to refer to testimony relating to ''records pertaining'' to transactions of a person, in order to reflect the terms of the statute (section 509(d)(1)(B) and (d)(2)(B)).

e. In paragraph (e) of redesignated § 163.8, the three references to the taking of testimony have been removed because the statute (section 509(d)(6)) mentions (that is, precludes) only the examination of records in this context.

f. In the introductory text of paragraph (f)(3) of redesignated § 163.8, a reference has been added to ''the stay of compliance provisions of paragraph (c),'' because the judicial determination exception in the statute (section 509(d)(7)) is not limited to the notice provisions.

g. In redesignated § 163.9 (enforcement of summons), a sentence has been added at the end to state that a person who is entitled to notice under § 163.8(a) shall have the right to intervene in the enforcement proceeding. This new sentence reflects the terms of section 509(d)(5)(A) and, by being limited to a person entitled to notice, also reflects the exception contained in section 509(d)(7).

Section 163.13—Regulatory Audit Procedures

Comment: Three comments were submitted in regard to this proposed section. One commenter specifically stated its support for proposed paragraph (a)(9) which requires Customs auditors to send a copy of the formal written audit report to the person audited within 30 days following completion of the audit. The other two commenters expressed disappointment with the overall content of proposed § 163.13 and made the following points with regard to what they felt was missing from, and thus should be added to, the proposed text:

1. The proposed text sets forth only vague procedures to be followed by auditors, sets few time limits regarding the conduct of an audit, and provides for no direct consequences (sanctions) on the audit or the auditor for failing to adhere to the procedures or time limits that are provided. Thus, in effect, the proposed section does little more than repeat the provisions of 19 U.S.C. 1509(b).

2. For the new importer or an importer that has never been subjected to a regulatory audit, the proposed text fails to explain the purpose of a regulatory audit and does not distinguish between a compliance assessment and a full audit.

3. The proposed text does not specify what information will be required and does not outline the rights and obligations of the parties.

Customs response: 1. Customs disagrees and believes the regulatory provisions appropriately serve the intended purpose.

2 and 3. Customs believes that the Part 163 texts as set forth below (in particular, the definitions of ''audit'' and ''compliance assessment'' in §§ 163.1(c) and (e), the provisions regarding the examination of records in § 163.6, and the provisions of this section which has been redesignated as § 163.11 as discussed above) provide adequate basic guidance regarding these issues. Moreover, to the extent that more detailed guidance is required, other published agency guidelines and procedures are, or will be, made available (for example, cat kits, standard operating procedures, and audit manuals).

In the light of the modified definition of ''compliance assessment'' as discussed above (in which a compliance assessment is described as a type of importer audit but is no longer described as the first phase of an audit), and based on a further internal review of the proposed regulatory text, a number of changes have been incorporated in redesignated § 163.11 as set forth below. The majority of these changes are based on the view of Customs that, notwithstanding the fact that the term ''audit'' technically encompasses a compliance assessment, and consistent with current Customs practice, the statutory procedures applicable to full audits (that is, notice and time estimates, entry and closing conferences, and preparing and providing a copy of a formal written report) should be reflected specifically and succinctly in the regulations as applying equally to compliance assessments which are often performed independently of other audit procedures. The changes in question are as follows:

a. The section title has been modified to read ''compliance assessment and other audit procedures'', and throughout the section text each separate reference to an ''audit'' or to a ''compliance assessment'' has been replaced by a reference to a ''compliance assessment or other audit.''

b. The words ''which does not include a quantity verification for a customs bonded warehouse or general purpose

foreign trade zone or an inquiry,'' which are definitional in nature, have been removed from the introductory text of paragraph (a), and equivalent phraseology has been included in the definition of ''audit'' in § 163.1(c) but without any reference to an ''inquiry'' (see the above discussion regarding the addition of a new definition covering this term).

c. Although subparagraphs (a)(1) (regarding notice and time estimates), (a)(2) (regarding the entry conference) and (a)(3) (regarding additional time) remain essentially the same except for the textual change (use of the expression ''compliance assessment or other audit'') discussed above, the remainder of proposed paragraph (a) has been reorganized into three subparagraphs (a)(4) through (a)(6) in order to avoid repetitive text and otherwise simplify the text and in order to make clear the equal applicability of the subject procedures to all audit procedures (including compliance assessments). New subparagraph (a)(4) covers closing conferences, new subparagraph (a)(5) concerns the preparation of reports, and new subparagraph (a)(6) concerns sending a copy of the report.

d. The order of proposed paragraphs (b) (exceptions) and (c) (petitions regarding failure to hold a closing conference) has been reversed because the exceptions include, and thus should follow, the petition provision.

e. The reference in proposed paragraph (b) to paragraphs ''(a)(4) through (a)(6) and (a)(8) through (a)(9) and (c)'' has been modified in the paragraph (c) text of § 163.11 set forth below to read ''(a)(5), (a)(6) and (b)'' in order to properly reflect the exceptions in the statute (section 509(b)(5), which refers to paragraphs (3) and (4) but not to paragraph (2) which concerns entry and closing conferences) and in order to reflect the simplified paragraph (a) structure discussed above.

Section 163.14—Recordkeeping Compliance Program

Comment: Six commenters made the following points regarding this proposed section:

1. Customs does not have the resources necessary to grant the number of requests to become certified recordkeepers that will come in under the program. Customs may wish to allow customs brokers (the only persons licensed and regulated by Customs) to handle these requests and audit parties participating in the program. Customs could then audit the customs brokers' processes in providing these suggested services.

2. There is no concrete benefit for companies to enter into the certification program. A blanket waiver from all penalties (except perhaps those resulting from the intentional destruction of records) would be a more meaningful inducement for companies to enter the program. If a participant fails to meet the level of service required by the certification program, the participant would be given a warning notice or have its certification revoked.

3. One commenter stated that while the Recordkeeping Compliance Program concept is good, the proposed benefits are less than what would be expected for the time and effort to establish and maintain such a program because the proposed text appears to grant one violation whereby mitigation would be considered, and thereafter suspension or removal of participation would result and without further consideration for mitigation of monetary penalties; even a ''three strikes and out'' law appears to be less severe on violators. Based on similar reasoning, another commenter recommended that the following new sentence be added after the first sentence of paragraph (b) of this proposed section: ''The participant is also eligible for reduction or cancellation of any liquidated damages assessments or penalties arising under 19 U.S.C. 1592 or 1641 for failure to produce certain records.''

4. The Recordkeeping Compliance Program must be limited to (a)(1)(A) entry records because the *quid pro quo* of the program is the avoidance of penalties for failure to produce demanded entry records; thus, the program should not apply to records kept in the ordinary course of business. In this regard, some of the program requirements take on a radically burdensome character when applied to ordinary business records. For example, proposed paragraph (a)(3)(iv) requires the participant to have procedures in place regarding the preparation and maintenance of required records and the production of such records to Customs. Thousands of hours would be required for a Fortune 500 company to comply with this requirement because of the extensive nature of its financial accounting recordkeeping systems.

5. Proposed paragraph (a)(3)(vi) should be revised to read as follows: ''(vi) Have a record maintenance procedure which complies with the requirements of Customs and other federal agencies whose regulations apply to the import transactions.'' This change will simplify the text and also recognizes that an importer may be subject to other related regulatory recordkeeping requirements.

6. Two commenters criticized proposed paragraph (a)(3)(vii) which requires program participants to disclose to Customs variances to, and violations of, the program requirements and to take corrective action when notified by Customs of any such variances or violations. One commenter complained that it creates the potential for self-incrimination and eliminates the voluntary nature of prior disclosures of violations pursuant to the civil penalty statute; this commenter argued that acceptable procedures should merely require that the recordkeeper consult with legal counsel and take remedial steps that may include Customs notification. The other commenter stated that the recordkeeper should be allowed a reasonable time after discovery to correct the error before reporting to Customs; the recordkeeper would still be obliged to report the error to Customs and Customs may still take appropriate action if not satisfied with the corrective action taken by the recordkeeper.

7. The Recordkeeping Compliance Handbook referred to in this proposed section should be part of the regulatory text or should be posted on the Customs Internet web site.

Customs response: 1. Customs disagrees. Customs has adequate resources to process applications for the Recordkeeping Compliance Program. Moreover, since Customs will be performing the investigations and compliance assessments, audits and other inquiries, it is only appropriate that Customs retain the approval authority for this program and not delegate it to private concerns.

2. Customs disagrees. The regulatory text provides for issuance of a notice in lieu of a penalty for the first violation, and Customs considers this to be a reasonably concrete benefit. A blanket waiver would not be feasible and would be unwarranted since the statute (section 509(g)(7)(A)) specifically provides for an alternative to penalties only if the violation is not a repeat or willful violation.

3. Customs disagrees. The proposed text did not limit mitigation under 19 U.S.C. 1618 to the first violation. Moreover, the regulatory text permits, but does not mandate, removal from the program. The suggested additional sentence would be inappropriate since it goes beyond the authority conferred on Customs by the statute.

Based on a further review of the proposed regulatory text, Customs has concluded that it is redundant, and thus unnecessary, to refer to penalty mitigation in this regulatory context because the opportunity for mitigation

is in theory available to any person under section 509(g)(5) and 19 U.S.C. 1618 without regard to whether the person is a participant in the Recordkeeping Compliance Program; the text of the opening paragraph of proposed § 163.14 (redesignated below as § 163.12 as discussed above) has been modified accordingly. In addition, a new sentence has been added at the end of that opening paragraph to clarify that participation in the Recordkeeping Compliance Program has no limiting effect on the authority of Customs to use other legal means (summons, court order, etc.) to compel a participant to produce records.

4. Customs agrees that a recordkeeper's *quid pro quo* for participating in the Recordkeeping Compliance Program (that is, having an alternative to a penalty for failure to produce a demanded record) only has reference to entry ((a)(1)(A) list) records, and appropriate references to ''entry'' records have been added to the text of redesignated § 163.12 to clarify this point. However, this does not mean that a recordkeeper's responsibilities or obligations under the Recordkeeping Compliance Program relate only to ''entry records.'' In this regard, the importing community is reminded of the requirement to make, keep, and render for examination and inspection business, financial and other records (including, but not limited to, statements, declarations, documents and electronically generated data) which pertain to any activity specified in the statute (section 508(a) and (b)) and in the regulations (§ 163.1(a)(2)); both the statute (section 509(f)(2)(A)–(F)) and the implementing regulations (§ 163.12(b)(3)(i)–(vi)) set forth Recordkeeping Compliance Program certification criteria involving recordkeeping standards that clearly relate to records in this broad sense rather than only in the narrower context of ''entry records.'' Thus, whereas a failure to properly maintain and produce a particular record will not always constitute a violation giving rise to a potential liability for section 509(g) penalties, such a failure nevertheless would always be relevant to the issue of whether a recordkeeper may participate in the Recordkeeping Compliance Program.

5. Customs does not believe that it is necessary or appropriate to refer to the requirements of other government agencies in this context.

6. Customs disagrees. The reporting of recordkeeping violations under the Recordkeeping Compliance Program does not affect the voluntary nature of prior disclosures. The regulatory text in question merely reflects the terms of the statute (section 509(f)(2)(F)).

7. Customs does not agree that the Recordkeeping Compliance Handbook (which is merely for guidance purposes) should be included within the regulatory texts. However, the Handbook will be posted to the Customs internet web site (www.customs.ustreas.gov) and will be available through the Customs Electronic Bulletin Board (703–921–6155).

Based on a further internal review of the proposed regulatory texts and as a result of other changes made to the proposed texts as discussed above, Customs has determined that a number of additional changes should be made to the Recordkeeping Compliance Program provisions of redesignated § 163.12 and proposed § 163.15 (redesignated as § 163.13 as discussed above). These changes, reflected in the texts set forth in this document, are as follows:

a. As a consequence of the changes to the definition of ''certified recordkeeper'' and the removal of the definition of ''certified recordkeeper's agent'', all references to agents of certified recordkeepers, and all textual discussions of such agents, have been removed.

b. As a consequence of the removal from § 163.5 of the requirement for Customs approval of alternate storage methods, all references to ''approved'' alternate storage methods have been replaced by references to ''adopted'' alternate storage methods.

c. In redesignated § 163.12, the following organizational changes have been made: (1) The introductory text has been designated as paragraph (a) and proposed paragraph (a) has been redesignated as (b); (2) proposed paragraph (b), which concerned benefits of participation, has been redesignated as paragraph (d) and has been reheaded ''alternatives to penalties''; (3) the discussion of the Customs Recordkeeping Compliance Handbook has been moved from paragraph (c) to paragraph (b)(2) since it relates to application procedures, and the paragraph (c) heading has been modified to refer to application ''review''; and (4) in redesignated paragraph (b)(3), which concerns certification requirements, the first listed requirement (proposed subparagraph (i) concerning compliance with the Customs Recordkeeping Compliance Handbook) has been moved into the introductory text and the remaining listed requirements have been renumbered accordingly.

d. In redesignated § 163.12(b)(1), the reference ''§ 163.2(a) and (c)'' has been changed to read ''§ 163.2(a)'' to conform to the statute (section 509(f)(1)) which, in identifying who may participate in the program, refers only to ''parties listed in section 508(a).'' The recordkeepers described in § 163.2(c) (preparers and signers of NAFTA Certificates of Origin) are mentioned in section 509(b) and thus are outside the scope of the statutory (and, thus, regulatory) provisions in question. In addition, the second sentence of the proposed text (regarding the voluntary nature of program participation) has been removed because it repeats what has already been said in the preceding paragraph.

e. In redesignated § 163.12(b)(3), all references to an ''agreement'' between Customs and the participant have been removed because no separate agreements will exist.

f. The texts of redesignated §§ 163.12(c)(1) and (c)(2) have been modified to clarify that the Miami regulatory audit field office will also be responsible for reviewing and approving the application and issuing the certification.

g. In redesignated § 163.12(d)(1), the following changes have been made: (1) The first sentence of the text as proposed (proposed § 163.14(b)(1)) has been eliminated because the benefits of the program have already been stated earlier; (2) in the first sentence of the text below, a proviso has been added regarding general compliance with the procedures and requirements of the program in order to reflect the terms of the statute (section 509(g)(7)(A)(ii); and (3) in the last sentence regarding the application of sanctions, the references to ''no attempt to correct deficiencies'' and to ''a failure to exercise reasonable care'' have been removed, and a reference to removal of certification ''until corrective action satisfactory to Customs is taken'' has been added at the end in order to reflect the terms of the statute (section 509(g)(7)(A)).

h. In redesignated § 163.12(d), a new subparagraph (3) has been added to reflect the requirement in the statute (section 509(g)(7)(C)) that a program participant who has received a notice of violation must notify Customs within a reasonable time regarding the steps that have been taken to prevent a recurrence of the violation.

i. In addition to the changes noted above, redesignated § 163.13 as set forth below has been extensively modified (1) by providing for ''removal'' of certification in place of ''suspension'' or ''revocation'' of certification, (2) by adding a new paragraph (b) text to set forth specific grounds and procedures for denial of an application for

certification which were missing from the text as proposed, (3) by revising the list of grounds upon which a certification removal action may be based to conform to other changes made to the proposed texts by this document and to reflect more closely the standards that are applied in other regulatory contexts involving the removal of privileges previously granted by Customs, and (4) by joining the denial appeal provisions with the removal appeal procedures in paragraph (d) and adding a 30-day appeal period for removal appeals to align on the appeal period prescribed for denial appeals. Thus, under the modified § 163.13 text, paragraph (a) consists of a general statement referring to certification denial and removal actions, paragraph (b) sets forth certification denial procedures, paragraph (c) concerns certification removal, and paragraph (d) concerns the appeal of certification denial and removal. Finally, the texts in new paragraphs (b) and (c) have been modified to specify that both initial application/certification denials and initial certification removal actions are taken by the Director of the Miami regulatory audit field office, and the text of new subparagraph (c)(3), which concerns the effect of removal actions, has been modified to limit the circumstances in which a removal action will take effect upon issuance of the notice (thus, in most cases the action will be effective only after the appeal procedure has been concluded).

Appendix to Part 163

Although several comments were received with regard to the (a)(1)(A) list which was set forth in the Appendix to proposed new Part 163, Customs believes that such comments should be dealt with not in this document but rather in connection with the overall review of the (a)(1)(A) list referred to in the notice published in the **Federal Register** on December 24, 1996 (61 FR 67872). Accordingly, the Appendix to Part 163 as set forth below reflects the (a)(1)(A) list as previously published except for two changes thereto which are necessary in order to reflect amendments to the Customs Regulations that were adopted after initial publication of the (a)(1)(A) list. These changes involve the following: (1) Replacement of the listings for §§ 7.8(a) and 7.8(b) by a listing for § 7.3(f), in order to reflect the revision and redesignation of former § 7.8 effected by T.D. 97–75 (published in the **Federal Register** on September 3, 1997, 62 FR 46433); and (2) the addition of a listing for § 12.140 which was added by T.D. 97–9 (published in the **Federal Register** on February 26, 1997, 62 FR 8620) and which requires the submission of specific new information in connection with the entry of certain softwood lumber products from Canada.

Additional Changes to the Regulations

In addition to the changes to the proposed regulatory texts identified and discussed above in connection with the public comments, Customs has made numerous editorial, nonsubstantive changes to the proposed texts (in most cases involving wording, punctuation or structure) in order to enhance the clarity, readability and application of the regulatory texts. Furthermore, following publication of the proposed regulatory texts, Customs discovered that a number of other changes to other provisions of the Customs Regulations, that are necessary in order to ensure conformity with the new Part 163 provisions, were inadvertently omitted from the published proposals. These additional conforming regulatory changes have therefore been included in this final rule document and are summarized below:

Part 19

On April 3, 1997, a final rule amending Part 19 of the Customs Regulations (19 CFR Part 19) in regard to duty-free stores was published in the **Federal Register** (62 FR 15831). The final texts included a revision of § 19.4 which, in paragraph (b)(4)(i)(B), sets forth a requirement to retain all records ''defined in § 162.1(a),'' which section is being removed by this document in favor of the definition in new § 163.1(a); accordingly, this document corrects that paragraph (b)(4)(i)(B) section reference to read ''§ 163.1(a).'' In addition, the new § 19.4 text sets forth, in paragraph (b)(5), rules regarding record retention in lieu of originals (including provisions regarding Customs approval of alternative storage methods); since the new Part 163 provisions (which have general application and thus clearly apply to duty-free store operators) include, in § 163.5, rules regarding alternative record storage, and in order to ensure regulatory consistency, this document replaces that paragraph (b)(5) text with a shorter text that refers to the § 163.5 provisions.

Part 113

Section 113.62(j) of the Customs Regulations (19 CFR 113.62(j)) sets forth the text of an agreement to comply with electronic entry filing requirements provided for in Part 143, as one of the conditions of the basic importation and entry bond. Subparagraphs (2) and (3) thereof refer to the retention of supporting documents and the production thereof, but the language therein is not entirely consistent with the new Part 163 provisions. In the light of the changes to the Part 143 texts set forth in this document (which include an appropriate cross-reference regarding the applicability of the Part 163 provisions), this document revises the § 113.62(j) text to eliminate the subparagraph (2) and (3) provisions, thereby avoiding any possible inconsistency with the Part 143 and Part 163 texts.

Part 181

In § 181.12 of the Customs Regulations (19 CFR 181.12) which concerns the maintenance and availability of NAFTA export records: (1) In the introductory text of paragraph (a)(1), a specific reference to maintenance of the Certificate of Origin (or a copy thereof) has been added to more accurately reflect the scope of the corresponding statutory provisions (sections 508(b) and (c)); and (2) in paragraph (b)(1), the reference to ''§ 162.1d'' has been changed to read ''part 163'' to reflect adoption of new Part 163. In addition, in § 181.13 of the Customs Regulations (19 CFR 181.13) a sentence has been added at the end to clarify that penalties may be imposed pursuant to 19 U.S.C. 1508(e) for a failure to retain NAFTA export records. Finally, in § 181.22(a) of the Customs Regulations (19 CFR 181.22(a)), the reference in the last sentence to records as specified in ''§ 162.1a(a)'' has been changed to read ''§ 163.1(a)'' to reflect the location of the definition of ''records'' in the new Part 163 texts.

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, and after further review of this matter, Customs believes that the proposed regulatory amendments should be adopted as a final rule with certain changes thereto as discussed above and as set forth below. This document also includes an appropriate update of the list of information collection approvals contained in § 178.2 of the Customs Regulations (19 CFR 178.2).

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Regulatory Flexibility Act

Insofar as the regulatory amendments closely follow legislative direction, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601

et seq.), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1515–0214. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this final rule is in Part 163. Although other parts of the Customs Regulations are being amended, all information required by these amendments is contained or identified in Part 163. This information is to be maintained in the form of records which are necessary to ensure that the Customs Service will be able to effectively administer the laws it is charged with enforcing while, at the same time, imposing a minimum burden on the public it is serving. Respondents or recordkeepers are already required by statute or regulation to maintain the vast majority of the information covered in this proposed regulation. The likely respondents or recordkeepers are business organizations including importers, exporters and manufacturers.

The estimated average annual burden associated with the collection of information in this final rule is 117.2 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Information Services Group, Office of Finance, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229, and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 19

Customs duties and inspection, Imports, Exports, Reporting and recordkeeping requirements, Warehouses.

19 CFR Part 24

Accounting, Customs duties and inspection, Reporting and recordkeeping requirements, Harbors, Taxes.

19 CFR Part 111

Administrative practice and procedures, Customs duties and inspection, Brokers, Reporting and recordkeeping requirements, Penalties.

19 CFR Part 113

Bonds, Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 143

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Recordkeeping and reporting requirements, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Recordkeeping and reporting requirements.

19 CFR Part 178

Administrative practice and procedure, Recordkeeping and reporting requirements.

19 CFR Part 181

Canada, Customs duties and inspection, Exports, Imports, Mexico, Recordkeeping and reporting requirements, Trade agreements (North American Free Trade Agreement).

Amendments to the Regulations

Accordingly, for the reasons stated in the preamble, Chapter I of Title 19, Code of Federal Regulations (19 CFR Chapter I) is amended by amending Parts 19, 24, 111, 113, 143, 162, 178 and 181 and by adding a new Part 163 to read as follows:

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. The authority citation for Part 19 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624.

* * * * *

2. In § 19.4, paragraph (b)(4)(i)(B) is amended by removing the reference ''§ 162.1(a)'' and adding, in its place, the reference ''§ 163.1(a)'' and paragraph (b)(5) is revised to read as follows:

§ 19.4 Customs and proprietor responsibility and supervision over warehouses.

* * * * *

(b) * * *

(5) *Record retention in lieu of originals.* A warehouse proprietor may, in accordance with § 163.5 of this chapter, utilize alternative storage methods in lieu of maintaining records in their original formats.

* * * * *

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for Part 24 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624; 31 U.S.C. 9701.

* * * * *

§ 24.22 [Amended]

2. Section 24.22(d)(5) is amended by removing the phrase ''shall be maintained for a period of 3 years'' and adding, in its place, the phrase ''shall be maintained in the United States for a period of 5 years''.

3. Section 24.22(g)(6) is amended by removing the phrase ''shall be maintained for a period of 2 years'' and adding, in its place, the phrase ''shall be maintained in the United States for a period of 5 years''.

PART 111—CUSTOMS BROKERS

1. The authority citation for Part 111 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * * *

2. In § 111.1, the definition of ''Records'' is revised to read as follows:

§ 111.1 Definitions.

* * * * *

Records. ''Records'' means documents, data and information referred to in, and required to be made or maintained under, this part and any other records, as defined in § 163.1(a) of this chapter, that are required to be maintained by a broker under part 163 of this chapter.

* * * * *

3. Section 111.21 is amended by designating the existing paragraph as paragraph (a), by removing from the second sentence of newly designated paragraph (a) the words ''a copy of each entry made by him with all supporting records, except those documents he is required to file with Customs, and'', and by adding new paragraphs (b) and (c) to read as follows:

§ 111.21 Record of transactions.

(a) * * *

(b) Each broker shall comply with the provisions of this part and part 163 of this chapter when maintaining records that reflect on his transactions as a broker.

(c) Each broker shall designate a knowledgeable company employee to be the contact for Customs for broker-wide customs business and financial recordkeeping requirements.

§ 111.22 [Removed and reserved]

4. Section 111.22 is removed and reserved.

5. Section 111.23 is amended by revising paragraph (a)(1) to read as follows, by removing paragraphs (b), (c), (d) and (f), by redesignating paragraph (e) as paragraph (b), in newly redesignated paragraph (b) by removing the word ''centralized'' each time it appears and adding, in its place, the word ''consolidated'', in newly redesignated paragraphs (b)(1) and (b)(2)(ii) by removing the word ''financial'', in the introductory text of newly designated paragraph (b)(2) by removing the words ''Office of Field Operations, Headquarters'' [sic] and adding, in their place, the words ''Director, Regulatory Audit Division, U.S. Customs Service, 909 S.E. First Avenue, Miami, Florida 33131'', and in the first sentence of newly redesignated paragraph (b)(2)(i) by removing the word ''accounting'':

§ 111.23 Retention of records.

(a) *Place and period of retention*—(1) *Place.* Records shall be retained by a broker in accordance with the provisions of this part and part 163 of this chapter within the broker district that covers the Customs port to which they relate unless the broker chooses to consolidate records at one or more other locations, and provides advance notice of such consolidation to Customs, in accordance with paragraph (b) of this section.

* * * * *

PART 113—CUSTOMS BONDS

1. The authority citation for Part 113 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

2. Section 113.62(j) is revised to read as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(j) *Agreement to comply with electronic entry filing requirements.* If the principal is qualified to utilize electronic entry filing as provided for in part 143, subpart D, of this chapter, the principal agrees to comply with all conditions set forth in that subpart and to send and accept electronic transmissions without the necessity of paper copies.

* * * * *

PART 143—SPECIAL ENTRY PROCEDURES

1. The authority citation for Part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

§ 143.32 [Amended]

2. In § 143.32, paragraph (n) is amended by removing the reference ''§ 162.1a(a)'' and adding, in its place, the reference ''part 163''.

3. Section 143.35 is revised to read as follows:

§ 143.35 Procedure for electronic entry summary.

In order to obtain entry summary processing electronically, the filer will submit certified entry summary data electronically through ABI. Data will be validated and, if the transmission is found error-free, will be accepted. If it is determined through selectivity criteria and review of data that documentation is required for further processing of the entry summary, Customs will so notify the filer. Documentation submitted before being requested by Customs will not be accepted or retained by Customs. The entry summary will be scheduled for liquidation once payment is made under statement processing (see § 24.25 of this chapter).

4. In § 143.36, the first sentence of paragraph (a) and the introductory text of paragraph (c) are revised to read as follows:

§ 143.36 Form of immediate delivery, entry and entry summary.

(a) *Electronic form of data.* If Customs determines that the immediate delivery, entry or entry summary data is satisfactory under §§ 143.34 and 143.35, the electronic form of the immediate delivery, entry or entry summary through ABI shall be deemed to satisfy all filing requirements under this part.

* * *

* * * * *

(c) *Submission of invoice.* The invoice will be retained by the filer unless requested by Customs. If the invoice is submitted by the filer before a request is made by Customs, it will not be accepted or retained by Customs. When Customs requests presentation of the invoice, invoice data must be submitted in one of the following forms:

* * * * *

5. In § 143.37, paragraphs (c) and (d) are removed and paragraph (a) is revised to read as follows:

§ 143.37 Retention of records.

(a) *Record maintenance requirements.* All records received or generated by a broker or importer must be maintained in accordance with part 163 of this chapter.

* * * * *

§ 143.38 [Removed and Reserved]

6. Section 143.38 is removed and reserved.

7. Section 143.39 is revised to read as follows:

§ 143.39 Penalties.

(a) *Brokers.* Brokers unable to produce records requested by Customs under this chapter will be subject to disciplinary action or penalties pursuant to part 111 or part 163 of this chapter.

(b) *Importers.* Importers unable to produce records requested by Customs under this chapter will be subject to penalties pursuant to part 163 of this chapter.

PART 162—INSPECTION, SEARCH, AND SEIZURE

1. The authority citation for Part 162 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624.

* * * * *

2. The heading of Part 162 is revised to read as set forth above.

3. Section 162.0 is revised to read as follows:

§ 162.0 Scope.

This part contains provisions for the inspection, examination, and search of persons, vessels, aircraft, vehicles, and merchandise involved in importation, for the seizure of property, and for the forfeiture and sale of seized property. It also contains provisions for Customs enforcement of the controlled substances laws. Provisions relating to petitions for remission or mitigation of fines, penalties, and forfeitures incurred are contained in part 171 of this chapter.

4. In Subpart A, the Subpart heading is revised to read as follows:

Subpart A—Inspection, Examination, and Search

5. In Subpart A, §§ 162.1a through 162.1i are removed.

1. Part 163 is added to read as follows:

PART 163—RECORDKEEPING

Sec.
163.0 Scope.
163.1 Definitions.
163.2 Persons required to maintain records.
163.3 Entry records.
163.4 Record retention period.
163.5 Methods for storage of records.
163.6 Production and examination of entry and other records and witnesses; penalties.
163.7 Summons.
163.8 Third-party recordkeeper summons.
163.9 Enforcement of summons.
163.10 Failure to comply with court order; penalties.
163.11 Compliance assessment and other audit procedures.
163.12 Recordkeeping Compliance Program.
163.13 Denial and removal of program certification; appeal procedures.

Appendix to Part 163—Interim (a)(1)(A) List

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

§ 163.0 Scope.

This part sets forth the recordkeeping requirements and procedures governing the maintenance, production, inspection, and examination of records. It also sets forth the procedures governing the examination of persons in connection with any investigation or compliance assessment, audit or other inquiry conducted for the purposes of ascertaining the correctness of any entry, for determining the liability of any person for duties, fees and taxes due or that may be due, for determining liability for fines, penalties and forfeitures, or for ensuring compliance with the laws and regulations administered or enforced by Customs. Additional provisions concerning records maintenance and examination applicable to U.S. importers, exporters, and producers under the United States-Canada Free Trade Agreement and the North American Free Trade Agreement are contained in parts 10 and 181 of this chapter, respectively.

§ 163.1 Definitions.

When used in this part, the following terms shall have the meaning indicated:

(a) *Records*—(1) *In general.* The term ''records'' means any information made or normally kept in the ordinary course of business that pertains to any activity listed in paragraph (a)(2) of this section. The term includes any information required for the entry of merchandise (the (a)(1)(A) list) and other information pertaining to, or from which is derived, any information element set forth in a collection of information required by the Tariff Act of 1930, as amended, in connection with any activity listed in paragraph (a)(2) of this section. The term includes, but is not limited to, the following: Statements; declarations; documents; electronically generated or machine readable data; electronically stored or transmitted information or data; books; papers; correspondence; accounts; financial accounting data; technical data; computer programs necessary to retrieve information in a usable form; and entry records (contained in the (a)(1)(A) list).

(2) *Activities.* The following are activities for purposes of paragraph (a)(1) of this section:

(i) Any importation, declaration or entry;

(ii) The transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States;

(iii) The filing of a drawback claim;

(iv) The completion and signature of a NAFTA Certificate of Origin pursuant to § 181.11(b) of this chapter;

(v) The collection, or payment to Customs, of duties, fees and taxes; or

(vi) Any other activity required to be undertaken pursuant to the laws or regulations administered by Customs.

(b) *(a)(1)(A) list.* See the definition of ''entry records''.

(c) *Audit.* ''Audit'' means a Customs regulatory audit verification of information contained in records required to be maintained and produced by persons listed in § 163.2 or pursuant to other applicable laws and regulations administered by Customs but does not include a quantity verification for a customs bonded warehouse or general purpose foreign trade zone. The purpose of an audit is to determine that information submitted or required is accurate, complete and in accordance with laws and regulations administered by Customs.

(d) *Certified recordkeeper.* A ''certified recordkeeper'' is a person who is required to keep records under this chapter and who is a participant in the Recordkeeping Compliance Program provided for in § 163.12.

(e) *Compliance assessment.* A ''compliance assessment'' is a type of importer audit performed by a Customs Compliance Assessment Team which uses various audit techniques, including statistical testing of import and financial transactions, to assess the importer's compliance level in trade areas, to determine the adequacy of the importer's internal controls over its customs operations, and to determine the importer's rates of compliance.

(f) *Entry records/(a)(1)(A) list.* The terms ''entry records'' and ''(a)(1)(A) list'' refer to records required by law or regulation for the entry of merchandise (whether or not Customs required their presentation at the time of entry). The (a)(1)(A) list is contained in the Appendix to this part.

(g) *Inquiry.* An ''inquiry'' is any formal or informal procedure, other than an investigation, through which a request for information is made by a Customs officer.

(h) *Original.* The term ''original'', when used in the context of maintenance of records, has reference to records that are in the condition in which they were made or received by the person responsible for maintaining the records pursuant to 19 U.S.C. 1508 and the provisions of this chapter, including records consisting of the following:

(1) Electronic information which was used to develop other electronic records or paper documents;

(2) Electronic information which is in a readable format such as a facsimile paper format or an electronic or hardcopy spreadsheet;

(3) In the case of a paper record that is part of a multi-part form where all parts of the form are made by the same impression, one of the carbon-copy parts or a facsimile copy or photocopy of one of the parts; and

(4) A copy of a record that was provided to another government agency which retained it, provided that, if required by Customs, a signed statement accompanies the copy certifying it to be a true copy of the record provided to the other government agency.

(i) *Party/person.* The terms ''party'' and ''person'' refer to a natural person, corporation, partnership, association, or other entity or group.

(j) *Summons.* ''Summons'' means any summons issued under this part that requires the production of records or the giving of testimony, or both.

(k) *Technical data.* ''Technical data'' are records which include diagrams and other data with regard to a business or an engineering or exploration operation, whether conducted inside or outside the United States, and whether on paper, cards, photographs, blueprints, tapes, microfiche, film, or other media or in electronic or magnetic storage.

(l) *Third-party recordkeeper.* ''Third-party recordkeeper'' means any attorney, any accountant or any customs

broker other than a customs broker who is the importer of record on an entry.

§ 163.2 Persons required to maintain records.

(a) *General.* Except as otherwise provided in paragraph (b) or (e) of this section, the following persons shall maintain records and shall render such records for examination and inspection by Customs:

(1) An owner, importer, consignee, importer of record, entry filer, or other person who:

(i) Imports merchandise into the customs territory of the United States, files a drawback claim, or transports or stores merchandise carried or held under bond, or

(ii) Knowingly causes the importation or transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States;

(2) An agent of any person described in paragraph (a)(1) of this section; or

(3) A person whose activities require the filing of a declaration or entry, or both.

(b) *Domestic transactions.* For purposes of paragraph (a)(1)(ii) of this section, a person who orders merchandise from an importer in a domestic transaction knowingly causes merchandise to be imported only if:

(1) The terms and conditions of the importation are controlled by the person placing the order with the importer (for example, the importer is not an independent contractor but rather is the agent of the person placing the order: Whereas a consumer who purchases an imported automobile from a domestic dealer would not be required to maintain records, a transit authority that prepared detailed specifications from which imported subway cars or busses were manufactured would be required to maintain records); or

(2) Technical data, molds, equipment, other production assistance, material, components, or parts are furnished by the person placing the order with the importer with knowledge that they will be used in the manufacture or production of the imported merchandise.

(c) *Recordkeeping required for certain exporters.* Any person who exports goods to Canada or Mexico for which a Certificate of Origin was completed and signed pursuant to the North American Free Trade Agreement must also maintain records in accordance with part 181 of this chapter.

(d) *Recordkeeping required for customs brokers.* Each customs broker must also make and maintain records and make such records available in accordance with part 111 of this chapter.

(e) *Recordkeeping not required for certain travelers.* After having physically cleared the Customs facility, a traveler who made a baggage or oral declaration upon arrival in the United States will not be required to maintain supporting records regarding non-commercial merchandise acquired abroad which falls within the traveler's personal exemptions or which is covered by a flat rate of duty.

§ 163.3 Entry records.

Any person described in § 163.2(a) with reference to an import transaction shall be prepared to produce or transmit to Customs, in accordance with § 163.6(a), any entry records which may be demanded by Customs. If entry records submitted to Customs not pursuant to a demand are returned by Customs, or if production of entry records at the time of entry is waived by Customs, such person shall continue to maintain those entry records in accordance with this part. Entry records which are normally kept in the ordinary course of business must be maintained by such person in accordance with this part whether or not copies thereof are retained by Customs.

§ 163.4 Record retention period.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, any record required to be made, kept, and rendered for examination and inspection by Customs under § 163.2 or any other provision of this chapter shall be kept for 5 years from the date of entry, if the record relates to an entry, or 5 years from the date of the activity which required creation of the record.

(b) *Exceptions.* (1) Any record relating to a drawback claim shall be kept until the third anniversary of the date of payment of the claim.

(2) Packing lists shall be retained for a period of 60 calendar days from the end of the release or conditional release period, whichever is later, or, if a demand for return to Customs custody has been issued, for a period of 60 calendar days either from the date the goods are redelivered or from the date specified in the demand as the latest redelivery date if redelivery has not taken place.

(3) A consignee who is not the owner or purchaser and who appoints a customs broker shall keep a record pertaining to merchandise covered by an informal entry for 2 years from the date of the informal entry.

(4) Records pertaining to articles that are admitted free of duty and tax pursuant to 19 U.S.C. 1321(a)(2) and §§ 10.151 through 10.153 of this chapter, and carriers' records pertaining to manifested cargo that is exempt from entry under the provisions of this chapter, shall be kept for 2 years from the date of the entry or other activity which required creation of the record.

(5) If another provision of this chapter sets forth a retention period for a specific type of record that differs from the period that would apply under this section, that other provision controls.

§ 163.5 Methods for storage of records.

(a) *Original records.* All persons listed in § 163.2 shall maintain all records required by law and regulation for the required retention periods and as original records, whether paper or electronic, unless alternative storage methods have been adopted in accordance with paragraph (b) of this section. The records, whether in their original format or under an alternative storage method, must be capable of being retrieved upon lawful request or demand by Customs.

(b) *Alternative method of storage*—(1) *General.* Any of the persons listed in § 163.2 may maintain any records, other than records required to be maintained as original records under laws and regulations administered by other Federal government agencies, in an alternative format, provided that the person gives advance written notification of such alternative storage method to the Director, Regulatory Audit Division, U.S. Customs Service, 909 S.E. First Avenue, Miami, Florida 33131, and provided further that the Director of the Miami regulatory audit field office does not instruct the person in writing as provided herein that certain described records may not be maintained in an alternative format. The written notice to the Director of the Miami regulatory audit field office must be provided at least 30 calendar days before implementation of the alternative storage method, must identify the type of alternative storage method to be used, and must state that the alternative storage method complies with the standards set forth in paragraph (b)(2) of this section. If an alternative storage method covers records that pertain to goods under Customs seizure or detention or that relate to a matter that is currently the subject of an inquiry or investigation or administrative or court proceeding, the appropriate Customs office may instruct the person in writing that those records must be maintained as original records and therefore may not be converted to an alternative format until specific written authorization is received from that Customs office. A written instruction to a person under

this paragraph may be issued during the 30-day advance notice period prescribed in this section or at any time thereafter, must describe the records in question with reasonable specificity but need not identify the underlying basis for the instruction, and shall not preclude application of the planned alternative storage method to other records not described therein.

(2) *Standards for alternative storage methods.* Methods commonly used in standard business practice for storage of records include, but are not limited to, machine readable data, CD ROM, and microfiche. Methods that are in compliance with generally accepted business standards will generally satisfy Customs requirements, provided that the method used allows for retrieval of records requested within a reasonable time after the request and provided that adequate provisions exist to prevent alteration, destruction, or deterioration of the records. The following standards must be applied by recordkeepers when using alternative storage methods:

(i) Operational and written procedures are in place to ensure that the imaging and/or other media storage process preserves the integrity, readability, and security of the information contained in the original records. The procedures must include a standardized retrieval process for such records. Vendor specifications/documentation and benchmark data must be available for Customs review;

(ii) There is an effective labeling, naming, filing, and indexing system;

(iii) Except in the case of packing lists (see § 163.4(b)(2)), entry records must be maintained in their original formats for a period of 120 calendar days from the end of the release or conditional release period, whichever is later, or, if a demand for return to Customs custody has been issued, for a period of 120 calendar days either from the date the goods are redelivered or from the date specified in the demand as the latest redelivery date if redelivery has not taken place;

(iv) An internal testing of the system must be performed on a yearly basis;

(v) The recordkeeper must have the capability to make, and must bear the cost of, hard-copy reproductions of alternatively stored records that are required by Customs for audit, inquiry, investigation, or inspection of such records; and

(vi) The recordkeeper shall retain and keep available one working copy and one back-up copy of the records stored in a secure location for the required periods as provided in § 163.4.

(3) *Changes to alternative storage procedures.* No changes to alternative recordkeeping procedures may be made without first notifying the Director of the Miami regulatory audit field office. The notification must be in writing and must be provided to the director at least 30 calendar days before implementation of the change.

(4) *Penalties.* All persons listed in § 163.2 who use alternative storage methods for records and who fail to maintain or produce the records in accordance with this part shall be subject to penalties pursuant to § 163.6 for entry records or sanctions pursuant to §§ 163.9 and 163.10 for other records.

(5) *Failure to comply with alternative storage requirements.* If a person listed in § 163.2 uses an alternative storage method for records that is not in compliance with the conditions and requirements of this section, the appropriate Customs office may instruct the person in writing to discontinue use of the alternative storage method. The instruction shall take effect upon receipt thereof and shall remain in effect until the noncompliance has been rectified and alternative storage has recommenced in accordance with the procedures set forth in paragraph (b)(1) of this section.

§ 163.6 Production and examination of entry and other records and witnesses; penalties.

(a) *Production of entry records.* Pursuant to written, oral, or electronic notice, any Customs officer may require the production of entry records by any person listed in § 163.2(a) who is required under this part to maintain such records, even if the entry records were required at the time of entry. Any oral demand for entry records shall be followed by a written or electronic demand. The entry records shall be produced within 30 calendar days of receipt of the demand or within any shorter period as Customs may prescribe when the entry records are required in connection with a determination regarding the admissibility or release of merchandise. Should any person from whom Customs has demanded entry records encounter a problem in timely complying with the demand, such person may submit a written or electronic request to Customs for approval of a specific additional period of time in which to produce the records; the request must be received by Customs before the applicable due date for production of the records and must include an explanation of the circumstances giving rise to the request. Customs will promptly advise the requesting person electronically or in writing either that the request is denied or that the requested additional time period, or such shorter period as Customs may deem appropriate, is approved. The mere fact that a request for additional time to produce demanded entry records was submitted under this section shall not by itself preclude the imposition of a monetary penalty or other sanction under this part for failure to timely produce the records, but no such penalty or other sanction will be imposed if the request is approved and the records are produced before expiration of that additional period of time.

(b) *Failure to produce entry records*—(1) *Monetary penalties applicable.* The following penalties may be imposed if a person fails to comply with a lawful demand for the production of an entry record and is not excused from a penalty pursuant to paragraph (b)(3) of this section:

(i) If the failure to comply is a result of the willful failure of the person to maintain, store, or retrieve the demanded record, such person shall be subject to a penalty, for each release of merchandise, not to exceed $100,000, or an amount equal to 75 percent of the appraised value of the merchandise, whichever amount is less; or

(ii) If the failure to comply is a result of negligence of the person in maintaining, storing, or retrieving the demanded record, such person shall be subject to a penalty, for each release of merchandise, not to exceed $10,000, or an amount equal to 40 percent of the appraised value of the merchandise, whichever amount is less.

(2) *Additional actions*—(i) *General.* In addition to any penalty imposed under paragraph (b)(1) of this section, and except as otherwise provided in paragraph (b)(2)(ii) of this section, if the demanded entry record relates to the eligibility of merchandise for a column 1 special rate of duty in the Harmonized Tariff Schedule of the United States (HTSUS), the entry of such merchandise:

(A) If unliquidated, shall be liquidated at the applicable HTSUS column 1 general rate of duty; or

(B) If liquidated within the 2-year period preceding the date of the demand, shall be reliquidated, notwithstanding the time limitation in 19 U.S.C. 1514 or 1520, at the applicable HTSUS column 1 general rate of duty.

(ii) *Exception.* Any liquidation or reliquidation under paragraph (b)(2)(i)(A) or (b)(2)(ii)(B) of this section shall be at the applicable HTSUS column 2 rate of duty if Customs demonstrates that the merchandise should be dutiable at such rate.

(3) *Avoidance of penalties.* No penalty may be assessed under paragraph (b)(1)

of this section if the person who fails to comply with a lawful demand for entry records can show:

(i) That the loss of the demanded record was the result of an act of God or other natural casualty or disaster beyond the fault of such person or an agent of the person;

(ii) On the basis of other evidence satisfactory to Customs, that the demand was substantially complied with;

(iii) That the record demanded was presented to and retained by Customs at the time of entry or submitted in response to an earlier demand; or

(iv) That he has been certified as a participant in the Recordkeeping Compliance Program (see § 163.12), that he is generally in compliance with the appropriate procedures and requirements of that program, and that the violation in question is his first violation and was a non-willful violation.

(4) *Penalties not exclusive.* Any penalty imposed under paragraph (b)(1) of this section shall be in addition to any other penalty provided by law except for:

(i) A penalty imposed under 19 U.S.C. 1592 for a material omission of any information contained in the demanded record; or

(ii) Disciplinary action taken under 19 U.S.C. 1641.

(5) *Remission or mitigation of penalties.* A penalty imposed under this section may be remitted or mitigated under 19 U.S.C. 1618.

(6) *Customs summons.* The assessment of a penalty under this section shall not limit or preclude the issuance or enforcement of a summons under this part.

(c) *Examination of entry and other records*—(1) *Reasons for examination.* Customs may initiate an investigation or compliance assessment, audit or other inquiry for the purpose of:

(i) Ascertaining the correctness of any entry, determining the liability of any person for duties, taxes and fees due or duties, taxes and fees which may be due, or determining the liability of any person for fines, penalties and forfeitures; or

(ii) Ensuring compliance with the laws and regulations administered or enforced by Customs.

(2) *Availability of records.* During the course of any investigation or compliance assessment, audit or other inquiry, any Customs officer, during normal business hours, and to the extent possible at a time mutually convenient to the parties, may examine, or cause to be examined, any relevant entry or other records by providing the person responsible for such records with reasonable written, oral or electronic notice that describes the records with reasonable specificity. The examination of entry records shall be subject to the notice and production procedures set forth in paragraph (a) of this section, and a failure to produce entry records may result in the imposition of penalties or the taking of other action as provided in paragraph (b) of this section.

(3) *Examination notice not exclusive.* In addition to, or in lieu of, issuance of an examination notice under paragraph (c)(2) of this section, Customs may issue a summons pursuant to § 163.7, and seek its enforcement pursuant to §§ 163.9 and 163.10, to compel the production of any records required to be maintained and produced under this chapter.

§ 163.7 Summons.

(a) *Who may be served.* During the course of any investigation or compliance assessment, audit or other inquiry initiated for the reasons set forth in § 163.6(c), the Commissioner of Customs or his designee, but no designee of the Commissioner below the rank of port director, field director of regulatory audit or special agent in charge, may issue a summons requiring a person within a reasonable period of time to appear before the appropriate Customs officer and to produce records or give relevant testimony under oath or both. Such a summons may be issued to any person who:

(1) Imported, or knowingly caused to be imported, merchandise into the customs territory of the United States;

(2) Exported merchandise, or knowingly caused merchandise to be exported, to a NAFTA country as defined in 19 U.S.C. 3301(4) (see also part 181 of this chapter) or to Canada during such time as the United States-Canada Free Trade Agreement is in force with respect to, and the United States applies that Agreement to, Canada;

(3) Transported or stored merchandise that was or is carried or held under customs bond, or knowingly caused such transportation or storage;

(4) Filed a declaration, entry, or drawback claim with Customs;

(5) Is an officer, employee, or agent of any person described in paragraph (a)(1) through (a)(4) of this section;

(6) Has possession, custody or care of records relating to an importation or other activity described in paragraph (a)(1) through (a)(4) of this section; or

(7) Customs may deem proper.

(b) *Contents of summons*—(1) *Appearance of person.* Any summons issued under this section to compel the appearance of a person shall state:

(i) The name, title, and telephone number of the Customs officer before whom the appearance shall take place;

(ii) The address within the customs territory of the United States where the person shall appear, not to exceed 100 miles from the place where the summons was served;

(iii) The time of appearance; and

(iv) The name, address, and telephone number of the Customs officer issuing the summons.

(2) *Production of records.* If a summons issued under this section requires the production of records, the summons shall set forth the information specified in paragraph (b)(1) of this section and shall also describe the records in question with reasonable specificity.

(c) *Service of summons*—(1) *Who may serve.* Any Customs officer is authorized to serve a summons issued under this section if designated in the summons to serve it.

(2) *Method of service*—(i) *Natural person.* Service upon a natural person shall be made by personal delivery.

(ii) *Corporation, partnership, association.* Service shall be made upon a domestic or foreign corporation, or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivery to an officer, managing or general agent, or any other agent authorized by appointment or law to receive service of process.

(3) *Certificate of service.* On the hearing of an application for the enforcement of a summons, the certificate of service signed by the person serving the summons is prima facie evidence of the facts it states.

(d) *Transcript of testimony under oath.* Testimony of any person taken pursuant to a summons may be taken under oath and when so taken shall be transcribed or otherwise recorded. When testimony is transcribed or otherwise recorded, a copy shall be made available on request to the witness unless for good cause shown the issuing officer determines under 5 U.S.C. 555 that a copy should not be provided. In that event, the witness shall be limited to inspection of the official transcript of the testimony. The testimony or transcript may be in the form of a written statement under oath provided by the person examined at the request of the Customs officer.

§ 163.8 Third-party recordkeeper summons.

(a) *Notice required.* Except as otherwise provided in paragraph (f) of this section, if a summons issued under § 163.7 to a third-party recordkeeper

requires the production of, or the giving of testimony relating to, records pertaining to transactions of any person, other than the person summoned, who is identified in the description of the records contained in the summons, then notice of the summons shall be provided to the person so identified in the summons.

(b) *Time of notice.* The notice of service of summons required by paragraph (a) of this section should be provided by the issuing officer immediately after service of summons is obtained under § 163.7(c), but in no event shall notice be given less than 10 business days before the date set in the summons for the production of records or the giving of testimony.

(c) *Contents of notice.* The issuing officer shall ensure that any notice issued under this section includes a copy of the summons and provides the following information:

(1) That compliance with the summons may be stayed if written direction not to comply with the summons is given by the person receiving notice to the person summoned;

(2) That a copy of any such direction to not comply and a copy of the summons shall be sent by registered or certified mail to the person summoned and to the Customs officer who issued the summons; and

(3) That the actions under paragraphs (c)(1) and (c)(2) of this section shall be accomplished not later than the day before the day fixed in the summons as the day upon which the records are to be examined or the testimony is to be given.

(d) *Service of notice.* The Customs officer who issues the summons shall serve the notice required by paragraph (a) of this section in the same manner as is prescribed in § 163.7(c)(2) for the service of a summons, or by certified or registered mail to the last known address of the person entitled to notice.

(e) *Examination of records precluded.* If notice is required by this section, no record may be examined before the date fixed in the summons as the date to produce the records. If the person entitled to notice under paragraph (a) of this section issues a stay of compliance with the summons in accordance with paragraph (c) of this section, no examination of records shall take place except with the consent of the person staying compliance or pursuant to an order issued by a U.S. district court.

(f) *Exceptions to notice and stay of summons provisions*—(1) *Personal liability for duties, fees, or taxes.* The notice provisions of paragraph (a) of this section shall not apply to any summons served on the person, or on any officer or employee of the person, with respect to whose liability for duties, fees, or taxes the summons is issued.

(2) *Verification of existence of records.* The notice provisions of paragraph (a) of this section shall not apply to any summons issued to determine whether or not records of transactions of an identified person have been made or kept.

(3) *Judicial determination.* The notice provisions of paragraph (a) of this section and the stay of compliance provisions of paragraph (c) of this section shall not apply with respect to a summons described in paragraph (a) of this section if a U.S. district court determines, upon petition by the issuing Customs officer, that reasonable cause exists to believe that the giving of notice may lead to an attempt:

(i) To conceal, destroy, or alter relevant records;

(ii) To prevent the communication of information from other persons through intimidation, bribery, or collusion; or

(iii) To flee to avoid prosecution, testifying, or production of records.

§ 163.9 Enforcement of summons.

Whenever a person does not comply with a Customs summons, the issuing officer may request the appropriate U.S. attorney to seek an order requiring compliance from the U.S. district court for the district in which the person is found or resides or is doing business. A person who is entitled to notice under § 163.8(a) shall have a right to intervene in any such enforcement proceeding.

§ 163.10 Failure to comply with court order; penalties.

(a) *Monetary penalties.* The U.S. district court for any judicial district in which a person served with a Customs summons is found or resides or is doing business may order such person to comply with the summons. Upon the failure of a person to obey a court order to comply with a Customs summons, the court may find such person in contempt and may assess a monetary penalty.

(b) *Importations prohibited.* If a person fails to comply with a court order to comply with a Customs summons and is adjudged guilty of contempt, the Commissioner of Customs, with the approval of the Secretary of the Treasury, for so long as that person remains in contempt:

(1) May prohibit importation of merchandise by that person, directly or indirectly, or for that person's account; and

(2) May withhold delivery of merchandise imported by that person, directly or indirectly, or for that person's account.

(c) *Sale of merchandise.* If any person remains in contempt for more than 1 year after the Commissioner issues instructions to withhold delivery under paragraph (b)(2) of this section, the merchandise shall be considered abandoned and shall be sold at public auction or otherwise disposed of in accordance with subpart E of part 162 of this chapter.

§ 163.11 Compliance assessment and other audit procedures.

(a) *Conduct of a Customs compliance assessment or other audit.* In conducting a compliance assessment or other audit, the Customs auditors, except as otherwise provided in paragraph (c) of this section, shall:

(1) Provide notice, telephonically and in writing, to the person who is to be the subject of the compliance assessment or other audit, in advance of the compliance assessment or other audit and with a reasonable estimate of the time to be required for the compliance assessment or other audit;

(2) Inform the person who is to be the subject of the compliance assessment or other audit, in writing and before commencing the compliance assessment or other audit, of his right to an entry conference at which time the objectives and records requirements of the compliance assessment or other audit will be explained and the estimated termination date will be set;

(3) Provide a further estimate of any additional time for the compliance assessment or other audit if, in the course of the compliance assessment or other audit, it becomes apparent that additional time will be required;

(4) Schedule a closing conference upon completion of the compliance assessment or other audit on-site work to explain the preliminary results of the compliance assessment or other audit;

(5) Complete a formal written compliance assessment or other audit report within 90 calendar days following the closing conference referred to in paragraph (a)(4) of this section, unless the Director, Regulatory Audit Division, at Customs Headquarters provides written notice to the person who was the subject of the compliance assessment or other audit of the reason for any delay and the anticipated completion date; and

(6) After application of any exemption contained in 5 U.S.C. 552, send a copy of the formal written compliance assessment or other audit report to the person who was the subject of the compliance assessment or other audit

within 30 calendar days following completion of the report.

(b) *Petition procedures for failure to conduct closing conference.* Except as otherwise provided in paragraph (c) of this section, if the estimated or actual termination date for a compliance assessment or other audit passes without a Customs auditor providing a closing conference to explain the results of the compliance assessment or other audit, the person who was the subject of the compliance assessment or other audit may petition in writing for such a conference to the Director, Regulatory Audit Division, U.S. Customs Service, Washington, DC 20229. Upon receipt of such a request, the Director shall provide for such a conference to be held within 15 calendar days after the date of receipt.

(c) *Exception to procedures.* Paragraphs (a)(5), (a)(6) and (b) of this section shall not apply after Customs commences a formal investigation with respect to the issue involved.

§ 163.12 Recordkeeping Compliance Program.

(a) *General.* The Recordkeeping Compliance Program is a voluntary Customs program under which certified recordkeepers may be eligible for alternatives to penalties (see paragraph (d) of this section) that might be assessed under § 163.6 for failure to produce a demanded entry record. However, even where a certified recordkeeper is eligible for an alternative to a penalty, participation in the Recordkeeping Compliance Program has no limiting effect on the authority of Customs to use a summons, court order or other legal process to compel the production of records by that certified recordkeeper.

(b) *Certification procedures*—(1) *Who may apply.* Any person described in § 163.2(a) who is required to maintain and produce entry records under this part may apply to participate in the Recordkeeping Compliance Program.

(2) *Where to apply.* An application for certification to participate in the Recordkeeping Compliance Program shall be submitted to the Director, Regulatory Audit Division, U.S. Customs Service, 909 S.E. First Avenue, Miami, Florida 33131. The application shall be submitted in accordance with the guidelines contained in the Customs Recordkeeping Compliance Handbook which may be obtained by downloading it from the Customs Electronic Bulletin Board (703–921–6155) or by writing to the Recordkeeping Compliance Program, Regulatory Audit Division, Office of Strategic Trade, U.S. Customs Service, 909 S.E. First Avenue, Suite 710, Miami, Florida 33131.

(3) *Certification requirements.* A recordkeeper may be certified as a participant in the Recordkeeping Compliance Program after meeting the general recordkeeping requirements established under this section or after negotiating an alternative program suited to the needs of the recordkeeper and Customs. To be certified, a recordkeeper must be in compliance with Customs laws and regulations. Customs will take into account the size and nature of the importing business and the volume of imports and Customs workload constraints prior to granting certification. In order to be certified, a recordkeeper must meet the applicable requirements set forth in the Customs Recordkeeping Compliance Handbook and must be able to demonstrate that it:

(i) Understands the legal requirements for recordkeeping, including the nature of the records required to be maintained and produced and the time periods relating thereto;

(ii) Has in place procedures to explain the recordkeeping requirements to those employees who are involved in the preparation, maintenance and production of required records;

(iii) Has in place procedures regarding the preparation and maintenance of required records, and the production of such records to Customs;

(iv) Has designated a dependable individual or individuals to be responsible for recordkeeping compliance under the program and whose duties include maintaining familiarity with the recordkeeping requirements of Customs;

(v) Has a record maintenance procedure acceptable to Customs for original records or has an alternative records maintenance procedure adopted in accordance with § 163.5(b); and

(vi) Has procedures for notifying Customs of any occurrence of a variance from, or violation of, the requirements of the Recordkeeping Compliance Program or negotiated alternative program, as well as procedures for taking corrective action when notified by Customs of violations or problems regarding such program. For purposes of this paragraph, the term ''variance'' means a deviation from the Recordkeeping Compliance Program that does not involve a failure to maintain or produce records or a failure to meet the requirements set forth in this section. For purposes of this paragraph, the term ''violation'' means a deviation from the Recordkeeping Compliance Program that involves a failure to maintain or produce records or a failure to meet the requirements set forth in this section.

(c) *Application review and approval and certification process*—(1) *Review of applications.* The Miami regulatory audit field office will process the application and will coordinate and consult, as may be necessary, with the appropriate Customs Headquarters and field officials. The Miami regulatory audit field office will review and verify the information contained in the application and may initiate an on-site verification prior to approval and certification. If an on-site visit is warranted, the Miami regulatory audit field office shall inform the applicant. If additional information is necessary to process the application, the applicant shall be notified. Customs requests for information not submitted with the application or for additional explanation of details will cause a delay in the application approval and certification of applicants and may result in the suspension of the application approval and certification process until the requested information is received by Customs.

(2) *Approval and certification.* If, upon review, Customs determines that the application should be approved and that certification should be granted, the Director of the Miami regulatory audit field office shall issue the certification with all the applicable conditions stated therein.

(d) *Alternatives to penalties*—(1) *General.* If a certified participant in the Recordkeeping Compliance Program does not produce a demanded entry record for a specific release or provide the information contained in the demanded entry record by acceptable alternate means, Customs shall, in lieu of a monetary penalty provided for in § 163.6(b), issue a written notice of violation to the person as described in paragraph (d)(2) of this section, provided that the certified participant is generally in compliance with the procedures and requirements of the program and provided that the violation was not a willful violation and was not a repeat violation. A willful failure to produce demanded entry records or repeated failures to produce demanded entry records may result in the issuance of penalties under § 163.6(b) and removal of certification under the program (see § 163.13) until corrective action satisfactory to Customs is taken.

(2) *Contents of notice.* A notice of violation issued to a participant in the Recordkeeping Compliance Program for failure to produce a demanded entry record or information contained therein shall:

(i) State that the recordkeeper has violated the recordkeeping requirements;

(ii) Identify the record or information which was demanded and not produced;

(iii) Warn the recordkeeper that future failures to produce demanded entry records or information contained therein may result in the imposition of monetary penalties and could result in the removal of the recordkeeper from the Recordkeeping Compliance Program.

(3) *Response to notice.* Within a reasonable time after receiving written notice under paragraph (d)(1) of this section, the recordkeeper shall notify Customs of the steps it has taken to prevent a recurrence of the violation.

§ 163.13 Denial and removal of program certification; appeal procedures.

(a) *General.* Customs may take, and applicants and participants may appeal and obtain administrative review of, the following decisions regarding the Recordkeeping Compliance Program provided for in § 163.12:

(1) Denial of certification for program participation in accordance with paragraph (b) of this section; and

(2) Removal of certification for program participation in accordance with paragraph (c) of this section.

(b) *Denial of certification for program participation*—(1) *Grounds for denial.* Customs may deny an application for certification for participation in the Recordkeeping Compliance Program for any of the following reasons:

(i) The applicant fails to meet the requirements set forth in § 163.12(b)(3);

(ii) A circumstance involving the applicant arises that would justify initiation of a certification removal action under paragraph (c) of this section; or

(iii) In the judgment of Customs, the applicant appears not to be in compliance with Customs laws and regulations.

(2) *Denial procedure.* If the Director of the Miami regulatory audit field office determines that an application submitted under § 163.12 should not be approved and that certification for participation in the Recordkeeping Compliance Program should not be granted, the Director shall issue a written notice of denial to the applicant. The notice of denial shall set forth the reasons for the denial and shall advise the applicant of its right to file an appeal of the denial in accordance with paragraph (d) of this section.

(c) *Certification removal*—(1) *Grounds for removal.* The certification for participation in the Recordkeeping Compliance Program by a certified recordkeeper may be removed when any of the following conditions are discovered:

(i) The certification privilege was obtained through fraud or mistake of fact;

(ii) The program participant no longer has a valid bond;

(iii) The program participant fails on a recurring basis to provide entry records when demanded by Customs;

(iv) The program participant willfully refuses to produce a demanded or requested record;

(v) The program participant is no longer in compliance with the Customs laws and regulations, including the requirements set forth in § 163.12(b)(3); or

(vi) The program participant is convicted of any felony or has committed acts which would constitute a misdemeanor or felony involving theft, smuggling, or any theft-connected crime.

(2) *Removal procedure.* If Customs determines that the certification of a program participant should be removed, the Director of the Miami regulatory audit field office shall serve the program participant with written notice of the removal. Such notice shall inform the program participant of the grounds for the removal and shall advise the program participant of its right to file an appeal of the removal in accordance with paragraph (d) of this section.

(3) *Effect of removal.* The removal of certification shall be effective immediately in cases of willfulness on the part of the program participant or when required by public health, interest, or safety. In all other cases, the removal of certification shall be effective when the program participant has received notice under paragraph (c)(2) of this section and either no appeal has been filed within the time limit prescribed in paragraph (d)(2) of this section or all appeal procedures thereunder have been concluded by a decision that upholds the removal action. Removal of certification may subject the affected person to penalties.

(d) *Appeal of certification denial or removal*—(1) *Appeal of certification denial.* A person may challenge a denial of an application for certification for participation in the Recordkeeping Compliance Program by filing a written appeal with the Director, Regulatory Audit Division, U.S. Customs Service, Washington, DC 20229. The appeal must be received by the Director, Regulatory Audit Division, within 30 calendar days after issuance of the notice of denial. The Director, Regulatory Audit Division, will review the appeal and will respond with a written decision within 30 calendar days after receipt of the appeal unless circumstances require a delay in issuance of the decision. If the decision cannot be issued within the 30-day period, the Director, Regulatory Audit Division, will advise the appellant of the reasons for the delay and of any further actions which will be carried out to complete the appeal review and of the anticipated date for issuance of the appeal decision.

(2) *Appeal of certification removal.* A certified recordkeeper who has received a Customs notice of removal of certification for participation in the Recordkeeping Compliance Program may challenge the removal by filing a written appeal with the Director, Regulatory Audit Division, U.S. Customs Service, Washington, DC 20229. The appeal must be received by the Director, Regulatory Audit Division, within 30 calendar days after issuance of the notice of removal. The Director, Regulatory Audit Division, shall consider the allegations upon which the removal was based and the responses made thereto by the appellant and shall render a written decision on the appeal within 30 calendar days after receipt of the appeal.

Appendix to Part 163—Interim (a)(1)(A) List

List of Records Required for the Entry of Merchandise

General Information

(1) Section 508 of the Tariff Act of 1930, as amended (19 U.S.C. 1508), sets forth the general recordkeeping requirements for Customs-related activities. Section 509 of the Tariff Act of 1930, as amended (19 U.S.C. 1509) sets forth the procedures for the production and examination of those records (which includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data).

(2) Section 509(a)(1)(A) of the Tariff Act of 1930, as amended by title VI of Public Law 103–182, commonly referred to as the Customs Modernization Act (19 U.S.C. 1509(a)(1)(A)), requires the production, within a reasonable time after demand by the Customs Service is made (taking into consideration the number, type and age of the item demanded) if ''such record is required by law or regulation for the entry of the merchandise (whether or not the Customs Service required its presentation at the time of entry).'' Section 509(e) of the Tariff Act of 1930, as amended by Public Law 103–182 (19 U.S.C. 1509(e)) requires the Customs Service to identify and publish a list of the records and entry information that is required to be maintained and produced under subsection (a)(1)(A) of section 509 (19 U.S.C. 1509(a)(1)(A)). This list is commonly referred to as ''the (a)(1)(A) list.''

(3) The Customs Service has tried to identify all the presently required entry

information or records on the following list. However, as automated programs and new procedures are introduced, these may change. In addition, errors and omissions to the list may be discovered upon further review by Customs officials or the trade. Pursuant to section 509(g), the failure to produce listed records or information upon reasonable demand may result in penalty action or liquidation or reliquidation at a higher rate than entered. A recordkeeping penalty may not be assessed if the listed information or records are transmitted to and retained by Customs.

(4) *Other recordkeeping requirements:* The importing community and Customs officials are reminded that the (a)(1)(A) list only pertains to records or information required for the entry of merchandise. An owner, importer, consignee, importer of record, entry filer, or other party who imports merchandise, files a drawback claim or transports or stores bonded merchandise, any agent of the foregoing, or any person whose activities require them to file a declaration or entry, is also required to make, keep and render for examination and inspection records (including, but not limited to, statements, declarations, documents and electronically generated or machine readable data) which pertain to any such activity or the information contained in the records required by the Tariff Act in connection with any such activity, and are normally kept in the ordinary course of business. While these records are not subject to administrative penalties, they are subject to examination and/or summons by Customs officers. Failure to comply could result in the imposition of significant judicially imposed penalties and denial of import privileges.

(5) The following list does not replace entry requirements, but is merely provided for information and reference. In the case of the list conflicting with regulatory or statutory requirements, the latter will govern.

List of Records and Information Required for the Entry of Merchandise

The following records (which include, but are not limited to, any statement, declaration, document, or electronically generated or machine readable data) are required by law or regulation for the entry of merchandise and are required to be maintained and produced to Customs upon reasonable demand (whether or not Customs required their presentation at the time of entry). Information may be submitted to Customs at the time of entry in a Customs authorized electronic or paper format. Not every entry of merchandise requires all of the following information. Only those records or information applicable to the entry requirements for the merchandise in question will be required/mandatory. The list may be amended as Customs reviews its requirements and continues to implement the Customs Modernization Act. When a record or information is filed with and retained by Customs, the record is not subject to recordkeeping penalties, although the underlying backup or supporting information from which it is obtained may also be subject to the general record retention regulations and examination or summons pursuant to 19 U.S.C. 1508 and 1509. (All references, unless otherwise indicated, are to the current edition of title 19, Code of Federal Regulations, as amended by subsequent Federal Register documents.)

I. *General list of records required for most entries. Information shown with an asterisk (*) is usually on the appropriate form and filed with and retained by Customs:*

§§ 141.11 through 141.15 Evidence of right to make entry (airway bill/bill of lading or *carrier certificate, etc.) when goods are imported on a common carrier
§ 141.19 * Declaration of entry (usually contained on the entry summary or warehouse entry)
§ 141.32 Power of attorney (when required by regulations)
§ 141.54 Consolidated shipments authority to make entry (if this procedure is utilized)
§ 142.3 Packing list (where appropriate)
§ 142.4 Bond information (except if 10.101 or 142.4(c) applies)
Parts 4, 18, 122, 123 * Vessel, Vehicle or Air Manifest (filed by the carrier)

II. *The following records or information are required by § 141.61 on Customs Form (CF) 3461 or CF 7533 or the regulations cited. Information shown with an asterisk (*) is contained on the appropriate form and/or otherwise filed with and retained by Customs:*

§§ 142.3, 142.3a * Entry Number
* Entry Type Code
* Elected Entry Date
* Port Code
§ 142.4 * Bond information
§§ 141.61, 142.3a * Broker/Importer Filer Number
§§ 141.61, 142.3 * Ultimate Consignee Name and Number/street address of premises to be delivered
§ 141.61 * Importer of Record Number
* Country of Origin
§ 141.11 * IT/BL/AWB Number and Code
* Arrival Date
§ 141.61 * Carrier Code
* Voyage/Flight/Trip
* Vessel Code/Name
* Manufacturer ID Number (for AD/CVD must be actual mfr.)
* Location of Goods-Code(s)/Name(s)
* U.S. Port of Unlading
* General Order Number (only when required by the regulations)
§ 142.6 * Description of Merchandise
§ 142.6 * HTSUSA Number
§ 142.6 * Manifest Quantity
* Total Value
* Signature of Applicant

III. *In addition to the information listed above, the following records or items of information are required by law and regulation for the entry of merchandise and are presently required to be produced by the importer of record at the time the Customs Form 7501 is filed:*

§ 141.61 * Entry Summary Date
§ 141.61 * Entry Date
§ 142.3 * Bond Number, Bond Type Code and Surety code
§ 142.3 * Ultimate Consignee Address
§ 141.61 * Importer of Record Name and Address
§ 141.61 * Exporting Country and Date Exported
* I.T. (In-bond) Entry Date (for IT Entries only)
* Mode of Transportation (MOT Code)
§ 141.61 * Importing Carrier Name
§ 141.82 Conveyance Name/Number
* Foreign Port of Lading
* Import Date and Line Numbers
* Reference Number
* HTSUS Number
§ 141.61 * Identification number for merchandise subject to Anti-dumping or Countervailing duty order (ADA/CVD Case Number)
§ 141.61 * Gross Weight
* Manifest Quantity
§ 141.61 * Net Quantity in HTSUSA Units
§ 141.61 * Entered Value, Charges, and Relationship
§ 141.61 * Applicable HTSUSA Rate, ADA/CVD Rate, I.R.C. Rate, and/or Visa Number, Duty, I.R. Tax, and Fees (e.g. HMF, MPF, Cotton)
§ 141.61 Non-Dutiable Charges
§ 141.61 * Signature of Declarant, Title, and Date
* Textile Category Number
§ 141.83, 141.86 Invoice information which includes, e.g., date, number, merchandise (commercial product) description, quantities, values, unit price, trade terms, part, model, style, marks and numbers, name and address of foreign party responsible for invoicing, kind of currency
Terms of Sale
Shipping Quantities
Shipping Units of Measurements
Manifest Description of Goods
Foreign Trade Zone Designation and Status Designation (if applicable)
Indication of Eligibility for Special Access Program (9802/GSP/CBI)
§ 141.89 CF 5523
Part 141 Corrected Commercial Invoice
141.86 (e) Packing List
177.8 * Binding Ruling Identification Number (or a copy of the ruling)
§ 10.102 Duty Free Entry Certificate (9808.00.30009 HTS)
§ 10.108 Lease Statement

IV. *Documents/records or information required for entry of special categories of merchandise (the listed documents or information is only required for merchandise entered [or required to be entered] in accordance with the provisions of the sections of 19 CFR [the Customs Regulations] listed). These are in addition to any documents/records or information required by other agencies in their regulations for the entry of merchandise:*

§ 4.14 CF 226 Information for vessel repairs, parts and equipment
§ 7.3(f) CF 3229 Origin certificate for insular possessions Shipper's and importer's declaration for insular possessions
Part 10 Documents required for entry of articles exported and returned:
§§ 10.1 through 10.6 Foreign shipper's declaration or master's certificate, declaration for free entry by owner, importer or consignee
§ 10.7 Certificate from foreign shipper for reusable containers

§ 10.8 Declaration of person performing alterations or repairs
Declaration for non-conforming merchandise
§ 10.9 Declaration of processing
§ 10.24 Declaration by assembler Endorsement by importer
§§ 10.31, 10.35 Documents required for Temporary Importations Under Bond:
Information required, Bond or Carnet
§ 10.36 Lists for samples, professional equipment, theatrical effects
Documents required for Instruments of International Traffic:
§ 10.41 Application, Bond or TIR carnet

Note: additional 19 U.S.C. 1508 records: see § 10.41b(e)

§ 10.43 Documents required for exempt organizations
§ 10.46 Request from head of agency for 9808.00.10 or 9808.00.20 HTSUS treatment
Documents required for works of art
§ 10.48 Declaration of artist, seller or shipper, curator, etc.
§§ 10.49, 10.52 Declaration by institution
§ 10.53 Declaration by importer
USFWS Form 3–177, if appropriate
§§ 10.59, 10.63 Documents/CF 5125 for withdrawal of ship supplies
§§ 10.66, 10.67 Declarations for articles exported and returned
§§ 10.68, 10.69 Documents for commercial samples, tools, theatrical effects
§§ 10.70, 10.71 Purebred breeding certificate
§ 10.84 Automotive Products certificate
§ 10.90 Master records and metal matrices: detailed statement of cost of production
§ 10.98 Declarations for copper fluxing material
§ 10.99 Declaration of non-beverage ethyl alcohol, ATF permit
§§ 10.101 through 10.102 Stipulation for government shipments and/or certification for government duty-free entries, etc.
§ 10.107 Report for rescue and relief equipment
15 CFR part 301 Requirements for entry of scientific and educational apparatus
§ 10.121 Certificate from USIA for visual/auditory materials
§ 10.134 Declaration of actual use (When classification involves actual use)
§ 10.138 End Use Certificate
§§ 10.171 through 10.178 Documents, etc. required for entries of GSP merchandise, GSP Declaration (plus supporting documentation)
§ 10.174 Evidence of direct shipment
§ 10.179 Certificate of importer of crude petroleum
§ 10.180 Certificate of fresh, chilled or frozen beef
§ 10.183 Civil aircraft parts/simulator documentation and certifications
§§ 10.191 through 10.198 Documents, etc. required for entries of CBI merchandise, CBI declaration of origin (plus supporting information)
§ 10.194 Evidence of direct shipment
†[§ 10.306 Evidence of direct shipment for CFTA]
†[§ 10.307 Documents, etc. required for entries under CFTA Certificate of origin of CF 353]

[†CFTA provisions are suspended while NAFTA remains in effect. See part 181]

§ 12.6 European Community cheese affidavit
§ 12.7 HHS permit for milk or cream importation
§ 12.11 Notice of arrival for plant and plant products
§ 12.17 APHIS Permit animal viruses, serums and toxins
§ 12.21 HHS license for viruses, toxins, antitoxins, etc. for treatment of man
§ 12.23 Notice of claimed investigational exemption for a new drug
§§ 12.26 through 12.31 Necessary permits from APHIS, FWS & foreign government certificates when required by the applicable regulation
§ 12.33 Chop list, proforma invoice and release permit from HHS
§ 12.34 Certificate of match inspection and importer's declaration
§ 12.43 Certificate of origin/declarations for goods made by forced labor, etc.
§ 12.61 Shipper's declaration, official certificate for seal and otter skins
§§ 12.73, 12.80 Motor vehicle declarations
§ 12.85 Boat declarations (CG–5096) and USCG exemption
§ 12.91 FDA form 2877 and required declarations for electronics products
§ 12.99 Declarations for switchblade knives
§§ 12.104 through 12.104i Cultural property declarations, statements and certificates of origin
§ 12.105 through 12.109 Pre-Columbian monumental and architectural sculpture and murals
Certificate of legal exportation
Evidence of exemption
§ 12.110 Pesticides, etc. notice of arrival
§§ 12.118 through 12.127 Toxic substances: TSCA statements
§ 12.130 Textiles & textile products
Single country declaration
Multiple country declaration
VISA
§ 12.132 NAFTA textile requirements
§ 12.140 Province of first manufacture, export permit number and fee status of softwood lumber from Canada
§ 54.5 Declaration by importer of use of certain metal articles
§ 54.6(a) Re-Melting Certificate
Part 114 Carnets (serves as entry and bond document where applicable)
Part 115 Container certificate of approval
Part 128 Express consignments
§ 128.21 * Manifests with required information (filed by carrier)
§ 132.23 Acknowledgment of delivery for mailed items subject to quota
§ 133.21(b)(6) Consent from trademark or trade name holder to import otherwise restricted goods
§§ 134.25, 134.36 Certificate of marking; notice to repacker
§ 141.88 Computed value information
§ 141.89 Additional invoice information required for certain classes of merchandise including, but not limited to:
Textile Entries: Quota charge Statement, if applicable including Style Number, Article Number and Product
Steel Entries: Ordering specifications, including but not limited to, all applicable industry standards and mill certificates, including but not limited to, chemical composition.
§ 143.13 Documents required for appraisement entries Bills, statements of costs of production Value declaration
§ 143.23 Informal entry: commercial invoice plus declaration
§ 144.12 Warehouse entry information
§ 145.11 Customs Declaration for Mail, Invoice
§ 145.12 Mail entry information (CF 3419 is completed by Customs but formal entry may be required.)
Part 148 Supporting documents for personal importations
Part 151, subpart B Scale Weight
Part 151, subpart B Sugar imports sampling/lab information (Chemical Analysis)
Part 151, subpart C Petroleum imports sampling/lab information Out turn Report 24. to 25.—Reserved
Part 151, subpart E Wool and Hair invoice information, additional documents
Part 151, subpart F Cotton invoice information, additional documents
§ 181.22 NAFTA Certificate of origin and supporting records
19 U.S.C. 1356k Coffee Form O (currently suspended)

Other Federal and State Agency Documents

State and Local Government Records
Other Federal Agency Records (See 19 CFR part 12, 19 U.S.C. 1484, 1499)
Licenses, Authorizations, Permits

Foreign Trade Zones

§ 146.32 Supporting documents to CF 214

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding a new listing to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control No.
* * *	* * *	*
Part 163	General recordkeeping and record production requirements	1515–0214
* * *	* * *	*

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

1. The authority citation for Part 181 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 3314.

§ 181.12 [Amended]

2. In § 181.12, the introductory text of paragraph (a)(1) is amended by removing the words ''all records'' and adding, in their place, the words ''the Certificate (or a copy thereof) and all other records'', and paragraph (b)(1) is amended by removing the reference ''§ 162.1d'' and adding, in its place, the reference ''part 163''.

3. In § 181.13, a new sentence is added at the end to read as follows:

§ 181.13 Failure to comply with requirements.

* * * Such measures may include the imposition of penalties pursuant to 19 U.S.C. 1508(e) for failure to retain records required to be maintained under § 181.12.

§ 181.22 [Amended]

4. In § 181.22, the second sentence of paragraph (a) is amended by removing the reference ''§ 162.1a(a)'' and adding, in its place, the reference ''§ 163.1(a)''.

Approved: May 26, 1998.

Samuel H. Banks,

Acting Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–15771 Filed 6–15–98; 8:45 am]

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Tuesday
June 16, 1998

Part III

Department of Housing and Urban Development

24 CFR Part 200

HUD Minimum Property Standard—Adoption of the 1995 Model Energy Code; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR–4272–P–01]

RIN 2502–AH03

HUD Minimum Property Standard—Adoption of the 1995 Model Energy Code

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Minimum Property Standards (MPS) in 24 CFR part 200, subpart S, by referencing the latest edition of the Model Energy Code (MEC): the 1995 edition. The 1992 MEC edition presently cited in the MPS regulations and incorporated in Handbook, 4910.1 would be replaced. These proposed changes are necessary to keep the MPS current and to help protect the Department's insurance fund. In addition, the proposed changes are consistent with legislation and OMB Circular A–119, which require Federal agencies to use national voluntary consensus standards, when practical, in lieu of developing an agency standard. In order to determine the appropriateness of these proposed changes, HUD asked Pacific Northwest National Laboratory (PNNL) to perform a detailed analysis of the 1995 MEC. PNNL determined that the use of the 1995 MEC will achieve a significant increase in energy savings, and that it is technologically feasible, and economically justified.

DATES: Comment due date: August 17, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing & Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–8000. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXED comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 Seventh Street S.W., Room 9156, Washington, D.C. 20410–8000; telephone: voice, (202) 708–6423; TTY, (202) 708–4594 (these are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act, 12 U.S.C. 1702 *et seq.*, authorizes the Secretary of Housing and Urban Development (Secretary) to prescribe standards for determining the acceptability of one- and two-family residential structures, multifamily residential structures, and care-type facilities (nursing home, intermediate care facility, combined nursing home and intermediate care facility, board and care home, hospital or group practice facility). (See e.g., 12 U.S.C. 1715*l*(f).) Some general statutory guidelines govern the nature of these standards. For example, the standards are ''to establish the acceptability of * * * property for mortgage insurance * * *.'' (12 U.S.C. 1715*l*(f)). In addition, the standards must be consistent with the declared national housing policy of realizing ''the goal of a decent and suitable living environment for every American family * * *.'' (42 U.S.C. 1441). The Minimum Property Standards (MPS) requirements in 24 CFR part 200, subpart S, are also published in HUD Handbook 4910.1, as provided in § 200.929(b)(2) of the MPS. Any changes made in the MPS by this rule will, accordingly, be reflected in the referenced handbook.

The current MPS are consistent with the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113, 110 Stat. 783, approved March 7, 1996) and OMB Circular A–119. This statute and circular establish a Federal policy that, whenever feasible, model codes and standards developed by private organizations should be adopted by the U.S. Government when their use will eliminate the necessity for separate Federal agency standards covering the same technical issues.

Section 526(a) of the National Housing Act requires the Secretary to ''promote the use of energy saving techniques through the minimum property standards'' and assure that the MPS are ''at least as effective in performance as the energy performance requirements incorporated in the minimum property standards that were in effect under this subsection on September 30, 1982.''

This requirement was supported and extended in section 101 of the Energy Policy Act of 1992 (Pub. L. 102–486, Oct. 24, 1992), which amended section 109 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12709). This provision covers public and assisted housing, and single family and multifamily residential housing (other than manufactured housing) subject to mortgages insured under the National Housing Act. HUD implemented the requirement of Section 101 by amending the Minimum Property Standards (MPS) for Housing (See 24 CFR 200.925; 24 CFR 200.926e) to reference the provisions of the 1992 Model Energy Code (MEC). (See FR Vol. 58, No. 218, November 15, 1993)

Also under section 109 of the Cranston-Gonzalez National Affordability Housing Act, ''If the requirements of 1992 Model Energy Code or, in the case of multifamily high rises, ASHRAE [American Society of Heating, Refrigerating and Air Conditioning Engineers] Standard 90.1–1989, are revised at any time, the Secretaries (of HUD and Agriculture) shall, not later than 1 year after such revision, amend the standards established under subsection (a) to meet or exceed the requirements of such revised code or standard unless the Secretaries determine that compliance with such revised code or standard would not result in a significant increase in energy efficiency or would not be technologically feasible or economically justified.'' This proposed rule has been prepared as expeditiously as possible following receipt of the PNNL analysis.

The Model Energy Code 1995 establishes minimum requirements for energy-related features of new buildings and additions to existing buildings. It covers low-rise buildings, three stories or less, as well as one- and two-family buildings. It also includes high-rise buildings, four stories or more, and applies to any additions to existing buildings. Since the Minimum Property Standards only apply to new structures and do not include additions, sections of the MEC that deal with additions were deleted from adoption by the MPS. Further, the MEC sections dealing with mixed occupancy and change of occupancy are deleted from adoption by the MPS because the MPS apply only to multifamily buildings, caretype occupancy, and one- and two-family dwellings.

The MEC is applicable to all types of residential and non-residential buildings. It is not applicable to historic structures (specifically designated as historically significant by the State or local governing body, or listed in the National Register of Historic Places, or which have been determined to be eligible for listing). Nor does it apply to manufactured homes regulated by the Federal Manufactured Home Construction and Safety Standards. HUD has other energy standards for manufactured housing.

The MEC emphasizes flexibility to suit local needs and conditions by offering a number of means for achieving compliance. MEC compliance can be demonstrated based on using the building envelope specifications for insulation/windows (thermal transmittance). Compliance can also be demonstrated with the building envelope which has an overall thermal transmittance equal to or better than specified in the MEC. The MEC allows compliance to be demonstrated by showing the estimated energy use of a residence is less than or equal to the energy use resulting from a building which meets the explicit requirements of the MEC. In addition, the MEC allows compliance of residences whose estimated energy costs are less than or equal to the energy costs resulting from the same house if it was built to the MEC specifications.

To assure that the 1995 MEC standards meet legislative requirements, HUD contracted with Pacific Northwest National Laboratory (PNNL), a Department of Energy national laboratory, to review and analyze the technical aspects of these standards. Their report, entitled ''Assessment of the 1995 Model Energy Code for Adoption'' March 1997, analyzed this matter and has determined that there is a significant increase in energy savings, that it is technologically feasible, and economically justified. PNNL performed a detailed cost/benefit analysis in accordance with established analytical methods. Their analysis added the discounted cost and benefits of an energy investment which are based on existing and forecasted economic parameters. Some of these parameters include: interest rates, loan term, inflation rate, alternative investments, loan fees and state taxes. Present and projected escalation fuel costs are also used.

This report concluded that the present value of estimated savings to each new home buyer is approximately $700, for an additional up-front cost of approximately $300. This is based on a national average of single family and multifamily homes. In addition, the report detailed the specific differences between the 1992 MEC and the 1995 MEC.

ASHRAE 90.1, which is mentioned in section 109 of the Cranston-Gonzalez National Affordability Housing Act and adopted by reference in the 1995 MEC, was also analyzed in this report. Public and HUD-assisted multifamily high-rise housing (buildings four stories or more) are required to comply with ASHRAE Standard 90.1–1989 (ASHRAEa). It incorporated a number of addenda adding new requirements or modifying existing ones. This codified version of Standard 90.1 endorsed in 1993, which included addenda, did not increase the requirements, or costs, from the 1992 MEC. Rather, it made the enforcement of the code easier for building officials.

In order to simplify compliance with the MEC, HUD has made available two computer software programs, MECcheck and COMcheck, which can be used to demonstrate compliance with the requirements. These materials were developed by the U.S. Department of Energy to simplify compliance with building energy codes.

Copies of the MPS are available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, at the Department of Housing and Urban Development, Washington, DC 20410–8000. Also, copies of the PNNL report, ''Assessment of the 1995 Model Energy Code for Adoption'' March 1997, are available from HUD USER, P.O. Box 6091, Rockville, MD 20849. MECcheck is also available from HUD USER.

Incorporation by Reference

These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR 51. Copies of the standards may be obtained from the Council of American Building Officials, 5203 Leesburg Pike, Suite 708, Falls Church, VA 22041.

Findings and Certifications

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose any federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, D.C. 20410.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule is not anticipated to have a significant economic impact on a substantial number of small entities. The rule is not anticipated to have any adverse or disproportionate economic impact on small businesses. The rule only proposes to adopt model energy standards that are already nationally recognized throughout the affected industry. Notwithstanding this determination, HUD specifically invites comments regarding alternatives to this rule that would meet HUD's objectives as described in this preamble.

Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under Section 6(a) of Executive Order 12612, *Federalism*, that this rule does not have federalism implications concerning the division of local, State, and federal responsibilities. The rule only proposes to adopt standards that are already nationally recognized throughout the affected industry.

List of Subjects for 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

Accordingly, 24 CFR part 200 would be amended as follows:

1. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

Subpart S [Amended]

2. All references in part 200, subpart S, to ''the CABO Model Energy Code, 1992'' are replaced with ''the CABO Model Energy Code, 1995''.

3. Section 200.926d is amended by revising paragraph (e) to read as follows:

§ 200.926d Construction requirements.

* * * * *

(e) *Energy efficiency.* All buildings shall be constructed in compliance with the requirements of:

(i) The CABO Model Energy Code (MEC), 1995 Edition, except Sections

101.4.3 (or as otherwise provided in this paragraph), 101.4.4, 104 and 105;

(ii) Section 101.4.3.2, Historic buildings;

(iii) The MEC Appendix; and

(iv) HUD UM 100, HUD Building Product Standards and Certification Program for Solar Water Heating Systems.

(v) ASHRAE/IES 90.1–1989, including addenda, as referenced in the MEC, applies to all multifamily high-rise buildings. All buildings which comply with ASHRAE/IES 90.1–1989, Energy Efficiency Design of New Buildings Except Low-Rise Residential Buildings, will use ASHRAE Standard 62–1989 or its equivalent for specific ventilation requirements.

§ 200.929 [Amended]

4. Section 200.929(b)(2) is amended by substituting the date ''1994'' for the date ''1993'' in the first sentence.

Appendix A [Amended]

5. The introductory paragraph to Appendix A to 24 CFR part 200 is revised to change in two places the address for obtaining MPS and for public inspection of the MPS to ''HUD Manufactured Housing and Standards Division, Office of Consumer and Regulatory Affairs, Room 9156, to 451 7th Street, SW, Washington, DC 20410''. In the standards referenced in the paragraph under Council of American Building Officials: the reference to ''CABO Model Energy Code—1992 Edition'' is replaced with ''CABO Model Energy Code—1995 Edition''.

Dated: April 27, 1998.

Art Agnos,

Acting General Deputy, Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 98–15849 Filed 6–15–98; 8:45 am]

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federal register

Tuesday
June 16, 1998

Part IV

Department of Education

Federal Work-Study Programs; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.033]

Office of Postsecondary Education; Federal Work-Study Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for institutions that participate in the Federal Work-Study (FWS) Program to submit the Campus-Based Reallocation Form (ED Form E40–4P).

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution that participated in the FWS Program for the 1997–98 award year (July 1, 1997 through June 30, 1998) to submit a Campus-Based Reallocation Form to request supplemental FWS funds for the 1998–99 award year (July 1, 1998 through June 30, 1999). The information collected is used to determine whether an institution is eligible to receive supplemental FWS funds for the 1998–99 award year.

DATE: *Closing Date for Submitting a Campus-Based Reallocation Form.* If an institution that participated in the FWS Program for the 1997–98 award year wants to ensure that it will be considered for supplemental FWS funds for the 1998–99 award year, the institution must submit the Campus-Based Reallocation Form by July 17, 1998. The Department will not accept a form submitted by facsimile transmission.

ADDRESSES: *Campus-Based Reallocation Form Delivered by Mail.* The Campus-Based Reallocation Form delivered by mail must be addressed to Mr. Milton Thomas, Jr., Institutional Financial Management Division, U.S. Department of Education, P.O. Box 23781, Washington, D.C. 20026–0781. An applicant must show proof of mailing consisting of one of the following: (1) a legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of the mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If a Campus-Based Reallocation Form is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

Campus-Based Reallocation Form Delivered by Hand. A Campus-Based Reallocation Form delivered by hand must be taken to Mr. Milton Thomas, Jr., Campus-Based Financial Operations Branch, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, Room 4714, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C. Hand-delivered Reallocation Forms will be accepted between 8:00 a.m. and 4:30 p.m. (Eastern time) daily, except Saturdays, Sundays, and Federal holidays. A Campus-Based Reallocation Form that is delivered by hand will not be accepted after 4:30 p.m. on the closing date.

SUPPLEMENTARY INFORMATION: The Department will reallocate unexpended FWS Federal funds from the 1997–98 award year as supplemental allocations for the 1998–99 award year under the FWS Program. Supplemental allocations will be issued this fall in accordance with the reallocation procedures contained in the Higher Education Act of 1965, as amended (HEA). Under section 442(e) of the HEA, unexpended FWS funds returned to the Secretary must be reallocated to eligible institutions that used at least 10 percent of the total FWS Federal funds granted to the institution to compensate students employed in community services. Because reallocated FWS funds will be distributed on the basis of fair share shortfall criteria, institutions must also have a fair share shortfall to receive these funds. A fair share shortfall means that an institution has an unmet need for FWS funds as determined by the FWS allocation formula in the HEA that uses data reported by the institution on its Fiscal Operations Report and Application to Participate (FISAP).

Institutions must use all the reallocated FWS Federal funds to compensate students employed in community services. To ensure consideration for supplemental FWS Federal funds for the 1998–99 award year, an institution must submit the Campus-Based Reallocation Form by July 17, 1998.

Applicable Regulations

The following regulations apply to the Federal Work-Study Program:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR Part 673.

(3) Federal Work-Study Programs, 34 CFR Part 675.

(4) Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

(5) New Restrictions on Lobbying, 34 CFR Part 82.

(6) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR Part 85.

(7) Drug-Free Schools and Campuses, 34 CFR Part 86.

FOR FURTHER INFORMATION CONTACT: For technical assistance concerning the Campus-Based Reallocation Form or other operational procedures of the campus-based programs, contact Mr. Milton Thomas, Jr., Institutional Financial Management Division, U.S. Department of Education, P.O. Box 23781, Washington, D.C. 20026–0781. Telephone (202) 708–9756. 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.

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(Authority: 42 U.S.C. 2752)

Dated: June 9, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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- Quizalofop-p ethyl ester; published 6-16-98

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; published 6-16-98

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Fluid milk promotion order; comments due by 6-22-98; published 5-22-98

Grapes grown in California and imported table grapes; comments due by 6-25-98; published 5-26-98

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  - Reporting and recordkeeping requirements; comments due by 6-25-98; published 5-26-98

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  - Propulsion and auxiliary marine engines; comments due by 6-22-98; published 5-22-98

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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 2400/P.L. 105–178

Transportation Equity Act for the 21st Century (June 9, 1998; 112 Stat. 107)

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