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Thursday
May 6, 1999

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WASHINGTON, DC

WHEN: May 18, 1999 at 9:00 am.

WHERE: Office of the Federal Register
Conference Room
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Washington, DC
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RESERVATIONS: 202–523–4538

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Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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Rules and Regulations

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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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29558; Amdt. No. 1929]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPS) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. 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. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on 30 April 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.3 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER DIAPs, identified as follows:

* * * *effective upon publication*

FDC date	State	City	Airport	FDC No.	SIAP
04/14/99	AL	Evergreen	Middleton Field	FDC 9/2496	VOR/DME or GPS RWY 9 Amdt 2...
04/14/99	PA	Monongahela	Monongahela/Rostraver	FDC 9/2482	GPS RWY 25 Orig...
04/15/99	ME	Greenville	Greenville Muni	FDC 9/2513	NDB or GPS RWY 14 Amdt 4A...
04/15/99	ME	Greenville	Greenville Seaplane Base	FDC 9/2517	NDB or GPS–A Amdt 4B...
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04/27/99	PA	Allentown	LeHigh Valley Intl	FDC 9/2804	ILS RWY 6 Amdt 21...
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[FR Doc. 99–11391 Filed 5–5–99; 8:45 am]

BILLING CODE 4910–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29557; Amdt. No. 1928]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under

instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availablity of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical material. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identified the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 years.

Conclusion

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. 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. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on April 30, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISLMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective May 20, 1999*

De Kalb, IL, De Kalb Taylor Muni, LOC/DME RWY 2, Orig
De Kalb, IL, De Kalb Taylor Muni, NDB RWY 27, Amdt 1
De Kalb, IL, De Kalb Taylor Muni, GPS RWY 9, Amdt 1
De Kalb, IL, De Kalb Taylor Muni, VOR/DME OR GPS RWY 27, Amdt 5
Indianapolis, IN, Indianapolis Intl, ILS RWY 5L, Amdt 1
Indianapolis, IN, Indianapolis Intl, ILS RWY 23R, Amdt 1
Rockland, ME, Knox County Regional, NDB RWY 3, Orig
Rockland, ME, Knox County Regional, NDB RWY 31, Orig
Minneapolis, MN, Minneapolis-St. Paul Intl/Wold Chamberlain, ILS RWY 22, Amdt 7
Minneapolis, MN, Minneapolis-St. Paul Intl/Wold Chamberlain, ILS RWY 30R, Amdt 9
Minneapolis, MN, Minneapolis-St. Paul Intl/Wold Chamberlain, (Simultaneous Close Parallel) ILS PRM RWY 30R, Amdt 4
Owatonna, MN, Owatonna Muni, ILS RWY 30, Orig

Sand Island, Midway Atoll, MQ, Henderson Field, NDB RWY 6, Orig
Sand Island, Midway Atoll, MQ, Henderson Field, NDB RWY 24, Orig

** * * Effective June 17, 1999*

Leesburg, FL, Leesburg Regional, GPS RWY 13, Orig
Bainbridge, GA, Decatur County Industrial Air Park, GPS RWY 9, Orig
Carrollton, GA, West Georgia Regional O V Gray Field, NDB, OR GPS RWY 34, Amdt 2
Marietta, GA, Cobb County-McCollum Field, GPS RWY 9, Orig
Crookston, MN, Crookston Muni Kirkwood Fld, VOR RWY 31, Amdt 5
Crookston, MN, Crookston Muni Kirkwood Fld, NDB OR GPS RWY 13, Amdt 7
Crookston, MN, Crookston Muni Kirkwood Fld, GPS RWY 31, Amdt 1

** * * Effective July 15, 1999*

Gambell, AK, Gambell, NDB RWY 16, Amdt 1
Gambell, AK, Gambell, NDB/DME RWY 34, Amdt 2
Gambell, AK, Gambell, GPS RWY 16, Orig
Gambell, AK, Gambell, GPS RWY 34, Orig
Haleyville, AL, Posey Field, GPS RWY 36, Orig
Fort Myers, FL, Page Field, GPS RWY 5, Orig
Fort Myers, FL, Page Field, GPS RWY 13, Orig
Fort Myers, FL, Page Field, GPS RWY 23, Orig
Fort Myers, FL, Page Field, GPS RWY 31, Orig
Miami, FL, Opa Locka, GPS RWY 9L, Orig
Miami, FL, Opa Locka, GPS RWY 27R, Orig
Atlanta, GA, Fulton County Airport-Brown Field, GPS RWY 26, Orig
Toccoa, GA, Toccoa RG Letourneau Field, GPS RWY 2, Orig
Toccoa, GA, Toccoa RG Letourneau Field, VOR OR GPS RWY 20, Amdt 12
Washington, IA, Washington Muni, GPS RWY 18, Orig
Washington, IA, Washington Muni, GPS RWY 36, Orig
West Union, IA, George L. Scott Muni, GPS RWY 17, Orig
West Union, IA, George L. Scott Muni, GPS RWY 35, Orig
Lexington, KY, Blue Grass, GPS RWY 4, Orig
Lexington, KY, Blue Grass, GPS RWY 22, Orig
Somerset, KY, Somerset-Pulaski County-J.T. Wilson Field, GPS RWY 22, Amdt 1
Columbus-West Point-Starkville, MS, Golden Triangle Regional, GPS RWY 18, Orig
Columbus-West Point-Starkville, MS, Golden Triangle Regional, GPS RWY 36, Orig
Oxford, MS, University-Oxford, GPS RWY 9, Orig
Oxford, MS, University-Oxford, GPS RWY 27, Orig
Yazoo City, MS, Yazoo County, GPS RWY 17, Orig
Yazoo City, MS, Yazoo County, GPS RWY 35, Orig
Columbia, MO, Columbia Regional, ILS RWY 2, Amdt 13
Stockton, MO, Stockton Muni, VOR/DME OR GPS–A, Amdt 2
Stockton, MO, Stockton Muni, GPS RWY 1, Orig
Stockton, MO, Stockton Muni, GPS RWY 19, Orig
Santa Fe, NM, Santa Fe Muni, GPS RWY 2, Orig
Santa Fe, NM, Santa Fe Muni, GPS RWY 33, Orig
Elizabethtown, NC, Elizabethtown, GPS RWY 15, Orig
Elizabethtown, NC, Elizabethtown, VOR/DME RWY 15, Amdt 1
Elizabethtown, NC, Elizabethtown, GPS RWY 33, Orig
Elizabethtown, NC, Elizabethtown, NDB RWY 33, Amdt 1
Wadesboro, NC, Anson County, GPS RWY 17, Orig
Wadesboro, NC, Anson County, GPS RWY 35, Orig
Bismarck, ND, Bismarck Muni, RADAR–1, Amdt 3
Ada, OK, Ada Muni, GPS RWY 17, Orig
Altus, OK, Altus Muni, GPS RWY 17, Amdt 1
Altus, OK, Altus Muni, VOR/DME RNAV RWY 17, Amdt 2
Chickasha, OK, Chickasha Muni, GPS RWY 35, Orig
Jacksboro, TN, Campbell County, GPS RWY 23, Orig
Lawrenceburg, TN, Lawrenceburg-Lawrence-County, GPS RWY 17, Orig
Rogersville, TN, Hawkins County, GPS RWY 7, Orig
Savannah, TN, Savannah-Hardin County, GPS RWY 1, Orig
Savannah, TN, Savannah-Hardin County, GPS RWY 19, Orig
Austin, TX, Robert Mueller Muni, ILS RWY 13R, Amdt 10A, CANCELLED
Austin, TX, Robert Mueller Muni, ILS RWY 31L, Amdt 33A, CANCELLED
Austin, TX, Robert Mueller Muni, GPS RWY 13R, Orig-A, CANCELLED
Austin, TX, Robert Mueller Muni, GPS RWY 31L, Orig-A, CANCELLED
Crockett, TX, Houston County, GPS RWY 2, Orig
Crockett, TX, Houston County, GPS RWY 20, Orig
Houston, TX, William P. Hobby, GPS RWY 4, Orig
Houston, TX, William P. Hobby, GPS RWY 12R, Orig
Houston, TX, William P. Hobby, GPS RWY 17, Orig
Houston, TX, William P. Hobby, GPS RWY 22, Orig
Houston, TX, William P. Hobby, GPS RWY 30L, Orig
Houston, TX, William P. Hobby, GPS RWY 35, Orig

[FR Doc. 99–11390 Filed 5–5–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 01–99–034]

RIN 2115–AA97

Safety Zone: Ellis Island Medals of Honor Fireworks, New York Harbor, Upper Bay

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Ellis Island Medals of Honor Fireworks program located north of Federal Anchorage 20B, New York Harbor, Upper Bay. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Federal Anchorages 20A and 20B.

DATES: This rule is effective from 8:30 p.m. until 10 p.m., on Saturday, May 8, 1999. There is no rain date for this event.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date the Application for Approval of Marine Event was receive, there was insufficient time to draft and publish an NPRM and publish the final rule 30 days before its effective date. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with this fireworks display. This is also an annual event published in 33 CFR 100.114. However, this year's display is

being moved from east of Liberty Island to east of Ellis Island.

Background and Purpose

On March 3, 1999, Fireworks by Grucci submitted an application to hold a fireworks program on the water of Upper New York Bay between Federal Anchorages 20A and 20B. The fireworks program is being sponsored by The Forum. This regulation establishes a safety zone in all waters of Upper New York Bay within a 360 yard radius of the fireworks barge located in approximate position 40°41′15″ N. 074°02′09″ W. (NAD 1993), approximately 365 yards east of Ellis Island. The safety zone is in effect from 8:30 p.m. until 10 p.m. on Saturday, May 8, 1999. There is no rain date for this event. The safety zone prevents vessels from transiting a portion of Federal Anchorages 20A and 20B and is needed to protect boaters from the hazards associated with fireworks launched form a barge in the area. Recreational and commercial vessel traffic will be able to anchor in the unaffected northern and southern portions of Federal Anchorages 20A and 20B. Federal Anchorages 20C, 20D and 20E, to the south, are also available for vessel use. Marine traffic will still be able to transit through Anchorage Channel, Upper Bay, during the event as the safety zone only extends 150 yards into the 900-yard wide channel. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the event via local notice to mariners, and marine information broadcasts.

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 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 final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the limited marine traffic in the area, the minimal time that vessels will be restricted from the zone, that vessels may safely anchor to the north and south of the zone, that vessels may still transit through Anchorage Channel during the event, and extensive advance notifications which will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered 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 fields, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information 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 final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain *Federal mandates*. A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This Final Rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this Final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This Rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This Rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This Rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This Rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

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

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 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), 6.04–6, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–034 to read as follows:

§ 165.T01–034 Safety Zone; Ellis Island Medals of Honor Fireworks, New York Harbor, Upper Bay.

(a) *Location*. The following area is a safety zone: All waters of New York Harbor, Upper Bay within a 360 yard radius of the fireworks barge in approximate position 40°41′15″ N., 074°02′09″ W. (NAD 1983), approximately 365 yards East of Ellis Island.

(b) *Effective period.* This section is effective from 8:30 p.m. until 10 p.m. on Saturday, May 8, 1999. There is no rain date for this event.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: April 23, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–11343 Filed 5–5–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[FRL–6316–7]

Clean Air Act Final Approval in Part and Final Disapproval in Part, Section 112(l), Program Submittal; State of Alaska; Amendment and Clarification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final approval in part and disapproval in part; amendment and clarification.

SUMMARY: This action identifies which 40 CFR Parts 61 and 63 General Provisions authorities are delegated to the Alaska Department of Environmental Conservation (ADEC), and serves as a clarification to the Clean Air Act Final Approval in Part and Final Disapproval in Part, Section 112(l), Program Submittal; State of Alaska, published on December 5, 1996 (*see* 61 FR 64463). This action amends 40 CFR 61.04 and 63.99 by revising and adding tables outlining ADEC's current delegation status.

DATES: The amendments are effective on May 6, 1999.

ADDRESSES: Copies of the requests for delegation and other supporting documentation are available for public inspection at the following location: U.S. Environmental Protection Agency, Region X, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, WA, 98101.

FOR FURTHER INFORMATION CONTACT: Andrea Wullenweber, US EPA, Region X (OAQ–107), 1200 Sixth Avenue, Seattle, WA, 98101, (206) 553–8760.

SUPPLEMENTARY INFORMATION:

I Administrative Requirements

Under Executive Order (E.O.) 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore, not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655, May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements [*see* section 307(b)(2)].

II Clarification

What Action Is EPA Taking Today?

This action clarifies which 40 CFR Parts 61 and 63 General Provisions authorities are delegated to the Alaska Department of Environmental Conservation (ADEC), and serves as a clarification to the Clean Air Act Final Approval in Part and Final Disapproval in Part, Section 112(l), Program Submittal; State of Alaska, published on December 5, 1996 (*see* 61 FR 64463).

Why Is EPA Taking This Action?

On December 5, 1996 (*see* 61 FR 64463), EPA granted ADEC final approval in part and final disapproval in part of Clean Air Act, Section 112(l), authority to implement and enforce specific 40 CFR Parts 61 and 63 federal NESHAP regulations which have been adopted into state law. Since that December 5, 1996, **Federal Register** action, EPA has issued guidance identifying which 40 CFR Part 63, Subpart A, General Provisions, authorities may and may not be delegated to state and local agencies. This guidance was issued in a memorandum from John Seitz, Director, Office of Air Quality Planning and Standards, dated July, 10, 1998, entitled, ''Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies.'' In light of this guidance, Chuck Clarke, Regional Administrator, EPA, Region X, issued a letter of clarification to Michele Brown, Commissioner, ADEC, dated March 11, 1999, identifying specifically which 40 CFR Parts 61 and 63 General Provisions authorities are and are not delegated to ADEC. This clarification notice summarizes that letter.

Which Part 63 General Provisions Authorities Are Delegated to ADEC?

EPA, Region 10, has determined that ADEC has sufficient expertise to implement all of the 40 CFR Part 63 General Provisions authorities which

may be delegated to state and local agencies, as listed in the July 10, 1998, memorandum from John Seitz (referenced above). The table below lists these General Provisions authorities which are delegated to ADEC. In delegating 40 CFR 63.9 and 63.10, Approval of Adjustments to Time Periods for Submitting Reports, ADEC has the authority to approve adjustments to the timing that reports are due, but does not have the authority to alter the contents of the reports. For Title V sources, semiannual and annual reports are required by Part 70, and this does not change that requirement.

In delegating these authorities, EPA grants ADEC the authority to make decisions which are not likely to be nationally significant nor alter the stringency of the underlying standard. The intent is that ADEC will make decisions on a source-by-source basis, *not* on a source category-wide basis. Additionally, ADEC may assume that for any authorities not listed in this preamble, in the Part 63 Delegation Status table, or in the subparts as not delegable, ADEC has been delegated that particular authority.

40 CFR PART 63, SUBPART A, GENERAL PROVISIONS AUTHORITIES WHICH ADEC IS DELEGATED

Section	Authorities
63.1	Applicability Determinations.
63.6(e)	Operation and Maintenance Requirements—Responsibility for Determining Compliance.
63.6(f)	Compliance with Non-Opacity Standards—Responsibility for Determining Compliance.
63.6(h) [except 63.6(h)(9)]	Compliance with Opacity and Visible Emissions Standards—Responsibility for Determining Compliance.
63.7(c)(2)(i) and (d)	Approval of Site-Specific Test Plans.
63.7(e)(2)(i)	Approval of Minor Alternatives to Test Methods.
63.7(e)(2)(ii) and (f)	Approval of Intermediate Alternatives to Test Methods.
63.7(e)(2)(iii)	Approval of Shorter Sampling Times and Volumes When Necessitated by Process Variables or Other Factors.
63.7(e)(2)(iv) and (h)(2), (3)	Waiver of Performance Testing.
63.8(c)(1) and (e)(1)	Approval of Site-Specific Performance Evaluation (monitoring) Test Plans.
63.8(f)	Approval of Minor Alternatives to Monitoring.
63.8(f)	Approval of Intermediate Alternatives to Monitoring.
63.9 and 63.10 [except 63.10(f)]	Approval of Adjustments to Time Periods for Submitting Reports.

Note: For definitions of minor and intermediate alternatives to test methods and monitoring, see memorandum from John Seitz, Office of Air Quality Planning and Standards, dated July, 10, 1998, entitled, ''Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies.''

Which Part 63 General Provisions Authorities Are Automatically Granted to ADEC as Part of Its Part 70 Operating Permits Program?

The 40 CFR Part 63 General Provisions authorities that are automatically granted to ADEC as part of its Part 70 operating permits program approval (regardless of whether the operating permits program approval is interim or final) are: 40 CFR 63.5(e) and (f), Approval and Disapproval of Construction and Reconstruction, and 63.6(i)(1), Extension of Compliance with Emission Standards. Sections 112(i)(1) and (3) state that the ''Administrator (or a State with a permit program approved under Title V)'' may conduct preconstruction review and may grant compliance extensions. EPA interprets that this authority does not require delegation through subpart E and, instead, is automatically granted to States as part of their Part 70 operating permits program approval. Additionally, for 40 CFR 63.6(i)(1), ADEC does not need to have been delegated a particular standard or have issued a Part 70 operating permit to a particular source to grant that source a compliance extension.

Which Part 63 General Provisions Authorities Are Not Delegated to ADEC?

As a general rule, in delegating the authorities of 40 CFR Part 63, Subpart A, to state or local agencies, EPA retains certain decision-making authorities which could result in a change to the stringency of an underlying standard, which are likely to be nationally significant, or which may require a rulemaking and subsequent **Federal Register** notice. ADEC is not delegated those 40 CFR Parts 63 authorities listed in the footnotes of the Part 63 Delegation Status table at the end of this rule. Additionally, ADEC is not delegated any authorities identified in the subparts (i.e., under ''Delegation of Authority'') that cannot be delegated.

Section 63.6(g), Use of an Alternative Non-opacity Emission Standard, also cannot be delegated to a state or local agency because approval of such an alternative requires a Federal rulemaking. Sections 63.12 through 63.15 contain the following information, which is not necessary to delegate to state or local agencies: State Authority and Delegations (63.12), Addresses of State Air Pollution Control Agencies and EPA Regional Offices (63.13), Incorporations By Reference (63.14), and Availability of Information and Confidentiality (63.15).

Which Part 61 General Provisions Authorities Are Not Delegated to ADEC?

As a general rule, in delegating the authorities of 40 CFR Parts 61, Subpart A, to state or local agencies, EPA retains certain decision-making authorities which could result in a change to the stringency of an underlying standard, which are likely to be nationally significant, or which may require a rulemaking and subsequent **Federal Register** notice. In the footnotes of the Part 61 Delegation Status table at the end of this rule, EPA has identified which authorities are not delegated to ADEC. This list has been compiled jointly by EPA's Office of Environmental Compliance and Assistance (OECA) and EPA, Region 10, based on the July 10, 1998, memorandum from John Seitz (as referenced above), EPA policy memos from pre-1990, and a guidance document under development by OECA entitled, ''How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring.''

Sections 61.04(b) and 61.16 contain the following information, respectively,

which is not necessary to delegate to state or local agencies: Address and Availability of Information. Also, ADEC is not delegated any sections in the subparts pertaining to approval of alternative standards (i.e., alternative means of emission limitations), or approval of major alternatives to test methods or monitoring; as well as any authorities identified in the subparts (i.e., under ''Delegation of Authority'') that cannot be delegated.

Which Part 61 General Provisions Authorities Are Delegated to ADEC?

ADEC may assume that for any authorities not listed in this preamble, in the Part 61 Delegation Status table, or in the subparts as not delegable, ADEC has been delegated that particular authority. Additionally, in delegating these authorities, EPA grants ADEC the authority to make decisions which are not likely to be nationally significant nor alter the stringency of the underlying standard. The intent is that ADEC will make decisions on a source-by-source basis, not on a category-wide basis.

What Are ADEC's Reporting Requirements to EPA?

As a condition of receiving delegation of the General Provisions authorities, ADEC must submit to EPA the following information:

- ADEC must input all source information into the Aerometric Information Retrieval System (AIRS) for both point and area sources by September 30 of each year;
- ADEC must report to EPA, Region X, all MACTRAX information upon request, which is typically semiannually. (MACTRAX provides summary data for each implemented NESHAP that EPA uses to evaluate the Air Toxics Program);
- ADEC must also provide any additional compliance related information to EPA, Region X, as agreed upon in the Compliance Assurance Agreement;
- ADEC must submit to EPA, Region X, copies of determinations issued pursuant to the delegated General Provisions authorities (which are listed in Table 1);
- ADEC must also forward to EPA, Region X, copies of any notifications received pursuant to 63.6(h)(7)(ii) pertaining to the use of a continuous opacity monitoring system; and

ADEC must submit to EPA's Emission Measurement Center of the Emissions Monitoring and Analysis Division copies of any approved intermediate changes to test methods or monitoring. (For definitions of major, intermediate and minor alternative test methods or monitoring methods, see the July 10, 1998, memorandum from John Seitz, referenced above). These intermediate test methods or monitoring changes should be sent via mail or facsimile to: Chief, Source Categorization Group A, U.S. EPA (MD–19), Research Triangle Park, NC 27711, Facsimile telephone number: (919) 541–1039.

What Is the Effective Date of This Clarification?

This clarification of ADEC's delegation of authority was effective on the date of the letter from Chuck Clarke, EPA, to Michele Brown, ADEC, which was March 11, 1999. Please note that this clarification does not change any source-specific determinations that have already been made under the 40 CFR Parts 61 and 63 General Provisions; instead, this should be used as guidance for all future decisions regarding the General Provisions authorities.

What Is the Impact of This Clarification on the Regulated Community?

This clarification notice informs the regulated community where to send requests for determinations that will be made pursuant to the General Provisions authorities in Parts 61 and 63. For those General Provisions authorities that are delegated, requests should be submitted to ADEC; and for those General Provisions authorities that are not delegated, requests should be submitted to EPA.

What Is The Impact of This Clarification on Indian Country in Alaska?

This clarification notice (as well as the original December 5, 1996, delegation) does not extend to ''Indian country'' located in Alaska, as defined in 18 USC Section 1151. Because the extent of Indian country is currently unknown and is subject to litigation, the exact boundaries of Indian country have not been established in Alaska. At present, the lands acknowledged to be Indian country are the Annette Island Reserve, the trust lands identified as Indian country by the United States in Klawock, Kake, and Angoon, and the Native allotments still in restricted status. With this clarification, EPA does not intend to affect the rights of federally-recognized Indian tribes in Alaska, nor does it intend to limit the existing rights of the State of Alaska. Because the approved ADEC program does not extend to sources and activities in Indian country, EPA will continue to implement NESHAPs in Indian country.

III Amendment

What Action Is EPA Taking Today?

EPA is amending 40 CFR 61.04(b)(C) to correct ADEC's address, and is amending 40 CFR 61.04(c)(10) to add ADEC's delegation status for Part 61 standards to the existing table for Region X. EPA is also amending 40 CFR 63.99(a)(2) to add a table listing ADEC's delegation status for Part 63 standards. These Delegation Status tables are listed at the end of this rule.

Why Is EPA Taking This Action?

EPA is amending these tables to add ADEC's delegation status to help the reader more easily distinguish which subparts of Parts 61 and 63 are delegated. This information helps the reader determine which agency (EPA or ADEC) is the primary implementing and enforcing agency for a particular subpart. These tables list the subparts that were delegated to ADEC in a **Federal Register** action published on December 5, 1996 (*see* 61 FR 64463), and also list the Parts 61 and 63 General Provisions authorities which are not delegated to ADEC, based on this clarification notice.

List of Subjects

40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Reporting and recordkeeping requirements, Vinyl Chloride.

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 18, 1999.

Jane S. Moore,

Acting Regional Administrator, Region X.

Title 40, chapter I, parts 61 and 63 of the Code of Federal Regulations is amended as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7413, 7414, 7416, 7601 and 7602.

Subpart A—General Provisions

2. Section 61.04 is amended in paragraph (b) by revising paragraph (b)(C); and by revising the existing table in paragraph (c)(10) and the note to paragraph (c)(10) to read as follows:

§ 61.04 Address.

* * * * *

(b) * * *

(C) State of Alaska, Department of Environmental Conservation (ADEC), 410 Willoughby Avenue, Suite 105, Juneau, AK 99801–1795.

Note: For a table listing ADEC's delegation status, see paragraph (c)(10) of this section.

* * * * *

(c) * * *

(10) * * *

DELEGATION STATUS FOR PART 61 STANDARDS—REGION X

Subpart	ADEC[1]	IDEQ[2]	ODEQ[3]	LRAPA[4]	Ecology[5]	BCAA[6]	NWAPA[7]	OAPCA[8]	PSAPCA[9]	SCAPCA[10]	SWAPCA[11]	YRCAA[12]
A General Provisions[13]	X	.....	.....	.....	.....	.....	X	.....	X	.....	X	
B Radon from Underground Uranium Mines												
C Beryllium	.....	.....	.....	.....	.....	.....	X	.....	X	.....	X	
D Beryllium Rocket Motor Firing	.....	.....	.....	.....	.....	.....	X	.....	X	.....	X	
E Mercury	X	.....	.....	.....	.....	.....	X	.....	X	.....	X	
F Vinyl Chloride	.....	.....	.....	.....	.....	.....	X	.....	X	.....	X	
H Emissions of Radionuclides other than Radon from Dept of Energy facilities												
I Radionuclides from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H												
J Equipment Leaks of Benzene	X	.....	.....	.....	.....	.....	X	.....	X	.....	X	
K Radionuclides from Elemental Phosphorus Plants												
L Benzene from Coke Recovery	.....	.....	.....	.....	.....	.....	X	.....	X	.....	.....	
M Asbestos	X[1]	.....	.....	.....	.....	.....	X	.....	X	.....	X	
N Arsenic from Glass Plants	.....	.....	.....	.....	.....	.....	X	.....	X	.....	X	
O Arsenic from Primary Copper Smelters	.....	.....	.....	.....	.....	.....	X	.....	X	.....	X	
P Arsenic from Arsenic Production Facilities	.....	.....	.....	.....	.....	.....	X	.....	X	.....	X	
Q Radon from Dept of Energy facilities												
R Radon from Phosphogypsum Stacks												
T Radon from Disposal of Uranium Mill Tailings												
V Equipment Leaks	X	.....	.....	.....	.....	.....	X	.....	X	.....	X	
W Radon from Operating Mill Tailings												
Y Benzene from Benzene Storage Vessels	X	.....	.....	.....	.....	.....	X	.....	X	.....	X	
BB Benzene from Benzene Transfer Operations	.....	.....	.....	.....	.....	.....	X	.....	X	.....	X	
FF Benzene Waste Operations	X	.....	.....	.....	.....	.....	X	.....	X	.....	X	
.												

[1] Alaska Department of Environmental Conservation (1/18/97) NOTE: Alaska received delegation for sections 61.145 and 61.154 of Subpart M (Asbestos), along with other sections and appendices which are referenced in 61.145, as 61.145 applies to sources required to obtain an operating permit under Alaska's regulations. EPA retains the authority to implement and enforce Subpart M for area source asbestos demolition and renovation activities.
[2] Idaho Division of Environmental Quality.
[3] Oregon Department of Environmental Quality.
[4] Lane Regional Air Pollution Authority.
[5] Washington Department of Ecology.
[6] Benton Clean Air Authority.
[7] Northwest Air Pollution Authority (5/14/98).
[8] Olympic Air Pollution Control Authority.
[9] Puget Sound Air Pollution Control Agency (7/1/97).
[10] Spokane County Air Pollution Control Authority.
[11] Southwest Air Pollution Control Authority (8/1/96).
[12] Yakima Regional Clean Air Authority.
[13] Authorities which are not delegated include: 40 CFR 61.04(b); 61.12(d)(1); 61.13(h)(1)(ii) for approval of major alternatives to test methods; 61.14(g)(1)(ii) for approval of major alternatives to monitoring; 61.16; 61.53(c)(4); any sections in the subparts pertaining to approval of alternative standards (i.e., alternative means of emission limitations), or approval of major alternatives to test methods or monitoring; and all authorities identified in the subparts (i.e., under "Delegation of Authority") that cannot be delegated.

Note to paragraph (c)(10): Dates in parenthesis indicate the effective date of the federal rules that have been adopted by and delegated to the state or local air pollution control agency. Therefore, any amendments made to these delegated rules after this effective date are not delegated to the agency.

PART 63—[AMENDED]

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

Authority: 42 U.S.C. 7401, et seq.

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.99 is amended by adding paragraph (a)(2) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(2) Alaska.

(i) The following table lists the specific part 63 standards that have been delegated unchanged to the Alaska Department of Environmental Conservation. The (X) symbol is used to indicate each subpart that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—ALASKA

Subpart		Alaska Department of Environmental Conservation (1/18/97)
A	General Provisions [1]	X
D	Early Reductions	X
F	HON-SOCMI.	
G	HON-Process Vents.	
H	HON-Equipment Leaks.	
I	HON-Negotiated Leaks.	
L	Coke Oven Batteries.	
M	Perc Dry Cleaning	X
N	Chromium Electroplating	X [2]
O	Ethylene Oxide Sterilizers.	
Q	Industrial Process Cooling Towers	X
R	Gasoline Distribution	X
S	Pulp and Paper.	
T	Halogenated Solvent Cleaning	X
U	Polymers and Resins I.	
W	Polymers and Resins II-Epoxy.	
X	Secondary Lead Smelting.	
Y	Marine Tank Vessel Loading	X
CC	Petroleum Refineries	X
DD	Off-Site Waste and Recovery	X
EE	Magnetic Tape Manufacturing.	
GG	Aerospace Manufacturing & Rework.	
II	Shipbuilding and Ship Repair	X
JJ	Wood Furniture Manufacturing Operations	X
KK	Printing and Publishing Industry	X
LL	Primary Aluminum.	
OO	Tanks—Level 1.	
PP	Containers.	
QQ	Surface Impoundments.	
RR	Individual Drain Systems.	
VV	Oil-Water Separators and Organic-Water Separators.	
EEE	Hazardous Waste Combustors.	
JJJ	Polymers and Resins IV.	

[1] Authorities which are not delegated include: 40 CFR 63.6(g); 63.6(h)(9); 63.7(e)(2)(ii) and (f) for approval of major alternatives to test methods; 63.8(f) for approval of major alternatives to monitoring; 63.10(f); and all authorities identified in the subparts (i.e., under ''Delegation of Authority'') that cannot be delegated. For definitions of minor, intermediate, and major alternatives to test methods and monitoring, see memorandum from John Seitz, Office of Air Quality Planning and Standards, dated July, 10, 1998, entitled, ''Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies.''

[2] Alaska received delegation for Subpart N (Chromium Electroplating) as it applies to sources required to obtain an operating permit under Alaska's regulations. EPA retains the authority for implementing and enforcing Subpart N for area source chromium electroplating and anodizing operations which have been exempted from Part 70 permitting in 40 CFR 63.340(e)(1).

(ii) [Reserved]

Note to paragraph (a)(2): The date in parenthesis indicates the effective date of the federal rules that have been adopted by and delegated to the Alaska Department of Environmental Conservation. Therefore, any amendments made to these delegated rules after this effective date are not delegated to the agency.

* * * * *

[FR Doc. 99–11270 Filed 5–5–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300846; FRL–6074–9]

RIN 2070–AB78

Myclobutanil; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for combined residues of the fungicide myclobutanil and its metabolite in or on strawberries at 0.5 parts per million (ppm) for an additional 1-year period. This tolerance will expire and is revoked on March 31, 2000. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on strawberries. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective May 6, 1999. Objections and requests for hearings must be received by EPA, on or before July 6, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP-300846], 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-300846], 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, Crystal Mall #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@epa.gov. Copies of electronic 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 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300846]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, 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: Rm., 271, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–308–9362; e-mail: schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of April, 11, 1997 (62 FR 17730) (FRL–5597–9), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) it established a time-limited tolerance for the combined residues of myclobutanil and its metabolite in or on strawberries at 0.5 ppm, with an expiration date of March 31, 1998. EPA extended the expiration date of this tolerance to March 31, 1999, in a **Federal Register** notice published March 4, 1998 (FRL 5772–8). EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of myclobutanil on strawberries for this year growing season due to continued incidence of powdery mildew in Florida and California and the claimed ineffectiveness of registered alternatives at controlling the disease. After having reviewed the submission, EPA concurs that an emergency condition could exist. EPA has authorized under FIFRA section 18 the use of myclobutanil on strawberries for control of powdery mildew in strawberries.

EPA assessed the potential risks presented by residues of myclobutanil in or on strawberries. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of April 11, 1997 (62 FR 17730) (FRL–5597–9). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on March 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on strawberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation 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 July 6, 1999, 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 under the ''ADDRESSES'' section (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). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, 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: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

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.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300846] (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.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit 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 record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. 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 tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the exemption 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 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.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. 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 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).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 23, 1999.

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. 321(q), 346(a), and 371.

§180.443 [Amended]

2. In §180.443, by amending the table in paragraph (b), by revising the date for Strawberries from ''3/31/99'' to read ''3/31/00''.

[FR Doc. 99–11385 Filed 5–5–99; 8:45 am]

BILLING CODE 6560–50–F

Proposed Rules

Federal Register
Vol. 64, No. 87
Thursday, May 6, 1999

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

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 20

RIN 1076–AD95

Financial Assistance and Social Services Programs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (Bureau) is proposing to revise the existing Financial Assistance and Social Services Program regulations to incorporate rules for Burial Assistance, Child Assistance, Disaster Assistance, Emergency Assistance, General Assistance, Services to Children, Elderly and Families, and Tribal Welfare Reform. All other sections are revised and renumbered to conform to existing programmatic and budgetary statutes and conditions. Also, these regulations have been rewritten in Plain English as required by E.O. 12866. In keeping with the intent of Plain English, we added more subparts for easier use in reference.

DATES: Comments must be received by July 6, 1999.

ADDRESSES: Mail comments to Division of Social Services, Bureau of Indian Affairs, 1849 C Street, NW, MS–4660–MIB, Washington, DC 20240 or hand deliver them to room 4660 at the above address. Comments will be available for inspection at this address from 9:00 a.m. to 4:00 p.m., Monday through Friday beginning approximately May 26, 1999.

FOR FURTHER INFORMATION CONTACT: Larry Blair, Chief, Division of Social Services, Bureau of Indian Affairs at telephone (202) 208–2479.

SUPPLEMENTARY INFORMATION: We last revised the financial assistance and social services regulations in 25 CFR Part 20 in 1985. Since that time, a number of important changes have occurred that are not reflected in the existing regulations. These actions present an opportunity to review the current priorities and policies contained in the regulations and propose changes that conform to existing conditions. We've considered the following factors in proposing changes in the current regulations:

- The primary purpose of the amendments is to provide clear, concise regulations that will improve program implementation;
- Congress has enacted a cap on the level of financial assistance funding;
- Existing financial assistance and social services regulations do not provide for the development of tribal welfare reform/redesign plans in accordance with tribal desires and existing law;
- Given fluctuations in financial assistance caseloads and emergencies, it has been difficult to plan and refine the existing service delivery framework;
- The Department of Health and Human Services (HHS) has made a policy decision to allow Temporary Assistance for Needy Families (TANF) payments to be included as one of the grants under Pub. L. 102–477;
- Pub. L. 104–193 Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) reduced funding level authorizations and requires General Assistance (GA) payments to be equal to the level of state TANF payments; and
- The Indian Child Protection and Family Violence Prevention Act and the Adoption and Safe Families Act have established new standards in child welfare, and the regulations need revision to incorporate and consolidate additional child protection and permanency planning requirements.

The continued focus and use of the financial assistance and social services program needs to be on the reservation and other areas where the Indian Community resides and where other government entities do not provide reasonably comparable and available services. The Bureau continues to support the policy that Indian people living away from their reservation are eligible and should receive financial assistance and social services from local state, county, and city resources on the same basis as non-Indians. For the purposes of simplifying the locations where we will provide the financial assistance and social services program, we use the term ''service area'' in these regulations and tell you how to get a service area if one does not yet exist.

Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Tribes have been operating this financial assistance program for thirty years and the amount of funding is dependent upon the local economy in terms of unemployment and extent of need for funds. Approximately 400 tribes receive some form of financial assistance yearly and the amount of funds varies according to caseload increases and decreases.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule affects a number of Indian Communities throughout the nation but the impact is not adverse because the financial assistance programs have been in operation for many years and this regulation does not increase cases and expenditures over prior year totals because it is dependent upon the extent of need.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. The financial assistance funds are

divided up between 400 Indian communities based upon need.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule provides guidance for a welfare benefit program and will not affect payment levels of eligible clients nor cause increases or decreases in existing caseloads or total expenditures.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This program is a welfare benefit program and does not affect local enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (1 U.S.C. 1531, *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required.

Federalism (E.O. 12612)

In accordance with Executive Order 12612 this rule does not have significant Federalism effects. A Federalism assessment is not required.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation requires an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is required. An OMB Form 83–I has been reviewed by the Department and sent to OMB for approval.

The Paperwork Reduction Act submission is BIA Financial Assistance and Social Services Program, form number OMB 1076–0017. The Bureau has reviewed the information needed and reduced the amount of information being collected. The information collection takes 15 minutes for 200,000 respondents for a burden of 50,000 hours. The information collection will be used to make decisions within the framework of the financial assistance program, such as determining eligibility, ensuring uniformity of services, and maintaining current records for audit purposes. The information collection is required to obtain or retain a benefit. Information covered by the Privacy Act will be kept confidential as required by regulation. Please note that an agency may not collect 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 Paperwork Reduction Act submission began as a separate issue in order to allow the tribes to continue working with the family assistance programs while the rule was being revised. The notice of reinstatement for this information collection was published in the **Federal Register** for a 60 day notice period, and recently for a 30 day period (63 FR 30771 of December 21, 1998 and 63 FR 70414 of March 31, 1999 respectively). The **Federal Register** Notices specifically requested comments concerning:

1. Whether the collection of information is necessary for the proper performance of the functions of the Bureau including whether the information will have practical utility;

2. The accuracy of the Bureau'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.

OMB received the request for clearance of this information collection March 31, 1999. You may send any comments about the collection to the Desk Officer for the Department of the Interior, Office of Information and Regulatory Affairs—Office of Management and Budget, 725 17th Street NW, Washington, DC 20503. OMB has up to 60 days to decide if the information collection will be approved; however, your comments will receive maximum consideration if they are received within the first 30 days.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, **§ 20.300 What are the basic eligibility criteria?**) (5) Is the description of the proposed rule in the ''supplementary information'' section of this preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov

List of Subjects in 25 CFR Part 20

Administrative practice and procedures, Child welfare, Indians-Social welfare, Public assistance programs.

For the reasons set out in the preamble, Part 20 of Title 25, Subchapter D, Chapter I of the Code of Federal Regulations is proposed to be amended as set forth below:

SUBCHAPTER D—HUMAN SERVICES

PART 20—FINANCIAL ASSISTANCE AND SOCIAL SERVICES PROGRAMS

Subpart A—Definitions, Purpose and Policy

Sec.

20.100 What definitions clarify the meaning of the provisions of this part?
20.101 What is the purpose of this part?
20.102 What is the Bureau's policy in providing financial assistance and social services under this part?
20.103 Have the information collection requirements in this part been approved by the Office of Management and Budget?

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20.200 What contact will the Bureau maintain with state, tribal, county, local, and other Federal agency programs?
20.201 How does the Bureau designate service area and what information is required?
20.202 What does financial assistance include?
20.203 What is a tribal redesign plan?
20.204 Can a tribe incorporate assistance from other sources into a tribal redesign plan?
20.205 Must all tribes develop a tribal redesign plan?
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20.208 Can a tribe use savings from a tribal redesign plan to meet other priorities of the tribe?
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20.317 How will the ineligibility period be implemented?
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20.322 Who is eligible to receive a TWEP incentive payment?
20.323 Will the local TWEP be required to have written program procedures?
20.324 When can the Bureau provide Burial Assistance?
20.325 What is the process for making application for Burial Assistance for eligible Indians?
20.326 When are the related transportation expenses covered by Burial Assistance?
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20.328 How can a tribe apply for Disaster Assistance?
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20.400 For whom should Services to Children, Elderly, and Families be provided?
20.401 What services are included under Services to Children, Elderly, and Families Services?

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20.500 What are the eligibility criteria for Child Assistance?
20.501 What are the rates of payment for foster care?
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Authority: 25 U.S.C. 13; Pub. L. 102–477, 106 Stat. 2302; Pub. L. 104–193, 110 Stat. 2105; Pub. L. 105–83, 111 Stat. 1543.

Subpart A—Definitions, Purpose and Policy

§ 20.100 What definitions clarify the meaning of the provisions of this part?

Appeal means a written request for correction of an action or decision of a specific program decision by a Bureau official (§ 20.700) or a tribal official (§ 20.705).

Applicant means an Indian individual or person by or on whose behalf an application for financial assistance and/or social services has been made under this part.

Application means the written process through which a request is made for financial assistance or social services.

Area Director means the Bureau official in charge of an Area Office.

Assistant Secretary means the Assistant Secretary—Indian Affairs.

Authorized representative means a parent or other caretaker relative, conservator, legal guardian, foster parent, attorney, paralegal acting under the supervision of an attorney, friend or other spokesperson duly authorized and acting on behalf or representing the applicant or recipient.

Bureau means the Bureau of Indian Affairs of the United States Department of the Interior.

Bureau Standard of Assistance means payment standards established by the Assistant Secretary—Indian Affairs for burial, disaster, emergency, and adoption and guardianship subsidy. In accordance with Pub. L. 104–193, the Bureau standard of assistance for general assistance is the state rate for TANF in the state where the applicant lives. Child Assistance and foster care rates are in accordance with Title IV of the Social Security Act (49 Stat. 620) and Pub. L. 104–193.

Burial assistance means a financial assistance payment made on behalf of an indigent eligible Indian person who meets the eligibility criteria to provide minimum burial expenses according to Bureau payment standards established by the Assistant Secretary—Indian Affairs.

Case means all individuals in the household.

Case management means the activity of a social services worker in assessing client and family problem(s), case planning, coordinating and linking services for clients, monitoring service provisions and client progress, advocacy, tracking and evaluating services provided, such as evaluation of child's treatment being concurrent with parent's treatment, and provision of aftercare service. Activities may also include resource development and providing other direct services such as accountability of funds, data collection, reporting requirements, and documenting activities in the case file.

Case plan means a signed written plan with time limited goals which is developed and signed by the service recipient and social services worker. The case plan will include documentation of referral and ineligibility for other services. The plan must incorporate the steps needed to assist individuals and families to resolve social, economic, psychological, interpersonal, and/or other problems, to achieve self-sufficiency and independence. All plans for children in foster care must include a time specific goal of the return of the child to the home or initiation of a guardianship/adoption.

Child means an Indian person under the age of 18 or such other age of majority as may be established for purposes of parental support by tribal or state law (if any) applicable to the person at his or her residence, except that no person who has been emancipated by marriage will be deemed a child.

Child assistance means financial assistance provided on behalf of an Indian child, or an Indian under age 18, who is not eligible for any other state or Federal assistance as documented in the case file and who requires placement in a foster home or specialized non-medical care facility, in accordance with standards of payments established by the state in which they reside pursuant to the foster care program under Title IV of the Social Security Act (49 Stat. 620), or has special needs as specified in § 20.100 (pp).

Designated representative means an official of the Bureau who is designated by a Superintendent to hold a hearing as prescribed in §§ 20.700 through 20.705 and who has had no prior involvement in the proposed decision under § 20.602 and whose hearing decision under §§ 20.700 through 20.705 will have the same force and effect as if rendered by the Superintendent.

Disaster means a situation where a Tribal Community is adversely effected by a natural disaster or other forces which pose a threat to life, safety, or health as specified in §§ 20.327 and 20.328.

Emergency means a situation where an individual or family's home and personal possessions are either destroyed or damaged through forces beyond their control as specified in § 20.329.

Employable means an eligible Indian person who is physically and mentally able to obtain employment, and who is not exempt from seeking employment in accordance with the criteria specified in § 20.315.

Essential needs means shelter, food, clothing and utilities, as included in the standard of assistance in the state where the eligible applicant lives.

Extended family means persons related by blood, marriage or as defined by Indian custom.

Family assessment means a social services evaluation of a family's abilities and resources to provide the necessary care and supervision for the child(ren), and individuals within the family's current living situation and is included in the case file.

Foster care services means those social services provided when an Indian child lives away from the family home.

General Assistance means a secondary or residual source of financial assistance payments to eligible Indian individuals for essential needs as provided and pursuant to §§ 20.300 through 20.319.

Head of household means the persons in the household with whom the household members live and who makes application for benefits.

Homemaker services means those non-medical services purchased or contracted for individuals who are not eligible for any other programs such as Medicaid/Medicare as documented in the case file. These individuals must be under the supervision of a social services agency which is administered by a person trained in such skills as child care and home management to prevent out-of-home placement.

Household means persons living together who may or may not be related to the ''head of household.''

Indian means any person who is a member of any of those tribes listed in the **Federal Register** pursuant to 25 CFR part 83, as recognized by and receiving services from the Bureau of Indian Affairs.

Indian court means Indian tribal court or court of Indian offenses.

Indian tribe means an Indian or Alaskan Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Pub. L. 103–454, 108 Stat. 4791.

Individual Self-sufficiency Plan (ISP) means a plan designed to meet the goal of employment through specific action steps and is incorporated within the case plan. The plan is jointly developed and signed by the general assistance recipient and social services worker.

Need means the deficit after consideration of income and other resources necessary to meet the cost of essential need items and special need items as defined by the Bureau standard of assistance for the state in which the applicant or recipient resides.

Non-medical care means financial assistance for room and board services for individuals in non-medical care facilities. These individuals must not be eligible for SSI or any other Federal or state programs and this information must be documented in the case file.

Permanency plan means the documentation in a case plan which provides for permanent living alternatives for the child(ren) in foster care who are not eligible for any other Federal or state program. Permanency plans are developed in accordance with tribal, cultural, and tribal/state legal standards when the parent or guardian is unable to resolve the issues that require out of home placement of the child(ren).

Protective services means those services necessary to protect an individual who is the victim of an alleged and/or substantiated abuse or neglect incident. In coordination with law enforcement and tribal courts, this may include placement of the individual out of the home to assure the safety of the individual while the allegations are being investigated. Social workers will not remove individuals

from their homes without a court order except in life or death situations. Protective services can also include provision of social services in the home, the coordination and referral to other programs/services and the involvement of Child Protection and/or Multi-Disciplinary Teams.

Public assistance means those programs of financial assistance provided by state, tribal, county, local and Federal organizations including programs under Title IV of the Social Security Act (49 Stat. 620), as amended, and (Pub. L. 104–193).

Recipient is an individual or person who has been determined as eligible through documentation in the case file and is receiving financial assistance or social services under this part.

Recurring income means any cash or in kind payment, earned or unearned, received on a monthly, quarterly, semiannual, or annual basis.

Resources means income and other liquid assets available to an Indian person or household to meet current living costs, unless otherwise specifically excluded by Federal statute. Liquid assets are those properties in the form of cash or other financial instruments which can be converted to cash, such as savings or checking accounts, promissory notes, mortgages and similar properties, and retirements and annuities.

Secretary means the Secretary of the Interior.

Service area means:

(1) Reservations; and/or

(2) Areas adjacent or adjoining reservations; and/or

(3) Allotments outside the reservations; and/or

(4) Areas defined as reservations or service areas by statute; and/or

(5) Other defined areas designated by the Assistant Secretary—Indian Affairs pursuant to this part.

Services to children, elderly and families means social services, including protective services, not including money payments, provided through the social work skills of casework, group work or community development to assist in solving social problems involving children, elderly and families.

Special needs means a financial assistance payment made to or on behalf of individuals who have extenuating, non-medical circumstances which warrant a one-time annual financial assistance payment when other resources are not available and the circumstances are documented in the case files.

Subsidized guardianship means a payment of a monthly subsidy, not to exceed two years, for the child(ren) in long-term, court approved guardianship placements. The children must not be eligible for any other Federal or state program and this must be documented in the case file.

Substitute care means the provision of foster care or any in-home, out of home, or relative placement of the child(ren) by someone other than a parent.

Superintendent means the Bureau official in charge of an Agency Office.

Supplemental Security Income (SSI) means those programs of assistance provided under Title XVI of the Social Security Act (49 Stat. 620), as amended.

Temporary Assistance for Needy Families (TANF) means one of the programs of financial assistance provided under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, (PRWORA).

Tribal governing body means the federally recognized governing body of an Indian tribe.

Tribal redesign plan means a tribally designed method for changing general assistance eligibility and/or payment levels in accordance with appropriation language so as to reduce dependence on general assistance as specified in §§ 20.203 through 20.211.

Tribal Work Experience Program (TWEP) means a program operated by tribal contract/grant or self-governance annual funding agreement, which provides eligible participants with work experience and training that promotes and preserves work habits and develops work skills aimed toward self-sufficiency. The Bureau payment standard is established by the Assistant Secretary—Indian Affairs.

Unemployable means a person who meets the criteria specified in § 20.315.

§ 20.101 What is the purpose of this part?

The regulations in this part govern the provision of Child Assistance, General Assistance, and Services to Children, Elderly and Families to eligible Indians.

§ 20.102 What is the Bureau's policy in providing financial assistance and social services under this part?

(a) The Bureau can provide assistance under this part to eligible Indians when financial assistance or social services are either not available or not provided by State, tribal, county, local and other Federal agencies.

(b) Bureau social services programs will not be used to supplement or supplant other programs.

(c) Bureau financial assistance and social services are subject to annual Congressional appropriations.

§ 20.103 Have the information collection requirements in this part been approved by the Office of Management and Budget?

The information collection requirements contained in §§ 20.300, 20.400, and 20.500 have been submitted for clearance to the Office of Management and Budget under 44 U.S.C. 35d *et seq.* The notice of reinstatement for this information collection was published in the **Federal Register** on March 31, 1999.

Subpart B—Welfare Reform

§ 20.200 What contact will the Bureau maintain with State, tribal, county, local, and other Federal agency programs?

We will coordinate all financial assistance and social services programs with State, tribal, county, local and other Federal agency programs to ensure that the financial assistance and social services program avoids duplication of assistance.

§ 20.201 How does the Bureau designate a service area and what information is required?

(a) The geographic boundaries of reservations for those tribes having reservations defines their service area.

(b) The Assistant Secretary—Indian Affairs can designate service areas for financial assistance or social services to:

(1) Tribes having no reservations;

(2) Tribes having no areas adjacent or adjoining reservations;

(3) Tribes having no allotments outside the reservations;

(4) Tribes having no areas defined as reservations or service areas by statute; or

(5) Tribes having no other defined areas designated by the Assistant Secretary—Indian Affairs.

(c) If you are a tribe requesting service area designation you must submit a resolution that certifies that:

(1) Tribal members and their Indian family members residing within the service area are socially, culturally, and economically affiliated with your tribe and service area.

(2) The proposed service area will not include counties or parts thereof that have reasonably available comparable services.

(d) You must provide documentation showing that:

(1) The area is administratively feasible (that is, it can allow us to provide an adequate level of services to the Indian people residing in the area);

(2) The area is near the Indian Community;

(3) No duplication of services exists; and

(4) All eligible Indians will be served.

(e) You must send documentation to the Area Director who will certify its

accuracy and make recommendations to the Assistant Secretary—Indian Affairs. The Assistant Secretary—Indian Affairs can make a determination to approve and publish notice of the designation of service area and the Indians to be served in the **Federal Register**.

§ 20.202 What does financial assistance include?

The following types of assistance are included in financial assistance:

(a) Burial Assistance for indigent burials;

(b) Child Assistance for children in foster home care, children in need of adoption or guardianship, children in need of residential care, and children with special needs;

(c) Disaster Assistance in cases where the Federal Emergency Management Agency (FEMA) or the Red Cross do not provide assistance.

(d) Emergency Assistance for essential needs to prevent hardship caused by burnout, flooding of homes, or other life threatening situations that may cause loss or damage of personal possessions; and

(e) General Assistance for basic essential needs.

§ 20.203 What is a tribal redesign plan?

(a) A tribal redesign plan allows a tribe to:

(1) Change eligibility for general assistance in the service area; or

(2) Change the amount of general assistance payments for individuals within the service area.

(b) If you develop a tribal redesign plan it must:

(1) Treat all persons in the same situation equally; and

(2) Not result in additional expenses for the Bureau.

§ 20.204 Can a tribe incorporate assistance from other sources into a tribal redesign plan?

Yes. A tribe may incorporate an HHS-approved TANF tribal welfare plan and associated funding into a Pub. L. 102–477 grant, a Pub. L. 103–413 self-governance annual funding agreement, or a tribal redesign plan.

§ 20.205 Must all tribes submit a tribal redesign plan?

No. You must submit a tribal redesign plan under § 20.206 only if you want to change the way that the General Assistance program operates in your service area.

§ 20.206 Can tribes change eligibility criteria or levels of payments for General Assistance?

Yes. If you have a redesign plan you can administer General Assistance programs under a Pub. L. 93–638 self-determination contract, a Pub. L. 102–477 grant, or a Pub. L. 103–413 self-governance annual funding agreement by changing eligibility criteria or levels of payment for General Assistance. A Bureau servicing office can administer a tribal redesign plan as requested by a tribal resolution.

§ 20.207 Must a tribe get approval for a tribal redesign plan?

(a) If you have a Pub. L. 93–638 contract or receive direct services from us, you must obtain approval from the Area Director or a Bureau servicing office before developing a redesign plan. You must submit your redesign plan for approval at least three months before the effective date in accordance with Pub. L. 93–638 as amended and part 900.

(b) If you operate with a self-governance annual funding agreement or Pub. L. 102–477 grant you must ask the appropriate Area Director to make a recommendation for approval of the redesign. The Assistant Secretary—Indian Affairs will consider the Area Director's recommendation for approval before making a final decision.

§ 20.208 Can a tribe use savings from a tribal redesign plan to meet other priorities of the tribe?

Yes. You may use savings from a redesign to meet other priorities.

§ 20.209 What if the tribal redesign plan leads to increased costs?

The tribe must meet any increase in costs to the General Assistance program that result solely from tribally increased payment levels due to a redesign plan.

§ 20.210 Can a tribe operating under a tribal redesign plan go back to operating under this part?

Yes. A tribe operating under a tribal redesign plan can choose to return to operation of the program as provided in §§ 20.300 through 20.323.

§ 20.211 Can eligibility criteria or payments for Burial Assistance, Child Assistance, and Disaster Assistance change?

No. Neither the Bureau nor a tribe may change eligibility criteria or levels of payment for Burial Assistance, Child Assistance, Disaster Assistance, and Emergency Assistance awarded in Pub. L. 93–638 contracts, Pub. L. 102–477 grants, Pub. L. 103–413 self-governance annual funding agreements.

Subpart C—Direct Assistance

§ 20.300 What are the basic eligibility criteria?

To meet basic eligibility criteria for assistance or services under this part the applicant must:

(a) Be a member of an Indian tribe or be a one-fourth degree or more blood quantum descendant of a member of any Indian tribe; and

(b) Not have sufficient resources to meet the essential need items defined by the Bureau standard of assistance; and

(c) Reside in the service area as defined in § 20.100; and

(d) Meet the additional eligibility criteria for each of the specific programs of financial assistance or social services in §§ 20.301 through 20.516.

§ 20.301 What is the goal of General Assistance?

The goal of the General Assistance program is to increase self-sufficiency. Each General Assistance recipient must work with the social services worker to develop and sign an Individual Self-Sufficiency Plan (ISP). The plan must outline the specific steps the individual will take to increase independence by meeting the goal of employment.

§ 20.302 Are Indian applicants required to seek assistance through TANF?

Yes. All Indian applicants with dependent children are required to apply for TANF and follow TANF regulations.

§ 20.303 When is an applicant eligible for General Assistance?

To be eligible for General Assistance an applicant must:

(a) Meet the criteria contained in § 20.300;

(b) Not have sufficient resources to meet the essential need items defined by the Bureau standard of assistance; and

(c) Apply concurrently for financial assistance from other State, tribal, county, local, or other Federal agency programs for which he/she is eligible;

(d) Not receive TANF, Supplemental Security Income (SSI), or benefits from other state or Federal entitlement programs; and

(e) Develop with a social services worker and sign an employment strategy to meet the goal of employment through specific action steps including job readiness and job search activities.

§ 20.304 When will the Bureau review eligibility for General Assistance?

The Bureau will review eligibility for General Assistance:

(a) Whenever there is an indication of a change in status which can affect a recipient's eligibility or amount of

assistance. Recipients are required to immediately inform the social services office of any such changes;

(b) Not less than every 3 months for individuals who are not exempt from seeking or accepting employment in accordance with § 20.315 or the ISP; and

(c) Not less than every 6 months for all recipients.

§ 20.305 What does redetermination involve?

(a) Redetermination assesses the need for continued financial assistance as outlined in § 20.304. It includes:

(1) A home visit;

(2) An estimate of income, living circumstances, household composition for the month(s) for which financial assistance is to be provided; and

(3) Appropriate revisions to the case plan.

(b) The social services worker will make a decision as to whether the recipient will continue to receive general assistance based on paragraph (a) of this section.

§ 20.306 What is the payment standard for General Assistance?

(a) Under Pub. L. 104–193, the Bureau must use the same TANF payment standard (and any associated rateable reduction) that exists in the State or service area where the applicant or recipient resides. This payment standard is the amount from which the Bureau subtracts net income and resources to determine General Assistance eligibility and payment levels;

(b) If the State does not have a standard for an adult, we will use either the difference between the standard for a child and the standard for a household of two, or one-half of the standard for a household of two, whichever is greater; and

(c) If the State does not have a TANF program, we will use the AFDC payment standard which was in effect on September 30, 1995, in the State where the applicant or recipient resides.

§ 20.307 What resources does the Bureau consider when determining need?

When the Bureau determines General Assistance eligibility and payment levels, we consider income and other resources as specified in §§ 20.308 and 20.309.

(a) All earned or unearned income must be calculated as income in the month it is received and as a resource thereafter, except that certain income obtained from the sale of real or personal property may be exempt as provided in § 20.309.

(b) Resources are considered to be available when they are liquidated and when the applicant or recipient has a legal interest in the liquidated sum, as defined in § 20.100.

§ 20.308 What does earned income include?

Earned income is cash or any in-kind payment earned in the form of wages, salary, commissions, or profit, from activities by an employee or self-employed individual. Earned income include:

(a) Any one-time payment to an individual for activities which were sustained over a period of time (for example, the sale of farm crops, livestock, artwork, crafts and beading); and

(b) With regard to self-employment, total profit from a business enterprise (i.e., gross receipts less expenses incurred in producing the goods or services). Business expenses do not include depreciation, personal business and entertainment expenses, personal transportation, capital equipment purchases, or principal payments on loans for capital assets or durable goods.

§ 20.309 What does unearned income include?

Unearned income includes, but is not limited to:

(a) Income from interest; oil and gas and other mineral royalties; gaming income per capita distributions; rental property; cash contributions, such as child support and alimony; gaming winnings; retirement;

(b) Annuities, veteran's disability, unemployment benefits, and Federal and State tax refunds;

(c) Per capita payments not excluded by Federal statute;

(d) Income from sale of trust land and real or personal property that is set aside for reinvestment in trust land or a primary residence, but has not been reinvested in trust land or a primary residence at the end of one year from the date the income was received;

(e) In-kind contributions providing shelter at no cost to the individual or household, this must equal the amount for shelter included in the State standard, or 25 percent of the State standard, whichever is less; and

(f) Financial assistance provided by a State, tribal, county, local, or other Federal agency.

§ 20.310 What recurring income must be prorated?

The following recurring income is prorated:

(a) Recurring income received by individuals over a 12-month period for less than a full year's employment (for example, income earned by teachers who are not employed for a full year);

(b) Income received by individuals employed on a contractual basis over the term of a contract; and

(c) Intermittent income received quarterly, semiannually, or yearly over the period covered by the income.

§ 20.311 What deducted amounts will be disregarded from the gross amount of earned income?

(a) The social services worker will disregard the following amounts from the earned income:

(1) Other Federal, State, and local taxes;

(2) Social Security (FICA);

(3) Health insurance;

(4) Work related expenses, including reasonable transportation costs;

(5) Child care costs, except where the other parent in the home is not working or is not disabled; and

(6) The cost of special clothing, tools, and equipment directly related to the individual's employment.

(b) For self-employed individuals, the social services worker will deduct the costs of conducting business and all of the amounts in paragraph (a) of this section.

§ 20.312 What amounts will be disregarded from income or other resources?

The social services worker will disregard the following amounts from income, or other resources:

(a) The first $2,000 of liquid resources annually available to the household;

(b) Any home produce from a garden, livestock, and poultry used by the applicant or recipient and his/her household for their consumption; and

(c) Resources specifically excluded by Federal statute.

§ 20.313 How will the Bureau compute financial assistance payments?

(a) The social services worker will compute financial assistance payments by:

(1) Calculating the difference between the Bureau standard of assistance and all resources calculated under §§ 20.307 through 20.310;

(2) Applying the rateable reduction or maximum payment level used by the State where the applicant lives;

(3) Deducting an amount for shelter (see paragraph (b) of this section for details on how to calculate a shelter amount); and

(4) Rounding the result down to the next lowest dollar.

(b) The social services worker must calculate a shelter amount for purposes of paragraph (a)(3) of this section. To calculate the shelter amount:

(1) The shelter amount must not exceed the amount for shelter in the State TANF standard;

(2) If the State TANF does not specify an amount for shelter, the social services worker must calculate the amount as 25 percent of the total State TANF payment; and

(3) If there is more than one household in a dwelling, the social services worker must prorate the actual shelter cost among the households receiving General Assistance; this amount cannot exceed the amount in the standard for individuals in similar circumstances. The head of each household is responsible for his/her portion of the documented shelter cost.

(c) The social services worker must not provide General Assistance payments for any period before the date of the application for assistance.

§ 20.314 What is the policy on employment?

(a) An applicant or recipient must:

(1) Actively seek employment, including the use of available State, tribal, county, local or Bureau-funded employment services;

(2) Make satisfactory progress in an ISP; and

(3) Accept local and seasonable employment when it is available.

(b) A head of household who does not comply with this section will not be eligible for General Assistance for a period of at least 60 days but not more than 90 days. This action must be documented in the case file.

§ 20.315 When is the employment policy not applicable?

The employment policy in § 20.314 does not apply to the persons shown in the following table.

The employment policy in § 20.314 does not apply to * * *	if * * *	and * * *
(a) Anyone younger than 16.		
(b) A full-time student under the age of 19	he/she is attending an elementary or secondary school or a vocational or technical school equivalent to a secondary school.	he/she is making satisfactory progress.
(c) A person enrolled at least half-time in a program of study under Section 5404 of Pub. L. 100–297.	he/she is making satisfactory progress	he/she was an active General Assistance recipient for a minimum of 3 months before determination/redetermination of eligibility.
(d) A person suffering from a temporary medical injury or illness.	it is documented in the case plan that the illness or injury is serious enough to temporarily prevent employment.	
(e) An incapacitated person who has not yet received Supplemental Security Income (SSI) assistance.	a physician, psychologist, or social services worker certifies that a physical or mental impairment (either by itself, or in conjunction with age) prevents the individual from being employed.	the assessment is documented in the case plan.
(f) A caretaker who is responsible for a person in the home who has a physical or mental impairment.	a physician or certified psychologist verifies the condition.	the case plan documents that: the condition requires the caretaker to be home on a virtually continuous basis; and there is no other appropriate household member available.
(g) A parent or other individual who does not have access to child care.	he/she personally provides full-time care to a child under the age of six.	
(h) A person for whom employment is not accessible.	there is a minimum commuting time of one hour each way.	

§ 20.316 What must a person covered by the employment policy do?

(a) If you are covered by the employment policy in § 20.314, you must seek employment and provide evidence of your monthly efforts to obtain employment in accordance with your ISP.

(b) If you do not seek and accept available local and seasonal employment, or you quit a job without good cause, you cannot receive General Assistance for a period of at least 60 days but not more than 90 days after you refuse or quit a job.

§ 20.317 How will the ineligibility period be implemented?

(a) If you refuse or quit a job, your ineligibility period will continue until you seek and accept appropriate available local and seasonal employment and fulfill your obligations already agreed to in the ISP.

(b) The Bureau will reduce your suspension period by 30 days when you show that you have sought local and seasonal employment in accordance with the ISP; and

(c) Your eligibility suspension will affect only you. The Bureau will not apply it to other eligible members of the household.

§ 20.318 What case management responsibilities does the social services worker have?

In working with each recipient, you, the social services worker must:

(a) Assess the general employability of the recipient;

(b) Assist the recipient in the development of the ISP;

(c) Sign the ISP;

(d) Help the recipient identify the service(s) needed to meet the goals identified in their ISP;

(e) Monitor and supervise recipient participation in work related training and other employment assistance programs; and

(f) Document activities in the case file.

§ 20.319 What responsibilities does the general assistance recipient have?

In working with the social services worker, you the recipient must:

(a) Participate with the social services worker in developing an ISP and sign the ISP;

(b) Perform successfully in the work related activities, community service, training and/or other employment assistance programs developed in the ISP;

(c) Participate successfully in treatment and counseling services identified in the ISP;

(d) Participate in evaluations of job readiness and or any other testing required for employment purposes; and

(e) Demonstrate that you are actively seeking employment by providing the social services worker with evidence of job search activities as required in the ISP.

§ 20.320 What is TWEP?

TWEP is a program that provides work experience and job skills to enhance potential job placement for the general assistance recipient. TWEP programs can be incorporated within Pub. L. 93–638 self-determination contracts, Pub. L. 102–477 grants, and Pub. L. 103–413 self-governance annual funding agreements at the request of the tribe.

§ 20.321 Does TWEP allow an incentive payment?

Yes. Incentive payments to participants are separate and will not be considered as wages or work related expenses, but as grant assistance payments under §§ 20.320 through 20.323. Incentive payments will not exceed the Bureau maximum payment standard established by the Assistant Secretary—Indian Affairs. The payment standard will be reviewed periodically to determine if revision is necessary.

§ 20.322 Who is eligible to receive a TWEP incentive payment?

(a) Consistent with the ISP, in situations where the participation is mandatory and the recognized head of the family unit is certified as unemployable, an alternate member of the assistance group, such as the spouse or another adult, will be designated as available for the TWEP incentive payment.

(b) Where there are multiple family units in one household, one member of each family unit will be eligible to receive the TWEP incentive payment.

§ 20.323 Will the local TWEP be required to have written program procedures?

Yes. The local TWEP must have specific written program procedures that cover hours of work, acceptable reasons for granting leave from work, evaluation criteria and monitoring plans and ISP's for participants. Work readiness progress must be documented in each ISP.

§ 20.324 When can the Bureau provide Burial Assistance?

In the absence of other resources, the Bureau can provide Burial Assistance for eligible indigent Indians meeting the requirements prescribed in § 20.300.

§ 20.325 What is the process for making application for Burial Assistance for eligible Indians?

(a) The application is made on behalf of the deceased who is considered the applicant. Determination of eligibility is based on the income and resources available to him/her in accordance with § 20.100(mm). This includes but is not limited to SSI, veterans death benefits, social security, and Individual Indian Money (IIM) accounts. Determination of need will be accomplished on a case by case basis using the Bureau payment standard.

(b) Requests and applications for Burial Assistance must be submitted within 30 days following death.

(c) Applications are subject to eligibility determinations in accordance with criteria specified at § 20.300.

(d) The approved payment standard will not exceed the Bureau maximum burial payment standard which will be established by the Assistant Secretary—Indian Affairs 60 days after this rule is published in final. The payment standard will be reviewed periodically to determine if revision is necessary.

§ 20.326 When are the related transportation expenses covered by Burial Assistance?

Transportation costs directly associated with burials are normally a part of the established burial rate. In those instances where an additional transportation charge is added to the burial rate because of extenuating circumstances, the social services worker can pay the added charge. However, the social services worker will ensure that these charges are reasonable, equitable, and apply to burials for eligible indigent individuals who are socially, culturally, and economically affiliated with their tribes and who have not resided out of the service area for a period of time exceeding six consecutive months and this must be documented in the case plan.

§ 20.327 When can the Bureau provide Disaster Assistance?

Disaster assistance is immediate and or short term relief from a disaster and can be provided to a tribal community when services are not provided by FEMA or Red Cross in accordance to § 20.328.

§ 20.328 How can a tribe apply for Disaster Assistance?

(a) The tribe affected by the disaster is considered the applicant and must submit the following to the Area Director through the local Superintendent:

(1) A tribal resolution requesting disaster assistance; and

(2) A copy of county, state, or Presidential declaration of disaster; and

(3) The projected extent of need in the service area not covered by other Federal funding sources.

(b) The Area Director must forward the above tribal documents and his/her recommendation to the Assistant Secretary—Indian Affairs for final decision on whether disaster assistance will be provided and to what extent.

§ 20.329 When can the Bureau provide Emergency Assistance payments?

Emergency Assistance payments can be provided to individuals or families who suffer from a burn out, flood, or other destruction of their home and loss or damage to personal possessions and will be limited to essential needs and other non-medical necessities.

§ 20.330 What is the payment standard for Emergency Assistance?

The approved payment standard will not exceed the Bureau's maximum Emergency Assistance payment standard which will be established by the Assistant Secretary—Indian Affairs 60 days after this rule is published in final. The payment standard will be reviewed periodically to determine if revision is necessary.

Subpart D—Services to Children, Elderly, and Families

§ 20.400 For whom should Services to Children, Elderly, and Families be provided?

Services to Children, Elderly, and Families will be provided for Indians meeting the requirements prescribed in § 20.300 who request such services or on whose behalf such services are requested.

§ 20.401 What services are included under Services to Children, Elderly and Families?

Services to Children, Elderly, and Families can include, but are not limited to, the following:

(a) Assistance in solving problems related to family functioning, interpersonal relationships, economic opportunity, money management, and referral to the appropriate resource for problems related to illness, physical or mental handicaps, drug abuse, alcoholism, and violation of law.

(b) Protective services are provided when children or adults are deprived temporarily or permanently of needed supervision by responsible adults, or are neglected, exploited, or need services when they are mentally or physically handicapped or otherwise disabled. Protective services for children and associated case management data have been developed for protective services, and will continue to be consolidated for nationwide reporting as per Pub. L. 101–630 and Pub. L. 99–570. Such services can include, but are not limited to, the following:

(1) Response to requests from members of the community on behalf of children or adults alleged to need protective services. Coordination with

Law Enforcement and/or courts must be completed prior to removal of individuals except in life or death situations.

(2) Family and child services, including referrals for homemaker and day care services for children; and

(3) Services to Indian courts, which can include, but are not limited to, the following:

(i) Investigation of and reports concerning allegations of child abuse and neglect, abandonment, and conditions such as mentally or physically handicapped or otherwise disabled individual which can require referrals;

(ii) Provision of social information related to the disposition of a case, including recommendation of alternative resources for treatment; and

(iii) Provision of placement services by the court order prior to and after adjudication.

(4) Community services which are services involving other groups, agencies, and facilities in the community can include, but are not limited to:

(i) Responses to community needs for evaluating social conditions affecting the well-being of its citizens;

(ii) Treatment of the identified conditions that are within the competence of social services; and

(iii) Maintenance of liaison with other community agencies for the purpose of identifying available services for assistance in solving the social problems of individuals, families, and children and facilitating the use of available community services by Indian persons who need them.

(5) Documentation of all activities and services in case files.

Subpart E—Child Assistance

§ 20.500 What are the eligibility criteria for Child Assistance?

An Indian child meeting the requirements established in § 20.300 can be considered eligible for child assistance or services under this part, *provided*, that:

(a) The child's legally responsible parent, custodian/guardian, or Indian court having jurisdiction requests such assistance, in writing, and indicates they are unable to provide necessary care and guidance for the child, or to provide for the child's special needs in his/her own home. A documented family assessment is required to determine whether parent(s)/custodian/guardian(s) are able to care for their child(ren);

(b) Relative caregivers must apply for and be denied TANF payments or other financial assistance. The child is not receiving and is not eligible to receive TANF or other assistance and is not included in such payments involving other caregivers. An otherwise eligible child can receive Child Assistance upon application for and pending initial receipt of TANF or other financial assistance;

(c) The child resides in an area where comparable Child Assistance and services are not available or are not being provided to all residents on the same basis from a state, tribal, county, local, and Federal agencies; and

(d) All income accruing to children, except income exempted by Federal statute and income earned by the child, will be considered as a resource which must be used to meet the cost of out of home care authorized and arranged by the social services providers.

(e) All Bureau and Tribal Agencies must work on developing partnerships with state and local governments to increase accessibility to funding sources and develop IV–E agreements/contracts.

§ 20.501 What are the rates of payment for foster care?

The state foster care rate in the state in which the Indian child resides is the foster care payment level, as provided by Title IV of the Social Security Act (49 Stat. 620).

§ 20.502 Can Child Assistance funds be used for placement of Indian children in treatment centers?

Child Assistance funds must be used as a last resort for placements of Indian children in specialized non-medical care facilities licensed by tribe or state. These services may be purchased or contracted under the supervision of the social services programs for children for whom the resources are not available from the state, tribal, county, local, and Federal agencies. The payment will only consist of room and board. Other services that may be needed, including mental health, education, and physical therapy must be assumed by the respective agency responsible for the provision of the service. Prior to placement a written agreement must be signed between the various funding sources to identify the services that will be paid by each source and will require approval of the Area Director.

§ 20.503 Can Child Assistance funds be used for Indian adoption subsidies or subsidized guardianships?

Yes, Child Assistance funds can be authorized to provide either adoption or guardianship subsidies for a period not to exceed two years for each child involved. The funds must be used to assist in the adoption or guardianship of a child currently in foster care. All other available resources must be considered and documented in the case file. Prior to authorizing a subsidy, approval of the Area Director is required.

§ 20.504 What eligibility requirements must be met for an Indian adoption subsidy or subsidized guardianship?

The eligibility requirements that must be met for an Indian adoption subsidy or subsidized guardianship are as follows:

(a) The child(ren) must be under the age of 18 (with regards to special circumstances as defined by tribal standards);

(b) The child(ren) must have been in foster care prior to the adoption or guardianship placement with payment, care, supervision, and responsibilities placed with the social services program;

(c) The adoption placement or guardianship meets the special needs of the child(ren) as indicated in the home study;

(d) The social services worker has provided permanency planning services;

(e) Adoption or guardianship has been clearly shown to be in the best interest of the child(ren);

(f) All other resources for adoption or long-term guardianship placement have been explored; and

(g) The child(ren)'s adoption or guardianship placement could not be completed without Bureau/tribal financial assistance.

§ 20.505 What is the payment standard for adoption and guardianship?

The approved payment standard will not exceed the Bureau's maximum adoption and guardianship payment standard which will be established by the Assistant Secretary—Indian Affairs 60 days after this rule is published in final. The payment standard will be reviewed periodically to determine if revision is necessary.

§ 20.506 Can homemaker services be provided with Child Assistance?

When other resources such as Medicaid are not available, homemaker services can be purchased or contracted and provided under the supervision of the social services program, e.g., for a severely handicapped child whose care places undue stress on the family and for whom resources are unavailable from the state, tribal, county, local, and other Federal agencies. Homemaking services can be purchased on a short-term basis not to exceed three months. While housekeeping services are one portion of this service, homemaker services must focus on training household members in such skills as

child care and home management. Homemaker services provide for:

(a) Child(ren) who, otherwise, would need foster care placement or who would benefit from supportive (protective) supervision;

(b) Severely handicapped or special needs child(ren) whose care places undue stress on the family; or

(c) Child(ren) whose care would benefit from specialized training and supportive services provided to family members.

§ 20.507 What services are provided jointly with the Child Assistance Program?

(a) Social services provided for children in their own home aimed at strengthening the family's ability to provide for and nurture their child(ren). These supportive services can include, social work-case management, counseling for parents and children, group work, day care, and homemaker services, when necessary;

(b) Protection of Indian children from abuse and neglect in coordination with law enforcement and courts;

(c) Foster care or care other than in the parental home. When temporary placement out of the home is necessary, a written case plan must be established within 30 days of placement and reviewed within 60 days of placement or as outlined in tribally established standards. The case plan must contain a written agreement signed among the various funding sources to identify the services that will be paid by each source in those instances where the child requires services outside the authority of the Child Assistance program.

§ 20.508 What information is required in the foster care case file?

At a minimum the following information is required:

(a) Tribal enrollment verification in accordance with § 20.100;

(b) A written case plan must be established within 30 days of placement, which includes the need for and expected length of placement;

(c) Information on the child(ren)'s health status and school records, including medications and immunization records;

(d) Parental consents for emergency medical care, school, and transportation;

(e) A signed plan for payment, including financial responsibility of parents and use of other appropriate resources;

(f) A copy of the certification/license of the foster home;

(g) A current photo of the child(ren);

(h) A copy of the social security card, birth certificate, Medicaid card and current court order;

(i) A placement beyond 30 days will require action by a court of competent jurisdiction, or in accordance with tribal codes and standards authorized by a court of competent jurisdiction. All placements require documentation of the need for protection of the child(ren) involved;

(j) Involuntary placements must be in accordance with Tribal Codes and authorized by a court of competent jurisdiction. A family assessment must be completed by a social services worker within 30 days of placement;

(k) All placements require at a minimum one home visit per month by the social services worker with the child(ren), documented in the file; and

(l) A list of all prior placements, including the names of the foster parents and dates of placements.

§ 20.509 What are the requirements for foster care?

The social services worker will select substitute care, which meets the physical, behavioral, and emotional needs of the child(ren) who require such care, which is intended to be short-term in nature. The following requirements must be met and documented in a case plan:

(a) All foster homes must be certified/licensed by the tribe or other recognized authority, as appropriate. Foster care placements must be made through a court of competent jurisdiction to ensure Federal background checks are completed as required by Pub. L. 101–630, and training (optional for relative placements) will be provided to the foster family;

(b) Relative placements must have on file an approved current home study;

(c) The social services worker must discuss with foster parents or caretakers, the child(ren)'s special needs, including disabilities, and provide counseling or referral to available resources;

(d) Any child(ren) requiring medical, substance abuse, and/or behavioral (mental) health services will be referred to appropriate health-services agencies for assessment and provision of services;

(e) Provision must be made for all necessary costs of care, which includes clothing, incidentals, and personal allowance, in accordance with established state standards of payments;

(f) A foster family agreement will be developed establishing roles and responsibilities of the biological parents, foster parents, placing agency, the terms of payment of care and the need for adherence to the established case plan. The agreement will be signed and dated by the parties involved;

(g) Any reports of suspected child abuse/neglect in a foster home must be reported immediately to law enforcement and protective services in accordance with tribal standards and reporting requirements pursuant to Pub. L. 101–630. If necessary, protective services will be provided in collaboration with other service providers;

(h) The social services worker will complete a yearly assessment of each tribal or state certified/licensed foster home as to how the home has fulfilled its function relative to the needs of the child(ren) placed in the home;

(i) An off-reservation family home or institution under contract must meet the licensing standards of the state in which it is located or tribally established certifying/licensing standards; and

(j) The social services agency must make efforts to secure child support for child(ren) in foster care, through a court of competent jurisdiction.

§ 20.510 How is the court involved in foster care placements?

The court retains custody of child(ren) in placement and the care and supervision must be given to the appropriate social services agency. Even though the court can issue any court order consistent with tribal law, the courts do not have the authority to require expenditure of Federal funds to pay for specifically prescribed or restrictive services or out-of-home placements of children. Case plans must be reviewed with the appropriate court at least every six months and a permanency hearing held within twelve months after a child enters foster care or according to established tribal standards. These standards can be established in the tribal code and can be in accordance with available funding source requirements.

§ 20.511 Should permanency plans be developed?

Permanency planning must be considered for child(ren) whose parents have not made reasonable efforts to meet case plan goals or have not had any contact with the child(ren) in foster care or substitute placement and must be developed six months after initial placement of the child. Every effort will be made to preserve the family and/or reunify the children with the family and relatives when developing permanency plans.

§ 20.512 Can the Bureau/tribal contractors make Indian adoptive placements?

The Bureau is not an authorized adoption agency, and staff must not arrange adoptive placements. However, long term permanency planning can

involve the Bureau social services workers cooperating with Tribal Courts to provide adoption subsidy. Tribal contractors will provide adoption services, as authorized by the tribal courts in accordance with tribal codes/law.

§ 20.513 Should Interstate Compacts be used for the placement of children?

Interstate compact agreements must be used whenever possible for foster care, adoption and guardianship to assure the availability of the funding resources and services from the originating placement source.

§ 20.514 What assistance can the courts request from social services on behalf of children?

The courts can request the following:

(a) Investigations of law enforcement reports of child abuse and neglect;

(b) Assessment of the need for out of home placement of the child(ren); and

(c) Provision of court-related services following adjudication, such as monitoring, foster care, or pre/post placement services.

§ 20.515 What is required for case management?

Social Services staff are required to document regular contact with children and families in accordance with specific program requirements. The social services agency is responsible for implementation of quality case management; this requires the supervisor's review of case plans every 90 days.

§ 20.516 How are child abuse and neglect cases to be handled?

Reported child abuse and neglect cases must be handled in accordance with the Indian Child Protection and Family Violence Prevention Act of 1990, Pub. L. 101–630, 25 CFR Part 63, Federal and/or state laws where applicable, and tribal codes which protect Indian children and victims of domestic violence. Child Protection Teams must be developed in accordance to Pub. L. 99–570. Those cases referred by the state will be handled according to the Indian Child Welfare Act, Pub. L. 95–608, and 25 CFR Part 23.

Subpart F—Administrative Procedures

§ 20.600 How is an application for financial assistance or social services made?

(a) Written or oral applications by or on behalf of any individual or group will be accepted for financial assistance or social services. Referrals will be accepted from relatives, interested individuals, social services agencies, law enforcement agencies, courts and others.

(b) All applications must be in written form to the Superintendent or his/her designated representative.

§ 20.601 From whom is eligibility information collected?

(a) Each applicant is the primary source of information used to determine eligibility and need. If it is necessary to secure information such as medical records, from other sources, the applicant must authorize the release of information.

(b) Recipients must accurately report any changes in circumstances which may affect their eligibility or the amount of financial assistance they receive. Recipients must report changes in circumstance within 30 days.

§ 20.602 How is an application approved or denied?

(a) Each application must be approved if the applicant meets the eligibility criteria in §§ 20.301 through 20.516 for the type of assistance requested. Financial assistance will be made back to the date of application.

(b) An application must be denied if the applicant does not meet the eligibility criteria set forth in §§ 20.301 through 20.516.

(c) Action to approve or deny an application must be made within 30 days of the date of the application. If action cannot be taken within 30 days, the applicant must be notified in writing of the reasons why the decision cannot be made. The local social services worker must issue written notice of the approval or denial of each application within 45 days of the date of the application.

§ 20.603 How is an applicant or recipient notified that benefits or services are denied?

(a) Written notice of the denial of benefits or services must be mailed or hand delivered to the applicant or recipient. Any action that increases, decreases, suspends, or terminates financial assistance requires written notice to the applicant or recipient 20 days in advance of the effective date. The notice must clearly and completely advise the applicant or recipient of the legal right to contest any adverse decision under §§ 20.600 through 20.605. The notice must:

(1) State the action taken, the effective date, and the reason(s) for the decision;

(2) Inform the applicant or recipient of the right to request a hearing if dissatisfied with the decision;

(3) Advise the applicant or recipient of the right to be represented by an authorized representative at no expense to the Bureau;

(4) Include the address of the local Superintendent or his/her designated representative to whom the request for a hearing must be submitted; and

(5) Advise the applicant or recipient that failure to request a hearing within 20 days of the date of the notice will cause the decision to become final and subject to appeal under Part 2 of 25 CFR.

(b) Upon receipt of the timely appeal, the financial assistance will remain unchanged and will continue to be provided, pending the issuance of a written decision by the Superintendent or his/her designated representative.

§ 20.604 How is an incorrect payment adjusted or recovered?

(a) When an incorrect payment of financial assistance has been made to an individual or family, a proper adjustment or recovery is required.

(b) The proper adjustment or recovery is based upon individual need as appropriate to the circumstances that resulted in an incorrect payment.

(c) Prior to adjustment or recovery, the recipient will be notified of the proposal to correct the payment and given an informal opportunity to resolve the matter.

(d) If an informal resolution cannot be attained, the recipient must be given a written notice of decision.

(e) If a hearing is requested, the hearing will be conducted in accordance with the procedures under §§ 20.700 through 20.705.

§ 20.605 What happens when applicants or recipients knowingly and willfully provide false, fictitious, or fraudulent information?

Applicants or recipients who knowingly and willfully provide false fictitious, or fraudulent information are subject to prosecution under 18 U.S.C. 1001, which carries a fine of not more than $10,000 or imprisonment for not more than five years, or both. The social services worker will prepare a written report detailing the action considered to be fraud and submit the report to the Superintendent or his/her designated representative for appropriate investigative action.

Subpart G—Hearings and Appeals

§ 20.700 Can an applicant or recipient appeal the decision of a Bureau official?

Yes. Any applicant or recipient who is dissatisfied with a Bureau decision concerning eligibility or receipt of financial assistance under this part can request a hearing before the Superintendent or his/her designated representative. The request for a hearing must be made within 20 days of the date of the written notice of the decision as

stated in § 20.603. The Superintendent or his/her designated representative can extend the 20 day period if good cause is shown and documented in the record.

§ 20.701 Does an applicant or recipient receive financial assistance while an appeal is pending?

Yes. Financial assistance will be continued or reinstated to insure there is no break in financial assistance until such time as the Superintendent or his/her designated representative renders a decision. The Superintendent or his/her designated representative can adjust payments or recover overpayments to conform with his/her decision.

§ 20.702 When is an appeal hearing scheduled?

The Superintendent or his/her designated representative must set a date for the hearing within 10 days of the date of request for a hearing and give written notice to the applicant or recipient.

§ 20.703 What must the written notice of hearing include?

The written notice of hearing must include:

(a) The date, time and location of the hearing;

(b) A statement of the facts and issues giving rise to the appeal;

(c) The applicant's or recipient's right to be heard in person, or to be represented by an authorized representative at no expense to the Bureau;

(d) The applicant or recipient's right to present both oral and written evidence during the hearing;

(e) The applicant's or recipient's right to confront and cross-examine witnesses at the hearing;

(f) The applicant's or recipient's right of one continuance of not more than 10 days with respect to the date of hearing; and

(g) The applicant's or recipient's right to examine and copy, at a reasonable time before the hearing, his/her case record as it relates to the proposed action being contested.

§ 20.704 Who conducts the hearing or appeal of a Bureau decision or action and what is the process?

(a) The Superintendent or his/her designated representative conducts the hearing in an informal but orderly manner, records the hearing, and provides the applicant or recipient with a transcript of the hearing upon request.

(b) The Superintendent or his/her designated representative must render a written decision within 10 days of the completion of the hearing. The written decision must include:

(1) A written statement covering the evidence relied upon and reasons for the decision, and

(2) The applicant's or recipient's right to appeal the Superintendent or his/her designated representative's decision pursuant to Part 2 of 25 CFR and request Bureau assistance in preparation of the appeal.

§ 20.705 Can an applicant or recipient appeal a tribal decision?

Yes. The applicant or recipient must pursue the appeal process applicable to the Pub. L. 93–638 contract, Pub. L. 102–477 grant, or Pub. L. 103–413 self-governance annual funding agreement. If no appeal process exists, then the applicant or recipient must pursue the appeal through the appropriate tribal forum.

Dated: April 30, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–11334 Filed 5–5–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 874]

RIN 1512–AA07

Applegate Valley Viticultural Area (99R–112P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing to establish a viticultural area within the State of Oregon to be known as ''Applegate Valley.'' The proposed viticultural area is within Jackson and Josephine Counties and entirely within the existing Rogue Valley viticultural area as described in 27 CFR 9.132. Mr. Barnard E. Smith, President, The Academy of Wine of Oregon Inc., submitted the petition. Mr. Smith believes that ''Applegate Valley'' is a widely known name for the petitioned area, that the area is well defined, and that the area is distinguished from other areas by its soil and climate.

DATES: Send your comments on or before July 6, 1999.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 874). Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at the ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC., 20226.

FOR FURTHER INFORMATION CONTACT: Jackie White, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington DC., 20226, (202) 927–8145.

SUPPLEMENTARY INFORMATION:

1. Background on Viticultural Areas

What is ATF's Authority To Establish a Viticultural Area?

ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) on August 23, 1978. This decision revised the regulations in 27 CFR Part 4, Labeling and Advertising of Wine, to allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added 27 CFR Part 9, American Viticultural Areas, for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

What is the Definition of an American Viticultural Area?

An American viticultural area is a delimited grape-growing region distinguishable by geographic features. The viticultural features such as soil, climate, elevation, topography, etc., distinguish it from surrounding areas.

What Is Required To Establish a Viticultural Area?

Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

- Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

• A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

• A copy (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

2. Applegate Valley Petition

ATF has received a petition proposing to establish a viticultural area within the State of Oregon to be known as ''Applegate Valley.'' The proposed viticultural area is within Jackson and Josephine Counties, and entirely within the existing Rogue Valley viticultural area described in 27 CFR 9.132. The petition was submitted by Mr. Barnard E. Smith, President, The Academy of Wine of Oregon Inc. Mr. Smith believes that ''Applegate Valley'' is a widely known name for the petitioned area. Mr. Smith states that the area is well defined, and that the area is distinguished from other areas by its soil and climate.

According to the petitioner, the Applegate Valley has been a grape-growing region since 1870 when A. H. Carson began planting 30 acres of grapes along North Applegate Road. There are now six bonded wineries in the valley as well as 23 vineyards. The petitioner states that over 235 acres have been planted to grapes.

What Name Evidence Has Been Provided?

According to the petitioner, the Applegate River was named for one or more of the Applegate brothers who explored the area in 1846. The U.S.G.S. map used to show the boundaries of the area (Medford, Oregon; California scale 1:250,000) uses the name Applegate River and shows the town of Applegate within the proposed ''Applegate Valley'' viticultural area. The petitioner has provided the following other references as name evidence.

• ''The Wine Appellations of Oregon'' map published by the Oregon Wine Marketing Coalition shows the Applegate Valley and mentions it in its notes.

• The Oxford Companion to Wine (first edition) mentions the Applegate Valley on page 693.

• The Oregon Winegrape Growers' Guide devotes several paragraphs to a discussion of the Applegate Valley as one of Oregon's grape growing areas.

• Treasury decision ATF–310 (The Rogue Valley Viticultural Area) describes ''the Applegate Valley (within the Rogue Valley viticultural area) as one of the warmest grape growing areas in western Oregon.''

What Boundary Evidence Has Been Provided?

Applegate Valley is surrounded by the Siskiyou Mountains. To the east and south is the Rogue River National Forest. To the west is the Siskiyou National Forest. According to the petitioner, these proposed boundaries have been identified by the U.S. Forest Service in minute detail but do not show on published maps. The petitioner states that these boundaries can be closely approximated by straight-line segments drawn between prominent physical features of the terrain, mostly mountaintops. Boundaries of national forests were used where appropriate.

What Evidence Relating to Geographical Features Has Been Provided?

• Topography: The proposed boundaries are within Jackson and Josephine

Counties in the State of Oregon. The proposed area is entirely within the existing Rogue Valley viticultural area. The Rogue Valley viticultural area has three distinct sub regions: Illinois Valley, Applegate Valley, and Bear Creek Valley. The Illinois Valley lies to the west of the proposed boundaries and Bear Creek Valley lies directly to the east of the proposed boundaries.

The Applegate Valley is approximately 50 miles long running from its origins near the California border generally northwest to where it joins the Rogue River just west of Grants Pass. According to the petitioner, the surrounding Siskiyou Mountains are believed to have been created in the Jurassic period by up-thrusts of the ocean floor as a plate forced its way under the continental shelf. The proposed boundaries are found on the U.S.G.S. map titled ''Medford, Oregon; California'' NK 10–5 scale 1:250,000 (1955, revised 1976).

• Soil: The petitioner states that soil types are generally granite in origin as opposed to the volcanic origin of the Cascade Mountains to the east. Most of the Applegate Valley vineyards are planted on stream terraces or alluvial fans providing deep well-drained soils. According to the petitioner, the leaching of the more basic soil components found in the Illinois Valley have left the soil slightly more acidic than the soils in the proposed boundaries. The petitioner further states that the soils outside the proposed boundaries to the east near Bear Creek Valley tend to be less acidic than the soils in the proposed boundaries. The soils in the Applegate Valley have a pH between 6.1 and 6.5 which are more ideal. The petitioner claims that while soil origin is an important factor in determining differences between the proposed ''Applegate'' and the larger Rogue Valley viticultural areas, its role is secondary to climate.

• Climate: The grape-growing region around Cave Junction located in the Illinois Valley is about 70 miles closer to the Pacific Ocean than the grape-growing region around Medford located in Bear Creek Valley. The Siskiyou Mountains separate the valleys which further accentuate climate differences among the valleys. The precipitation in the Illinois Valley at Cave Junction is 58.9 inches per year. The precipitation decreases to 31.1 inches, at Grants Pass, in the northeast and to 25.2 inches at Applegate. In the Bear Creek Valley at Medford, the precipitation decreases further to 18.3 inches per year.

According to the petitioner, the average temperature in the Illinois Valley during the growing season (April to October) is 2.5 degrees lower than in the eastern valleys. The petitioner states that, cumulatively this means that the degree-days rise from 4971 degree-days in Cave Junction to 5602 degree-days in Grants Pass. This temperature data is from a soil survey for Jackson and Josephine Counties and does not compare with Winkler's values since it is based on temperature of 40 degrees Fahrenheit instead of 50 degrees Fahrenheit.

According to the Oregon Winegrape Grower's Guide, ''As one moves from west to east, or from the Illinois River Valley including Selma to the Applegate Valley and into the Rogue Valley, good grape growing sites generally become warmer due to the lessening of the marine air influence.'' The Oregon Winegrape Grower's Guide goes on to point out that earlier ripening varieties such as Pinot noir, Early Muscat, and Gewurztraminer, do well in the Illinois Valley. In contrast, the Applegate Valley with its Region II temperature range can ripen Cabernet Sauvignon, Merlot, and Chardonnay two to three weeks earlier than is possible in the Illinois Valley.

3. Public Participation

Who May Comment on This Notice?

ATF requests comments from all interested persons. In addition, ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so.

However, assurance of consideration can only be given to comments received on or before the closing date.

Will ATF Keep My Comments Confidential?

ATF cannot recognize any material in comments as confidential. All comments and materials may be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in the comments. We may also disclose the name of any person who submits a comment.

How do I Send Facsimile Comments?

You may submit comments of not more than three pages by facsimile transmission to (202) 927–8525. Facsimile comments must:

- Be legible.
- Reference this notice number.
- Be 8½″ x 11″ in size.
- Contain a legible written signature.
- Be not more than three pages.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (E-mail) Comments?

You may submit comments by e-mail by sending the comments to nprm.notice874@atfhq.atf.treas.gov. You must follow these instructions. E-mail comments must:

- Contain your name, mailing address, and e-mail address.
- Reference this notice number.
- Be legible when printed on not more than three pages 8½″ x 11″ in size.

We will not acknowledge receipt of e-mail. We will treat e-mail as originals.

How do I Send Comments to the ATF Internet Web Site?

You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF Internet web site at *http://www.atf.treas.gov./core/regulations/rules.htm*.

Can I Request a Public Hearing?

If you desire the opportunity to comment orally at a public hearing on this proposed regulation, you must submit your request in writing to the Director within the 60-day comment period. The Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

4. Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Proposed Rule?

The provisions of the Paperwork Reduction Act of 1995 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

These proposed regulations will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that area.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

5. Drafting Information

The principal author of this document is Jackie White, Coordinator, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding § 9.165 to read as follows:

* * * * *

§ 9.165 Applegate Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Applegate Valley.''

(b) *Approved Maps.* The appropriate map for determining the boundaries of the Applegate Valley viticultural area is one U.S.G.S. map titled ''Medford, Oregon; California'' NK 10–5 scale 1:250,000 (1955, revised 1976).

(c) *Boundaries.* The Applegate Valley viticultural area is located within the State of Oregon within Jackson and Josephine Counties, and entirely within the existing Rogue Valley viticultural area. The boundaries are as follows:

(1) Beginning at the confluence of the Applegate River with the Rogue River approximately 5 miles west of Grants Pass, the boundary proceeds due west to the boundary of the Siskiyou National Forest north of Dutcher Creek;

(2) Then southerly and westerly along the boundary of the Siskiyou National Forest to Highway 199;

(3) Then easterly to the peak of Roundtop Mountain (4663 feet);

(4) Then easterly and southerly to the peak of Mungers Butte;

(5) Then southerly and westerly to Holcomb Peak;

(6) Then in a generally southeasterly direction along the eastern boundary of the Siskiyou National Forest until it joins the northern boundary of the Rogue River National Forest;

(7) Then easterly along the northern boundary of the Rogue River National forest to a point due south of the peak of Bald Mountain;

(8) Then due north to the peak of Bald Mountain (5635 feet);

(9) Then northerly and westerly to the lookout tower on Anderson Butte;

(10) Then northerly and westerly to the peak of an unnamed mountain with an elevation of 3181 feet;

(11) Then northerly and westerly to the peak of Timber Mountain;

(12) Then westerly and southerly to the middle peak of Billy Mountain;

(13) Then northerly and westerly through a series of five unnamed peaks with elevations of approximately 3600, 4000, 3800, 3400, and 3800 feet, respectively;

(14) Then northerly and easterly to Grants Pass Peak;

(15) Then westerly to Jerome Prairie;

(16) Then northwesterly to the confluence of the Applegate River and the Rogue River and the point of the beginning.

Signed: April 29, 1999.

John W. Magaw,

Director.

[FR Doc. 99–11366 Filed 5–5–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 356

[Docket No. MARAD–99–5609]

RIN 2133–AB38

Eligibility of U.S.-Flag Vessels of 100 Feet or Greater To Obtain Commercial Fisheries Documents

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Maritime Administration (MARAD, we, our, or us) is soliciting public comments on the new U.S. citizenship requirements set forth in the American Fisheries Act of 1998 (AFA), P.L. 105–277, for vessels of 100 registered feet or greater. The AFA seeks to raise the U.S. ownership and control standards for U.S.-flag fishing vessels operating in U.S. waters, to eliminate exemptions for vessels that can not meet current citizenship standards, and to help phase out of operation many of the largest fishing vessels. These statutory changes are intended to give U.S. interests a priority in the harvest of U.S. fishery resources. We are required to promulgate final regulations by April 1, 2000, regarding the citizenship requirements for ownership and control of vessels of 100 registered feet or more that have or are seeking a fishery endorsement to their documentation. The regulations will become effective on October 1, 2001.

Section 203 of the AFA specifically requires that the regulations: prohibit impermissible transfers of ownership or control; identify transactions that will require prior MARAD approval; and identify transactions that will not require prior MARAD approval. To the extent practicable, the regulations are required to minimize disruptions to the commercial fishing industry, to the traditional financing arrangements of such industry, and to the formation of fishery cooperatives.

We are seeking public comments related to our implementation of the AFA. Your comment is welcome on the questions included in this ANPRM following the section ''What information are we requesting?'' or on any aspect of our implementation of the AFA.

DATES: You should submit your written comments early enough to ensure that we receive them no later than July 1, 1999. In addition, public meetings at which oral and written comments may be presented have been scheduled for the dates and locations listed in **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., S.W., Washington, DC 20590–0001 or by e-mail to John T. Marquez, Jr. at ''John.Marquez@marad.dot.gov''. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 am and 5 pm, E.T., Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: John T. Marquez, Jr. of the Office of Chief Counsel. You may contact him by phone at (202) 366–5320, by fax at (202) 366–7485, by e-mail at ''John.Marquez@marad.dot.gov'', or you may send mail to John T. Marquez, Jr., Maritime Administration, Office of Chief Counsel, Room 7228, MAR–222, 400 Seventh St., S.W., Washington, D.C. 20590–0001.

SUPPLEMENTARY INFORMATION:

Public Hearing Dates and Locations

1. May 18, 1999, 9:00 a.m. to 5:00 p.m.—South Auditorium, Jackson Federal Building, 915 Second Avenue, Seattle, WA;
2. May 20, 1999, 9:00 a.m. to 5:00 p.m.—Assembly Room, Z.J. Loussac Library, 3600 Denall St., Anchorage, AK;
3. June 9, 1999, 7:00 p.m. to 10:00 p.m.—Holiday Inn—Logan Airport, 225 McClellan Highway, Boston, MA;
4. June 17, 1999, 9:00 a.m. to 1:00 p.m.—Suite 1830, Crescent City Room, World Trade Center, 2 Canal Street, New Orleans, LA; and
5. June 23, 1999, 9:00 a.m. to 1:00 p.m.—Room 6200, Nassif Building, 400 7th Street S.W., Washington, D.C.

Comments

How Will We Issue Rules To Implement The AFA?

We will be using informal rulemaking procedures under the Administrative Procedure Act (5 U.S.C. 553) to promulgate regulations implementing the AFA. The process of promulgating these regulations will include the issuance of the following documents:

(1) An advance notice of proposed rulemaking (ANPRM).

(2) A notice of proposed rulemaking (NPRM).

(3) A final rule.

What is an ANPRM?

An ANPRM tells the public that we are considering an area for rulemaking and requests written comments on the appropriate scope of the rulemaking or on specific topics. This ANPRM does not include the text of a potential regulation.

What is a NPRM?

A NPRM proposes our specific regulatory changes for public comment and contains supporting information. It generally includes proposed regulatory text.

What is a Final Rule?

A final rule sets out new regulatory requirements and their effective date. A final rule will also identify issues raised by commenters in response to the notice of proposed rulemaking and give the agency's response.

Who May File Comments?

Anyone may file written comments about proposals made in any rulemaking document that requests public comments, including any State government agency, any political subdivision of a State, and any interested person invited by us to participate in the rulemaking process.

How do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

We encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**. If possible, one copy should be in an unbound format to facilitate copying and electronic filing.

How can I be Sure that My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket

Management will return the postcard by mail. If you send comments by e-mail, you will receive a message by e-mail confirming receipt of your comments. Your e-mail address should be noted with your comments.

What Takes Place at a Public Meeting?

We have scheduled public meetings in five cities during the sixty day comment period to this ANPRM. Meeting locations and times are provided above under **DATES**. A public meeting is a nonadversarial, fact-finding proceeding conducted by a MARAD representative. Generally, public meetings are announced in the **Federal Register**. Interested persons are invited to attend and to present their views to the agency on specific issues. There are no formal pleadings and no adverse parties, and any regulation issued afterward is not necessarily based exclusively on the record of the meeting. A record of oral comments will be made at the public meeting; however, commenters are also requested to provide their comments to us in writing at the meeting. A copy of all written and oral comments made at the public meeting will be filed in the docket. Sections 556 and 557 of the Administrative Procedure Act (5 U.S.C. 556 and 557) do not apply to public meetings under this part.

How can I Participate at a Public Meeting?

If you would like to speak at one of the public meetings, you should notify John T. Marquez, Jr. at least five (5) working days before the scheduled meeting. You may notify him by phone at (202) 366–5320, by fax at (202) 366–7485 or by e-mail at ''John.Marquez@marad.dot.gov''. Your notification should include your name, address, phone number, fax number, e-mail address and the party that you represent. If you plan to attend the public meeting in Washington, DC, you must notify us in advance in order to be admitted to the building. Only one oral presentation per company or group should be presented.

Is Information that I Submit to MARAD Made Available to the Public?

When you submit information to us as part of this ANPRM, during any rulemaking proceeding, or for any other reason, we may make that information publicly available unless you ask that we keep the information confidential. If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, Maritime Administration, at the address given above under **FOR FURTHER INFORMATION CONTACT**. You should mark ''CONFIDENTIAL'' on each page of the original document that you would like to keep confidential.

In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send comments containing information claimed to be confidential business information, you should also include a cover letter setting forth with specificity the basis for any such claim (for example, it is exempt from mandatory public disclosure under the Freedom of Information Act, 5 U.S.C. 552; it is information collected by officials of the United States in the course of their employment duties that is exempt from disclosure pursuant to 18 U.S.C. 1905).

We will decide whether or not to treat your information as confidential. You will be notified in writing of our decision to grant or deny confidentiality before the information is publicly disclosed and will be given an opportunity to respond.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

How can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket Room are indicated above in the same location. Comments may also be viewed on the Internet. To read the comments on the Internet, take the following steps: Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/). On that page, click on ''search.'' On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''MARAD–1999–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.'' On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Accordingly, we recommend that you periodically check the Docket for new material.

Background

What are the New Requirements for a Fishery Endorsement Under the American Fisheries Act (AFA)?

Documentation of vessels under federal law is a type of national registration which, among other things, serves to establish a vessel's eligibility to engage in a specified trade such as the fisheries of the United States. This is done through an endorsement on the vessel's Certificate of Documentation. In order to obtain a fishery endorsement for a documented vessel, the owner of a vessel must comply with the requirements set out in sections 12102 and 12108 of Title 46, United States Code.

The AFA was passed as part of the Omnibus and Emergency Appropriations Act for FY 1999, PL 105–277, on October 6, 1998. The AFA imposes a 75% U.S. citizen ownership and control requirement for owners of vessels of 100 registered feet or more who are engaging in the U.S. fisheries or wish to enter such trade. We are required to scrutinize transfers of ownership and control of such vessels, such as leases, charters, mortgages, financings, and other arrangements that might convey impermissible control over the management, sales, financing or other operation of a vessel or vessel owning entity. This review will include the examination of debt instruments which might convey impermissible control to a non-U.S. citizen and determinations as to whether trustees who hold mortgages on vessels for the benefit of non-U.S. citizens are qualified under the criteria set forth in the AFA. We are seeking public comment in these areas along with suggestions as to whether the defined term for ''control'' and ''controlled'' set forth in Section 2(c) of the Shipping Act of 1916 (1916 Act), 46 App. U.S.C. 802(c), should be expanded to include other indications of control. All comments will be considered in the preparation of a rulemaking to implement the requirements of the AFA applicable to MARAD.

For vessels measuring 100 registered feet or greater, the owner is required by subsection 203(c) of the AFA to file an annual statement of citizenship with us setting forth all elements of ownership and control necessary to demonstrate

compliance with the requirements of 46 U.S.C. 12102(c). In implementing this section, we are directed to promulgate regulations that follow, to the extent practicable, the requirements of 46 CFR Part 355, as in effect on September 25, 1997, including the prescribed form of citizenship affidavit. The regulations at 46 CFR Part 355 set forth MARAD's requirements for determining citizenship under section 2 of the 1916 Act and can be summarized as follows:

• The entity must be organized and existing under the laws of the United States.

• The names and date and place of birth of corporate officers and directors must be disclosed, along with an affirmative statement that such officers and directors are citizens of the United States by virtue of birth in the United States, naturalization, or as otherwise authorized by law. The president or other chief executive officer, chairman of the board, and all officers authorized to act in the absence or disability of such persons must be U.S. citizens, and no more of its directors than a minority of the number necessary to constitute a quorum can be non-U.S. citizens.

For other types of entities, such as limited liability companies, associations, etc., citizenship requirements are imposed on persons who have similar functions as officers and directors of a corporation.

• There are two methods of establishing that 75% of the stock of a corporation is owned by U.S. citizens. They are:

(1) Direct Proof. For corporations with thirty (30) or fewer stockholders, the name of each stockholder and the number and percentage of shares of stock held by that individual must be given, along with a statement that he/she is a citizen of the United States by virtue of birth in the United States, naturalization, or as otherwise authorized by law. If the stockholder is not a citizen of the United States, then the country of which he/she is a citizen must be provided.

(2) ''Fair Inference.'' If the stock of the corporation is publicly traded, U.S. citizenship can be established by using the addresses of the stockholders; i.e. relying on corporate books and records at least 95% of the stock must be held by persons having registered U.S. addresses in order to ''infer'' that at least 75 percent (75%) of the stock is owned by U.S. citizens. This method of proof of U.S. citizenship for corporations, whose stock is publicly traded, dates back to 1936 and is based on a court case, *Collier Advertising Service, Inc.* v. *Hudson River Day Line*, 14 F. Supp. 335 (S.D.N.Y. 1936). In addition, the citizenship of all stockholders owning of record or beneficially five percent (5%) or more of the stock must be established.

Old Standard

Prior to the passage of the AFA, owners of vessels engaged in the fisheries of the United States were required to meet the vessel documentation requirements set forth at 46 U.S.C. 2102. These vessel documentation requirements and fishery endorsement requirements are set forth below:

• an individual was required to be a citizen of the United States;

• an association, trust, joint venture, or other entity was required to have members all of which were citizens of the United States;

• a partnership was required to have general partners that were citizens of the United States and the controlling interest in the partnership was required to be owned by citizens of the United States; and

• a corporation was required (1) to be established under the laws of the United States; (2) to have a president or other chief executive officer and chairman of its board of directors who were citizens of the United States; and (3) to have no more noncitizen directors than a minority of the number necessary to constitute a quorum. In addition, if a corporation, seeking a fishery endorsement, was owned by other corporations, in whole or in part, the controlling interest in these corporations in the aggregate had to owned by citizens of the United States.

New Ownership and Control Requirements

Subsection 202(a) of the AFA amended the vessel documentation statute by increasing the U.S. citizen ownership and control requirement from a majority (at least 51 percent) to at least 75 percent ownership and control for all vessels, including fish tender vessels and floating processors, seeking a fishery endorsement or renewal of such endorsement. The effective date of this new U.S. citizen ownership requirement is October 1, 2001.

Subsection 202(a) also provides that, when considering whether a vessel owner qualifies for a fishery endorsement, the U.S. citizenship requirements of section 2(c) of the 1916 Act apply to entities other than corporations, such as limited liability companies, partnerships, joint ventures, and other types of entities. The statutory language of section 2(c) of the 1916 Act, which we are to apply when determining the citizenship status of entities either seeking a fishery endorsement or renewing such endorsement is as follows:

> Seventy-five per centum of the interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if the title to 75 per centum of its stock is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if 75 per centum of the voting power in such corporation is not vested in citizens of the United States; or (c) if, through any contract or understanding, it is so arranged that more than 25 per centum of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or (d) if by any other means whatsoever control of any interest in the corporation in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a citizen of the United States.

The citizenship requirements of section 2(c) apply at each tier of ownership; therefore, any person or entity whose interest is being relied upon to establish the required 75 percent U.S. citizen ownership and control, including any parent corporation, partnership or other entity, must also comply with the U.S. citizenship requirements of section 2(c). In addition, the AFA requires that the 75 percent citizenship requirement be applied in the aggregate. A literal interpretation of the requirement to apply the 75 percent citizenship requirement both at each tier and ''in the aggregate'' would mean that a non-section 2 citizen could not have an ownership or control interest of more than 25 percent in a vessel or vessel owning entity by any means. For example, a non-section 2 citizen may own up to 25 percent of the interest in the primary corporation that owns a vessel with a fishery endorsement. However, that same non-section 2 participant would not be allowed to have any interest in a parent corporation or any other entities at any tier that may have an ownership interest in the 75 percent of the primary corporation owned by section 2 citizens.

The AFA also sets forth certain standards that will be applied by us in determining ''control'' or ''controlled'' for purposes of section 12102(c) of title 46, United States Code, and the language of section 2(c) of the 1916 Act. Specifically, the AFA states that the terms ''control'' or ''controlled'' shall include:

• the right to direct the business of the entity which owns the vessel;

• the right to limit the actions of or replace the chief executive officer, a majority of the board of directors, any

general partner, or any person serving in a management capacity of the entity which owns the vessel; or

- the right to direct the transfer, operation or manning of a vessel with a fishery endorsement.

However, the terms ''control'' or ''controlled'' shall not include the right to simply participate in the above activities or the use by a mortgagee of loan covenants approved by the Secretary. Determining ''control'' often involves the review and analysis of a specific set of facts in a given transaction and goes beyond the mere form of a transaction. For example, a non-section 2 citizen's equity investment in an entity in excess of its ownership interest might be deemed ''control''; a non-section 2 citizen's leading role in setting up a U.S. company for purposes of engaging in the U.S. fisheries might be an indication of control; interlocking corporate officers/directors and shareholders between a U.S. citizen entity and a non-section 2 citizen entity might be deemed impermissible control; or passing the overall economic benefit from the transaction to non-U.S. citizens might be deemed impermissible control. In this ANPRM, we are seeking comments on the elements of ''control'' that should be considered in determining U.S. citizenship for purposes of qualifying for a fishery endorsement.

Leasing and Chartering

A very significant new standard imposed under 202(a)(3) of the AFA is that vessels with a fishery endorsement cannot be leased or chartered to an individual who is not a citizen of the United States or to an entity that is not eligible to own a vessel with a fishery endorsement. If such vessels are chartered or leased to non-section 2 citizens, the fishery endorsement is immediately invalid upon use as a fishing vessel.

Mortgages and Financing

The AFA sets forth the eligibility requirements for lenders who wish to obtain a preferred mortgage as security for their loan. A lender will be eligible for a preferred mortgage if: (a) The lender is in compliance with the U.S. citizenship requirements needed for a fishery endorsement; (b) the lender is a state or federally chartered financial institution that complies with the ''controlling interest'' requirements of section 2(b) of the 1916 Act, including, among other things, 51% U.S. citizen ownership and control; or (c) the lender uses a section 2 citizen trustee to hold the mortgage.

The use of a section 2 citizen trustee to hold the mortgage is one of long-standing in the maritime industry and resulted from a court case, *Chemical Bank New York Trust Company* v. *Steamship Westhampton,* 358 F.2nd 574 (4th Cir. 1965). The court held that the mortgage on the ship WESTHAMPTON, although given to a section 2 citizen trustee, was not entitled to preferred status because the bond which was secured by the mortgage was an interest in a vessel under section 37 of the 1916 Act, and the issuance of the bond to a non-section 2 citizen holder had not been approved by MARAD. We have authority under sections 9 and 37 of the 1916 Act to approve of certain transfers of interest in section 2 citizen-owned vessels to non-section 2 citizens. Within months of the court's decision in Westhampton, the Congress enacted legislation whereby the issuance, assignment or transfer to non-section 2 citizens of notes, bonds, or other evidence of indebtedness, secured by a mortgage on a U.S. vessel, was acceptable so long as the trustee holding the mortgage had our approval. The so-called ''Westhampton trustee'' statute was repealed by the Congress in 1996. However, the ''Westhampton trustee'' concept has been incorporated in the AFA and will permit foreign financing in the U.S. fishing industry.

The purpose of the trustee holding the mortgage is to prohibit the non-section 2 citizen lender from exercising prohibited types of control over the vessel or its owner. Non-section 2 citizen lenders may have certain rights conveyed to them in loan documents through negative financial loan covenants. However, use of such covenants may require our approval and such approval will be dependent upon whether elements of ''control'' over the vessel owner or the vessel are being transferred to the non-section 2 citizen lender. Pursuant to this ANPRM, we are interested in soliciting comments from the public on what restrictions should be imposed on foreign lenders. For example, should we give blanket approval for a trustee to operate a vessel temporarily without our consent for reasons related to safety, repairs, drydocking or other circumstances?

Specific Vessels

Subsection 202(a)(5) of the Act further amends 46 U.S.C. 12102(c), by adding a new paragraph (5) that exempts the following vessels from the 75 percent standard, provided the owners of the vessels continue to comply with the fishery endorsement law in effect on October 1, 1998: (1) vessels engaged in fisheries under the authority of the Western Pacific Fishery Management Council; and (2) purse seine vessels engaged in tuna fishing in the Pacific Ocean outside the exclusive economic zone or pursuant to the South Pacific Regional Fisheries Treaty. Fishery endorsements issued by the Secretary for these vessels would be valid only in those specific fisheries and the vessels would not be eligible to receive a fishery endorsement to participate in other fisheries unless the owner complied with the 75 percent standard.

A new paragraph at 46 U.S.C. 12102(c)(6) prevents new large fishing vessels from entering U.S. fisheries, including former U.S.-flag fishing vessels that have reflagged in recent years to fish in waters outside the U.S. exclusive economic zone. Specifically, it prohibits the issuance of fishery endorsements to vessels greater than 165 feet in registered length, or of more than 750 gross registered tons, or that have an engine or engines capable of producing a total of more than 3,000 shaft horsepower. Two exceptions are permitted:

(1) (i) the vessel had a valid fishery endorsement on September 25, 1997;

(ii) the vessel is not placed under foreign registry after October 6, 1998, the date of the enactment of the AFA; and

(iii) in the event the vessel's fishery endorsement is allowed to lapse or is invalidated after October 6, 1998, an application for a new fishery endorsement is submitted to the Secretary of Transportation (Secretary) within 15 business days; or

(2) the owner of the vessel demonstrates to the Secretary that a regional fishery management council has recommended and the Secretary of Commerce has approved specific measures after the date of the enactment of the AFA to allow the vessel to be used in fisheries under that council's authority. The regional councils have the authority and are encouraged to submit for approval to the Secretary of Commerce measures to prohibit vessels that receive a fishery endorsement under section 12102(c)(6) from receiving any permit that would allow the vessel to participate in fisheries under their authority, so that a vessel cannot receive a fishery endorsement through measures recommended by one council, then enter the fisheries under the authority of another council.

Subsection 203(g) of the AFA provides limited exemptions from the new U.S.-control and ownership requirements in 46 U.S.C. 12102(c) for the owners of five vessels (the EXCELLENCE, GOLDEN ALASKA, OCEAN PHOENIX, NORTHERN

TRAVELER, and NORTHERN VOYAGER) under certain conditions. The exemption applies only to the present owners, and the subsection not only requires all subsequent owners to comply with the 75 percent standard, but requires even the present owners to comply if more than 50 percent of the interest owned and controlled in that owner changes after October 1, 2001. The exemption also automatically terminates with respect to the NORTHERN TRAVELER or NORTHERN VOYAGER if the vessel is used in a fishery other than one under the jurisdiction of the New England or Mid-Atlantic fishery management councils, and automatically terminates with respect to the EXCELLENCE, GOLDEN ALASKA, or OCEAN PHOENIX if the vessel is used to harvest fish.

Penalties

Subsection 203(e) of the AFA provides that the Secretary shall revoke the fishery endorsement of any vessel subject to 46 U.S.C. 12102(c), as amended by subtitle I of the AFA, whose owner does not meet the 75% ownership requirement or otherwise fails to comply with 46 U.S.C. 12102(c).

Subsection 203(f) of the AFA expands the penalties under 46 U.S.C. 12122 (a) and (b), and makes the owner of a documented vessel for which a fishery endorsement has been issued liable to the United States Government for a civil penalty of up to $100,000 for each day in which such vessel has engaged in fishing within the exclusive economic zone of the United States, if the owner or the representative or agent of the owner knowingly made a false statement or representation with respect to the eligibility of the vessel under 46 U.S.C. 12102(c) in applying for, or applying to renew, such fishery endorsement. This subsection increases the penalties for fishery endorsement violations and is intended to discourage willful noncompliance with the new requirements.

Fishery Cooperatives

Generally, subsection 210(e)(1) of the AFA prohibits any individual or entity from harvesting more than 17.5% of the pollock in the Bering Sea and Aleutian Islands (BSAI) directed pollock fishery to ensure competition. Subsection 210(e)(2) directs the North Pacific Council to establish an excessive share cap for the processing of pollock in the BSAI directed pollock fishery. At the request of the North Pacific Council or the Secretary of Commerce, an individual who is believed to have exceeded the harvesting or processing caps in either 210(e) (1) or (2), may be required pursuant to subsection 210(e)(3) to submit such information to the Administrator of MARAD as the Administrator deems appropriate to allow the Administrator to determine whether such individual or entity has exceeded either such percentage. The Administrator shall make a finding as soon as practicable upon such request and shall submit such finding to the North Pacific Council and the Secretary of Commerce.

International Agreements

Subsection 213(g) of the AFA specifies that in the event the new U.S. ownership and control requirements or preferred mortgage requirements of subtitle I of the Act are deemed to be inconsistent with an existing international agreement relating to foreign investment with respect to a specific owner or mortgagee on October 1, 2001 of a vessel with a fishery endorsement, that the provision shall not apply to that specific owner or mortgagee with respect to that particular vessel to the extent of the inconsistency. Subsection (g) does not exempt any subsequent owner or mortgagee of the vessel, and is therefore not an exemption that ''runs with the vessel.'' In addition, the exemption in subsection (g) ceases to apply even to the owner on October 1, 2001 of the vessel if any ownership interest in that owner is transferred to or acquired by a foreign individual or entity after October 1, 2001.

What Information are We Requesting?

We are requesting comments, suggestions and information relating to the changes in the statutory requirements to obtain a fishery endorsement for a documented vessel of 100 feet or greater in registered length and the regulations necessary to implement those requirements. Comments are requested specifically on the questions presented below and on any other aspect that the commenter believes would be helpful to us in drafting regulations to implement the AFA. Unless specifically stated otherwise, when used in the following questions the term ''vessel'' refers to vessels of 100 registered feet or more that have or are seeking a fishery endorsement.

Questions

I. Financing and Mortgages

We will be reviewing financing transactions involving non-section 2 lending institutions to determine whether covenants in these loan documents convey, either directly or indirectly, control over the vessel or vessel owner. We recognize that certain loan covenants are not indicative of control by a non-citizen lender over a section 2 citizen vessel owner as previously discussed. However, we are seeking input regarding the typical covenants found in loan documents involving fishing vessels that may be unique from those found in other commercial vessel financing arrangements.

1. What are examples of conventional covenants found in typical loan documents involving the financing of fishing vessels?

2. Are there mortgage covenants used in traditional fishing vessel financing arrangements concerning the use, operation, or control of the vessel, whether actual or contingent, that could be considered to give the lender or mortgagee control over the vessel, such as the ability to remove or replace the master of the vessel?

3. Are there standard mortgage covenants that we should approve of in advance for use, such as the ability to restrict the vessel owner from incurring additional debt without the lender's approval, the ability to restrict the vessel owner from selling assets without the lender's approval, etc?

4. Are there mortgage covenants that should require our approval on a case-by-case basis prior to use?

5. Should loan agreements and other agreements between section 2 citizen owners of fishing vessels and foreign lenders be permitted to take effect prior to our approval?

6. Foreign lenders may obtain preferred mortgages on fishing vessels greater than l00 registered feet provided they use a trustee arrangement (commonly referred to as the ''Westhampton Trustee''). We have long-standing experience in connection with the Westhampton Trustee and, prior to its elimination by Congress along with other requirements relating to mortgagees, we had regulations found at 46 CFR part 221 (1997) governing the use of Westhampton Trustees. The AFA revives the use of the Westhampton Trustee for fishing vessels. Should we adopt similar requirements under the AFA to those contained in our earlier regulations for trustees/mortgagees? Are there other requirements that should be added?

7. To what extent are vessels financed by fish processors or through entities other than traditional lending institutions? Do such financing arrangements contain covenants that differ from covenants used by traditional lending institutions?

8. Should we preclude an entity that has a contract for the purchase of all or

a significant portion of a vessel's catch from financing the purchase, reconstruction, or any other transaction relating to the vessel?

II. Management and Control

The AFA directs us to scrutinize leases, charters, and similar arrangements for purposes of determining whether impermissible control ''over the management, sales, financing, or other operations of an entity'' is being conveyed to non-section 2 citizens. In addition, we are specifically required under the AFA to review contracts involving the purchase over extended periods of time of all, or substantially all, of the living marine resources harvested by a fishing vessel.

1. Are vessel management companies frequently used in the U.S. fisheries? If so, what is their role; i.e., duties and responsibilities.

2. What is the role and responsibility of a sales manager in the fishing industry? Should a vessel be eligible for a fishery endorsement if the sales manager is not a 75 percent owned and controlled U.S. citizen?

3. What types of long-term contracts for sale of all or a large portion of the catch from a vessel are used in the fishing industry? Do such contracts have covenants that give the purchaser of the vessel's catch control over the operation of the vessel or the vessel's owner?

4. Should a section 2 citizen vessel owner be precluded from entering into an exclusive sales contract, providing for the sale of all or a significant portion of its catch, with a non-section 2 citizen entity? If allowed, should the terms of these contracts be restricted in any way?

5. We have consistently construed the ability by a non-section 2 citizen to discipline, remove or replace the master of a vessel as an indication of control over the vessel, and the granting of such right to a non-section 2 citizen as prohibited. Are there unique circumstances unknown to MARAD which should be considered prior to adopting a similar requirement for U.S. documented vessels with a fishery endorsement?

6. Should every contract or business arrangement that the vessel owner enters into with a non-section 2 citizen require our prior approval? If not, what contracts or other business arrangements should? Should it matter whether the business arrangement affects the operation of the vessel, or is it enough if it affects the overall operation of the fishing business?

7. Should section 2 citizen owners of such fishing vessels be required to submit the contracts or business arrangements for advance approval prior to entering into the transaction? If not, should there be a time imposed for submission for approval after entering into such transactions; i.e. within thirty (30) days or some lesser period?

8. The AFA requires that 75 percent of the interest in an entity that owns a vessel with a fishery endorsement be owned and controlled by section 2 citizens at each tier and in the aggregate. If the phrase ''in the aggregate'' is determined to preclude a non-section 2 citizen from having a combined interest from its total participation at every tier of more than 25%, what impact will that have on vessel owners, mortgagees, lenders, managers, etc . . .?

III. Fishery Cooperatives

We are seeking information that will help us to evaluate how fishery cooperatives should be considered in the context of determining the U.S. citizenship of vessel owners, especially the role of non-section 2 citizen participants in fishery cooperatives. Responses to the following questions will assist in developing our regulations.

1. Who can become a member of a fishery cooperative? How are fishery cooperatives managed? Does a member receive a ''membership interest'' in the fishery cooperative and does each member have one vote or are there circumstances whereby a member might have more than one vote on matters requiring a vote by the members?

2. What role do shoreside processors play in fishery cooperatives?

3. Should a non-section 2 citizen be prohibited from becoming a member of a fishery cooperative?

4. If a fishery cooperative enters into any agreement with non-section 2(c) citizens, should that agreement be subject to our approval prior to entering into the agreement or within thirty (30) days of entering into the agreement?

5. What types of regulatory requirements related to the ownership and control of a vessel or vessel owning entity would impede or facilitate the ability of parties to enter into fishery cooperatives?

IV. General and Procedural

In addition to the questions set forth above, there are a number of areas in which input from the fishing industry would be beneficial in developing our regulations. They are as follows:

1. What regulatory requirements, within the framework of the AFA, should we adopt to protect the limited fishery resources and ensure that qualified U.S. citizens primarily benefit?

2. Subsection 210(e)(2) of the AFA directs the North Pacific Council to establish an excessive share cap for the processing of pollock in the directed pollock fishery. At the request of the North Pacific Council or the Secretary of Commerce, an individual who is believed to have exceeded the harvesting or processing caps in either 210(e) (1) or (2), may be required pursuant to subsection 210(e)(3) to submit such information to the Administrator of MARAD as the Administrator deems appropriate to allow the Administrator to determine whether such individual or entity has exceeded either percentage. Should we establish set procedures to address charges that a party has exceeded the excessive share cap or should findings be made on an ad hoc basis?

3. What procedure should we have for findings under the requirements of the AFA that the vessel owner does not qualify as a citizen for purposes of obtaining a fishery endorsement?

4. Are there any known conflicts or possible violation of international treaty agreements created by the imposition of the section 2(c) citizenship requirements on owners of U.S. documented vessels with a fishery endorsement, trustees, and mortgagees?

5. Are there any unique issues within the fishing industry or particular fisheries relating to the ownership, operation, management, control, financing, or mortgaging of fishing vessels of which we should be aware in promulgating rules to implement the AFA?

6. What costs related to the implementation of the new citizenship and control requirements for vessels of 100 feet or greater mandated by the AFA are likely to be incurred by vessel owners, operators and managers, lending institutions, mortgagees, and other participants in the fishing industry?

Other Issues

This request for comments concerning the desirability of rulemaking is not limited to the foregoing. We are also seeking comments and/or suggestions concerning other issues that should be addressed in regulations implementing the requirements of the AFA for which MARAD is responsible.

Plain Language

This ANPRM is one of our first rulemaking documents to be published under the new plain language requirements. We welcome any comments and suggestions on the use and effectiveness of plain language techniques in this document or other suggestions to improve our use of plain language in future rulemakings.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review)

Any rule that is promulgated may be considered an economically significant regulatory action under section 3(f) of E.O. 12866; therefore, this rule has been reviewed by OMB. The rule also is considered significant under DOT Policies and Procedures. We cannot estimate at this time whether this rulemaking will be economically significant because we have not published a specific proposal. A preliminary regulatory evaluation will be prepared that reflects the comments to this ANPRM.

Federalism

We have analyzed this ANPRM in accordance with the principles and criteria contained in Executive Order 12612 and have determined that any rule that might be subsequently promulgated would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

Prior to commencing further rulemaking, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires us to consider whether our proposals will have a significant impact on a 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. 632).

Any regulations developed pursuant to this advance notice of proposed rulemaking may reasonably be expected to affect the following small entities: small businesses and individual U.S. citizens currently owning documented fishing industry vessels; individuals and small businesses seeking to sell or mortgage documented fishing industry vessels; small businesses seeking to document fishing industry vessels in the future; and lending institutions engaging in fishing industry vessel financing.

At the present time, we cannot state that any further rulemaking in this area will not have a significant economic impact on a substantial number of small entities. If you believe that this rulemaking will have a significant economic impact on your business, please submit a comment (see **ADDRESSES**) explaining in what way and to what degree this proposal will economically affect your business. If you think that your business qualifies as a small entity, and that further rulemaking will have a significant economic impact on your business, please submit a comment explaining why you think your business qualifies as a small entity and how this rulemaking may economically affect your business. In addition, we welcome comments from anyone in the general public who believes that these regulations may impact small business entities.

Environmental Impact Statement

Any rule that is subsequently promulgated is not expected to significantly affect the environment; therefore, an Environmental Impact Statement is not likely to be required under the National Environmental Policy Act of 1969. When regulations are proposed, an appropriate determination will be available in the docket for inspection or copying where indicated under **ADDRESSES**.

Paperwork Reduction Act

We cannot yet estimate the paperwork burden which may result from any further rulemaking on this issue, but it is expected that comments received on this advance notice of proposed rulemaking will assist the agency in estimating the potential paperwork burden, as required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). If you have comments on the potential information collection burden, please submit a comment (see **ADDRESSES**) explaining your concerns. If new recordkeeping requirements result from future proposed rulemaking, we will submit those recordkeeping requirements to the Office of Management and Budget for review.

Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

International Trade Impact Assessment

The final rule that will result from this rulemaking is not expected to contain standards-related activities that create unnecessary obstacles to the foreign commerce of the United States. If you believe that this rulemaking will have international trade impacts, we welcome your comments.

By order of the Maritime Administrator.

Dated: April 30, 1999.

Joel C. Richard,

Secretary.

[FR Doc. 99–11259 Filed 5–5–99; 8:45 am]

BILLING CODE 4910–81–P

Notices

Federal Register
Vol. 64, No. 87
Thursday, May 6, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Sloan-Kennally Timber Sale, Payette National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service published a notice of intent to prepare an environmental impact statement (EIS) for the proposed Sloan-Kennally Timber Sale in the **Federal Register** March 19, 1991, (Vol. 56, No. 53, p. 11541–11542). The Forest Service then published a revised notice of intent in the **Federal Register** September 23, 1994, (Vol. 59, No. 184, p. 48878) changing the dates for release of the draft EIS (DEIS) and final EIS (FEIS). The revised notice is hereby revised to show another change in the project schedule. In addition, the Payette National Forest is offering another scoping opportunity for comments on the scope of analysis and issues to address in this revised DEIS.

DATES: Comments must be received by June 7, 1999.

ADDRESSES: Submit written scoping comments to: Dan Anderson, Sloan-Kennally Timber Sale Team Leader, New Meadows Ranger District, Payette National Forest, P.O. Box J, New Meadows, Idaho 83654, Fax (208) 347–0309.

FOR FURTHER INFORMATION CONTACT: Questions about the project should be directed to Dan Anderson, phone (208) 347–0300.

SUPPLEMENTARY INFORMATION: Payette National Forest issued a DEIS on the Sloan-Kennally Project in August 1994, but because large fires burned on the Payette later that year and the priorities of the Forest shifted to subsequent timber salvage efforts, the FEIS was never issued. Due to the elapsed time, the incorporation of the Inland Native Fish Strategy (INFISH) into the Forest Plan, the issuance of an interim roadless policy for the agency, and the listing of bull trout under the Endangered Species Act, the Forest expects to issue a revised DEIS in June 1999, and a FEIS in October 1999.

The agency gives notice of the full environmental analysis and decision making process that is continuing on the proposal so that interested and affected people know how they may participate and contribute to the final decision. The Forest conducted public scoping and addressed comments in the DEIS. The Forest now invites additional comments on the scope of the analysis and the issues to address in the revised DEIS.

Public participation will be especially important at several points during the analysis, particularly during scoping of issues and during review of the revised DEIS.

The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in detail.
3. Eliminating insignificant issues or those covered by a relevant previous environmental analysis.
4. Determining potential cooperating agencies and responsibilities.

Issues that were considered and analyzed in the DEIS were water quality, soil productivity, wildlife habitat, roadless character and wilderness potential, biodiversity, economics and socio-economics, fish habitat, recreation, and visual quality. It is important to bring any new issues to the attention of the Forest now so that they may be considered in the revised DEIS.

The Responsible Official is David F. Alexander, Forest Supervisor, Payette National Forest.

Dated: April 30, 1999.

Miera Crawford,

External Relations Branch Chief.

[FR Doc. 99–11336 Filed 5–5–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Little Weiser Landscape Vegetation Management Project, Payette National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) for the proposed Little Weiser Landscape Vegetation Management Project, Council Ranger District, Payette National Forest, Idaho. The proposed action would harvest timber on 3,000 to 3,800 acres, construct about 8 miles of new road, reconstruct approximately 30 miles of system and non-system roads, obliterate 4.2 miles of roads, close approximately 40 miles of existing non-system roads, treat fuels, and plant conifer seedlings on 2,300 to 2,600 acres after harvest. The Forest Service will develop a range of alternatives, including a no action alternative, to address issues.

The agency invites public comments on the scope of the analysis and issues to be addressed in the draft environmental impact statement (DEIS). In addition, the agency gives notice of the full environmental analysis and decision making process that is beginning on the proposal so that interested and affected people can know how they may participate and contribute to the final decision.

DATES: Comments must be received by June 18, 1999.

ADDRESSES: Submit written comments and suggestions to: Dautis Pearson, Team Leader, Council Ranger District, Payette National Forest, P.O. Box 567, Council, Idaho 83612. Fax (208) 253–0109.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Dautis Pearson, phone (208) 253–4215.

SUPPLEMENTARY INFORMATION: The Payette National Forest prepared an environmental assessment (EA) on this Little Weiser proposal in March 1997. The Forest Supervisor signed a Decision Notice approving the project on December 23, 1997. In 1998, a lawsuit challenged this project, among others. In response to a settlement agreement resolving the litigation, the Forest Supervisor in February 1999, agreed to withdraw the decision and prepare an environmental impact statement that would update the analysis in the EA. The Forest Supervisor will then issue a new decision.

The Payette National Forest Plan (1988) provides Forest-wide direction

for management of the land and resources of the Payette National Forest, including this project area. The project would be consistent with the Plan as amended by the Inland Native Fish Strategy (INFISH) of 1995.

Public participation will be important at several points during the analysis, particularly during scoping of issues and review of the DEIS. The first opportunity in the process is scoping. This notice begins the 30-day scoping period.

The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in detail.
3. Eliminating insignificant issues or those covered by a relevant previous environmental analysis.
4. Determining potential cooperating agencies and responsibilities.

The Forest Service has consulted with the U.S. Fish and Wildlife Service, Department of Interior, on potential impacts to threatened and endangered species.

Preliminary issues include effects on soils, water, fish, timber, vegetation, wildlife, fire management, heritage resources, recreation, visual quality, and socio-economics.

The next major opportunity for public input is with the DEIS. The DEIS will analyze a range of alternatives to the proposed action, including the no-action alternative. The Forest expects to file the DEIS with the Environmental Protection Agency (EPA) for public review in July 1999. EPA will then publish a notice of availability of the DEIS in the **Federal Register**. The Forest Service invites public comments at that time.

The comment period on the DEIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of any DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, courts may waive or dismiss environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the final environmental impact statement (FEIS). *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when the agency can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues raised by the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the DEIS. Comments may also address the adequacy of the DEIS or the merits of the alternatives it analyzes. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The Forest Service will respond to comments received in the FEIS (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences disclosed in the FEIS, and applicable laws, regulations, and policies in making the final decision regarding this proposal. The responsible official will document the decision and reasons for it in the Record of Decision. That decision will be subject to appeal under 36 CFR 215.

David F. Alexander, Forest Supervisor of the Payette National Forest, is the responsible official for this EIS.

Dated: April 30, 1999.

Miera Crawford,

External Relations Branch Chief.

[FR Doc. 99–11337 Filed 5–5–99; 8:45 am]

BILLING CODE 3410–11–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: May 11, 1999; 9:00 a.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., S.W., Washington, D.C. 20547.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b. (c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or John Lindburg at (202) 401–3736.

Dated: May 3, 1999.

John A. Lindburg,

Legal Counsel and Acting Executive Director.

[FR Doc. 99–11474 Filed 5–3–99; 5:08 pm]

BILLING CODE 8230–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Mexico 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 New Mexico Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 4:00 p.m. on May 26, 1999, at the Double Tree Hotel, 201 Marquette, N.W., Albuquerque, New Mexico 87102. The purpose of the meeting is to review current civil rights developments in the State and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). 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, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–11369 Filed 5–5–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; William F. McNeil and American Protection Corporation; Order Denying Permission to Related Persons To Apply for or Use Export Licenses

William F. McNeil, #5 Woodland Road, Pittsfield, Massachusetts 01201, and American Protection Corporation, #5 Woodland Road, Pittsfield, Massachusetts 01201, and with a mailing address at P.O. Box 4227, Pittsfield, Massachusetts 01202–4227

On November 3, 1997, the Director, Office of Exporter Services Bureau of Export Administration, U.S. Department of Commerce, issued an Order denying William F. McNeil's (McNeil) export privileges until August 8, 2001 (62 FR 61269, November 17, 1997). The Order was based on McNeil August 8, 1996 conviction for violating the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. 1701–1706 (1991 & Supp. 1998)) (IEEPA), and was issued pursuant to Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401–2490 (1991 & Supp. 1998)) (the Act), [1] and Sections 766.25 and 750.8(a) of the Export Administration Regulations (15 CFR parts 730–774) (1998)) (the Regulations). Section 11(h)(2) of the Act provides that any person related, through affiliation, ownership, control, or position of responsibility, to a person who has been denied export privileges as a result of a conviction for violating IEEPA, may, at the discretion of the Secretary of Commerce,[2] be denied export privileges as well.

On March 31, 1998, American Protection Corporation was notified, pursuant to Section 766.23 of the Regulations, that the Bureau of Export Administration, U.S. Department of Commerce, has reason to believe that it is related to William McNeil through ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business, and that the order issued against McNeil should, in order to prevent evasion, also be made applicable to American Protection Corporation.

American Protection Corporation responded to BXA's notice on April 6, 1998 by letter signed by McNeil. McNeil stated in the letter that he is the sole owner and only permanent employee of American Protection Corporation. McNeil also stated that American Protection Corporation has not exported any goods since the denial order against him was issued on November 3, 1997, and that it will not export any goods until the denial order is lifted. This unsupported statement by McNeil is not sufficient, however, to ensure that American Protection Corporation will not be used to evade the order denying McNeil's export privileges. McNeil still is sole owner of American Protection Corporation, and absent a related person order, he could easily use American Protection Corporation to export to his benefit, thereby evading the terms of the order against him.

Therefore, I hereby find that American Protection Corporation is related to William F. McNeil, a person denied all U.S. export privileges until August 8, 2001, through ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business, and that, in order to prevent evasion, the denial order against McNeil issued on November 3, 1997, should also be made applicable to American Protection Corporation.

Accordingly, the Order of November 3, 1997, denying McNeil permission to apply for or use any export license, including any License Exception, is hereby amended to read as follows:

It is ordered:

I. Until August 8, 2001, William F. McNeil, #5 Woodland Road, Pittsfield, Massachusetts 01201, and American Protection Corporation, #5 Woodland Road, Pittsfield, Massachusetts 01201, and with a mailing address at P.O. Box 4227, Pittsfield, Massachusetts 01202–4227, may not, directly or indirectly, participate in any way, in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United Stats that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied persons any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied persons of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to transaction whereby the denied persons acquire or attempt to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied persons of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied persons in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied persons, or service any item, of whatever origin, that is owned, possessed or controlled by the denied persons if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to McNeil or to American Protection Corporation by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), August 13, 1997 (3 CFR, 1997 Comp. 306 (1998)) and August 13, 1998 (63 FR 44121, August 17, 1998), continued the Export Administration Regulations in effect under IEEPA.

[2] Pursuant to appropriate delegations of authority, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until August 8, 2001.

VI. A copy of this Order shall be delivered to McNeil and to American Protection Corporation. This Order shall be published in the **Federal Register**.

Dated: April 27, 1999.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 99–11416 Filed 5–5–99; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet May 25, 1999, 9:00 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Open Session

1. Opening remarks by the Chairperson.
2. Presentation of papers or comments by the public.
3. Update on pending regulatory revisions.
4. Update on policies under review.
5. Report on proposal to amend the Export Administration Regulations concerning the issue of ''exporter of Record.''
6. Discussion on encryption regulations.
7. Discussion on regulations regarding high Performance Computers.
8. Update on implementation of Wassenaar Arrangement.
9. Discussion on compliance and enforcement issues.

Closed Session

10. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available for the open session. Reservations are not required. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to the following address: Ms. Lee Ann Carpenter, BXA MS: 3876, 15th St. and Pennsylvania Ave., N.W., U.S. Department of Commerce, Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 12, 1999, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For more information, call Lee Ann Carpenter at (202) 482–2583.

Dated: April 30, 1999.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 99–11306 Filed 5–5–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828); (C–351–829]

Postponement of Final Determination of Antidumping and Countervailing Duty Investigations of Hot-Rolled Flat-Rolled Carbon-Quality Steel From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the final determinations of the antidumping and countervailing duty investigations of hot-rolled flat-rolled carbon-quality steel from Brazil.

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Linda Ludwig, Office of AD/CVD Enforcement, Group III, or Chris Cassell, Office of AD/CVD Enforcement Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3833 or (202) 482–4847, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (the Act), as amended, 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, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1998).

Postponement of Final Determinations and Extension of Provisional Measures

Pursuant to Section 735(a)(2) of the Tariff Act, on February 2, 1999, Companhia Siderurgica Nacional (CSN), Usinas Siderurgicas de Minas Gerais, S.A., (USIMINAS), and Companhia Siderurgica Paulista (COSIPA) requested that, in the event of affirmative preliminary determination, the Department extend the final determination in this case for the full sixty days permitted by statute. On February 4, 1999, CSN, USIMINAS, and COSIPA also requested an extension of the provisional measures (i.e., suspension of liquidation) period from four to six months in accordance with the Department's regulations (19 CFR § 351.210(e)(2)). On February 12, 1999, the affirmative preliminary determination was signed. Therefore, on February 26, 1999, in accordance with 19 CFR § 351.210(e)(2)(ii), we postponed this final determination until no later than 105 days after the publication of the preliminary determinations in the **Federal Register** (see, Postponement of Final Determination of Antidumping and Countervailing Duty Investigations of Hot-Rolled Flat-Rolled Carbon-Quality Steel from Brazil 64 FR 9474. This notice serves to postpone this final determination for an additional 30 days (i.e., until no later than 135 days after the date of publication of the preliminary determination) as originally requested by the respondents.

Suspension of liquidation will be extended accordingly.

In addition, because the countervailing duty investigation of hot-rolled flat-rolled carbon-quality steel products from Brazil has been aligned with the concurrent antidumping duty investigation under section 705(a)(1) of the Act, the time limit for completion of the final determination in the countervailing duty investigation will be the same date, July 6, 1999, as the final determination of the concurrent antidumping duty investigation.

This notice of postponement is published pursuant to 19 CFR 351.210(g).

Dated: April 28, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–11285 Filed 5–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Preliminary Results of New Shipper Review and Preliminary Results and Partial Rescission of First Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 29, 1998, the Department of Commerce (''the Department'') published a notice of initiation of an administrative review of the antidumping duty order on brake rotors from the People's Republic of China (''PRC'') covering the period October 10, 1996, through March 31, 1998. The Department is preliminarily rescinding this review in part with respect to respondents who had no shipments of the subject merchandise during the period of review (''POR'').

For those respondents that submitted full responses to the antidumping questionnaire and are entitled to a separate rate, we have preliminarily determined that U.S. sales have not been made below normal value. For the PRC non-market economy (''NME'') entity (*i.e.,* PRC government-controlled companies, including PRC companies that did not respond to the antidumping questionnaire), we are basing the preliminary results on ''facts available.''

If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess no antidumping duties on entries from the seven PRC exporters that cooperated in this review (including the one new shipper reviewed), for which the importer-specific assessment rates are zero or *de minimis* (*i.e.*, less than 0.50 percent), and to assess duties on entries from the other uncooperative reviewed exporters at the PRC-wide rate.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Barbara Wojcik-Betancourt, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1766 or (202) 482–0629, respectively.

SUPPLEMENTARY INFORMATION: 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. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1998).

Background

On April 14, 1998, the petitioner [2] requested an administrative review pursuant to section 751(a)(1) of the Act and section 351.213(b) of the Department's regulations for three exporter/producer combinations [2] that received zero rates in the less-than-fair-value (''LTFV'') investigation and thus were excluded from the antidumping duty order only with respect to subject merchandise sold through the specified exporter/producer combinations, and the following respondents in the LTFV investigation: (1) Hebei Metals and Minerals Import & Export Corporation (''Hebei''); (2) Jilin Provincial Machinery and Equipment Import & Export Corporation (''Jilin''); (3) Shandong Jiuyang Enterprise Corporation (''Jiuyang''); (4) Longjing Walking Tractor Foreign Trade Import & Export Corporation (''Longjing''); (5) Qingdao Metals, Minerals & Machinery Import and Export Corporation (''Qingdao''); (6) Shanxi Machinery and Equipment Import Export Corporation (''Shanxi''); (7) Southwest Technical Import & Export Corporation (''Southwest''); (8) Xianghe Zichen Casting Co., Ltd. (''Xianghe''); (9) Yantai Import & Export Corporation (''Yantai''); and (10) Yenhere Corporation (''Yenhere''). The petitioner also requested an adminsistrative review of all other PRC producers and exporters of the subject merchandise.

On April 29, 1998, the excluded exporters for which the petitioner requested a review contended that the Department did not have the basis for conducting an administrative review of them because they were excluded from the antidumping duty order on brake rotors.

On April 30, 1998, the Department received a timely request from Yantai Chen Fu Machinery Co., Ltd. (''Chen Fu''), in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the Department's regulations, for a new shipper review of this antidumping duty order.

In its April 30, 1998, request for review, Chen Fu certified that id did not export the subject merchandise to the United States during the period covered by the original LTFV investigation (the ''POI''), and that is it not affiliated with any company which exported subject merchandise to the United States during the POI. Chen Fu also certified that its export activities are not controlled by the central government of the PRC. Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv), Chen Fu submitted documentation establishing the date on which the merchandise was first entered for consumption in the United States, the volume of that shipment, and the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) and 19 CFR 351.214(d), we initiated a new shipper review covering Chen Fu (*Brake Rotors from the People's Republic of China: Initiation of New Shipper Antidumping Duty Administrative Review* (63 FR 28355, May 22, 1998)).

Also, on April 30, 1998, seven PRC exporters [3] requested an administrative review pursuant to section 751(a)(1) of the Act and section 351.213(b) of the Department's regulations, all but one of

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[1] The petitioner is the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers.

[2] The excluded exporters/producer combinations are (1) China National Automobile Industry Import & Export Corporation (''CAIEC'') or Shandong Laizhou CAPCO Industry (''Laizhou CAPCO'')/ Laizhou CAPCO; (2) Shenyang Honbase Machinery Co., Ltd. (''Shenyang Honbase'') or Laizhou Luyuan Automobile fittings Co., Ltd. (''Laizhou Luyuan'')/ Shenyang Honbase or laizhou Luyuan; and (3) China National Machinery and Equipment Import & Export (Xinjiang) Co., Ltd. (''Xinjinag'')/Zibo Botai Manufacturing Co., Ltd. (Zibo'').

[3] The seven PRC exporters are (1) Beijing Xinchangyuan Automobile Fittings Co., Ltd. (''Xinchangyuan''); (2) Jilin; (3) Longjing; (4) Jiuyang; (5) Xianghe; (6) Yantai; and (7) Yenhere.

which (Xinchangyuan) were included in the petitioner's request.

On May 11, 1998, Chen Fu agreed to waive time limits applicable to the new shipper review and conduct the new shipper review concurrently with the administrative review. On May 13, 1998, Xinchangyuan withdrew its request for an administrative review.

On May 22, 1998, the Department initiated an administrative review covering the exporters which received zero rates in the LTFV investigation (only with respect to their U.S. sales of brake rotors produced by companies other than those included in the excluded exporter/producer combinations) and the other producers and exporters for which the petitioner requested a review (*Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part* (63 FR 29370, 29371, May 29, 1998)).

During June 1998, we issued our questionnaire to the following entities: (1) all companies listed in our initiation notices; (2) the Ministry of Foreign Trade and Economic Cooperation (''MOFTEC'') for review of the PRC-wide rate; and (3) the Chinese Chamber of Commerce of Importers and Exporters of Machinery and Electronic Products (''the China Chamber'').

On July 24, 1998, the respondents and the petitioners submitted publicly available information (''PAI'') for use in valuing the factors of production. On July 31, 1998, the parties submitted rebuttal comments on PAI. On August 10, 1998, certain respondents (namely, Chen Fu, Jilin, Longjing, Jiuyang Xianghe, Yantai and Yenhere) submitted their responses to sections A, C and D of the antidumping questionnaire. In September 1998, we issued supplemental questionnaires to the respondents. In October 1998, we received supplemental questionnaire responses from the respondents.

On November 10, 1998, the Department published in the **Federal Register** a notice of postponement of the preliminary results no later than April 30, 1999 (63 FR 63026).

On February 12, 1999, Jilin submitted corrections to its section C response in anticipation of verification. On March 2, 1999, the Department issued a decision memorandum which outlined the Department's reasons for conducting a review of the exporters rates of zero in the LTFV investigation with respect to shipments of merchandise produced by manufacturers other than those in the respective excluded exporter/producer combination. On March 11, 1999, the Department issued another decision memorandum (''March 11, 1999, Memorandum'') which stated that the Department preliminarily found no evidence that POR shipments of merchandise subject to order were made by the exporters that are excluded with respect to certain exporter/producer combinations.

Scope of Review

The products covered by this review are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half.''

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo or any original equipment manufacturer (''OEM'') which produces vehicles sold in the United States (*e.g*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in this review are not certified be OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of the review are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are classifiable under subheading 8708.39.5010 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Period of Review

The POR covers the period October 10, 1996, through March 31, 1998.

Rescission

Pursuant to 19 CFR 351.213(d)(3), we have preliminarily determined that, during the POR, the exporters which received zero rates in the LTFV investigation did not make shipments of subject merchandise to the United States during the POR. Specifically, we preliminarily determined that during the POR, (1) neither CAIEC nor Laizhou CAPCO exported brake rotors to the United States that were manufactured by producers other than Laizhou CAPCO; (2) neither Shenyang Honbase nor Laizhou Luyuan exported brake rotors to the United States that were manufactured by producers other than Shenyang Honbase or Laizhou Luyuan; and (3) Xinjiang did not export brake rotors to the United States that were manufactured by producers other than Zibo (*see* memoranda dated March 2 and 11, 1999, from the team to Louis Apple, Office Director). In order to make this determination, we first examined POR subject merchandise shipment data furnished by the U.S. Customs Service. We then requested the U.S. Customs Service to examine the documentation filed at the U.S. port for each entry made by the exporters at issue to determine the manufacturer of the merchandise. Based on the results of our query (*see* March 11, 1999, Memorandum), we are preliminarily rescinding this review with respect to CAIEC, Laizhou CAPCO, Shenyang Honbase, Laizhou Luyuan and Xinjiang. However, we intend to verify the U.S. shipments of brake rotors made by these companies before issuing a final decision with respect to these companies.

Furthermore, we are rescinding this review with respect to Southwest, which reported that it made no shipments of subject merchandise during this POR, based on the results of our examination of shipment data furnished by the U.S. Customs Service. Because the shipment data we examined did not show U.S. entries of brake rotors during the POR from Southwest or its affiliated PRC producer, we pursued no further this inquiry with the U.S. Customs Service. We are also rescinding this review with respect to Xinchangyuan because it withdrew its request for review and no other interested party requested a review of this company.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. Of the seven respondents that submitted questionnaire responses, one of the PRC

companies, Chen Fu, is wholly-owned by private individuals. Another respondent, Xianghe, is a joint venture between Chinese and U.S. companies. Another respondent, Yenhere, is a limited liability corporation in the PRC. The four other respondents are either wholly owned by ''all the people'' (Jilin, Longjing, Yantai) or collectively owned (Jiuyang). Thus, for all seven of these respondents, a separate rates analysis is necessary to determine whether the exporters are independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China* (''*Bicycles*'') 61 FR 56570 (April 30, 1996)).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994) (''*Silicon Carbide*''). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

1. De Jure Control

Each respondent has placed on the administrative record documents to demonstrate absence of de jure control, including the ''Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People,'' adopted on April 13, 1988 (''the Industrial Enterprises Law''); ''The Enterprise Legal Person Registration Administrative Regulations,'' promulgated on June 13, 1988; the 1990 ''Regulation Governing Rural Collectively-Owned Enterprises of PRC;'' the 1992 ''Regulations for Transformation of Operational Mechanisms of State-Owned Industrial Enterprises'' (''Business Operation Provisions''); and the 1994 ''Foreign Trade Law of the People's Republic of China.''

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of companies ''owned by the whole people,'' privately owned enterprises, joint ventures, stock companies including limited liability companies, and collectively owned enterprises. *See, e.g., Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China* (''*Furfuryl Alcohol*'') 60 FR 22544 (May 8, 1995), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China* (''*Drawer Slides*'') 60 FR 29571 (June 5, 1995). We have no new information in this proceeding which would cause us to reconsider this determination with regard to the seven respondents mentioned above.

2. De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* and *Furfuryl Alcohol.* Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices (''EPs'') are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Silicon Carbide* and *Furfuryl Alcohol*).

Each of these seven respondents asserted the following: (1) it establishes its own EPs; (2) it negotiates contracts, without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, the respondents' questionnaire responses indicate that company-specific pricing during the POR does not suggest coordination among exporters. This information supports a preliminary finding that there is *de facto* absence of governmental control of the export functions of these respondents. *See Pure Magnesium from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Administrative Review,* 62 FR 55215 (October 23, 1997). Consequently, we have preliminarily determined that each of these respondents has met the criteria for the application of separate rates.

Hebei, Qingdao and Shanxi, named respondents in this review, did not respond to the questionnaire issued in this review. Hebei, Qingdao and Shanxi also did not submit information which demonstrated a *de jure* and *de facto* absence of government control with respect to each company's export functions. Therefore, we have preliminarily determined that these companies are not entitled to separate rates in this review and will be considered to be part of the non-responding PRC NME entity.

Facts Available

Section 776(a)(1) of the Act mandates that the Department use the facts available if necessary information is not available on the record of an antidumping proceeding. In addition, section 776(a)(2) of the Act mandates that the Department use the facts available where an interested party or any other person: (A) withholds information requested by the Department; (B) fails to provide requested information by the requested date or in the form and manner requested; (C) significantly impedes an antidumping proceeding; or (D) provides information that cannot be verified.

As indicated above, Hebei, Qingdao and Shanxi failed to demonstrate that they are entitled to separate rates and therefore are presumed to be part of the PRC entity. In response to our antidumping questionnaire, MOFTEC, on behalf of the PRC NME entity, referred the Department to the China Chamber (*see* letter from MOFTEC to the Department, dated June 26, 1998). The China Chamber provided no response to our antidumping questionnaire, which it also received directly from the Department (*see* the Department's cover letter and questionnaire to the China Chamber, dated June 30, 1998). Thus, the PRC NME entity provided no questionnaire response. Therefore, in this case, the PRC NME entity, including Hebei, Qingdao and Shanxi, failed to respond to the Department's questionnaire. Therefore, by failing to respond to the Department's questionnaire in this case, the PRC NME entity, including Hebei, Qingdao and Shanxi, failed to cooperate to the best of its ability. Where the Department must base the entire dumping margin for a respondent in an administrative review on the facts

available because that respondent failed to cooperate to the best of its ability, section 776(b) also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

As adverse facts available, imports of subject merchandise from the PRC NME entity (including Hebei, Qingdao and Shanxi and other producers/exporters who have not qualified for a separate rate) will be subject to a PRC-wide rate of 43.32 percent, which is based on the highest petition rate and which is the highest rate on the record of this proceeding. Because information from the petition constitutes secondary information, section 776(c) provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (''SAA'') (H. Doc. 316, 103d Cong., 2nd Sess. 870) provides that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value.

During our analysis of the petition in the LTFV investigation, we reviewed all of the data submitted and the assumptions that petitioners had made when calculating estimated dumping margins. As a result of our analysis, we recalculated the petition rate during the LTFV investigation to correct the petitioner's methodology with respect to certain factor values. *See Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China,* 62 FR 9160, 9162 (February 28, 1997) (''*Brake Rotors*''). Thus, because we reviewed the petitioner's assumptions and calculations from which the petition rates were derived, and made appropriate corrections, we had determined in the LTFV investigation that the petition rates, as corrected, had probative value. We have no new information that would warrant reconsidering that decision.

Fair Value Comparisons

To determine whether sales of the subject merchandise by each respondent to the United States were made at LTFV, we compared the EP to the normal value (''NV''), as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below.

Export Price

We used EP methodology in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and constructed export price methodology was not otherwise indicated.

1. Chen Fu, Jilin, Jiuyang, Longjing, Xianghe, Yenhere

We calculated EP based on packed, FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling in the PRC, in accordance with section 772(c) of the Act. Because foreign inland freight and foreign brokerage and handling fees were provided by NME service providers or paid for in an NME currency, we based those charges on surrogate rates from India (*see* ''Surrogate Country'' section below). To value foreign inland freight, we used the average 1994 truck freight rate contained in the Indian periodical *The Times of India.* We have used this same rate in numerous NME cases in which India has been selected as the primary surrogate (*see, e.g., Brake Rotors,* 62 FR at 9163). To value foreign brokerage and handling expenses, we relied on public information reported in the antidumping investigation of stainless steel wire rod from India (*see Brake Rotors from the People's Republic of China: Final Results of New Shipper Antidumping Duty New Shipper Administrative Review* (64 FR 9972, 9974, March 1, 1999) (*Brake Rotors New Shipper Review*)).

2. Yantai

We calculated EP based on packed, CIF, CNF or FOB U.S. port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling in the PRC, marine insurance and international freight, in accordance with section 772(c) of the Act. As all foreign inland freight and foreign brokerage and handling fees were provided by NME service providers or paid for in a NME currency, we valued these services using the Indian surrogate values discussed above. For marine insurance, we used public information reported in the antidumping investigation of sulfur dyes, including sulfur vat dyes, from India. For ocean freight, we used Yantai's reported expense because Yantai used market-economy freight carriers (*see, e.g., Brake Rotors New Shipper Review,* 64 FR at 9974).

Normal Value

A. Non-Market Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a NME country. None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

B. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. We determined that India is a country comparable to the PRC in terms of overall economic development (*see* Memorandum from the Office of Policy to Louis Apple, dated June 23, 1998, which was included in the Department's June 24, 1998, letter sent to each interested party in this proceeding). In addition, based on PAI placed on the record, we have determined that India is a significant producer of the subject merchandise. Accordingly, we considered India the primary surrogate country for purposes of valuing the factors of production as the basis for NV because it meets the Department's criteria for surrogate country selection. Where we could not find surrogate values from India, we valued those factors using values from Indonesia.

C. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production reported by the companies in the PRC which produced the subject merchandise for the exporters which sold the subject merchandise to the United States during the POR. To calculate NV, the reported unit factor quantities were multiplied by publicly available Indian or Indonesian values.

The selection of the surrogate values applied in this determination was based on the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POR and quoted in a foreign currency, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics. For a complete analysis of surrogate values, see the Preliminary Results Valuation

Memorandum from the Team to the File, dated April 30, 1999 (''Preliminary Results Valuation Memorandum'').

To value pig iron, we used domestic price data in India from the April 1996–March 1997 financial report of Lamina Foundries (''Lamina'') and from the 1996 financial report of Nagpur Alloy Castings Ltd. (''Nagpur''). We removed excise and sales taxes from the average pig iron value because the financial reports indicated that these taxes were included in the values. For steel scrap, ferrosilicon, ferromanganese, lubrication oil and limestone, we used average values based on import statistics spanning from April 1996–July 1997 from *Monthly Statistics of the Foreign Trade of India (''Monthly Statistics'').* For iron scrap, we used domestic price data from Lamina's 1996–97 financial report and 1996–97 import price data from *Monthly Statistics.*

Certain types of rotors use steel sheet, lug bolts and ball bearing cups. For steel sheet, we used October 1997 prices from the Indian publication *Statistics for Iron and Steel Industry.* For lug bolts, we could not obtain a product-specific price from India (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China* (61 FR 19026, April 30, 1996) (Comment 17)). Therefore, we used import data covering 1997 from the Indonesian government publication *Foreign Trade Statistical Bulletin.* To value ball bearing cups, we used April 1997–July 1997 import price data from *Monthly Statistics.*

For coking coal, we used an average of prices applicable during the fourth quarter of 1996 from the International Energy Agency's *Energy Price and Taxes,* and a 1996–1997 price from the publication *Federation of Indian Chambers of Commerce.* To value firewood, we used a 1990 domestic value from the USAID publication *Marketing Opportunities for Social Forestry in Uttar Pradesh.* To value electricity, we used a price applicable during the fourth quarter of 1996 from the International Energy Agency's *Energy Price and Taxes.*

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

To value selling, general and administrative (''SG&A'') expenses, factory overhead and profit, we calculated simple averages based on financial data from five Indian producers. We used only those producers' financial reports which were contemporaneous with the POR and for which PAI demonstrated that those companies are producers of the subject merchandise (*i.e.,* Jayaswals Neco Limited (''Jayaswals''), Kalyani Brakes Limited (''Kalyani''), Krishna Engineering Works (''Krishna''), Nagpur, and Rico Auto Industries Limited (''Rico'')). We did not use the financial reports of Lamina or Brakes India Limited in calculating the surrogate percentages because we have no PAI which demonstrates that these two companies are producers of the subject merchandise. Where appropriate, we removed from the surrogate overhead and SG&A calculations the excise duty amount listed in the financial reports (*see Brake Rotors,* 62 FR at 9164). We made certain adjustments to the percentages calculated as a result of reclassifying expenses contained in the financial reports.

In utilizing the financial data of the Indian companies, we treated the line item labeled ''stores and spares consumed'' as part of factory overhead because stores and spares are not direct materials consumed in the production process. Based on PAI, we considered the molding materials (*i.e.,* sand, bentonite, coal powder, steel pellets, lead powder, waste oil) to be indirect materials included in the stores and spares consumed category of the financial statements. We based our factory overhead calculation on the cost of goods manufactured rather than on the cost of goods sold. We also included interest and/or financial expenses in the SG&A calculation. In addition, we only reduced interest and financial expenses by amounts for interest income if the Indian financial report noted that the income was short-term in nature. Where a company did not distinguish interest income as a line item within total ''other income,'' we used the ratio of interest income to total other income as reported for the Indian metals industry in the *Reserve Bank of India Bulletin* to calculate the interest expense amount. For example, if an Indian company's financial statement indicated that the company had miscellaneous receipts or other income under the general category ''other income,'' we applied a ratio (based on data contained in *Reserve Bank of India Bulletin*) to that miscellaneous receipts or other income figure in the financial statement to determine the amount associated with short-term interest income. To avoid double-counting, we treated the line item ''packing, freight and delivery charges'' as expenses to be valued separately. Specifically, to determine the packing expense, we used the respondents' reported packing factors. We used the respondents' reported distances to determine the foreign inland freight expense. For a further discussion of other adjustments made, *see* the Preliminary Results Valuation Memorandum.

All inputs were shipped by truck. Therefore, to value PRC inland freight, we used the April 1994 truck rate from the *Times of India.*

In accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States,* 117 F. 3d 1401 (1997), we revised our methodology for calculating source-to-factory surrogate freight for those material inputs that are valued based on CIF import values in the surrogate country. Therefore, we have added to CIF surrogate values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port of importation to the factory, or from the domestic supplier to the factory on an import-specific basis.

To value adhesive tape, corrugated cartons, nails, polyethylene material for bags, steel strap and steel strip, we used April 1996–July 1997 import values from *Monthly Statistics.* To value pallet wood, we selected an April 1995–March 1996 import value from *Monthly Statistics* rather than other 1996–97 values on the record because the more contemporaneous values appeared aberrational relative to the overall value of the subject merchandise (*see* Preliminary Results Valuation Memorandum for further discussion).

Currency Conversion

We made currency conversions pursuant to section 773A(a) of the Act and section 351.415 of the Department's regulations based on the rates certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act and 19 CFR 351.307, we intend to verify certain information relied upon in making our final results. In this review, on May 5, 1998, the petitioner requested the Department to conduct verification of the information and statements submitted by the exporter/producer combinations excluded from this order. We intend to verify several respondents, including the exporter/producer combinations excluded from the order, in accordance with 19 CFR 351.307.

Preliminary Results of the Review

We preliminarily determine that the following margins exist for the seven respondents, who submitted full responses to the antidumping questionnaire, during the period October 10, 1996, through March 31, 1998:

Manufacturer/producer/exporter	Margin percent
Yantai Chen Fu Machinery Co., Ltd	0.00
Jilin Provincial Machinery & Equipment Import & Export Corporation	0.00
Longjing Walking Tractor Works Foreign Trade Import & Export Corporation	0.00
Shandong Jiuyang Enterprise Corporation	0.00
Xianghe Zichen Casting Co., Ltd.	0.00
Yantai Import & Export Corporation	0.00
Yenhere Corporation	0.00
PRC-Wide Rate	43.32

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 45 days of publication. Any hearing, if requested, will be held on July 22, 1999.

Issues raised in the hearing will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties may be submitted not later than July 13, 1999. Rebuttal briefs, limited to issues raised in the case briefs, will be due July 20, 1999. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations and cases cited.

The Department will issue the final results of this administrative and new shipper review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 45 days of the date of publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific ad valorem duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In order to estimate the entered value, we will subtract international movement expenses from the gross sales value. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise during the POR for which the importer-specific assessment rate is zero or *de minimis* (*i.e.,* less than 0.50 percent). For entries subject to the PRC-wide rate, the Customs Service shall assess ad valorem duties at the rate established in the final results. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review.

Cash Deposit Requirements

Upon completion of this new shipper review, for entries from Chen Fu, we will require cash deposits at the rate established in the final results pursuant to section 751(a)(2)(B)(iii) of the Act and section 351.214(e) of the Department's regulations and as further described below.

The following deposit requirements will be effective upon publication of the final results of these administrative and new shipper antidumping duty administrative reviews for all shipments of brake rotors from the PRC 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 each reviewed company will be the rate established in the final results; (2) the cash deposit rate for PRC exporters who received a separate rate in the LTFV investigation but who did not export subject merchandise during the POR or for whom there was no request for review (*i.e.,* Southwest and Xinchangyuan) will continue to be the rate assigned in that investigation; (3) the cash deposit rate for the PRC NME entity (*i.e.,* all other PRC exporters, including Hebei, Qingdao and Shanxi) will be 43.32 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) 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.

These administrative and new shipper administrative reviews and notice are in accordance with section 751(a)(1) and (2)(B) of the Act (19 U.S.C. 1675(a)(1) and (2)(B)) and 19 CFR 351.213 and 351.214.

Dated: April 30, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–11422 Filed 5–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Rescission of Antidumping Duty Administrative Review.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: In response to timely withdrawals of request for review by the petitioners and respondents, Korea Iron and Steel Co., Ltd., SeAH Steel Corporation and Shinho Steel Co., Ltd., the Department of Commerce is rescinding the 1997/1998 antidumping duty administrative review of circular welded non-alloy steel pipe from the Republic of Korea.

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Alysia Wilson or Cynthia Thirumalai, Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0108 and 482–4087 respectively.

The 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. In addition, all references to the Department of

Commerce's (''the Department's'') regulations are to 19 CFR part 351 (April 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 *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 are outside of the scope of the antidumping duty review.

Imports of these products 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, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Recession of 1997/98Antidumping Duty Administrative Review

On December 23, 1998, we published our *Notice of Initiation of Antidumping and Countervailing Administrative Reviews* (63 FR 71091–01). Subsequently, we received timely withdrawals of request for review from the petitioners and respondents, Korea Iron and Steel Co., Ltd., SeAH Steel Corporation and Shinho Steel Co., Ltd. Because all requests for review have been withdrawn, we are rescinding this review in its entirety in accordance with section 351.213(d)(1) of our regulations.

This notice is published in accordance with section 777(i)(1) of the Act.

Dated: April 29, 1999.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–11423 Filed 5–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New Shipper Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of New Shipper Antidumping Administrative Review.

SUMMARY: The Department of Commerce (the Department) has received a request from Yancheng Haiteng Aquatic Products & Foods Co., Ltd. (Yancheng Haiteng) to conduct a new shipper administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC), which has a September anniversary date. In accordance with the Department's regulations, we are initiating this administrative review.

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Sarah Ellerman, Laurel LaCivita or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–4106, (202) 482–4236 or (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

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. In addition, unless otherwise indicated, all citations to the Departments's regulations are to the current regulations, codified at 19 CFR Part 351 (April, 1998).

Background

On March 30, 1999, the Department received a timely request, in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the Department's regulations, for a new shipper administrative review of the antidumping duty order on freshwater crawfish tail meat, issued on September 15, 1997.

Initiation of Review

In its request of March 30, 1999, Yancheng Haiteng, as required by 19 CFR 351.214(b)(i) and (iii)(A), certified that it did not export the subject merchandise to the United States during the period of investigation (POI) (March 1, 1996 through August 31, 1996), and that since the investigation was initiated on October 23, 1996, it has not been affiliated with any company which exported subject merchandise to the United States during the POI. Yancheng Haiteng further certified that its export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to the Department's regulations at 19 CFR351.214(b)(2)(iv), Yancheng Haiteng submitted documentation establishing the date on which the subject merchandise was first entered for consumption into the United States, the volume of that first shipment, and the date of its first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) and 19 CFR 351.214(d), we are initiating a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the PRC. In accordance with 19 CFR 351.214(h)(1), we intend to issue preliminary results of this review no later than 180 days after the date of initiation.

The standard period of review (POR) in a new shipper proceeding initiated in the month immediately following the semiannual anniversary month is the six-month period immediately preceding the semi-annual anniversary month. Therefore, the POR for this new

shipper review of Yancheng Haiteng is September 1, 1998 through February 28, 1999.

Concurrent with publication of this notice, and in accordance with 19 CFR 351.214(e), we will instruct the U.S. Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the company listed above, until the completion of the review.

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: April 30, 1999.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–11421 Filed 5–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–809]

Postponement of Final Determination of Antidumping Duty Investigation of Hot-Rolled Flat-Rolled Carbon-Quality Steel From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final determination of antidumping duty investigation.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the final determination of the antidumping duty investigation of hot-rolled flat-rolled carbon-quality steel (Hot-Rolled Steel) from the Russian Federation (Russia).

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Lyn Baranowski or Rick Johnson at (202) 482–3208 or 482–3818, respectively, Office of AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (the Act), as amended 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, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1998).

Postponement of Final Determination and Extension of Provisional Measures

On February 25, 1999, the affirmative preliminary determination was published in this proceeding (*see Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 64 FR 9312). Pursuant to section 735(a)(2) of the Act, on March 4, 1999, respondent JSC Severstal (Severstal) requested that the Department extend the final determination in this case (19 U.S.C. 1673(a)(2)). Severstal also requested an extension of the provisional measures (i.e., suspension of liquidation) period from four to six months in accordance with the Department's regulations (19 CFR 351.210(e)(2)). Therefore, in accordance with 19 CFR 351.210(e)(2)(ii), because (1) our preliminary determination is affirmative, (2) respondent requesting the postponement represents a significant proportion of exports of the subject merchandise from Russia, and (3) no compelling reasons for denial exist, we are postponing this final determination for 31 days until June 10, 1999 (*see* Memorandum from Joseph Spetrini to Richard Moreland dated April 28, 1999). Suspension of liquidation will be extended accordingly.

This notice of postponement is published pursuant to 19 CFR 351.210(g).

Dated: April 28, 1999.

Richard Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–11283 Filed 5–5–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–846]

Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan, John Totaro, LaVonne Jackson, or Keir Whitson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4243, (202) 482–1374, (202) 482–0961, and (202) 482–1394, respectively.

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 C.F.R. part 351 (1998).

Final Determination

We determine that hot-rolled, flat-rolled, carbon-quality steel products (''hot-rolled steel'') from Japan is being sold in the United States at less than fair value (''LTFV''), as provided in Section 735 of the Act. The estimated margins are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

Case History

Since the *Preliminary Determination (see Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 8291 (Feb. 19, 1999)) (*''Preliminary Determination''*), the following events have occurred:

During February and March 1999, respondents Nippon Steel Corporation (''NSC''), NKK Corporation (''NKK'') and Kawasaki Steel Corporation (''KSC'') submitted responses to the sales and cost supplemental questionnaires issued by the Department. On February 12, 1999, February 25, 1999, and March 3, 1999, petitioners submitted comments regarding the issue of date of sale and the Department's Japan sales and cost verifications. On February 19, 1999, NKK filed an allegation of clerical error and requested the Department to issue an amended preliminary determination. On March 1, 1999, NSC submitted pre-verification changes and new factual information presumably discovered while preparing for the sales verification in Japan. On March 4, 1999, KSC submitted corrections presumably discovered while preparing for sales verification. Similarly, on March 4, 1999, NKK submitted pre-verification changes and new factual information

presumably discovered while preparing for sales verification.

During February and March 1999, we conducted sales and cost verifications of NSC's, NKK's and KSC's responses to the antidumping questionnaire. On March 26, 1999, we issued our sales and cost verification reports for all three responding companies. Petitioners and respondents submitted case briefs on April 12, 1999, and rebuttal briefs on April 19, 1999. On April 21, 1999, the Department held a public hearing. In addition, on April 12, 1999, General Motors Corporation (''GM'') requested a scope exclusion for hot-rolled carbon steel that both meets the standards of SAE J2329 Grade 2 and is of a gauge thinner than 2 mm with a 2.5 percent maximum tolerance. On April 22, 1999, the petitioners requested that certain ASTM A570–50 grade steel be excluded from the investigation. For a more detailed discussion of scope issue, please *see Scope Amendments Memorandum,* dated April 28, 1999.

Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of HTSUS definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max ..	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max.

Width = 44.80 inches maximum; Thickness = 0.063 − 0.198 inches;

Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000 − 88,000 psi.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16%	0.70–0.90%	0.025% Max	0.006% Max	0.30–0.50%	0.50–0.70%	0.25% Max ..	0.20% Max ..	0.21% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;

Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V(wt.)	Cb
010.10–0.14%	11.30–1.80%.	10.025% Max.	1.005% Max.	10.30–0.50%.	10.50–0.70%.	10.20–0.40%.	10.20% Max.	010.10 Max.	0.08% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;

Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% Max.	1.40% Max	0.025% Max.	0.010% Max.	0.50% Max	1.00% Max	0.50% Max	0.20% Max	0.005% Min.	Treated	0.01–0.07%

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses >0.148 inches; Tensile Strength = 80,000 psi minimum.

- Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm^2 and 640 N/mm^2 and an elongation percentage ≥26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm^2 and 690 N/mm^2 and an elongation percentage ≥25 percent for thicknesses of 2mm and above.
- Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.
- Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this investigation, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is July 1, 1997 through June 30, 1998.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the *Scope of Investigation* section, above, and sold in Japan during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on eleven characteristics to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: paint, quality, carbon content, strength, thickness, width, coiled or non-coiled, temper rolling, pickling, edge trim, and patterns. These characteristics have been weighted by the Department where appropriate. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the antidumping questionnaire and reporting instructions.

Changes From the Department's Preliminary Determination

The Department, upon review of the preliminary margin calculation program, found that there were errors associated with the calculation of the difference in merchandise adjustment (DIFMER) in NKK's model match program. The program that we used, failed to calculate the DIFMER adjustment associated with the matching home market CONNUM. Instead, the DIFMER calculation selected in the concordance program was chosen from the last comparison, resulting in the application of an incorrect DIFMER adjustment. For a complete discussion, please see the Department's *Final Determination Analysis Memo,* dated April 28, 1999.

Second, the Department disallowed KSC's home market technical service expenses because these expenses could not be verified. However, we continue to adjust for U.S. technical service expenses. *See KSC Home Market Verification Report,* dated March 26, 1999; *see also KSC Final Analysis Memo,* dated April 28, 1999.

Third, the Department corrected the model match and margin programs for all three companies in calculating packing costs for use in the cost test and constructed value. In the *Preliminary Determination,* the Department inadvertently used a sale specific packing cost for use in the calculation of general and administrative (''G&A'') expenses and interest expenses in both the cost test and constructed value analysis. For the final determination, the Department has revised this section of the program to calculate a weighted-average packing cost per CONNUM for use in these calculations. For a more complete analysis, please see the *Final Determination Analysis Memo,* dated April 28, 1999, for all three responding companies.

Interested Party Comments

Home Market and U.S. Sales

Comment 1: Date of Sale.

NKK

NKK states that the Department should reaffirm its preliminary finding that the invoice date/shipment date is the most appropriate date of sale for NKK. NKK argues that the material terms of sale were not finalized until after shipment for the majority of its U.S. and home market sales as supported by documentation provided during verification. In addition, NKK argues that the Department's regulations and other determinations dictate the use of date of invoice as the date of sale.

NKK argues that its demonstrated sales process clearly indicates that the invoice date/shipment date best reflects the date on which the final material terms of sale were finalized during the period of investigation, and that material terms of sale, i.e. price and quantity, often changed after the order confirmation date. NKK argues that the

Department verified that a significant portion of home market and U.S. sales had significant changes to price and/or quantity during the POI, and therefore the invoice/shipment date is the most appropriate date of sale for NKK's sales of subject merchandise.

Secondly, NKK argues that the Department's regulations indicate a preference for the use of date of invoice as the date of sale where changes from the original order occur on a frequent basis. NKK states that the Department established a presumption that material terms would be considered established on the invoice date after adopting § 351.401(i) of its regulations. NKK also argues that the presumption in favor of invoice date is supported by the language in the preamble to the regulations and that an alternative date of sale will be used only when there is evidence satisfying the Department that the different date better reflects the date on which the exporter or producer establishes the material terms of sale. NKK argues that the regulations therefore place the burden of proof on the party claiming that another date is more appropriate, and that this burden of proof has not been satisfied by record evidence. Rather, the record supports the finding that the material terms of sale are set on the date of shipment/invoice; thus, that date is the most appropriate date of sale.

Petitioners argue that the Department may use a date of sale other than invoice date if it determines that an alternative date more accurately reflects the date on which the material terms of sale are established. Petitioners argue that the documents and information obtained at NKK's verification support the conclusion that the essential terms of sale are set on the order confirmation date and therefore the order confirmation is the appropriate date of sale for this investigation.

Petitioners contend that NKK manufactures product to order and that the principal terms of sale are set at the point the customer places the order. Further, they argue that although the Department examined numerous transactions at verification, the data show that only a minuscule portion of sales had changes to material terms (*i.e.*, price terms). Petitioners argue that, for the majority of sales, price terms did not change between order confirmation date and invoice/shipment date, and that, in instances where changes did occur, they were accounted for after the invoice was issued. Petitioners contend that changes to price terms which occur after invoicing are not an appropriate adjustment for consideration in the Department's date of sale analysis. Petitioners further argue that, in the majority of sales reviewed at verification, the quantities shipped were within shipping tolerances and should therefore not be considered in the date of sale analysis. Because sales where the quantity shipped was outside the applicable delivery tolerances occurred only in a small number of verified transactions, the order confirmation date is the appropriate date of sale. Petitioners further argue that, in *Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Final Results of Antidumping Duty Administrative Review* (''*Certain Corrosion-Resistant Carbon Steel From Japan*''), 64 FR 12951, 12956–12957 (Mar.16, 1999), the Department used the order confirmation date as the date of sale under similar factual circumstances. Finally, petitioners argue that the Department should use facts available due to the fact that NKK did not report a separate database of sales based on order confirmation date. According to petitioners, the Department requested NKK to provide this information in both its original questionnaire as well as its supplemental questionnaire, and NKK refused to provide the requested information. Therefore, since the record evidence indicates that order confirmation date is the most appropriate date of sale, the Department should assign the highest dumping margin, or the highest rate in the petition as facts available.

NKK rebuts petitioners' arguments that order confirmation date is the date of sale. NKK argues that petitioners are incorrect in arguing that only a few transactions were reviewed at verification for the Department's date of sale analysis. NKK argues that the Department reviewed a large sample of sales and found that over fifty percent of these transactions had changes to material terms. *See NKK Sales Verification Report*, dated March 26, 1999, at 14. NKK argues that, contrary to petitioners' assertion, the frequency of changes for both price and quantity terms is sufficiently large to justify using invoice date as the date of sale. Secondly, NKK argues that petitioners' contention that post-shipment price changes are irrelevant to the date of sale analysis is incorrect. Citing *Diameter Circular Seamless Carbon and Alloy Steel Standard Line and Pressure Pipe from German: Final Results of Antidumping Duty Administrative Review*, 63 FR 13217 (March 18, 1998), NKK argues that the Department stated that it will use shipment date as a proxy date for sales invoice after shipment, not that all post-shipment price changes are to be ignored in the date of sale analysis. Third, NKK argues that the evidence on the record demonstrates that the final price invoiced was not determined until after shipment occurred and this differs from the price stated on the order confirmation. Fourth, NKK contends that each of the cases cited by petitioners in their argument can be distinguished from the facts in the present case. NKK argues that, in each of these cases, the Department used the order confirmation date because there were no changes to the terms of sale after the order date, whereas in the instant case, NKK has proven and the Department has verified that material terms are not final at order confirmation and that material terms changed frequently. These facts, according to NKK, support the conclusion that shipment/invoice date is the appropriate date of sale. Finally, NKK argues that it is inappropriate to apply adverse facts available to NKK. NKK contends that the Department gave NKK the choice as to whether to provide a single sales database using invoice date as the date of sale or to provide both invoice date and order confirmation date databases. NKK contends that it chose to provide a single database and has subsequently proven, through record evidence, that invoice date is the appropriate date of sale. Thus, there is no basis to use facts available.

Petitioners rebut NKK's argument that invoice date is the date on which material terms of sale are set and should be the date of sale. Petitioners reiterate their argument that only a small percentage of home market and U.S. sales had changes to material terms after the order confirmation date. Petitioners continue to argue that changes made after shipment are not an appropriate basis for the Department's date of sale analysis. Petitioners contend that the Department's verification demonstrates that only a few sales had changes to material terms, and state that this confirms that order confirmation date is the appropriate date of sale. Petitioners further contend that, because NKK failed to provide sales databases using order confirmation date as the date of sale, the Department should apply adverse facts available. According to petitioners, NKK did not report all sales where the order was confirmed within the POI, therefore the necessary sales are not on the record. Because NKK failed to report these sales, there is justification for the Department to reject NKK's response and apply facts available.

NSC

NSC argues that the Department should follow its preliminary determination and continue using the date of shipment as the date of sale. NSC argues that the Department verified that the essential terms of sale changed between the initial order and shipment date for a significant portion of home market and U.S. sales. NSC used the date of shipment as a proxy for the date of invoice because the shipment date falls within a short time of the invoice date.

NSC argues that the Department's regulations mandate the use of date of invoice as the date of sale, and that there is a rebuttable presumption that the appropriate date of sale is the invoice date. NSC argues that the presumption can only be overcome by compelling evidence on the record. NSC states that the essential terms of sale for its sales of subject merchandise are not finally established until, and sometimes after, shipment, and that this supports the presumption in favor of invoice date. NSC argues that there is a high standard to be met to overcome this presumption, and that record evidence on the frequency of changes and the potential for change to the essential terms after the initial order support the finding that invoice date is the appropriate date of sale.

NSC argues that the Department verified that material terms of sale changed after the initial order was placed in a significant portion of the sales examined. In addition, respondent argues that the Department verified that, in the Japanese hot-rolled steel industry, terms of sale are not established until the material is shipped to the purchaser. Based on these reasons, NSC argues that the date of shipment/invoice is the most appropriate date of sale as supported by the preference stated in the Department's regulations and record evidence and we should continue using the date of shipment as the date of sale for the final determination.

Petitioners argue that the Department may use a date of sale other than invoice date if it determines that an alternative date more accurately reflects the date on which the material terms of sale are established. Petitioners argue that the documents and information obtained at NSC's verification support the conclusion that the essential terms of sale are set on the order confirmation date and therefore the order confirmation is the appropriate date of sale for this investigation. In sum, petitioners argue that there was not a significant portion of sales for which material terms of sale changed, and that as a result the most appropriate date of sale is the date of order confirmation.

Petitioners argue that NSC only produces merchandise after the customer places the order and that the critical step in determining the material terms of sale is the issuance of the order confirmation. Petitioners further argue that the evidence examined at verification supports the conclusion that only modifications that occur between order confirmation and shipment are relevant to the date of sale analysis, and that modifications which occur after shipment are not relevant to the date of sale because the Department does not examine any date after the date of shipment as a possible date of sale. Petitioners contend that the data examined at verification indicate that only a small portion of home market and U.S. sales have changes to either price or quantity between order confirmation and shipment. Further, they contend that the analysis presented by NSC at verification was incorrect. Petitioners argue that their examination of the record shows that the sales traces examined indicated changes after the date of shipment and are therefore inappropriate to use as a basis for examining the most appropriate date of sale. In sum, the petitioners argue that NSC's claimed date of sale is not supported by record evidence and the Department should use the order confirmation date as the date of sale, as it did in *Certain Corrosion-Resistant Carbon Steel Products from Japan* 64 FR at 12956–57.

Petitioners argue that, should the Department choose to use date of invoice as the date of sale, it should employ a transaction-specific date of sale analysis, isolate those individual transactions for which material terms did not change, and use the order confirmation date as the date of sale for such transactions. In cases where terms of sale did change, the Department could use the date of shipment/invoice as the date of sale.

Petitioners rebut NSC's argument that date of shipment/invoice is the appropriate date of sale. Petitioners argue that the information on the record does not support the conclusion that a significant number of NSC's home market and U.S. sales had changes to material terms after shipment occurred. In fact, petitioners contend that only a small minority of reviewed transactions had changes to material terms sufficient to justify the determination that shipment/invoice date is the appropriate date of sale. In addition, petitioners state that NSC's argument that there are compelling facts on the record to warrant the use of shipment/invoice date as the date of sale creates a new standard unsupported by statutory or case precedent. Further, they claim that the argument that there is a potential for change should also be disregarded as it is based on a misunderstanding of the Department's regulations. Rather, they contend that it would be unreasonable to use invoice date as the date of sale merely because there is a hypothetical potential for post-order modifications. Petitioners conclude that, based on the facts and evidence on the record, the Department should use the order confirmation date or the date of the revised order confirmation as the date of sale.

NSC rebuts petitioners' arguments that order confirmation date is the most appropriate date of sale by reiterating its initial arguments on this topic. In addition, NSC contends that petitioners' analysis of the information on the record is wrong both in fact and in law. NSC argues that petitioners have misread how NSC reports its price adjustments after shipment and how NSC's documents reflect order modifications. NSC rebuts each of petitioners' points using proprietary information which is incapable of adequate public summary. NSC argues that petitioners' claims that order modification is the correct date because changes in the orders prior to shipment are reflected in the order modification and that changes after shipment cannot be considered are wrong. According to NSC, the Department may consider potential for changes both pre- and post-shipment in conducting its date of sale analysis. In fact, NSC argues, the Department's questionnaire instructs them to report the unit price recorded on the invoice for sales shipped and invoiced in whole or in part, which is what NSC reported to the Department.

NSC argues that the Department's regulations create a presumption in favor of date of invoice as the date of sale, a presumption which the petitioners have not overcome through record evidence. NSC argues once again that the significance of potential for change has been supported by Department precedent. Thus, the Department has concluded that simply because the essential terms of sale did not change after the initial contract date, this does not demonstrate that essential terms of sale were not subject to change after this date. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews (''Carbon Steel Flat Products from Korea'')*, 64 FR 12927, 12935 (March 16, 1999). NSC concludes, that because the terms of NSC's sales of

subject merchandise remain subject to change throughout the sales process, petitioners cannot overcome the presumption in favor of invoice date. Finally, NSC argues that the Department verified that 36 percent of its sales during the POI were in fact modified after the order confirmation was issued. The mere fact that hot-rolled steel products are made-to-order is not conclusive evidence that the parties engage in formal negotiating and contracting procedures that would result in terms of sale which are finally and irrevocably established at the beginning of the sales process. NSC argues that hot-rolled steel is a commodity product that is not sold through a formal negotiation and contracting process. Therefore, petitioners' argument that hot-rolled product is made to order is irrelevant to the date of sale analysis. NSC argues that, based upon the evidence placed on the record, the most appropriate date of sale is the shipment/invoice date.

KSC

Respondent argues that the Department's regulation establishes a presumption that invoice date should be used as the date of sale. Respondent also argues that the Department has consistently applied this rule. Specifically, respondent cites *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from South Africa*, 64 FR 15459, 15465 (March, 31, 1999) as evidence that the Department reaffirmed its practice of using the invoice date as the proper date of sale when material terms of sale can change between order and invoice date, even if the changes are not frequent, and the reporting company uses invoice date in its internal records.

Furthermore, KSC asserts that the Department has stated that its preference for invoice date is based on two policy rationales. First, the date on which the terms of sales are normally established is the invoice date. Second, the Department intends that the reporting and verification of information be simplified, resulting in predictable outcomes as well as the efficient use of resources. Additionally, respondent asserts that the Department will use invoice date as the date of sale unless the material terms of sale, as evidence by the record, are established on a different date.

Respondent argues that material changes to the terms of sale, affecting price or quantity, may and do occur between KSC's order confirmation and invoice. As a result, the terms of sale become fixed and finalized on the shipment/invoice date. In certain instances within the home market, price changes may occur even after invoicing. Respondent believes that the frequency of material changes between order confirmation and invoice, as seen during verification, proves that the invoice date should be used as KSC's date of sale because the terms of sale are final only at invoicing (even though the price may change afterward in the home market).

Respondent also argues that invoice date is the date of sale for KSC because, in accordance with the Department's regulations which provide that the date of sales is to be based upon data maintained by the respondent in the ordinary course of business, the books and records of KSC, Kawasho Corporation (''Kawasho'') and Kawasho International USA, Inc. (''Kawasho International'') are based on invoice data. Additionally, using the invoice date as the date of sale results in an efficient use of resources by simplifying reporting and the verification of information. Finally, respondent states that by using the invoice date, the Department allows for predictability in its proceedings.

Petitioners did not comment on KSC's date of sale argument.

Department's Position: We agree with all three respondents (NSC, NKK and KSC) that invoice/shipment date is the correct date of sale for all home market and U.S. sales of subject merchandise for each of the responding companies.

Under our current practice, as codified in the Department's Final Regulations at § 351.401(i), in identifying the date of sale of the subject merchandise, the Department will normally use the date of invoice, as recorded in the producer's records kept in the ordinary course of business. *See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Administrative Review*, 63 FR 55578, 55587 (1998) (''*Pipes and Tubes from Thailand*''). However, in some instances, it may not be appropriate to rely on the date of invoice as the date of sale, because the evidence may indicate that the material terms of sale were established on some date other than invoice date. *See Preamble to the Department's Final Regulations* at 19 CFR Part 351 (''Preamble''), 62 FR 27296 (1997). Thus, despite the general presumption that the invoice date constitutes the date of sale, the Department may determine that this is not an appropriate date of sale where the evidence of the respondent's selling practice points to a different date on which the material terms of sale were set.

In this investigation, in response to the original questionnaire, NSC and NKK reported invoice/shipment date as the date of sale in both the U.S. and home markets. KSC reported order confirmation date as the date of sale based on the belief that that is what the Department wanted. However, KSC also provided sales databases using invoice/shipment date as the date of sale, and continued to argue that this would be a more appropriate date of sale. To ascertain whether NSC, NKK and KSC accurately reported the date of sale, the Department included in its January 4, 1999 supplemental questionnaire a request for additional information regarding changes in terms of sale subsequent to order date. In its January 25, 1999 response, NSC, NKK and KSC indicated that there were numerous instances in which terms such as price and quantity changed subsequent to the confirmation of the original orders in the U.S. and home markets. NSC, NKK and KSC cited specific figures for each type of change. For purposes of our Preliminary Determination, we accepted the date of invoice as the date of sale subject to verification. *See Preliminary Determination*, 64 FR at 8294.

At verification, we carefully examined NSC's, NKK's and KSC's selling practices. We found that each company records sales in its financial records by date of invoice/shipment. For the home market, we reviewed several sales observations for which the price and quantity changed subsequent to the original order (*see Home Market Verification Reports*, dated March 26, 1999 for the respective companies). For the U.S. market, we reviewed several instances in which terms of sale changed subsequent to the original order. Based on respondents' representations, and as a result of our examination of each company's selling records kept in the ordinary course of business, we are satisfied that the date of invoice/shipment should be used as the date of sale because it best reflects the date on which material terms of sale were established for NSC's, NKK's and KSC's U.S. and home market sales.

We disagree with the petitioners' claim that, since the terms do not change after the order confirmation date, the order date (or the final change order date) is the most appropriate date of sale for NSC's, NKK's and KSC's U.S. and home market sales. The fact that terms often changed subsequent to the original order, and even after an initial order confirmation, suggests that these terms remained subject to change (whether or not they did change with respect to individual transactions) until as late as the invoice date. For sales that

we reviewed, we found this to be true for material terms of sale such as price and quantity, including quantity changes outside of established tolerances. The Department's decision in *Certain Corrosion-Resistant Carbon Steel Flat Products from Japan*, 64 FR 12951, 12958 (Mar. 16, 1999) should, therefore, not be followed in this case. In that case, the Department found that the material terms of sale were established on the date of the final order confirmation and that there were no material changes thereafter. As stated in the **Federal Register** notice, the Department in that case found that there were no changes between the final revised order confirmation and the shipment/invoice date. In addition, in the Corrosion-Resistant Steel case, there was no discussion on the possibility or frequency of changes between the original order confirmation, any revised order confirmations, the invoice, and changes subsequent to the invoice. The facts of the instant case are distinguishable. In the instant case, pursuant to our findings at verification, the Department determines that there are changes between the original order confirmation date (*i.e*, the date of sale proposed by petitioner), the invoice date (*i.e.*, the date of sale proposed by respondents), and in certain instances changes which occur after the invoice date for a significant number of individual transactions. Each of these facts distinguishes the factual record in the current case from the Department's decision in the Corrosion-Resistant Steel case. Therefore, pursuant to our findings at verification, we have determined that invoice date is the appropriate date of sale for NSC's, NKK's and KSC's sales, as it most accurately represents the date on which the material terms of sale are established.

In addition, the Department has also examined the time lags between order date and invoice date to determine whether it was appropriate to use order date as the date of sale dates. *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Duty Administrative Review* (''*Steel Pipe from Korea*''), 63 FR 32833, 32835 (June 16, 1998). However, it is important to note that, in *Steel Pipe from Korea*, the Department found that ''{t}he material terms of sale in the United States are set on the contract date and any subsequent changes are usually immaterial in nature or, if material, rarely occur.'' *Id.*, 63 FR at 32836. In contrast, NSC, NKK and KSC each reported that there were numerous instances of changes in terms of sale between the initial order date, and the shipment/invoice date. Therefore, invoice date is the most appropriate date of sale, notwithstanding some time lag between order confirmation and invoice. As noted above, we observed a significant number of such instances at verification where changes did occur between order confirmation and invoice.

We also disagree with petitioners' assertion that NSC's, NKK's and KSC's reported sales information was inaccurate and incomplete. During the course of sales verifications, the Department requested specific documentation from each of the responding companies in support of its claim that the date of invoice should be used as the date of sale. NSC, NKK and KSC complied with the verifiers' request for sales trace documentation, and the Department utilized the purchase order, order confirmation and invoice information provided by each company as part of the basis for its decision on this issue. At verification, the Department also clarified which quantity changes were and were not within tolerance, and used this information in conducting its date of sale analysis.

Finally, we have not accepted petitioners' suggestion that the Department should use a transaction-specific date of sale methodology. While this may be appropriate for products involving only a handful of sales within the period of investigation or review, such an approach would impose a very substantial undue burden on both respondents and the Department in terms of reporting and verification. As explained in the *Preamble* to the Department's regulations, the use of a single date of sale for each respondent makes more efficient use of the Department's resources and enhances the predictability of outcomes. *See* 62 FR at 27348.

Comment 2: Preliminary Determination of Critical Circumstances.

NKK

NKK argues that the Department's preliminary finding of critical circumstances is not supported by the facts on the record. First, NKK states, there is no history of dumping with respect to this product; thus, the Department must find ''knowledge of dumping'' in order to find critical circumstances. In this respect, NKK states, the Department normally relies on company-specific margins of over 25 percent to impute knowledge of dumping. NKK claims that its final margin, if adjusted for the alleged clerical error, will not exceed 25 percent and will therefore not meet the first statutory criterion for finding critical circumstances. NKK argues that although the Department relied on margins alleged in the petition in its preliminary critical circumstances finding, there is no basis for not using company-specific margins in the final critical circumstances determination.

Second, NKK argues that its shipments were not massive during the three months immediately preceding and the three months immediately following the filing of the petition. NKK argues that the Department's longstanding practice is to compare the volume of shipments during the three months preceding the filing of the petition with the volume of shipments in a comparable period following the filing of the petition. The Department deviated from this practice in its preliminary determination as to critical circumstances, comparing instead the December 1997–April 1998 period to the May 1998–September 1998 time period. NKK argues that there is no basis for the use of this time period to support a finding of critical circumstances, and that the evidence on the record does not support a finding that there were massive imports of NKK merchandise during the appropriate comparison period. In addition, NKK argues that the Department's conclusions with respect to importer knowledge of dumping based on press reports and rumors about the possibility of antidumping cases were contradicted by price increases during the same time period. Respondent argues that the Department's reliance on vague news articles and press reports placed on the record prior to the preliminary determination as to critical circumstances was misplaced because these sources did not clearly indicate that it was likely that the domestic industry would file antidumping cases against hot-rolled steel from Japan. NKK concludes that, due to the serious economic consequences a finding of critical circumstances could involve for itself and its customers, the Department should utilize company-specific import data for its final critical circumstances determination. If it does so, NKK claims, it must make a negative finding, because the ''massive shipments'' criterion has not been satisfied.

Petitioners rebut NKK's argument that the Department's preliminary determination of critical circumstances is not supported by the information on the record. Petitioners contend that NKK's argument for use of company-specific shipment data is contrary to the Department's regulations. According to petitioners, the Department must

examine imports into the United States as opposed to shipments, which may or may not correlate to imports during the relevant period. Secondly, petitioners argue that, if the Department were to use shipment data, this information would still not be an accurate basis for analysis as this would be company-specific data, whereas the analysis should focus on total imports from Japan. Because NKK has not cited any authority for its statement that the Department should make a company-specific critical circumstances finding, the Department should affirm its preliminary finding by using total imports from Japan as the basis for its critical circumstances determination. Finally, petitioners argue that NKK and other respondents knew that an antidumping investigation was likely, based upon the articles in the press placed on the record. Thus, petitioners argue, the Department should continue to disregard respondents' argument to the contrary and base its decision on record evidence.

NSC

NSC argues that the statute requires that the Department, if it is finding critical circumstances, must first either find a history of dumping, or impute knowledge of dumping and of material injury by reason of dumped sales. NSC argues that the Department's preliminary finding of critical circumstances was based on inflated margins and was contrary to law. NSC argues that the Department's final determination as to critical circumstances must be supported by evidence on the record.

First, NSC argues that the Department's reliance on allegations from the petition and the use of these allegations to make a preliminary finding of critical circumstances were unacceptable precedent. NSC states that mere allegations in the petition do not provide sufficient support for the Department to impute knowledge based on the magnitude of dumping margins and injury. NSC argues that the statute requires that the Department conduct a factual investigation and determine that there is a reasonable basis to believe or suspect that products are being dumped before making a finding of critical circumstances. In conducting this analysis, respondent argues, the Department has never before relied merely on petition allegations to form a reasonable belief concerning critical circumstances. Because the Department's preliminary determination was based on alleged and unsupported information from the petition, it cannot withstand scrutiny. Therefore, NSC argues, the Department should not find critical circumstances in the final determination.

Second, NSC argues that the Department's preliminary determination of sales at less than fair value was based on adverse inferences with no basis in either fact or law. Specifically, NSC argues that the use of facts available for NSC's home market freight cost and U.S. theoretical weight sales was not supported by record evidence. NSC argues that the Department cannot rely on margins based on improper adverse inferences in imputing knowledge for purposes of its final determination as to critical circumstances.

In rebuttal, petitioners argue that the Department's *Policy Bulletin* dated October 7, 1998 governs the decision reached by the Department. Petitioners note that NSC is incorrect in its assertion that the Department has unlawfully taken a substantive action adverse to it based solely on the information contained in the petition. They note that, under Article 5.3 of the *World Trade Organization's (''WTO'') Agreement on Antidumping* the Department must examine the adequacy of the evidence presented in the petition and whether these allegations are supported by evidence. Second, petitioners argue that the Department should not rely on NSC's statutory construction argument, because as NSC interprets the argument, the Department would have to issue questionnaires, evaluate responses and calculate company-specific margins prior to issuing a preliminary critical circumstances determination. Petitioners contend that there is no legal basis for this argument, because the requirements for a preliminary critical circumstances finding are not the same as those for a preliminary dumping determination. The fact remains, petitioners state, that the primary factor reviewed for a critical circumstances finding is whether there has been a massive increase in imports. Petitioners argue that the existence of massive imports was known at the time the petition was filed. They further argue that, based on this information, the statute leaves it to the Department's discretion to decide what procedures it will follow in determining whether there is reason to believe or suspect that dumping is occurring.

KSC

KSC asserts that the Department's preliminary critical circumstances determination contravened the statute. First, KSC argues that the Department does not have the authority to use a time frame other than the one based upon the date of filing of the petition to determine whether or not there were massive imports. Further, the articles relied upon by the Department to support the use of an earlier-than-usual time frame do not support a conclusion that KSC had reason to believe a case was being filed or likely to be filed. Second, KSC claims that it did not have massive imports during the ''proper time frame.'' Third, KSC claims that the Department violated its normal practice when it relied upon country-specific, rather than company-specific shipment data. Fourth, KSC argues that the Department's preliminary critical circumstances finding should have been negative because the ITC preliminarily determined that there was no present material injury with respect to this product. KSC's arguments with respect to each of these points is discussed in greater detail below.

KSC first argues that neither the statute nor the regulations grant the Department authority to examine a shipment period unrelated to either the filing of the petition or the preliminary determination in measuring ''massive shipments'' for purposes of the critical circumstances determination. According to the Department's regulations, the determination of whether or not there has been a massive increase in imports is normally made based on the period beginning on the date the proceeding begins and ending at least three months later. *See* 19 CFR § 351.216(h) and (i). KSC argues that the Department overstepped its authority by using a time frame disconnected from the date of filing of the petition. KSC further asserts that the use of any comparison time other than period immediately following the filing of the petition is unlawful because it contravenes the purpose of the statutory provision, which (according to the legislative history) is to deter the increase of exports ''during the period between initiation of an investigation and a preliminary determination'' (H. Rep. No. 96–317 at 63 (1979). Thus, KSC argues, the proper comparison is between shipments during the October–December 1998 period and shipments during the July–September 1998 period. KSC also argues that the articles relied upon by the Department to impute knowledge of dumping involve mere speculation, do not specifically refer to hot-rolled steel, and are not grounded in fact. KSC concludes that without a specific allegation with respect to a proceeding against hot rolled steel from Japan, the Department cannot attribute knowledge of a proceeding to KSC in order to provide a basis for use of a

different time frame for its massive imports analysis.

Second, KSC argues that, based on company-specific data of record, it did not have massive imports during the normal time frame provided for in the regulations. Rather, its imports decreased, in both quantity and value terms, during the post-petition October—December 1998 period, as compared to the pre-petition July–September 1998 period. Therefore, KSC argues, the Department should reverse its preliminary finding of critical circumstances.

Third, KSC argues that the Department unlawfully used country-specific data rather than company-specific data in its preliminary finding. KSC argues that the Department failed to request company-specific import data until after the preliminary critical circumstances determination, and the Department's failure to obtain this information unfairly punished KSC by applying an adverse inference even though they were cooperating. KSC argues that the Department must use the company-specific shipment data submitted by KSC for its final determination.

Finally, KSC argues that the Department's preliminary critical circumstances finding was unlawful because, given the ITC's preliminary determination that there was no present material injury, the Department could not reasonably impute knowledge of material injury, which is necessary for a finding of critical circumstances under post-URAA law when there is no history of dumping. KSC argues that a preliminary critical circumstances determination cannot be made by the Department unless the ITC determines that there was actual material injury. *See Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation,* 62 FR 31967, 31971 (June 11, 1997). KSC states that the Department cannot ignore the ITC injury finding. Thus, KSC argues that the Department should make a negative critical circumstances finding in the final determination.

Petitioners rebut each of KSC's four arguments regarding the Department's preliminary determination of critical circumstances. First, with respect to the Department's choice of a time frame for measuring shipments, petitioners argue that, despite KSC's reference to various legal authorities, the *Statement of Administrative Action* (''*SAA*''), congressional reports, and Department documents, KSC does not explain why the Department's regulation is at issue, or why the Department's actions in this case are not consistent with the authorities cited. Petitioners assert that the Department's action in this case did, in fact, serve to deter an increase in imports during the period following initiation.

Petitioners rebut criticism of the Department's reliance on published articles for selecting an early time frame by pointing out that, although KSC disputed the significance of certain articles considered by the Department in its determination, the articles discussed by KSC in its brief were, with one exception, published after April 1998. Petitioners thus conclude that it is apparent that the Department did not rely on these articles. Petitioners make two points in this respect.

First, petitioners contend, one report included in an exhibit to the petition is sufficient by itself to prove requisite knowledge by KSC. Petitioners cite the report dated April 1998 by CRU Steel Monitor. *See Exhibit 3* of *Petition for the Imposition of Antidumping Duties: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan,* (September 30, 1998). Petitioners assert that this report, respected within the industry worldwide, discusses concerns actually expressed by Japanese producers.

Second, petitioners argue that, although it is true that the other materials included as part of the petition did not refer specifically to hot-rolled imports from Japan, it is equally true that certain of these reports did refer specifically to the likelihood of antidumping cases being filed against hot-rolled steel imports. Petitioners add that although these reports mentioned Russia, the fact that, during this period, Japan was the second largest hot-rolled import supplier to the U.S. market makes it far-fetched to imagine that Japanese producers, like KSC, would infer that cases would be brought against Russia, the largest importer, but not Japan. Petitioners also contend that KSC is aware that U.S. flat-rolled producers have filed a large number of trade cases over the past two decades and those cases have always been brought against multiple countries.

Petitioners contend that KSC's argument that the Department's use of country-wide (rather than company-specific) import data for purposes of its analysis is an unjustified departure from the Department's normal practice is a moot point because, as KSC concedes, the company-specific data submitted to the Department shows a massive increase in imports by KSC during the period examined.

Finally, petitioners provide two reasons why, in their view, KSC's assertion that the Department was precluded from finding critical circumstances because the ITC did not preliminarily find present material injury in it preliminary injury determination is incorrect. First, petitioners argue that neither the statute nor its legislative history indicates that the Department must find that there is no material injury for purposes of such determination simply because the ITC did not find present material injury. Second, the ITC may find present material injury in its final determination even when it did not make such a finding in its preliminary investigation. Petitioners point out that the ITC, in its opinion, did not actually say that it did not find a reasonable indication of present material injury. Instead, the ITC avoided that issue entirely by moving directly to the threat of injury. Petitioners assert that this opinion is unusual, and that the Department might reasonably wonder whether this is because the ITC was carefully refusing to rule out a finding of present material injury in a final investigation.

Sumitomo Metal Industries

Sumitomo argues that the Department should not find critical circumstances with respect to it in the final determination. Sumitomo argues that the Department chose not to investigate Sumitomo because of the administrative burden to the Department, yet nevertheless applied its preliminary affirmative critical circumstances finding to imports by Sumitomo. Sumitomo argues that, as a cooperative non-selected respondent, it is entitled to a negative critical circumstances finding in the final determination. *See Preliminary Determinations of Critical Circumstances: Brake Drums and Brake Rotors from The People's Republic of China,* 61 FR 55269, 55270 (October 25, 1996). Sumitomo argues that it is the Department's practice not to issue final affirmative critical circumstances with regard to cooperative non-selected companies. For these reasons, Sumitomo argues the Department should find negative critical circumstances for non-mandatory cooperative respondents.

Department's Position: For the reasons discussed below, we continue to find critical circumstances for respondent KSC and ''all other'' respondents. However, in the final determination, we do not find critical circumstances with respect to NSC or NKK.

Section 735(a)(3) of the Act provides that if critical circumstances are alleged, the Department will determine whether: (A)(i) there is a history of dumping and

material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

As discussed in the preliminary critical circumstances finding, we are not aware of any antidumping order in any country on hot-rolled steel from Japan, for purposes of this final determination. Therefore, in this final determination we examined whether there was importer knowledge. In determining whether an importer knew or should have known that the exporter was selling hot-rolled steel at less than fair value and thereby causing material injury, the Department normally considers margins of 25 percent or more and a preliminary ITC determination of material injury sufficient to impute knowledge of dumping and the resultant material injury. The Department's final margins for KSC exceeded 25 percent. Therefore, we determine that importers knew or should have known that KSC was dumping the subject merchandise. As to the knowledge of injury from such dumped imports, in the present case, the ITC preliminarily found threat of material injury to the domestic industry due to imports of hot-rolled steel from Japan. Therefore, we also considered other sources of information, including numerous press reports from early to mid-1998 regarding rising imports, falling domestic prices resulting from rising imports and domestic buyers shifting to foreign suppliers. For a full discussion of the evidence on the record *see Final Critical Circumstances Memo,* dated Apr. 28, 1999. Based on this information, we find that importers knew or should have known that there would be material injury from the dumped merchandise.

Because we have found that the first statutory criterion is met with regard to KSC, we must consider the second statutory criterion: whether imports of the merchandise have been massive over a relatively short period. According to 19 CFR § 351.206(h), we consider the following to determine whether imports have been massive over a relatively short period of time: (1) volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by the imports.

When examining volume and value data, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition. Under 19 CFR § 351.206(h), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we normally will not consider the imports to have been ''massive.'' In addition, pursuant to 19 CFR § 351.206(i), the Department may use an alternative period if we find that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely. In the instant case, to determine whether or not imports of subject merchandise have been massive over a relatively short period for the final determination, we examined each selected respondents' export volumes from May–September 1998, as compared to December 1997–April 1998 and found that imports of hot-rolled steel from Japan increased by more than 100 percent. In this case, petitioners argue that importers, exporters, or producers of Japanese hot-rolled steel had reason to believe that an antidumping proceeding was likely. We find that press reports, particularly in March and April 1998, are sufficient to establish that by the end of April 1998, importers, exporters, or producers knew or should have known that a proceeding was likely concerning hot-rolled products from Japan. *See Critical Circumstances Memo,* dated Apr. 28, 1999. Accordingly, we examined the increase in import volumes from May—September 1998 as compared to December 1997—April 1998 and found that imports of hot rolled steel from Japan increased by more than 100 percent. Based on our analysis, we find that there was a massive increase in imports with respect to KSC.

With regard to ''all others'' (*i.e.,* companies that were not analyzed in this investigation, *e.g.,* Sumitomo), we have reconsidered our Preliminary Determination finding of critical circumstances. For the final determination we conducted the following analysis, based on the experience of the investigated companies, to determine whether a finding of critical circumstances is appropriate with respect to uninvestigated exporters. *See Notice of Final Determination of Sales at Less than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey,* 62 FR 9737, 9741 (March 4, 1997) (*Rebars from Turkey*). In *Rebars from Turkey,* the Department found critical circumstances for the ''all others'' category because it found critical circumstances for three of the four companies investigated. However, we are concerned that literally applying that approach may produce anomalous results in certain cases. For example, if the ''all others'' rate is below the critical circumstances threshold, we do not believe it would be appropriate to find critical circumstances for the all others category even if we found critical circumstances for a majority of the investigated companies. Therefore, we believe it is appropriate to address both critical circumstances criteria in reaching a determination concerning the ''all others'' category. Thus, we have applied that experience to both criteria. First, in determining whether knowledge of dumping existed, we looked to the ''all-others'' rate, which is based on the weighted-average of the individual rates for the investigated companies. In the instant case, the ''all others'' rate exceeds 25 percent. Thus, we find importers knew or should have known that there was dumping by the all other companies. Similarly, as with respondent KSC, we find that importers knew or should have known that injury from the dumping by all other companies existed based on the ITC's threat finding and the extensive press coverage, from early to mid-1998, of widespread lost sales and falling domestic prices as a result of dumped imports. Second, we have evaluated whether there are ''massive imports'' for the ''all others'' companies in terms of both the imports of the investigated companies and country-specific import data. An evaluation of the company-specific shipment data provided by respondents indicates that all three mandatory respondents had massive imports and that, on average, imports increased by over 50 percent during the comparison period. In addition, where, as in the instant case, the U.S. customs data also permit the Department to analyze overall imports of the product at issue, we will consider whether those data are consistent with a finding of massive imports overall. Again, in the instant case, aggregate imports of hot-rolled steel during the comparison period increased by more than 100 percent. Thus, we find that imports from uninvestigated exporters were massive during the relevant period. Therefore, based on these factors, the Department determines that there are critical circumstances with regard to all other imports of hot-rolled steel from Japan. For a complete discussion of the data examined, see the Department's *Final Critical Circumstances Memo,* dated April 28, 1999.

Comment 3: NKK's Home Market Levels of Trade.

In its case brief submitted to the Department, NKK argues that in the preliminary determination, the Department incorrectly concluded that NKK sells at one level of trade in the home market. NKK asserts that, prior to the Department's preliminary determination, NKK had provided supporting qualitative evidence to confirm that in the home market sales by NKK to unaffiliated trading companies and end-users and sales made by affiliated trading companies take place at two distinct levels of trade.

NKK asserts that section 773(a)(1)(B) of the Act requires the Department to compare prices, as is practicable, at the same level of trade. Furthermore, NKK asserts that the Department's own regulations describe that sales are made at different levels of trade when sales are made at different marketing stages. *See* 19 C.F.R. § 351.412(c)(2). NKK argues that two levels of trade can be, but are not always, based on substantial differences in selling activities. NKK further argues that the Department must determine in its analysis if levels of trade are meaningful. *See Preamble,* 62 FR at 27371.

NKK reminds the Department that in its initial section A questionnaire response it presented three distinct channels of trade in the home market and argued that the first two channels to end users and sales to unaffiliated trading companies, should be consolidated into one level of trade. The other level of trade, sales to affiliated trading companies, is distinct from sales to unaffiliated end-users and trading companies. NKK contends that the Department, in its level of trade analysis memorandum for the preliminary determination, ignored the selling category in which NKK sells merchandise to unaffiliated trading companies. NKK asserts that these sales account for 90 percent of total sales to unaffiliated customers during the period of investigation. NKK believes that this is a significant error.

NKK argues that there is a significant difference between the selling activities of NKK and the selling activities of its affiliated resellers. NKK asserts that while it performs a high degree of selling activities in sales to end-users, this type of sale is a small part of this level of trade. NKK argues that, in general, its selling activities for total sales are smaller than the selling activities of its affiliated resellers. *See Level of Trade Exhibit,* attached to *Verification Report,* dated March 26, 1999. NKK argues that when its end-user sales are compared to its affiliated trading companies' end-user sales, NKK engages in significantly less selling activity related to the development of new users, the assessment of user demand, the financing of steel purchases by end-users, the provision of inventory management and warehousing, and the management of delivery. NKK's affiliated trading companies, on the other hand, engages to a high degree in the aforementioned selling activities.

NKK argues that there is a substantial and meaningful difference between selling activities performed by NKK and those performed by affiliated resellers/ trading companies. NKK points out that the Department's own regulations establish that a substantially different selling function results with additional layers of selling activities. *See Preamble,* 62 FR at 27371. NKK asserts that its affiliated trading companies also incur comparatively greater risk as a result of more active and diverse selling activities. NKK, on the other hand, chooses to limit its own risk by selling 93 percent of its merchandise through affiliated trading companies and makes sales directly to end-users only in the case of well-established customers. Finally, NKK argues that its indirect selling expense ratio was significantly less than that of one of its trading companies during the POI. This, according to NKK, is consistent with the preamble to the Department's regulations, and definitively supports the notion that NKK and its affiliated trading companies sell at two distinct levels of trade in the home market. *See Id.*

Petitioners assert that, having found itself unable to quantify pricing differences for the sake of claiming a LOT adjustment, NKK is now claiming that the home market is actually two LOTs, and that U.S. sales should be only matched to the closer level. Petitioners further assert that NKK's argument that the Department's chart, used for comparison of selling activities, is inaccurate should be accorded no weight, since pursuant to § 351.412(c)(2) of the Department's regulations, the ''substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing.'' Finally, petitioners rebut NKK's claims that (1) its affiliate's high degree of performance of selling functions yields a higher level of exposure for them and NKK can thus diffuse risk and that (2) there is a difference in indirect expenses ratios between itself and its trading company by asserting that, whether or not it is true, NKK's first claim is unquantifiable, and the second claim is problematic because the higher level of indirect selling expenses may be typical for a reseller. Therefore, petitioners assert that, as in the *Preliminary Determination,* the Department should continue to deny NKK any LOT adjustment.

Petitioners argue that although NKK claims that it never provided inventory warehousing and management for its sales to unaffiliated trading companies, and rarely provided such services to end-users, the record shows that NKK provided high level delivery management services on sales to unaffiliated trading companies and also contradicts NKK's claim as to inventory warehousing. Therefore, for the 4 ''mill'' functions and 2 of the 5 ''trading company'' functions, (*i.e.,* for 6 out of the 9 categories of selling functions that NKK performs) NKK's selling functions on sales to unaffiliated customers and sales by its trading company to end-users are substantially the same. In light of these facts, petitioners argue that the Department should continue to find one level of trade in the home market.

Department's Position: We do not agree that NKK's home market sales are made at two distinct levels of trade. In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A and profit.

To determine the LOT of a company's sales (whether in the home market or in the U.S. market), we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa* (''*Certain Cut-to-Length Carbon Steel Plate from South Africa*''), 62 FR 61731 (November 19, 1997).

NKK sells subject merchandise in the home market through two channels of distribution: one channel involves sales by NKK to unaffiliated customers (including both end-users and trading companies); the second channel involves sales by NKK's affiliate to unaffiliated customers. For the preliminary determination, the Department found that NKK's sales to these three types of home market customers involved essentially the same level of selling functions. After a careful analysis of the information on the

record, we continue to find that there was not a substantial difference in the selling functions performed by NKK in making sales to its unaffiliated customers and those associated with sales by NKK's affiliated company to its unaffiliated customers. Therefore, we continue to find that there is one level of trade in the home market.

As discussed in the Department's preliminary *Level of Trade Memo,* dated February 12, 1999, the Department reviewed the selling functions performed with respect for each of the customer categories. As indicated by NKK in its January 19, 1999, supplemental section A response, NKK collapsed sales directly to unaffiliated companies (end-users and others) into one level of trade. In conducting its analysis the Department reviewed the information placed on the record and did not ignore the level of selling activity for sales to unaffiliated trading companies, as evidenced by the inclusion of this category in the *Level of Trade Memo.*

Second, NKK argues that there are substantial differences in the selling activities performed by NKK and the selling activities of its affiliated resellers. In the instant case, in conducting its level of trade analysis, the Department compared the selling functions performed for sales in the home market to the first unaffiliated customer. As evidenced by the discussion in the Department's *Level of Trade Memo* (referenced above), the information on the record indicates that the selling functions and activities performed by NKK on sales to unaffiliated customers as compared to the selling functions and activities performed by both NKK and its affiliate on sales to unaffiliated customers do not vary on a qualitative basis. NKK's argument that there are differences between these selling functions is not supported by the evidence on the record. Once again, in the Department's *Level of Trade Memo* we discussed the level of service provided for each channel of distribution and we found no distinction in the levels of service provided. NKK further argues that there are substantial differences in the amount of selling functions associated with the two groups of sales. However, the Department finds that, while the record indicates some differences in the amount of certain functions performed, these differences are not so substantial as to warrant finding different LOTs on this basis alone. Therefore, because the customer types are the same, the types of selling functions are the same, and there are not substantial differences in the level of functions performed, we continue to find that there is one LOT in the home market.

Comment 4: KSC's CEP Offset.

Petitioners argue that the Department should not grant KSC a CEP offset to the normal value of its home market sales in the final determination since KSC has failed to factually establish its entitlement to a CEP offset. Furthermore, petitioners argue that KSC's statements on the record actually refute its claim for a CEP offset. Petitioners claim that KSC has not established sufficiently that its home market and CEP sales through its affiliates, Kawasho Corporation and Kawasho International, are at different level of trades. For instance, petitioners claim that KSC originally stated in its section A response that it had two levels of trade in the home market and the same two levels of trade in the United States market. Petitioners state that KSC only claimed that its home market and U.S. sales to unaffiliated trading companies were at a less advanced stage in the marketing process than its sales to its affiliates. Petitioners also claim that KSC did not respond to Department inquiries that KSC ''explain why [it] considers the home market level of trade more advanced than the U.S. level of trade to warrant a CEP offset if necessary.''

Petitioners also argue that the fact that all sales to both markets were manufactured to order and were to the same categories of customers indicates that there are no differences in levels of trade between home market and the United States. Finally, petitioners claim that KSC's descriptions of its selling activities and services have been inconsistent and thus unreliable. As a result, petitioners argue that KSC has not met the required burden of proof to factually demonstrate that its home market sales and CEP sales were made at different levels of trade. Thus, the Department should not grant KSC a CEP offset for the final determination.

Respondent contends that the Department's decision to grant KSC a CEP offset is in accordance with law and is supported by substantial evidence on the record. As legal authority, respondent relies upon section 772(a)(7)(B) of the Tariff Act (19 U.S.C. § 1677b(a)(7)(B)) and the SAA at 831. Respondent argues that, contrary to petitioners' assertions, the facts on the record support KSC's claim for a CEP offset. Respondent asserts that petitioners misread KSC's response to the Department's section A questionnaire and that petitioners are incorrect in stating that KSC asserted that there were two levels of trade in the U.S. which correspond exactly to the two levels of trade in the home market. According to the respondent, KSC's section A response explains that there are at least three marketing stages for its CEP sales. In addition, KSC has consistently explained, in its section A, Supplemental section A, and section B responses, that its CEP sales were at a different level of trade than its home market sales through Kawasho. In fact, the respondent states that KSC's home market sales through Kawasho are at a more advanced level of trade than its CEP sales because these home market sales are at a more advanced stage of distribution and farther removed from the factory. Respondent asserts that, throughout the immediate investigation, KSC has supplied the Department with information, in its Supplemental responses and during verification, showing that it has to perform more and different selling activities and services for its home market sales than for its CEP sales. Furthermore, respondent argues that the difference in the number of employees for the different markets confirms that more is required to sell in the home market than to the CEP level of trade. Respondent concludes by stating that since there is no comparable level of trade in the home market, KSC is unable to calculate a trade adjustment for its CEP sales and instead requests the Department to grant a CEP offset pursuant to section 772(a)(7)(B) of the Tariff Act (19 U.S.C. § 1677b(a)(7)(B)) and 19 CFR § 351.412(f).

Department's Position: We disagree with petitioners that KSC's CEP offset should be denied. In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A and profit. For CEP sales, the Department makes its analysis at the level of the constructed export sale from the exporter to the affiliated importer.

Because of the statutory mandate to take level of trade differences into consideration, the Department is required to conduct a LOT analysis in every case, regardless of whether or not a respondent has requested a LOT adjustment or a CEP offset for a given group of sales. To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the

difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the LOTs between the NV and the CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR at 61731.

In the *Preliminary Determination,* the Department made a CEP offset adjustment to the normal value of KSC's sales that were compared to CEP sales in the United States, because the Department preliminarily found that all of KSC's home market sales were made at levels of trade different from and more advanced than the level of trade of KSC's CEP sales in the United States, and there is no basis for determining whether the differences in the LOTs between the NV and the CEP sales affects price comparability. *See Level of Trade Memo,* dated February 12, 1999. In particular, the Department found that KSC performed fewer and different selling functions in connection with CEP sales to Kawasho International and Kawasho Corporation than in connection with home market sales to its unaffiliated customers. For example, the Department found that KSC provided a high level of warehousing, processing, freight arrangement, and payment collection services in the home market, but did not provide the same level of services on its CEP sales to the United States. Further, the Department found that it was not possible to quantify a LOT adjustment based on the available data. The fact that KSC originally identified a different LOT pattern is not determinative. As explained above, the Department conducts its own LOT analysis, rather than merely accepting the assertions of the parties. Similarly, just as sales to a different customer category is insufficient, by itself, to establish a different level of trade, all sales to the same customer category are not necessarily sales made at the same level of trade. *See Preamble* to the Department's regulations, 62 FR at 27371. Finally, the Department is satisfied that it has sufficient reliable information to reach a decision as to the levels of trade at which KSC and its affiliates sell subject merchandise. Furthermore, the Department verified the data used in making this analysis. *See Verification Report,* dated March 26, 1999. Thus, after further examination of the record, the Department will continue to make a CEP offset because the facts on the record indicate that KSC's CEP level of trade is different from and less advanced than KSC's home market levels of trade and that the data of record do not permit it to, instead, make a LOT adjustment based on the effect of the LOT difference on price comparability.

Comment 5: Overruns.

NKK asserts that the Department should consider its sales of overruns in its calculation of home market price because such sales meet the Department's criteria for sales in the ordinary course of trade. NKK argues that (1) its invoice coding system identifies sales as overruns; (2) its overruns are sold for the same uses as ordinary production, and unlike non-prime merchandise, the specific product characteristics are maintained and used to determine whether overruns meet a customer's needs, and there is no physical difference between overruns and ordinary production; and (3) the number of customers purchasing overruns and the volume of overruns purchased are similar to ordinary sales according to the Department's overrun methodology.

Petitioners, in rebuttal, argue that the Department properly excluded the overruns in its preliminary determination margin calculation. Furthermore, petitioners argue that application of the Department's own standards for determining whether overrun sales are in the ordinary course of trade supports the Department's decision to exclude overruns from its margin calculation. *See, e.g., Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review,* 62 FR 64559, 64561 (December 8, 1997) referencing, *Laclede Steel Co.* v. *United States,* 18 CIT 965, (1995); *Carbon Steel Flat Products from Korea,* 64 FR at 12941–42. Petitioners argue that, by the Department's standards, NKK's overrun sales are outside the ordinary course of trade based on the ratio of overrun sales to home market sales, the number of overrun customers in relation to the total number of customers, the average price of overrun sales compared to commercial production sales, the relative profitability of overrun sales, and the quantity of overrun sales compared to the total quantity of commercial sales. Petitioners claim that no one factor among these standards is dispositive, and, finally, that the Department has excluded and should continue to exclude overruns in its margin calculation.

Department's Position: We agree with petitioners that overruns should continue to be excluded from the Department's final analysis. After an examination of the record, the Department has determined that NKK's overrun sales are sold at a lower price, sold in smaller quantities overall and sold to fewer customers than product that is not overruns. Second, based on the results of verification, where the Department examined overrun sales, we determined that these sales are made only after they cannot be applied to other sales and after a significant time lag follows production as compared to other sales in the normal course of business. The Department concedes that NKK's overruns are sold as prime merchandise; however, this sole factor does not enable these sales to be considered in the ordinary course of trade. Third, the Department found that there were sufficient matches to non-overrun prime merchandise sold in the ordinary course of trade, which is the Department's preference in determining matches between U.S. sales and home market sales. Based on these factors, the Department continues to exclude overrun sales from its analysis.

Comment 6: Department's Arm's Length Test.

NKK argues that the Department should use a different arm's length test than the ''99.5 percent'' test that it normally uses and used in the preliminary determination. The Department's current policy is to treat home market sales prices to an affiliated customer as having been made at ''arm's length'' (and therefore useable in the normal value calculation) if prices to that affiliated purchaser are, on average, at least 99.5 percent of the prices charged to unaffiliated purchasers. *See Preamble,* 62 FR at 27355. NKK states that the Department has not codified its ''99.5 percent'' arm's length test methodology, and therefore suggests what it believes to be a more accurate arm's length test. NKK claims that both generally and on the fact of this case, the Department's current test produces distorted results. NKK argues that there is no factual basis on which to conclude that sales to one of its affiliated trading companies were not made at arm's length prices.

NKK describes two variations of the test used in past dumping investigations and argues that both variations are methodologically flawed. Specifically, NKK argues that the current arm's length test methodology is flawed because the application of a single fixed

ratio (''99.5 percent'') to CONNUM-specific or weighted-average related/unrelated customer price ratios distorts commercial reality by not taking into account actual pricing practices. NKK references several types of situations in which it argues the current test produces anomalous results.

NKK also proposes a new approach involving several changes to its current test. First, NKK asserts that the Department should abandon its methodology of creating an ''overall customer percent-ratio aggregation'' and, instead, base its arm's length test on CONNUM-specific sales data. In short, NKK argues that the arm's length test should be applied on a CONNUM-specific basis, rather than a customer-specific basis. Second, NKK argues that, instead of using an ''inflexible and mechanical'' 99.5% of the mean for a benchmark to determine arm's length sales, the Department should instead adopt a test based on standard deviations. Such a test, according to NKK, would address the variability and magnitude of pricing data. Specifically, when the mean price for the CONNUM sold to the related customer is within one standard deviation of the mean price to the unrelated customer, the Department should consider that sales of that CONNUM to that customer are at arm's length.

NKK argues that its proposed test would not be difficult to apply, and includes proposed SAS programming. Finally, NKK asserts that if the Department adopts an arm's length analysis methodology that applies a standard-deviation test on a CONNUM-specific basis, the record will show that NKK's sales to affiliated trading companies were, in fact, at arm's length.

Petitioners, in rebuttal, argue that there is no reason for the Department to abandon its current arm's length test. Specifically, petitioners argue that the Department has considerable discretion in determining when to exclude related party sales in the calculation of normal value. *See, e.g., Usinor Sacilor* v. *United States*, 872 F. Supp. 1000, 1004 (CIT 1994). Furthermore, petitioners argue that the courts will uphold the Department's arm's length test unless respondents can prove that the test is unreasonable and distorts price comparability. *See SSAB Svenskt Stal AB* v. *Bethlehem Steel Corporation*, 976 F. Supp. 1027, 1030–1031 (CIT 1997); *Micron Technology Inc.* v. *United Tests*, 893 F. Supp. 21, 38 (CIT 1995). Petitioners argue that the burden of persuasion, with respect to the theory that the Department's arm's length test distorts price comparability, falls on the respondent. *See NEC Home Electronics Ltd.* v. *United States*, 54 F. 3d 736, 744 (Fed. Cir. 1995).

Petitioners specifically reject NKK's proposed arm's length test. Petitioners argue that NKK's proposed alternative test is based entirely on the idea of using standard deviations to account for pricing variability. Petitioners, citing statistical authorities, assert that the application of a mean/standard deviation analysis only works when there is a symmetrical, bell-shaped frequency distribution, and claim that NKK's data sets do not fit this model. Petitioners reject the accuracy of the sample scenarios that NKK advances in its case brief. For example, petitioners argue that one of NKK's case brief scenarios misrepresents the facts of a standard deviation-based analysis to the extent that NKK does not establish the standard deviation for unrelated prices. Petitioners assert that NKK's proposed arm's length test is over-inclusive, and statistically inaccurate; therefore, they argue, it should be dismissed by the Department.

Department's Position: The Department has not adopted NKK's proposed arm's length test for purposes of this investigation. As NKK has acknowledged, determining whether home market sales made to affiliated parties are made at arm's length is a complex process which the Department considered in some detail during the most recent round of regulatory revisions. At that time, the Department decided that it would not codify the current test, but would continue to apply it unless and until it developed a new method, in which case the new methodology would be described and announced in a policy bulletin. *See Preamble*, 62 FR at 27355. The Department's ''99.5 percent'' arm's length test methodology is well established and the CIT has repeatedly sustained the methodology. *See Micron Technology Inc.* v. *U.S.*, 893 F Supp. 21 (CIT 1995) and *Torrington Co.* v. *United States*, 960 F. Supp. 339 (CIT 1997).

An agency's interpretation of the statute it administers must be accorded substantial weight. Thus, the Department's well-established practice can be sustained as long as it is ''sufficiently reasonable.'' *See American Lamb Co.* v. *United States*, 785 F.2d 994, 1001 (Fed. Cir. 1986). In *Usinor Sacilor* v. *United States*, 872 F. Supp. at 1004, the Court of International Trade stated that it would uphold the Department's ''99.5 percent'' test unless it was shown to be unreasonable. While NKK has proposed an alternative methodology based on a statistical approach, it has not demonstrated that the current methodology is unreasonable. The CIT has already rejected the idea that the ''99.5 percent'' test is unreasonable because it does not take into account price variance. *See Usinor Sacilor* v. *United States*, 872 F. Supp. at 1004.

With respect to NKK's concern of applying the arm's-length test on a customer basis, we note that the question underlying the arm's-length test is whether affiliation between the seller and the customer has (in general) affected pricing. Because affiliation is the result of relationships between firms, the focus of the arm's-length test is the customer, not a particular product. For this reason, the Department makes one up-or-down call on pricing to an affiliated customer: either there is arm's-length pricing or there is not. However, under NKK's proposed connum-by-connum approach, affiliation could be found to matter for some connums, but not for others, even though the customer in both cases is the same. To support it's proposal, in exhibit B to it's submission dated April 12, 1999, NKK claims that the sales to an affiliated customer, NKK Trading of certain CONNUMs were considered not to be at arm's length prices although the prices for over 50% of those sales exceeded the mean price to the unaffiliated customers for these connums. However, the relatively small share of total sales to NKK Trading for which these connums account is perfectly consistent with the Department's finding that NKK's affiliation with NKK Trading has in general affected price.

Additionally, NKK presents several theoretical situations under the Department's current approach, where NKK claims that sales could be excluded for reasons unrelated to affiliation. In particular, NKK argues that a statistical approach would reduce the likelihood of testing error when pricing to affiliated and unaffiliated customers is the same (i.e., the error of finding that affiliation has affected prices when, in fact, it has not). However, NKK does not address the concern that, by lowering the threshold for accepting affiliated party sales under their statistical approach from the Department's current standard, NKK's test would increase the likelihood of testing error when pricing to affiliated and unaffiliated customers is not the same (i.e., the error of finding that affiliation has not affected price when, in fact, it has). Given this concern with NKK's proposed approach, the Department continues to believe that the ''99.5 percent'' test imposes a reasonable requirement on affiliated-party prices:

on average, they essentially must be as high as prices to unaffiliated parties.

Comment 7: NSC's Affiliated Freight Costs.

NSC argues that the Department should allow all of NSC's home market inland freight expenses for the final determination because the Department verified that NSC procures inland freight services at arm's length prices, and that NSC had properly reported these expenses.

NSC argues that, under the antidumping law, the Department shall reduce the normal value price by the costs incurred to bring the subject merchandise from the original place of shipment to the place of delivery to the purchaser in order to achieve an undistorted fair value comparison. *See* section 772(c)(2)(A); SAA at 4040. NSC argues that the Department has allowed respondents to deduct the full expense of inland freight services provided by affiliates unless the Department cannot establish that the services were not purchased in an arm's length transaction. *See Notice of Final Determinations of Sales at Less than Fair Value: Certain Hot-Rolled, Cold-Rolled, and Corrosion Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from France,* 58 FR 37125, 37132 (1993); *Certain Cold Rolled Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review,* 63 FR 781, 788 (January 7, 1998); *Steel Pipe from Korea,* 63 FR at 32,839; *see also Gray Portland Cement and Clinker from Mexico: Final Results,* 63 FR 12764, 12780 (1998).

NSC states that it ''confirmed'' prior to verification that these services from affiliates were purchased at arm's length prices by providing freight charts and explaining that it paid the same rates to affiliates and unaffiliates. NSC argues that the Department verified that NSC paid arm's length prices to affiliated and non-affiliated freight suppliers, and that NSC reported its inland freight charges accurately. *See Verification Report* at 14–15, dated March 26, 1999. NSC concludes that, therefore, the Department must make a deduction for NSC's home market inland freight expenses when calculating normal value for the final determination.

Department's Position: We agree with NSC. The Department has allowed a deduction for home market freight expenses because NSC reported its freight expenses in accordance with Departmental methodology and the expenses were verifiable. While NSC's responses to the Department's questionnaires did not demonstrate that NSC had procured inland freight services from affiliates at arm's length prices, at verification, we examined contracts and payment documentation which demonstrated that NSC's reported inland freight charges were accurate and non-distortive. *See Verification Report* at 15, dated March 26, 1999. Therefore, in the final determination, we have utilized NSC's reported home market freight expenses in the calculation of normal value.

Comment 8: NKK's Home Market Freight Costs.

Petitioners assert that, according to NKK, the company does not track actual delivery charges on an individual shipment basis; thus, it calculated its reported movement costs in the home market based on the way in which a particular product was most likely transported. Petitioners note that NKK, late in the process, disclosed that the reported delivery terms, for 19 percent of its transactions, were incorrect. In addition, NKK also revealed that a computer programming error resulted in the wrong method of transportation being reported for a full 13 percent of its home market sales. Petitioners argue that, in light of the numerous errors in NKK's reporting of movement expenses, NKK has failed to demonstrate that (1) its method for allocating its home market movement expenses does not cause inaccuracies or distortion and (2) it is entitled to an adjustment for movement expenses in the home market. Therefore, petitioners assert that, at minimum, the Department should deny NKK's reported adjustments for movement expenses for certain specific sales.

NKK asserts that it reported, in its original and supplemental questionnaire responses, that it does not retain transaction specific movement expenses. Instead, using its monthly summaries, NKK determined an average per-ton movement expense for each category of transportation, as well as by each method of transportation.

In addition, NKK argues, that pursuant to the Department's practice, a week before verification NKK submitted new revised databases. The Department accepted and verified the accuracy of the method for allocating these rates to specific transactions, and tested the reported movement expenses in 45 sample sales transactions. No discrepancies were found. Furthermore, NKK asserts that, contrary to what petitioners alleged in both in their pre-verification comments and briefs, the Department verified that the sales terms code did match the claim of a movement expense. Therefore, NKK's asserts that its methodology was reliable and accurate. NKK has successfully demonstrated its entitlement to an adjustment for movement expenses in the home market, and evidence on the record proves that petitioners' claims have no basis.

Department's Position: We agree with NKK and have allowed a deduction for freight expenses for home market sales of subject merchandise because the reported expenses are in accordance with Departmental methodology, are consistent with the company's accounting practices, and were substantiated at verification. *See Verification Report,* dated March 26, 1999. NKK has reported home market freight in accordance with its accounting system and provided the data on a product, transportation-type and destination-specific basis. Based on its findings at verification, the Department determined that respondent's reported freight costs for home market sales of hot-rolled steel are not distortive, and provide a reasonable estimate of actual transaction-specific freight expenses. Therefore, we are granting NKK a home market freight adjustment for sales of subject merchandise.

Comment 9: NSC's U.S. Sales.

Petitioners contend that certain of NSC's U.S. sales, those made through an affiliated U.S. reseller and reported as export price (''EP'') sales, are constructed export price (''CEP'') sales and that adverse facts available should be applied to these sales. Petitioners state that NSC was not forthright with its explanation of the U.S. reseller's functions in the sales process, as the Department found that the reseller performed many more functions than were originally outlined in the questionnaire responses. More specifically, petitioners believe that the findings at verification demonstrate the involvement of the reseller in the negotiation of the substantive terms of sales, such as prices. Furthermore, petitioners assert that NSC's claim that the reseller was merely a processor of information and a communication link is untenable. In addition, petitioners argue that because NSC failed to report ''significant facts'' regarding the reseller's role in the sales process the Department should use facts available. Petitioners contend that NSC withheld information from the Department, failed to provide information in a timely manner and impeded the proceeding. Lastly, petitioners have requested that the Department use the highest calculated margin for NSC's U.S. sales as facts available.

NSC argues that verification confirmed the facts underlying the Department's preliminary decision that

NSC's U.S. sales were properly characterized as EP sales. NSC states that the sales meet criteria for EP sales established in *Mitsubishi Heavy Indus., Inc.* v. *United States,* 15 F.Supp. 2d 807, 812 (CIT 1998) (citing *PQ Corp.* v. *United States,* 652 F.Supp. 724, 731 (CIT 1987), and affirmed in *AK Steel Corp.* v. *United States,* No. 97–05–00865, 1998 WL 846764, at *6 (CIT 1998).

NSC argues that if a transaction meets these criteria, the Department will treat the sales as EP because the routine selling functions of the manufacturer have been relocated geographically from the selling country to the United States. *See Koenig & Bauer-Albert AG* v. *United States,* 15 F. Supp. 2d 834, 352 (CIT 1998). NSC adds that, in such circumstances, the EP sales are in effect made directly to the unrelated buyer because the U.S. affiliate has no independent function. The remainder of NSC's argument cannot be recreated in a public summary.

Petitioners rebut NSC's contention that the Department should not use adverse inferences with regard to NSC's sales made through its affiliated U.S. reseller. The petitioners cite to the Department's *Verification Report* which shows that the U.S. reseller negotiated terms of sale with customers. Petitioners further argue that NSC's arguments ignore the U.S. reseller's role as verified by the Department. Additionally, petitioners state that due to the reseller's role in the ''negotiations and base price proposals'' the sales should be deemed CEP. Furthermore, petitioners contend that because NSC did not describe the full range of the reseller's role and the Department consequently does not have all of the information necessary with which to calculate a margin for CEP sales, the Department should find adverse inferences and use the highest calculated margin for these sales.

Petitioners argue that the Department finds that CEP treatment is justified where a U.S. affiliate plays a significant role in soliciting business and maintaining customer contacts, or participates in the negotiation of sales price to the extent that it is more than a processor of sales-related documentation or a communications link. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews,* 63 FR 13170, 13172 (March 18, 1998). Petitioners argue that, contrary to NSC's assertions, the facts in this case justify classifying certain of NSC's sales as CEP.

Petitioners also note that where the U.S. affiliate acts as the first and only point of contact for the U.S. unaffiliated customer, or that it played the primary role in generating the sale by bringing the customer to the foreign producer, the Department has found that the affiliate's role in the sales process is significant. *See Stainless Steel Plate in Coils from the Republic of Korea,* 64 FR 15444, 15453 (March, 31, 1999); *see also Notice of Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia: Final Results of Antidumping Duty Administrative Review,* 64 FR 12967, 12971 (March 16, 1999); *Carbon Steel Flat Products from Korea,* 64 FR at 12927. Petitioner also argues that the Department has found that where the U.S. affiliate participates in negotiations, its role is elevated beyond a processor of documentation or a communications link. Petitioner argues this is true even where the U.S. affiliate negotiates along with the foreign producer (*Small Diameter Circular Seamless Carbon and Alloy Steel Standard Line and Pressure Pipe from Germany: Preliminary Results of Antidumping Duty Administrative Review,* 62 FR 47446, 47448 (September 15, 1997), reserved the right to approve all orders, *id.* or limited the affiliate's ability to negotiate prices within certain ranges, *Cut-to-Length Carbon Steel Plate from Belgium: Preliminary Results of Antidumping Duty Administrative Review,* 62 FR 48213, 48214–15 (1997); *Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Duty Administrative Review,* 62 FR 18390, 18391–92 (1997)). Petitioners argue that where the U.S. affiliate's role is not incidental or ancillary, CEP treatment is appropriate. *See Industrial Nitrocellulose from the United Kingdom: Final Results of Antidumping Duty Administrative Review,* 64 FR 6609, 6611 (February 10, 1999). Petitioners cite the U.S. verification report in support of their argument that CEP is appropriate for certain of NSC's U.S. sales, and argue that application of facts available is justified as well, based NSC's failure to provide complete information on these circumstances.

In its rebuttal, NSC argues that the Department should continue to treat NSC's sales through its affiliated U.S. reseller as EP sales. NSC contends that the affiliated U.S. reseller acted as a communication link between the affiliated Japanese reseller and the U.S. customer. NSC states that the U.S. reseller acted ''only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.'' *See Mitsubishi Heavy Indus., Ltd.* v. *United States,* 15 F. Supp. 2d 807, 812 (CIT 1998). Furthermore, NSC argues that the U.S. reseller was in constant communication with the Japanese reseller and that messages during the sales negotiations document that the U.S. reseller had no authority to make decisions without the consent of the Japanese reseller. NSC contends that the U.S. reseller acted as a communication link, which is a role that U.S. affiliates may play in EP sales. *See AK Steel Corporation* v. *United States,* 34 F. Supp. 2d 756 (CIT 1998); *see also NSC U.S. Verification Memorandum,* dated March 26, 1999, at Exhibit 4. In sum, NSC argues that at no point did the affiliated U.S. reseller make any decisions with regard to the terms of sale without first consulting the Japanese reseller. Finally, NSC contends that if the U.S. reseller had authority to negotiate terms of sale the documented correspondence between the U.S. and Japanese resellers would not have occurred. Thus, the U.S. reseller was simply a conduit for communication.

Department's Position: We disagree with petitioners that NSC's U.S. sales should be treated as CEP sales. The statute defines export price as the price at which the subject merchandise is first sold (or offered for sale) to an unaffiliated purchaser before the date of import by the exporter outside the United States. In contrast, CEP is the price at which the subject merchandise is first sold (or offered for sale), before or after the date of import, in the United States by or for the account of the exporter or by a seller affiliated with the exporter to an unaffiliated purchaser. Thus, sales made prior to import can be either EP or CEP, with the former being sold by the exporter or producer outside the United States and the latter being sold by someone in the United States who is selling for the account of the exporter or is affiliated with the exporter. In cases in which both the exporter and a U.S. affiliate or a party in the United States acting on the exporter's behalf are involved in the sales transaction, a case-by-case determination must be made, based on the facts associated with the transactions at issue, to determine whether such sales are properly characterized as EP or CEP sales. Normally, when a party in the United States is involved in the sale to the first unaffiliated customer, the sales are properly treated as CEP sales. However, the Department has a long history of recognizing so-called ''indirect EP sales,'' which are sales made by an exporter, with the party in the United States performing only certain ancillary

functions that support the sales process. To determine whether sales are properly classified as EP in such cases the Department examines three criteria: whether (1) the merchandise is not inventoried by the importer, (2) the sale is made through a customary commercial channel for sales of this merchandise, and (3) the affiliated importer acts only as a processor of sales-related documents and as a communications link with the exporter. *See, e.g., Du Pont*, 841 F. Supp. at 1248–50; *AK Steel*, 1998 WL 846764 at *6. Only when all three criteria are met does the Department treat the sales as EP sales. As the Court explained in *AK Steel*, this test is simply a means to determine whether a sale at issue is in essence between the exporter and the unaffiliated buyer, in which case the EP rules apply, or whether the role of the affiliate has sufficient substance that the CEP rules apply. *Id.*

In this case, NSC's small U.S. office merely assisted NSC and its affiliated Japanese trading company in making the sales in question. With respect to the first prong of the indirect EP test, the merchandise at issue was shipped directly from the manufacturer to the unaffiliated U.S. customer without being introduced into the physical inventory of NSC's U.S. affiliate. With respect to the second prong, this pattern of direct shipment is a customary commercial channel for sales of such merchandise in the industry, and there is no indication that the sales between the parties involved represented any departure from the customary commercial patterns. As for the third prong, information obtained by the Department at verification confirmed NSC's claims that its U.S. affiliate's role was that of a processor of sales-related documents and as a communications link with the exporter.

The gravamen of petitioner's claim that these sales should be classified as CEP sales appears to be the fact that the affiliate is involved in the negotiation process. However, the sales-related documents we examined at verification indicated that the affiliate's role in the sales negotiation process is properly characterized as ancillary to the role of NSC and an affiliated trading company in Japan. *See U.S. Sales Verification Report*, dated March 26, 1999. The primary function of the U.S. affiliate in negotiation was conveying offers and counter-offers between the customer on the one hand, and NSC and the Japanese trading company on the other—in other words, serving as a ''communications link'' between the parties involved in making the decisions with respect to these sales. Contrary to petitioners' assertions, the U.S. affiliate cannot be said to have participated in any real sense in the negotiation of the sales at issue.

Verification also confirmed the accuracy of information NSC provided on the record with respect to its performance of other support functions related to these U.S. sales, including conveying an initial offer to bid, issuing certain sales documentation, and assisting in arranging the transport of the merchandise from Japan to the customer. The affiliate also pays U.S. import duties and certain transportation expenses (wharfage, brokerage, barge/demurrage, stevedoring, and trucking expenses) on these sales, receives payment from the customer and receives a commission on the sale. *See NSC U.S. Verification Report* at 2–4, dated March 26, 1999. These are all functions that have previously been found to be compatible with a finding that the sales involved are EP sales. In addition, the Court of International Trade has held that the fact that a U.S. subsidiary receives a commission for providing such services is not incompatible with a finding that the sales are EP sales. *See Outokumpu Copper Rolled Products AB* v. *United States* (''*Outokumpu*''), 829 F. Supp. 1371, 1378–80 (CIT 1993). Thus, the facts of record, taken as a whole and considered in context, demonstrate that these sales are essentially sales between NSC's affiliated Japanese trading company and the unaffiliated U.S. customer, with certain routine sales support functions carried out by the U.S. affiliate. Therefore, we find that the facts on the record demonstrate that the sales at issue meet the well-established criteria for indirect EP sales.

In addition, we note that these sales constitute such a minute portion of NSC's U.S. sales that, even if the Department had accepted petitioners' argument both that they should be considered CEP sales and that the Department should apply an adverse margin to these sales, the impact on NSC's margin, if any, would have been negligible.

Comment 10: NSC's U.S. Sales Prices.

Petitioners contend that the Department should use the gross unit U.S. price in dollars which appears on the invoice, and not a converted net price in yen as the basis for its U.S. price calculations. NSC reported the gross unit price for its U.S. sales in dollars, and this value appears on the invoice, even though NSC's customers ultimately pay for the merchandise in yen based on a nine day forward exchange rate. NSC reported the price paid in yen minus a trading company discount as NETPRTCU. Petitioners claim that the Department converted the net yen value to dollars on the date of shipment, and state that this approach is improper. Petitioners rely upon *Ferrosilicon from Brazil: Amended Final Results of Antidumping Duty Administrative Review* (''*Ferrosilicon from Brazil*''), 62 FR 54085, 54086 (1997), where the Department amended its final results in order to use the U.S. dollar-denominated gross unit price, and on *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan*, 63 FR 40434, 40446–7 (1998), where the Department also used a gross unit price in dollars.

Department's Position: The Department disagrees that we should use the gross unit U.S. price in dollars which appears on the invoice and not the converted price in yen. The yen value on the invoice is the value which is invoiced and paid by NSC's customers. For every U.S. sale, and other export sales, NSC records the dollar value, the yen value, and the exchange rate used to convert the dollar to yen, and then tracks the yen invoice value through to their accounts receivable. Petitioners' argument is that the Department should avoid unnecessary conversion where possible. The Department verified that the yen value on the invoice is converted using the yen to dollar exchange rate on the ninth day after shipment. This conversion is pursuant to the terms of sale agreed upon by the parties at the time of the order confirmation. Therefore, for purposes of NSC's normal accounting records, the yen value posted in the normal course of business is the converted dollar value effective on the date of shipment, using the methodology discussed above. In reporting U.S. sales to the Department, NSC directly reported the yen value from the invoice as recorded in the normal course of business. As a result, the Department used the yen value from the invoice as the starting point in its calculation of U.S. price.

Petitioners' reliance on the two administrative cases cited is misplaced. The *Ferrosilicon from Brazil* case, unlike this case, involved a forward exchange rate agreement. Thus, section 773A(a) of the Act required that foreign currencies be converted into U.S. dollars based on the exchange rate specified in the forward exchange rate agreement. Instead, the Department, due to the erroneous impression that it did not have dollar-denominated prices on record, ''mistakenly converted the U.S. sales prices reported in Brazilian currency to U.S. dollars on the date of sale.'' 62 FR at 54086. Because the

Brazilian currency gross unit amount which appeared on the commercial invoice corresponded to the dollar-denominated price as of the date of conversion pursuant to the forward exchange agreement, converting that Brazilian currency value to U.S. dollars was an exchange rate error. Because the dollar value reported to the Department already corresponded to the dollar equivalent of the amount to be paid in Brazilian currency on the proper day for making that currency exchange, the Department used the submitted dollar value.

The Japanese wire rod case involved a situation similar to *Ferrosilicon from Brazil*. In that case, the Department stated that the invoice listed a gross unit price only in dollars, the conversion factor associated with the forward exchange agreement, the amount corresponding to a commission (or ''discount'') paid to the Japanese trading company to which Nippon (*i.e.*, NSC in the instant case) sold, and a net price in yen that results after that ''discount'' was deducted. 63 FR at 40447. As instructed in the questionnaire, Nippon had reported the gross unit price on the invoice (which was in dollars), and the Department had used this price as the starting price in its preliminary calculations. *Id.* Petitioners urged that, because payment was made in yen, rather than in dollars, the Department should disregard Nippon's data and use facts available. *Id.* In the final determination, the Department continued to use the reported dollar gross price because Nippon, as requested, had provided the price on the invoice. *Id.* In addition, the Department had verified that Nippon received the yen-denominated amount corresponding to that dollar amount, converted at the forward exchange rate reflected on the invoice, minus the trading company's ''discount.'' *Id.* In other words, once the discount was taken into consideration (as it would necessarily be regardless of which currency was used), the dollar amount exactly corresponded to the net yen amount petitioners complained had not been used in the first place.

Based on the facts of the instant case, the Department has used the yen value reported on the invoice as the starting point for the calculation of U.S. price.

Comment 11: NSC's Arm's Length Analysis.

Petitioners argue that the Department should apply the arm's length test to resales made by NSC's affiliated customer to other NSC affiliates. On January 4, 1999, the Department requested that NSC add a field to its sales database indicating the relation of the end-user to NSC for sales made through one of NSC's affiliated resellers. Citing lack of time, NSC responded by providing the Department with a list of the affiliated reseller's customers who were also affiliated with NSC, instead of updating the database. Therefore, petitioners request that the Department apply the arm's length test to the subsequent sales by NSC's affiliated reseller, where applicable.

Department's Position: The Department disagrees with petitioners. The Department's regulations state that, if an exporter or producer sold the foreign like product to an affiliated party, it may calculate normal value based on such sales if it determines that the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller. *See* 19 C.F.R. § 351.403(c). It is the Department's normal practice to run the arm's length test on home market sales made by the producer to an affiliated company to determine whether the prices for such sales are comparable to prices charged to unrelated parties. In the instant case, the Department conducted its normal arm's length analysis and found that NSC's sales to the affiliated reseller at issue failed the arm's length test. Therefore, our preference is to use the downstream sales if available. Based upon the information placed on the record, we find no basis for departing from the Department's normal practice in this regard.

As the Department has stated in the *Preamble* to its regulations, ''[t]he purpose of an arm's length test is to eliminate prices that are distorted.'' *See* 62 FR at 27356. Once a non-distorted price has been identified in a given series of transactions for use as normal value, ''the Department does not believe it is necessary or appropriate to require the reporting of downstream sales in all instances.'' *See Id.* The approach proposed by petitioners, which would require routine reporting of all downstream data for home market sales to affiliates, so that the arm's length test could be conducted at multiple levels, would be both burdensome and unnecessary. Thus, for the final determination, when a sale by NSC to an affiliated party passed the arm's length test, we did not conduct further tests to determine whether the sales by that affiliate were also made at arm's length.

Comment 12: NSC's Home Market Downstream Sales.

NSC argues that the Department should continue to find that NSC need not report any further downstream sales. As it did in the *Preliminary Determination*, NSC contends that the process of acquiring the necessary information for the still unreported downstream sales would be overly burdensome due to the manual effort involved, and the affiliated reseller's limited retention of paper documents. Furthermore, NSC has continued to work to report the downstream sales. At verification, NSC demonstrated that the task of reporting the outstanding downstream sales would be overly burdensome, and, in some cases, impossible. In addition, NSC cites to the Department's regulations at 19 C.F.R. § 351.403(d), which state that in some cases the Department will not require the reporting of all downstream sales if the outstanding sales ''account for less than five percent of the total value (or quantity) of the exporter's or producer's sales of the foreign like product * * *'' As NSC's unreported downstream sales meet this Departmental requirement, NSC requests that the Department not change its *Preliminary Determination* regarding this issue. Petitioners did not comment on NSC's argument in their rebuttal briefs.

Department's Position: We agree with NSC that certain downstream sales should continue to be disregarded in the final determination. Pursuant to § 351.403 of the Department's regulations, the Department does not normally require the reporting of downstream sales if total sales of the foreign like product by a firm to all affiliated customers account for five percent or less of the firm's total sales of the foreign like product. In general, the Department does not believe it necessary or appropriate to require the reporting of downstream sales in all instances. Questions concerning the reporting of downstream sales are complicated, and the resolution of such questions depends on a number of considerations, including the nature of the merchandise sold to and by the affiliate, the volume of sales to the affiliate, the levels of trade involved, and whether sales to affiliates were made at arm's length. In addition, the Department normally will not require the respondent to report the affiliate's downstream sales unless the sales to the affiliate fail the arm's length test. The Department believes that imposing the burden of reporting small numbers of downstream sales often is not warranted, and that the accuracy of determinations generally is not compromised by the absence of such sales.

In the instant case, NSC requested that it be excused from reporting a small percentage of home market downstream

sales due to overwhelming burdens in obtaining the information and the fact that these downstream sales will not constitute appropriate matches for their U.S. sales of subject merchandise. Furthermore, the Department examined these sales at verification and confirmed that these sales will not constitute appropriate matches for U.S. sales. *See NSC Home Market Verification Report*, dated March 26, 1999. After examining the data placed on the record, the Department has determined that there are sufficient matches of sales in the home market and that the downstream sales in question account for less than three percent of each firm's total home market sales of subject merchandise. For purposes of this final determination, the Department is disregarding this small percentage of downstream sales.

Comment 13: Request for Written Opinion/ Ex Parte Communications.

NSC argues that, pursuant to section 782(g) of the Tariff Act (19 U.S.C. § 1677m(g)), and in accordance with the SAA at 814, the Department must inform all parties of the essential facts under consideration before making a final determination, and give all parties sufficient time to defend their interests. *See Bethlehem Steel Corp.* v. *United States*, 27 F. Supp. 2d 201, 207–08 (CIT 1998); Michael Y. Chung, *U.S. Antidumping Laws: A Look at the New Legislation*, 20 N.C.J. Int'l L. & Com. Reg. 495, 525 (1995). NSC states that the Court of International Trade has held that the Department cannot rely on information on which the parties have not been given an opportunity to comment. *See Wieland-Werke AG* v. *United States*, 4 F. Supp. 2d 1207 (CIT 1998). NSC argues that this requirement is necessary to provide due process and a fair judgement. NSC charges that the Department has not provided NSC with all information relevant to this investigation, and thus appears to be about to make a final determination which does not afford NSC the right to defend itself or respond to that information. In particular, NSC notes that the Department has not placed on the record the factual or legal bases for its decision not to verify NSC's theoretical-actual weight conversion factor. NSC states that the Department has not responded to its letters on this issue and has not placed on the record an ex-parte memorandum with respect to the meeting between NSC's representatives and Deputy Assistant Secretary Spetrini at which this issue was discussed.

NSC argues that the Department's failure to explain its basis for not verifying the conversion factor violates section 782(g) of the Tariff Act (19 U.S.C. § 1677m(g)) and Article 6.9 of the *Antidumping Agreement* (referring to informing parties of the essential facts under consideration, so that they may defend their interests), as well as § 351.307(c) of the Department's regulations and Article 6.7 of the *Antidumping Agreement* (which relate to reporting on the results of verification). NSC argues that the Department has refused to provide this information, that this refusal was illegal, and that it has prejudiced NSC's ability to defend its interests and affected its due process rights. In this respect, NSC relies upon the SAA at 814, and *Clifford* v. *United States*, 136 F.3d 144, 149 (D.C. Cir. 1998). NSC states that the Department's actions raise the specter of government officials secretly prejudging this matter, and not allowing NSC to respond or defend its interests. *See NEC Corp.* v. *United States*, 151 F.3d 1361, 1374 (Fed. Cir. 1998). NSC concludes that, for these reasons, the Department's decision on theoretical weight cannot stand.

NSC also cites the statutory requirement that the agency document ex-parte communications on the official record. *See* section 777(a)(3) of the Tariff Act (19 U.S.C. § 1677f(a)(3)); *see also Gilmore Steel Corp.* v. *United States*, 585 F. Supp. 670, 679 (CIT 1984). The Department is required to include notice of these communications in the official record of the case for judicial review. NSC states that, in addition, in order to allow interested parties to comment on information submitted by other parties during such meetings, *see* 19 C.F.R. § 351.301(c)(1), information communicated during ex-parte meetings must be placed on the record.

NSC states that the Department has ''chosen secrecy over transparency'' by not placing on the official record memoranda memorializing any ex-parte meetings between petitioner or other interested parties and members of the Administration concerning issues presented during this proceeding, and cites press reports alleging the occurrence of several meetings relating to this case. NSC adds that the Department also did not respond to NSC's letters requesting that ex-parte memoranda be placed on the record. NSC argues that the Department is thus in violation of section 777(a)(3) of the Tariff Act (19 U.S.C. § 1677f(a)(3)) and 19 C.F.R. § 351.104. NSC claims that, coupled with the violations of Article 6.9 and 19 U.S.C. § 1677m(g) described above, the Department's actions in this respect threaten the fairness and integrity of the entire proceeding. Petitioners did not comment on NSC's request in their rebuttal briefs.

Department's Position: We disagree with NSC's assertion that the Department has not provided NSC with all information relied upon in the investigation, in particular information relating to the Department's decision regarding NSC's sales made on a theoretical weight basis. At the time that the Department made the decision not to verify the theoretical-to-actual weight conversion factor, the Department explained to NSC's counsel the basis for the Department's actions. In addition, the Department issued a letter dated April 12, 1999, explaining the reason for rejecting the submitted conversion factors. The factual and legal bases for the Department's decision regarding these sales are also discussed in Comment 29, ''Use of Facts Available for NSC's Theoretical Weight Sales.''

The Department, pursuant to section 777f(a)(3) of the Act has placed all ex parte communications on the official record of the case and they are available to interested parties in room B–099 of the main Department of Commerce building. The only ex parte communications relating to NSC's sales made on a theoretical weight basis were communications with representatives of NSC. Therefore, NSC was not prejudiced by any delay in recording those communications for the record. In addition, as reflected in the memos summarizing ex parte communications, all ex parte communications with petitioners' counsel involved no new information and all information discussed was on the record.

The Department disagrees with NSC that it was not informed of the essential facts and did not have sufficient time to defend its interests. NSC, like other parties in this proceeding, has availed itself of the myriad opportunities to participate actively in the antidumping investigation by submitting information and argument and by commenting on information and argument placed upon the record. NSC has done so in meetings with the Department, in written briefs, and during the hearing conducted in this proceeding. In particular, NSC devoted over 40 pages of its case brief to arguing the actual/theoretical weight issue and argued the issue again at the hearing. Thus, NSC, like all other parties, has been given ample time to analyze and comment upon the essential facts under consideration, and to preserve its rights to appeal the decisions of the Department.

Cost of Production

NSC

Comment 14: NSC's Costs for Particular CONNUMs.

Petitioners argue that the Department should use adverse facts available for any U.S. sales that are matched to control numbers (''CONNUMs'') for which NSC failed to report product-specific cost. Petitioners state that the Department requested NSC to provide product-specific cost for all CONNUMs, including those that, in NSC's view, were not likely to be matched to U.S. sales. By refusing to provide the information, the petitioners assert, NSC has significantly impeded the investigation by failing to cooperate to the best of its ability. Petitioners maintain that the statute mandates use of facts available in several circumstances, including when a respondent withholds requested information or ''fails to provide such information by the deadlines for submission of the information.'' Section 776(a)(2)(A) and 776(b) of the Act authorize the Department to use an adverse inference where the respondent has ''not acted to the best of its ability to comply with a request for information.'' As further support for their position, petitioners cite *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997), in which the Department determined that an adverse inference was warranted because the company being reviewed failed to act to the best of its ability and did not comply with the Department's request.

In addition, petitioners contend that adverse facts available should be applied to 19 CONNUMs for which the Department found certain problems at verification. For these CONNUMs, costs were reported on a product-specific basis and on a CAPS code basis, but were then weight-averaged across a ''mix of products.'' According to petitioners, the evidence shows the respondent did not act to the best of its ability in reporting these costs, and an adverse inference should be used in applying facts available to ensure that the respondent will not be rewarded for its failure to supply the necessary information. Thus, for the final determination, whenever a U.S. sale is matched to a home market CONNUM for which product-specific costs were not reported, the Department should apply the highest calculated margin as facts available.

NSC argues that petitioners' suggestion that the Department should use adverse facts available for the products for which costs were reported on a broad product group average (*i.e.*, CAPS code specific basis) is unwarranted. NSC contends that it has cooperated as far as possible given the accelerated timeframe and fully explained its inability to report all costs on a product-specific basis. Moreover, NSC asserts that under section 782(e) of the Tariff Act (19 U.S.C. § 1677m(e)), the Department is required to consider respondents' information, even if it is not submitted by the deadlines or in the form requested. NSC claims, however, that the information submitted was timely, complete and verified, and thus the Department has no basis for the use of facts available or adverse facts available.

Further, NSC asserts that if facts available is warranted, an adverse inference should not be applied because the information on the record does not establish that NSC failed to act to the best of its ability throughout the investigation. In support of its position NSC cities 62 FR 27340, where the Department explained that it will consider whether ''practical difficulties'' contributed to a respondent's inability to supply requested information. Accordingly, the Department has no grounds to apply facts available with adverse inferences.

In addition, NSC argues that if the Department decides an adverse inference is proper, applying the highest calculated margin is aberrant and not consistent with the law or the Department's past practice. According to NSC, the Department's well-established policy limits it to the highest non-aberrant margin. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Italy*, 63 FR 40422, 40428 (1998). Further, NSC contends that a margin is not always the most appropriate means of substituting missing information. Thus, NSC asserts, should the Department choose to apply an adverse inference in selecting facts available, it should consider using information on the record related to the missing data, as opposed to using a punitively high margin.

Department's Position: We agree with petitioners that adverse facts available should be applied to any U.S. sales which are matched to CONNUMs for which the product-specific costs have not been provided. As noted in the comments from the petitioners, section 776(a) 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 or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to section 782 (d) and (e), facts otherwise available in reaching the applicable determination. In this investigation, on more than one occasion, the Department requested that NSC provide product-specific cost data for all U.S. and home market sales of subject merchandise. However, NSC failed to provide this information for certain CONNUMs. As noted in the cost verification report, the Department found nineteen CONNUMs where the mix of products within the CONNUM included both product-specific costs and costs reported on a broader product group cost, which means that the reported costs for these CONNUMs are not product-specific. Since NSC failed to provide the necessary information in the form and manner requested, and in some instances the submitted information was found to be inaccurate, we conclude that pursuant to section 776(a) of the Act, use of facts otherwise available is appropriate.

Moreover, section 776(b) of the Act, provides that an adverse inference may be used when an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information. As discussed above, even though we asked twice, NSC failed to comply with our requests for product-specific information. The information necessary to compute CONNUM specific costs for the products in question was available in NSC's books and records (as evidenced by the existence of similar data used to report product-specific costs for the products sold to the United States). NSC, however, simply elected not to report CONNUM-specific costs for these products because they believed these products would not be used as matches in the antidumping margin. Thus, for the final determination, we applied the highest calculated margin to any U.S. sales which is matched to home market CONNUMs for which the product-specific cost data was not reported.

Comment 15: NSC's Corrections to U.S. CONNUM Database Presented at Verification.

At verification, NSC submitted, as a minor correction, data showing that certain CONNUMs had been reported incorrectly due to an improper conversion from millimeters to inches. This resulted in the creation of a small number of new U.S. CONNUMs. According to petitioners, the Department should use adverse facts available for these CONNUMs in

calculating the margin for the final determination, because NSC failed to supply cost information for the new CONNUMs.

NSC rebuts petitioners argument and states that the costs for the new CONNUMs are reported in *Verification* exhibit B.1 and 15, and also included in the revised cost file NSC submitted at the Department's request on April 14, 1999. NSC asserts that it did not fail to report product costs for the minor corrections submitted at verification. NSC contends that full costs for all U.S. CONNUMs, including all of the new CONNUMs related to the minor corrections were included in the cost verification exhibits and in a cost file subsequently requested by the Department.

Department's Position: We disagree with petitioners. At verification, NSC provided a worksheet which showed the product-specific cost for the new CONNUMs created due to the minor correction. In addition, on April 14, 1999, the Department requested and received a revised COP and CV tape which reflects the minor corrections presented at verification.

Comment 16: NSC's Electricity Purchases.

The petitioners argue that the Department should not use transfer prices to value transactions between NSC and its affiliated suppliers of electricity. Instead, petitioners assert that, in dealing with transactions between affiliated suppliers under section 773(f)(2) and (3) of the Act, it is the Department's practice to value major inputs, like electricity, at the higher of the transfer price, market price or actual cost of production. Further, petitioners contend that there is nothing on the record to warrant changing the Department's an established practice. According to petitioners, NSC's claim that the price differential between the affiliated and unaffiliated suppliers is due to the different levels of distribution is baseless. Petitioners assert that the record shows there is no ''wholesale market'' for electricity in Japan.

In addition, petitioners dispute NSC's claims that the financial performances of the affiliated and unaffiliated suppliers are relevant as to whether the market price exceeds transfer price. Further, petitioners contend that financial analyses are not a function of prices charged to an affiliated company. Therefore, NSC is overlooking the purpose of the arm's length test— to guarantee a price that reflects the market value. Thus, for the final determination, the petitioners contend that the Department should adjust the transfer price to reflect the higher market price.

NSC contends that the Department should not adjust the price it paid to its affiliated electric power cooperatives (''co-ops''). According to NSC, a simple comparison between the rates paid to their affiliated suppliers and those paid to their unaffiliated suppliers (*i.e.*, regional electric companies) is meaningless. NSC argues that the electricity supplied by the affiliated and unaffiliated suppliers involves different segments of the electricity market. Specifically, the co-ops are wholesalers, whereas the regional companies are retailers. In addition, respondent asserts that it demonstrated at verification, through financial analysis, that the co-ops are not selling electricity at unreasonably low rates for wholesalers of electric power as compared to the unaffiliated regional electric companies. NSC further points out that if co-ops were to adjust their prices to equal the retail market price, the result would be an unrealistically high rate of return on assets. Thus, NSC claims it would be inappropriate for the Department to make any adjustment to its reported electricity costs.

Department's Position: While we disagree with petitioners that NSC's electricity purchases from its affiliated suppliers represent a major input in this case, we agree that the reported cost of electricity purchased from its affiliates should be adjusted to a market price (*i.e.*, arm's length price) in accordance with section 773(f)(2) of the Act.

We disagree with NSC's argument that section 773(f)(2) of the Act requires the Department to take into account whether NSC's affiliated and unaffiliated suppliers of electricity are at different levels of distribution, and if they are, to refuse to compare the prices charged by each the two groups of suppliers. Even if these suppliers do operate at different levels of distribution, the customer (*i.e.*, NSC) in all instances, is at the same level. Section 773(f)(2) of the Act focuses on whether the arms-length comparison reflects comparable merchandise and whether the transaction occurred in the market under consideration. It does not focus on the nature or circumstances of the supplier. In this instance, both NSC's affiliated and unaffiliated electricity suppliers provided the identical input to NSC. Purchases of electricity from its affiliated and unaffiliated suppliers occurred in Japan, the market under consideration.

We also disagree with NSC that a comparative return on asset analysis is indicative of whether transactions between affiliates occurred at market prices. The structure and efficiency of an entity is unique to that entity's operations. We agree that those characteristics do impact the profitability of an entity; however, we disagree that it is indicative of whether the selling practices in a particular market are necessarily at arm's-length prices. Accordingly, for the final determination, we adjusted NSC's electricity purchases from affiliates to reflect the prices charged by its unaffiliated suppliers.

Comment 17: NSC's Exchange Gains and Losses.

The petitioners argue that NSC failed to provide requested information as to the types of transactions that gave rise to reported foreign exchange gains and losses. The petitioners claim that NSC is able to segregate its foreign exchange gains and losses and contend that NSC's chart of accounts provides evidence that the means to do so were readily available. The petitioners note that this information was necessary because the Department treats exchange gains and losses differently depending on their source.

The petitioners state that, since NSC failed to comply with the Department's request to the best of its ability, the Department should draw an adverse inference and conclude that the entire amount of the transaction exchange gain is related to accounts receivable and thus should be disallowed. In addition, the petitioners argue that the Department should draw the adverse inference that the entire amount of exchange losses is related to accounts payable and should therefore be included in the cost of manufacturing.

NSC contends that in reporting foreign exchange gains and losses, it acted to the best of its ability and petitioners claim that an adverse inference should be applied is without merit. Although NSC notes that its chart of accounts divides exchange gains and losses into certain categories, in practice those accounts are not used. NSC asserts that it does not maintain transaction-specific data on foreign exchange gains and losses. Accordingly, NSC argues that reclassifying the information to meet the Department's request would be overwhelming. Thus, NSC asserts that it acted to the best of its ability and there is nothing on the record to suggest that it could have reported the requested information. Further, NSC argues that the Department should continue to exclude the portion of the exchange losses unrelated to the cost of production of hot-rolled steel.

Department's Position: While we disagree with the petitioners that we found evidence indicating that NSC had the means to segregate its foreign exchange gains and losses, we agree that

the foreign exchange gains should be excluded and certain foreign exchange losses included in the calculation of the G&A expense ratio. It is the Department's normal practice to distinguish between foreign exchange gains and losses from sales transactions and exchange gains and losses from other types of transactions. *See, e.g., Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Trinidad & Tobago*, 63 FR 9177, 9181 (February 24, 1998). The Department normally does not include exchange gains and losses generated from accounts receivable. Since NSC failed to provide any documentation showing that the foreign exchange gains should be included as an offset to the G&A expenses, we do not consider it appropriate to allow the gains as an offset to reported costs. In addition, with the exception of the exchange losses associated with or incurred by to divisions unrelated to steelmaking, NSC failed to provide any substantiation that the foreign exchange losses should be excluded. We therefore adjusted NSC's G&A expense ratio to exclude the foreign exchange gains and include certain foreign exchange losses.

Comment 18: NSC's G&A Expenses.

The petitioners argue that the Department should recalculate NSC's G&A expense ratio to include all appropriate expenses, including certain expenses the nature of which constitutes business proprietary information. The petitioners contend that the expenses at issue, which are discussed in more detail in the proprietary version of their case brief, relate to the company as a whole, and that NSC should not be permitted to exclude the portions of those expenses that relate to non-steel divisions.

In addition, the petitioners argue that there is no reason to believe that the poor performance of the Japanese economy affected any NSC division differently than any other division and that NSC failed to support this claim. The petitioners therefore believe that economic conditions are irrelevant to the issue at hand and provide no basis for excluding certain expenses from the G&A calculation.

NSC argues that its calculation of general and administrative expenses properly allocates company-wide costs to the production of hot-rolled steel. Specifically, NSC states that non-operating and special profits and losses are properly allocated to the production of hot-rolled steel using steel division cost of sales in the denominator, and that all exclusions from the calculation relate to gains and losses of non-steel divisions. NSC asserts that its non-operating and special profits and losses differ from general and administrative expenses as they arise from specific events and are not related to the operations of the company as a whole. NSC contends that the Department has excluded such special gains and losses from the cost calculation in the past and cites *Stainless Steel Wire Rod from Italy*, 63 FR at 40430 in support of its argument.

NSC argues that certain expenses at issue that were excluded from the G&A calculation are accurately classified as special losses and that the exclusion of these expenses should be retained. NSC contends that these expenses are related to ongoing restructuring and are determined by economic conditions at each separate division of the company. Accordingly, NSC argues that such expenses are not related to the company as a whole, but instead are specifically tied to each division, and there is no reason to allocate a portion of the proprietary expense associated with or pertaining to a separate division to the G&A expenses of the steel division. Further, NSC asserts that it demonstrated at verification that its allocation methodology actually excluded fewer costs than were incurred by non-steel divisions.

Department's Position: We agree with petitioners that the total amount of the proprietary expenses should be included in the G&A expense calculation. We find no reason to conclude that NSC's normal accounting treatment of not including this proprietary item as a cost of manufacturing, in accordance with its home country Generally Accepted Accounting Principles (''GAAP''), is unreasonable or distortive. In fact, there is virtually no difference in the amount of these proprietary expenses allocated to subject merchandise whether they are treated as G&A or as a cost of manufacturing. We consider these expenses to relate to the general operations of the company as a whole and as such consider it appropriate to allocate them on a company-wide basis as a percentage of unconsolidated cost sales.

Comment 19: NSC's Blast Furnace Costs.

The petitioners argue that, for the final determination, the Department should eliminate an offset for a reversal of a reserve for the repair of blast furnaces. According to petitioners, the Department's practice is to disallow the reversal of a charge taken in a prior year because it would distort the current year's costs. Petitioners note that, for instance, in *Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Duty Administrative Review*, 61 FR 13834, 13837 (March 26, 1996), the Department disallowed a reduction in current year production costs by the reversal of prior year operating expense accruals and write downs of equipment and inventory. Petitioners further claim that, although a reversal of a prior period charge is in accordance with Generally Accepted Accounting Principles (''GAAP''), the adjustment is considered improper for the antidumping analysis because it bears no relation to the cost of production during the current year.

Department's Position: We agree with the petitioners that an offset to G&A expenses for a reversal of a reserve for repairs of the blast furnace should be disallowed. It has been the Department's practice to disallow reductions to current year production costs by the reversal of prior year operating expense accruals. The subsequent year's reversal of these estimated costs does not represent revenue or reduced operating costs in the year of the reversal. Rather, they represent a correction of an estimate which was made in a prior year. While reversals of accruals are in accordance with GAAP, the Department relies on GAAP provided that it does not result in distorted per unit costs. In this investigation, we find it inappropriate to reduce the actual production costs incurred in the current year by excess reserves recognized in prior years.

Comment 20: NSC's Reconciliation Adjustment.

NSC argues that the Department incorrectly excluded NSC's reconciliation adjustment from its reported COP and CV data in the preliminary determination. NSC argues that its reconciliation adjustment corrects for differences between total reported costs and total actual costs incurred, and that failure to include the adjustment would result in a reported cost of manufacture that does not reconcile with NSC's accounting records. NSC thus concludes that the Department should include the reported reconciliation adjustment in its final determination.

Petitioners argue that the Department properly excluded the reconciliation adjustment in its *Preliminary Determination* because the quantities used to derive the adjustment were not on the same basis. Petitioner contends that while the overall differences may be very small for product groups, the particular quantity differences for specific products within groups are significant. The petitioners therefore refute NSC's claim that the difference is insignificant and contend that inclusion

of the reconciliation adjustment would distort product costs at the individual CONNUM level. In addition, the petitioner states that the reconciliation pertains only to quantity differences and is not related to per unit cost. The petitioner thus concludes that since the reconciliation adjustment does not represent an element of cost, no corresponding adjustment to the cost of manufacturing should be made.

Department's Position: We agree with the respondent that the reconciliation adjustment should be included in the COP and CV data files for the final determination. At verification, we determined that the reconciliation adjustment is based on differences between costs in NSC's normal books and records and product-specific cost reported to the Department. NSC maintains costs in the normal course of business at a more aggregate level than required by the Department; therefore, NSC used a reporting methodology which differed in some respects from its normal cost accounting system. As a result of deriving the reported costs, there were small differences between the reported product-specific cost and NSC's cost of manufacturing subject merchandise. Since the reconciliation adjustment reconciles the reported cost to the cost of manufacturing as recorded in its financial accounting system, for the final determination we have included the adjustment.

NKK

Comment 21: NKK's Overall Cost Methodology.

Petitioners argue that NKK's reporting methodology should be rejected because it is fundamentally flawed and results in costs that are significantly understated. Petitioners assert that NKK's methodology distorts costs because it relies on a base group that is not reflective of the actual production levels of subject merchandise at the individual manufacturing facilities and, therefore, does not properly reflect plant efficiencies; it relies on a single variance for all product groups, rather than more detailed variances; and, it relies on the cost extras from only one facility. (*See* Comments below for a detailed discussion of each of these three allegations.) Petitioners argue that the effect of these flaws is not quantifiable and the necessary information to correct these deficiencies is not on the record.

Moreover, petitioners argue that NKK withheld information requested by the Department that would have enabled the Department to correct these deficiencies and, therefore, has not acted to the best of its ability. First, petitioners assert that NKK did not provide variances by budget group when requested to do so by the Department. Second, petitioners argue that NKK did not provide cost extras for the second facility, even though there are significant differences in cost between plants. Third, petitioners argue that the selected base product is not, as claimed by NKK, representative of the overall production of the subject merchandise.

Therefore, petitioners assert that the Department must resort to total adverse facts available. If, however, the Department does not resort to total adverse facts available, then it argues that the Department should draw an adverse inference in selecting an alternative remedy to address the significant distortions.

NKK asserts that the Department verified that in the aggregate it reported all its costs and the issue is not whether NKK provided weighted average costs but the reasonableness of NKK's particular weighting methodology. NKK argues that petitioners' concerns regarding the reported variance are unwarranted because NKK developed the most specific variance it could for the hot-rolled steel operations. NKK argues that its use of Fukuyama's cost extras was reasonable because it developed the most reasonable product specific costs it could and had no choice but to work with the information which it maintains in the normal course of business. NKK also argues that the Department tested the reasonableness of NKK's reported values for cost extras during verification and noted no problems. NKK contends that there is no basis for using adverse facts available as petitioners request because it has been fully cooperative in all phases of this investigation. NKK contends that an alternative methodology can be based on verified information on the record and should not be based on adverse facts available.

Department Position: We disagree with petitioners that we should reject NKK's reported costs and use, instead, adverse facts available. While we agree that NKK's methodology improperly weights costs, because the selected base product does not adequately represent the range of subject merchandise produced at each plant, we find that this problem is correctable. (*See* Comment below.) We disagree with petitioners that NKK's reported variance or its cost extra methodology distort the reported costs. (*See* Comments below.) We note that the variance used by NKK was for the specific base product group and took into account the specific cost centers those products passed through during production. We also note that the absence on the record of cost extras specific to the second facility does not impugn NKK's methodology, since NKK adjusted the cost extras associated with the other facility by the difference between the weighted average base product groups of both facilities and the pinpoint product.

Moreover, we do not agree with petitioners that NKK did not act to the best of their ability in reporting costs. First, record evidence allows the Department to reasonably adjust for the improper weighting of costs (*i.e.*, to account for the cost differences between plants). Second, as noted above, NKK did not use one plant-wide variance, but calculated a variance for the specific base product group and took into account the specific cost centers those products passed through during production. Third, although NKK did not provide the requested information concerning each individual base group's variance, the Department was able to verify NKK's assertion as to the level of difficulty in preparing such variances. We also note that the selected base product group accounted for a significant portion of the U.S. and home market products, and that the information is not necessary in order to correct the flaws identified in NKK's response. Finally, the Department did not request that NKK provide cost extras for the second facility, nor did it determine that the presence of such data would have significantly altered the results, since the first facility's cost extras were adjusted by the difference in the pinpoint product and the weighted average base costs of both facilities. Therefore, we have relied on NKK's reported costs except for certain adjustments to account for the improper weight averaging of the cost of the two manufacturing facilities to account for plant efficiency.

Comment 22: NKK's Weighted-Average Costs.

Petitioners argue that NKK's response methodology for weighting the cost of the two manufacturing facilities which produced the subject merchandise significantly understates the cost of manufacturing (''COM''). Petitioners maintain that the Department's questionnaire states that the respondent must report COP and CV based on the weighted average cost incurred at all facilities and that NKK's methodology does not properly account for the actual production levels at the two facilities.

Petitioners also note that the Department's questionnaire specifically stated that, if NKK did not believe it could respond to the Department's request in the form requested, it was to notify the Department in writing before

it submitted the response. Accordingly, petitioners contend that at no time did NKK submit a letter asking permission to use a single selected product as the starting point instead of providing all of its product groups. Moreover, petitioners argue that NKK has acknowledged that it could have reported a certain number of additional product groups and account for the majority of U.S. sales during the POI but did not do so. Petitioners argue that NKK's failure to report accurate costs for these additional product groups means that the cost of corresponding home market sales that are matched to U.S. sales are inaccurate.

According to petitioners, the production of the ''pinpoint'' product (used by NKK to differentiate the cost of the base product group's cost to product specific cost) is not representative of the production of all of the base product groups at each production facility.

In support of their position, petitioners note that in *Carbon Steel Flat Products from Korea,* 64 FR at 12945, the Department rejected respondent's cost submission upon finding that the reported costs were understated. Petitioners argue that the Department concluded that the respondent could have reported information on a CONNUM-specific basis, but failed to do so. The Department rejected the submitted cost in that case and applied adverse facts available. Petitioners assert that NKK had the ability to report costs in a manner that reflected the actual product mix of the two works but that it disregarded the Department's instructions and used a distortive weighting methodology. Thus, petitioners contend that NKK's response should be rejected.

Petitioners contend that NKK's proposed adjustment does not result in reported costs that reflect the actual cost of certain product groups other than NKK's selected product group. Instead, petitioners argue that NKK's adjustment simply applies the base cost of the selected product group to the production quantities of the other product groups. Thus, petitioners contend that applying the correct production mix to the wrong cost does not remedy flaws in NKK's reporting.

NKK argues that its allocation methodology is reasonable. NKK asserts that its initial response showed that the relative weighting of costs between the Fukuyama and Keihin works was based on a subset of the total production quantity. In addition NKK argues that it clarified the reasons for choosing the particular product as the starting point for development of the actual costs in a supplemental response. NKK argues that the particular product chosen as the starting point corresponds most closely with the ''pinpoint'' product used in calculating the cost extras and that it represents the overwhelming majority of the U.S. sales. Further, NKK asserts that it was not practical to develop a different weighting for each of the subject merchandise product groups. NKK claims that due to time constraints it would have been impossible to extract each of the variances that related to the production flow of each of the different product groups and, therefore, once it had gone through the exercise for the selected group it was necessary and accurate enough to use this group for the weighting.

According to NKK, the correction to the weighting between the Fukuyama and Keihin works the Department contemplates in the cost verification report would be less accurate and less reasonable than NKK's methodology. NKK asserts that its methodology does not understate costs, and that this is clear because the total cost reconciled within a small difference. Thus, NKK argues that increasing the reported costs would constitute a serious distortion.

NKK contends that while its methodology is less precise for a portion of the subject merchandise, its method is more appropriate for the particular product group which represents the majority of the home market data that match to U.S. sales. Further, NKK claims that the remaining portion of the database is small and its methodology actually overstates the cost for some product categories. In addition, NKK argues that there were certain product groups which were only produced at Fukuyama and that the methodology NKK used actually overstates cost for these product groups. Thus, NKK states that using the overall aggregate weighting methodology mentioned in the Department's *Cost Verification Report* would result in an even greater distortion of costs.

NKK argues that, if the Department rejects NKK's methodology, the Department should adjust the weighting factors of the four key product groups. Using information on the record to allocate the production of these groups, NKK argues, the Department should increase the cost for two of the product groups and reduce the cost for the other two product groups. According to NKK, a single adjustment is too crude and adjustments for all product groups would be unduly burdensome and impractical.

NKK argues that petitioners mischaracterize the Department's decision in *Carbon Steel Flat Products from Korea.* NKK points out that the Department in fact rejected petitioners' call for total adverse facts available in that case and simply adjusted the reported costs with respect to the methodological issue as to weighting. NKK contends that the situation in this case is identical. In this case, NKK argues, the Department can accept its approach as reasonable, adjust the costs for product groups other than the selected product group on a product by product basis, or adjust the reported costs for the overall relative weighting.

Department's Position: While we agree with petitioners that NKK's submission methodology inappropriately weighted production at each of its two facilities, by using a single product group's production mix to weight all product groups, we disagree that the entire response should be rejected. While we do not have on the record CONNUM-specific production quantities for each facility, we do have information to allow the Department to re-weight NKK's production costs on a product-group specific basis to more properly reflect the actual production quantities at the facilities. A product group weighted average, between the two plants, is a reasonable approximation of our preferred method, as opposed to using a mix for a single product group for all subject merchandise.

NKK's reporting methodology first computed an average base cost for what it identified as a representative product for use as the starting point for the reported costs. The average base cost was computed using its budgeted cost system which is maintained in the normal course of business. NKK increased or decreased the average base cost depending on the relationship of each specific product to the base product using its standard management costing system. The selected product groups budgeted costs for the three periods covering the POI for each plant (six in total) were used to compute the POI weighted average cost of manufacturing for the base product. The six different budgeted costs were weight averaged based on actual production quantities of the selected product group at each plant during each budgeted cost calculation period during the POI. As a result, all CONNUMs for submission purposes reflect the production mix between the two plants for this selected product rather than the production mix of each of the subject merchandise product groups. We disagree with NKK that this methodology is the most reasonable given the information on the record because we found significant

differences in the product mix between the plants.

We disagree with petitioners that NKK's proposed adjustment applies a corrected production mix to the wrong cost. The weighting issue between the two plants does not impair the base cost plus extra methodology used to report product-specific costs. The relative cost differences between the pinpoint product and each of the other products NKK reported are not impacted by this issue.

Also, the *Carbon Steel Flat Products from Korea* case cited by petitioners does not support the use of adverse facts available in this case. In that case, the Department found that the respondent did not act to the best of its ability because the respondent repeatedly did not supply the requested information and during verification we found that the information existed.

Comment 23: NKK's Reported Cost Variances.

Petitioners contend that NKK's use of a single variance for all product groups is distortive and must be rejected. Petitioners assert that consistent with the Department's long standing practice of requiring variances at the most specific level, the Department directed NKK to report variances for each product group. Petitioners argue that the overall steel division variance is not a reliable substitute for the product group-specific variances requested by the Department, noting the difference in variances for each of the manufacturing facilities. Petitioners estimated the variances for a product group other than the NKK-selected product group and assert that neither the overall steel division variance nor the selected product group variance can substitute for the individual product group variances.

Petitioners argue that in *Antifriction Bearing (Other than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews,* (''*Antifriction Bearings*'') 60 FR 10900, 10928 (1995), the Department rejected respondent's use of plant-wide variances instead of more specific variances because it resulted in unreasonable cost shifting between products. Petitioners contend that, in this case, NKK's proposal to use the variance for the entire steel division, which incorporates more than one plant, is distortive. Petitioners contend that NKK's use of either the selected product group or the steel division variance leads to unreasonable cost shifting. Petitioners allege that NKK had the ability to report product group-specific variances but refused to do so.

NKK argues that the Department reviewed the variance calculation in detail at verification and noted no particular problems in the cost verification report with respect to the variance calculation or methodology. NKK contends that the Department reconciled the reported costs to the overall cost in the accounting records and that if there were any serious distortions one would have expected to find discrepancies in the reconciliation exercise.

NKK asserts that it could not have reported product-group-specific variances as petitioners contend. NKK claims that the variances it tracks in the ordinary course of business have no detail that would allow it to calculate separate variances, for example, for high carbon hot-rolled steel and for regular carbon hot-rolled steel. NKK contends that there is no need to do so and that it does not do so in the ordinary course of trade.

NKK asserts that it developed the most specific variance that it could for the hot rolled steel operations. NKK contends that it extracted those variances associated with the production stages leading up to finished hot-rolled steel. NKK claims that its comparison of this variance to the overall steel division variance simply shows that the disparity in variances among different steel products is relatively small and that this should be no surprise since the largest portion of the variance for both hot-rolled and downstream products usually occurs at the upstream production stages. NKK asserts that petitioners' argument about variances for different subject product groups ignores the facts on the record. NKK notes that petitioners' argument concludes that there are substantial differences between NKK's selected product group and the petitioners' example product group, when in fact the only difference is pickling. NKK claims that it is not plausible that the variances at the pickling stage alone could double the size of the overall variance.

Department's Position: We disagree with petitioners that NKK's application of variances is distortive and have continued to rely on NKK's submitted variances for the final determination. The Department's practice calls for respondents to report the most specific level of variances kept in their normal books and records. NKK, however, does not normally accumulate and allocate variances at the product group level. For the response, NKK determined variances by cost center for the production stages (*e.g.,* hot strip mill) at each of the manufacturing facilities through which the vast majority of the subject merchandise passes. NKK allocated the other variances it normally records across all products. In this case, NKK's variance methodology appears to reasonably reflect the variances applicable to the subject merchandise. Unlike the variances in *Antifriction Bearings,* NKK's reported variances are on a more specific level than the division-wide basis questioned in *Antifriction Bearings.* In addition, in *Antifriction Bearings,* the Department noted that the company did in fact maintain variances at a more detailed level than division-wide. Accordingly, we do not consider it appropriate to adjust NKK's reported variance amounts.

Comment 24: NKK's Reported Cost Extras.

Petitioners argue that NKK's use of Fukuyama's cost extras to develop the reported costs was not reasonable because they do not represent costs at the other facility.

NKK argues that it developed the most reasonable product specific costs that it could and had no choice but to work with information in its normal accounting system and those materials which it has in the ordinary course of business. NKK contends that the Department spent a great deal of time at the verification exploring the cost extras and testing the reasonableness of the only cost extras that NKK has in the ordinary course of business.

For a full discussion of this issue see the Department's April 28, 1999 Memorandum to Neal Halper, Acting Director, Office of Accounting, *Cost of production (''COP'') and constructed value (''CV'') Calculation Memorandum for Final Determination,* (''Final NKK Cost Calculation Memorandum'').

Department's Position: We agree with NKK that the use of Fukuyama cost extras by NKK is appropriate. NKK used the information it kept in the ordinary course of business to calculate product specific costs required by the Department. We did not request that NKK provide cost extras for the second facility, nor did we determine that the presence of such data would have significantly altered the results, since the first facility's cost extras accounted for the relative difference in costs due to technical specification differences between the pinpoint product and all other products. This relative difference was applied to a base cost that already incorporated cost differences between the two facilities. We also note that the cost extras were adjusted to reflect the costs at both facilities. For a full

discussion of this issue, see the Department's April 28, 1999 *Final NKK Cost Calculation Memorandum*. We have not made any adjustments to NKK's cost extras.

Comment 25: NKK's G&A Expenses.

NKK argues that the Department should not calculate G&A expenses on a company-wide basis, but should use NKK's steel division G&A. NKK argues that the Department's questionnaire does not require a company-wide G&A rate. NKK asserts that it normally assigns G&A expense to the relevant division that incurred the expense. NKK contends that expenses incurred in other divisions, which have nothing to do with the steel production, should not be attributed to the steel division and that head office expenses which relate to the overall operations are normally allocated to each division. NKK argues that the questionnaire allows for some flexibility in responses, depending on how a company incurs and records G&A expenses, and does not mandate a fixed approach to G&A expense reporting.

NKK contends that using its division-specific G&A expense kept in the normal course of business is consistent with the Department's prior practice. Citing the *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From South Africa* (''*Furfuryl Alcohol From South Africa*''), 60 FR 22550, 22556 (May 8, 1995), NKK alleges that the Department focused on respondent's approach in the normal course of business. In that case, NKK asserts, the Department noted that the respondent was able to demonstrate that some G&A expenses were directly related to non-subject merchandise and that the Department excluded these unrelated G&A expenses from the G&A ratio. NKK contends that its G&A methodology is based on the same premise that only relevant expenses should be included in the G&A.

NKK also cites the *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile*, 63 FR 31411, 31433 (June 9, 1998) (''*Fresh Atlantic Salmon from Chile*''), to support the argument that the Department followed the respondent's normal business practices. In that case, the respondent argued that the Department should use the reported G&A expense, which included expenses associated with an affiliated company. NKK notes that the Department rejected this approach and used only those expenses related to the responding salmon company, as recorded in the respondent's normal books and records. NKK argues that its approach is consistent with this decision, and states that the fact that business units are organized as divisions rather than ''legally separate'' affiliated companies should not matter. NKK contends that it makes no sense to ignore existing distinctions in G&A expenses between steel production and other business activities and that the narrowest category recorded in the respondent's accounting records should be used.

Petitioners argue that it is the Department's long-standing practice to calculate G&A expenses using a company's audited, unconsolidated financial statements. As support for their position, petitioners cited the *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada* (''*Stainless Steel Round Wire from Canada*''), 64 FR 17324, 17333 (April 9, 1999) and several other cases in which the Department followed this long-standing practice.

Petitioners contend that the *Fresh Atlantic Salmon from Chile* case cited by NKK is not consistent with NKK's argument that G&A expenses of other divisions should be excluded from respondents' G&A. Petitioners argue that the Department's determination in that case was to exclude expenses incurred by an affiliate and use the respondent's audited, unconsolidated financial statements.

Department's Position: We disagree with NKK that G&A expenses should be based on NKK's Steel Division G&A rather than on company-wide G&A. G&A expenses by their nature are indirect expenses incurred by the company as a whole. If they directly related to one process or product, they would more appropriately be considered manufacturing costs. NKK provided no specific reasons as to why its normal method of allocation of G&A to different divisions is more reasonable than the Department's normal method. It is the Department's consistent practice to calculate G&A expenses based on the producing company as a whole and not on a divisional or product-specific basis. *See Stainless Steel Round Wire from Canada; Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden*, 63 FR 40449, 40459 (July 29, 1998) and *Fresh Atlantic Salmon from Chile*, 63 FR at 31433. This approach recognizes the general nature of these expenses and the fact that they relate to the company as a whole and is consistent with GAAP treatment of such period costs. The Department's methodology also avoids any distortions that may result if, for business reasons, greater amounts of company-wide general expenses are allocated disproportionally between divisions. We consistently apply this methodology, unless the respondent provides case-specific facts that clearly support a departure from our normal practice of allocating company-wide G&A expenses over company-wide cost of sales. This approach is both reasonable and predictable. To allow a respondent to choose between the Department's normal method and an alternative method simply because one method results in a lower rate, would be a results oriented approach.

The Department's calculation of G&A expenses in the *Furfuryl Alcohol from South Africa* case was specific to the facts of that case. As noted above, we believe that the facts of this case warrant continuing to follow the Department's long-standing practice of calculating G&A expenses on a company-wide basis.

In the *Fresh Atlantic Salmon from Chile* case cited by NKK, we followed our normal practice of calculating the G&A expense rate based on the respondent's unconsolidated operations. The determination in that case was to exclude an affiliated company's G&A not to exclude G&A expenses of a different division as being unrelated to producing the subject merchandise. Moreover, we disagree with NKK's assertion that there is no distinction between a division and a stand alone affiliated company. Divisions may exist in name only or may have some autonomy, but they are controlled by the greater company. Affiliated companies are separate legal entities and as such require complete administration structures. In this case, NKK's divisions are not separate entities but merely separate business units within a single corporation. Thus, we have calculated G&A expenses based on NKK's unconsolidated company-wide G&A for the final determination.

Comment 26: NKK's Blast Furnace Costs.

NKK argues that the Department improperly included the loss from a blast furnace accident in G&A. NKK asserts that, consistent with prior Department practice, the Department should exclude the blast furnace losses as an extraordinary expense. NKK contends that this accident meets the standard for extraordinary treatment affirmed by the Court of International Trade in *Floral Trade Council of Davis, California* v. *United States*, (''*Floral Trade Council*'') 16 CIT 1014, 1016–17 (CIT 1992), because an accident such as this is ''unusual in nature and infrequent in occurrence.''

NKK argues that the blast furnace accident was ''unusual in nature'' because record evidence demonstrates that NKK has never had a blast furnace

accident in its history. NKK claims that, in past cases where the Department has excluded extraordinary expenses from the cost of production, an unforeseen and abnormal event occurred which was beyond management's control. NKK cited the following cases for the Department's practice with regard to the frequency with which the event occurred: *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Taiwan,* 63 FR 40462 (July 29, 1998), *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan,* 61 FR 38139, 38153 (July 23, 1996) and *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuador,* 60 FR 7019, 7038 (February 6, 1995). NKK argues that the blast furnace accident was unforeseen and beyond its control; otherwise it would have performed the necessary repairs to prevent the accident from occurring.

NKK argues that the blast furnace accident was also ''infrequent in occurrence.'' NKK contends that the Court explained in *Floral Trade Council* that ''an event is ''infrequent in occurrence'' if it is not reasonably expected to recur in the foreseeable future.'' NKK asserts that these are the facts in this case because NKK has never before had a blast furnace accident.

NKK also claimed that it properly treated the blast furnace accident as a non-operating expense in its audited financial statements. NKK argues that the Department's standard practice is to use costs as they are reported in the respondent's financial statements. NKK argues that it reported the losses resulting from the blast furnace accident as non-operating expenses in the financial statements that were completed and audited before the initiation of this antidumping investigation. NKK contends that its treatment of the blast furnace accident as a non-operating expense was in accordance with standard Japanese GAAP.

Petitioners argue that the Department correctly included certain losses related to the blast furnace accident in NKK's G&A. Petitioners assert that these losses do not qualify as extraordinary expenses. Petitioners contend that a breakdown in the blast furnace is not unusual in nature because it is not highly abnormal, unrelated nor incidentally related, to the manufacture of steel. Petitioners argue that only in rare situations will an event occur that meets both the ''infrequent in occurrence'' and ''unusual in nature'' criteria. Petitioners cited *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India,* 63 FR 72246 (December 31, 1998) and *Notice of Final Determination of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan,* (''*SRAMS from Taiwan*''), 63 FR 8909 (February 23, 1998) to demonstrate the type of events the Department determined were not unusual in nature. Petitioners contend that while blast furnace accidents may be infrequent, they are by no means ''unusual'' in occurrences in the steel industry. Therefore, petitioners argue that the Department should include the losses related to the blast furnace accident in NKK's G&A expenses.

Department's Position: We disagree with NKK that the loss from the blast furnace accident should be treated as an extraordinary expense. As noted in Floral Trade Council, an extraordinary event is both ''unusual in nature and infrequent in occurrence.'' NKK argues that the blast furnace accident was unusual in nature and infrequent in occurrence because this was the first blast furnace accident in NKK history. We disagree with NKK's assertion that this accident is unusual in nature. Like other steel producers, NKK performs regular maintenance and repairs of its blast furnaces in hopes of preventing accidents and loss of operation. While NKK may not have experienced a blast furnace accident in the past, industrial accidents are neither unusual nor unforeseen for steel producers. Furthermore, as NKK itself notes, it classified the loss due to the blast furnace accident in its audited financial statements as a non-operating expense and not an extraordinary loss. As in the Department's determination in the *SRAMS from Taiwan,* we have included the loss incurred as a result of the blast furnace accident in the G&A expenses for the final determination.

KSC

Comment 27: KSC's Affiliated Input Costs.

Petitioners argue that the Department should adjust KSC's reported materials costs for iron ore and coal purchased from affiliated parties at below-market prices. Petitioners note that KSC purchased iron ore and coal from affiliated and non-affiliated parties during the period of investigation (''POI'') and that, on average, the price paid to affiliated parties for these inputs was lower than the price paid to non-affiliated parties. Petitioners argue that section 773(f) (2) and (3) of the Act require such purchases to be valued at the higher of market prices, transfer price or the affiliated supplier's cost of production. Petitioners note that documentation provided by KSC demonstrates that its affiliated supplier's transfer price was lower than the market price paid to unaffiliated trading companies for the same materials. Petitioners also note that none of the schedules submitted by KSC makes references to any price differentiation by grade or time of purchase. Petitioners assert that it is the respondent's burden to show whether any adjustments to the transfer price or market price are necessary before a comparison may be made and cites to Department precedent in *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part,* 64 FR 2173, 2181–82 (January 13, 1999) (''*Steel from Canada*''). Since KSC has failed to meet this burden, petitioners argue, the Department must increase the affiliated supplier's transfer price to reflect the market value of iron ore and coal.

KSC argues that the Department should reject petitioners' request to adjust KSC's purchase price of iron ore and coal inputs through an affiliated party. KSC claims that the Department's verification report and the petitioners' analysis do not reflect the fact that there are price differences between various grades and types of iron ore and coal, and that its purchases were made at different times over the course of the POI. If these grade and timing differences are considered, KSC argues, then the price paid to the affiliated suppliers is virtually the same as that paid to the non-affiliated suppliers. KSC claims that since it does not purchase all types of iron ore and coal in consistent proportions from both affiliated and non-affiliated parties, the overall POI-average price does not provide for a valid comparison. KSC asserts that a cost verification exhibit offers a breakdown of input prices by commodity code, which demonstrates that prices paid to affiliated suppliers and unaffiliated suppliers are virtually the same when compared by grade. KSC notes that in many instances the price charged by the affiliated supplier is higher than the price charged by an unaffiliated supplier, while in other cases it is lower. KSC also claims that the Department's sample comparisons of identical grades on nearly the same date show nearly identical prices being

charged by affiliated and unaffiliated suppliers. KSC argues that this comparison confirms that the overall average prices of all grades over the entire year was not a valid indicator of arm's length pricing between KSC and its affiliated supplier.

Department Position: We agree with petitioners. KSC submitted a schedule which demonstrates that, on average, its POI purchases of iron ore and coal from affiliated parties were made at lower prices than its purchases from non-affiliated parties. KSC did not submit sufficient information to support its contention that timing differences and grade differences have an impact on the comparison of iron ore and coal prices and, therefore, we were not able to perform a more detailed analysis. At verification we reviewed a list of iron ore and coal prices by commodity code and noted, as KSC acknowledges, that the prices from affiliated suppliers were often lower than prices charged by unaffiliated suppliers. Since there is sufficient evidence on the record that purchases from affiliated parties were made at below-market prices, we believe that a comparison of the POI average prices is appropriate and does not distort our analysis. Therefore, in accordance with section 773(f)(2) of the Act, we have adjusted the cost of materials to reflect the market values of iron ore and coal, based on the prices charged by unaffiliated suppliers.

Comment 28: KSC's G&A Expenses.

In reporting G&A expenses, KSC argues that it properly excluded its expenses for special retirement expenses and losses on the sale of fixed assets used for production of non-subject merchandise. KSC notes that the special retirement expenses are one-time severance payments to transferred employees. KSC states that these expenses are incurred in more than one year to the extent that downsizing of operations is not completed in a single year, but the expense is a one-time event for the particular employees transferred during a particular year. KSC claims that since these expenses are not related to the current production of the company and are considered an extraordinary expense under Japanese GAAP, they should be excluded from G&A expenses. With regard to the losses on sale of fixed assets, KSC cites to *Fresh Atlantic Salmon From Chile,* 63 FR at 31436, in which the Department noted that losses on the sale of fixed assets are not included in G&A expenses when the assets in question are tied to the production of non-subject merchandise. KSC also cites the following cases as examples of Department practice on this issue: *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review,* 61 FR 46618, 46619–20 (September 4, 1996); *Certain Hot-Rolled Lead and Bismuth Carbon Steel Flat Products From the United Kingdom; Final Results of Antidumping Duty Administrative Review,* 60 FR 44009, 44012 (August 24, 1995) (''Lead and Bismuth''), *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From South Africa,* 60 FR 22550, 22556 (1995) (''Furfuryl Alcohol''), *Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada,* 59 FR 18791, 18795 (April 20, 1994) (''Steel Wire Rod''). KSC asserts that these cases provide examples of instances where the Department has recognized that expenses relating exclusively to the production of non-subject merchandise should not be included in the G&A expenses of subject merchandise. In the instant case, KSC claims that the Department should exclude the losses referred to above because they relate to assets which were used solely for the production of non-subject merchandise.

Petitioners argue that the Department normally calculates G&A expenses based on the respondent's unconsolidated operations, which include the operations of each of the respondent's divisions. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value—Stainless Steel Round Wire from Canada,* 64 FR 17324, 17333 (April 9, 1999). Petitioners also assert that KSC has not established on the record that the losses on the sale of fixed assets relate solely or exclusively to the production of non-subject merchandise. With regard to the expenses on special retirement payments, petitioners argue that expenses relating to the termination, transfer or early retirement of employees in a downsizing event are neither unusual nor infrequent for the steel industry, and therefore cannot be classified as extraordinary expenses. Petitioners add that the fact that KSC incurred special retirement expenses in 1996, 1997 and 1998 is further evidence that these expenses are not extraordinary under U.S. GAAP, and therefore should be included in the calculation of KSC's G&A expense rate.

Department's Position: We agree with petitioners and, as in the preliminary determination, we have included the special retirement and losses on sales of fixed assets in our calculation of KSC's G&A expense rate. The expenses for special retirement are severance costs that are recorded as part of KSC's ongoing downsizing operations. The Department's normal practice is to include severance costs in a company's G&A expenses. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil,* 64 FR 8299, 8305–8306 (February 19, 1999) and *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey,* 63 FR 68429, 68434 (December 11, 1998). We noted at verification that these downsizing activities have resulted in recurring expenses for KSC. The fact that the process may extend over multiple years does not preclude the use of current period expenses. KSC has recognized in its audited financial statements the expense related to the current fiscal year, and it is this period cost which we have included in KSC's G&A expenses. Also, even though the classification of these amounts as extraordinary expenses under Japanese GAAP. The Department does allow for the exclusion of extraordinary expenses under certain circumstances, but these severance amounts do not fall into this category. The Department normally will exclude costs considered extraordinary, provided that they are both unusual in nature and infrequent in occurrence. These expenses for special retirement cannot be considered infrequent in occurrence since they have been a recurring cost for KSC and, therefore, should be included in G&A expenses along with other period costs. *See Silicomanganese From Brazil: Preliminary Results of Antidumping Administrative Review,* 62 FR 1320, 1322 (January 9, 1997).

With regard to the losses on sale of fixed assets, we verified that the assets in question relate to the production of non-subject merchandise. However, it is our practice to calculate G&A expenses using the operations of the company as a whole. *See, e.g., Brass Sheet and Strip* at 46619, *Circular Welded Non-Alloy Steel Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review,* 63 FR 33041, 33050 (June 17, 1998). As we stated in the original questionnaire issued to KSC, ''G&A expenses are those period expenses which relate indirectly to the general production operations of the company rather than directly to the production process for the subject merchandise* * *'' Therefore, any income or expense incurred through KSC's disposition of fixed assets should be included in the G&A expense rate, regardless of whether they are used purely for the production of subject merchandise or non-subject

merchandise. This policy was established in *Final Determination of Sales at Less Than Fair Value: New Minivans from Japan,* 57 FR 21937, 21943 (May 26, 1992) (''Minivans''). In that case, the Department stated, ''we generally consider disposal of fixed assets to be a normal part of a company's operations and have included, therefore, any gains or losses generated by these transactions in the cost of production calculation.'' (emphasis added) This is consistent with our treatment of miscellaneous expenses in *U.S. Steel Group et al* v. *United States,* 998 F. Supp. 1151, 1153–54 (CIT 1998). We note also that KSC incurred losses on sale of fixed assets related to the production of subject merchandise and these losses were included in G&A expenses and allocated over the cost of all products that KSC produced.

In the *Fresh Atlantic Salmon from Chile* case cited by KSC, the issue was whether or not to treat temporary shutdown costs as period costs, or G&A expenses, that would normally be allocated over the cost of all products. The Department determined that the facilities in question were only idle for a brief period of time and therefore the costs associated with the temporary shutdown should not be treated as G&A expenses. Rather, the costs of operating the facility were charged directly to the cost of manufacturing for the non-subject products produced in the facility. The Department did not, as KSC implies, specifically exclude the shutdown costs from the G&A expense calculation because the facility did not produce subject merchandise. KSC's reliance on to *Brass Sheet and Strip* and *Steel Wire Rod* is similarly misplaced. The issue in these cases was whether to include in a respondent's G&A expenses certain costs that were incurred by a parent company or a subsidiary. The cites are not on point since the instant case involves equipment that was owned by KSC itself and, as noted above, the Department calculates G&A expenses based on the operations of the respondent, as a whole. Expense incurred by a parent company, or any other affiliated company, are only included in the G&A expense calculation to the extent of the support provided by the parent or affiliated company. KSC's reliance to *Lead and Bismuth* is also misplaced, since the respondent in that case closed an entire facility that only produced non-subject merchandise and then excluded these closure costs from the G&A expense rate calculation. In the instant case, KSC simply disposed of assets and, as noted above in *Minivans,* the Department's policy is to include in G&A all gains or losses generated by such disposals. The respondent in *Furfuryl Alcohol* calculated separate G&A expense rates by division and a company-wide G&A expense rate for G&A expenses that related to the operations of the company as a whole. Here, KSC submitted a single G&A expense rate for the entire company and only included its losses on sale of fixed assets related to subject merchandise. It would not be appropriate or reasonable to allocate these losses over the cost of producing all products, while specifically excluding losses on sale of fixed assets used for non-subject production. Since the sale of fixed assets is a general activity of the company, and not specifically related to production, we have allocated all losses on the sale of fixed assets over the cost of producing all products.

Facts Available

Comment 29: Use of Facts Available for NSC's Theoretical Weight U.S. Sales.

NSC characterizes as an inadvertent mistake the fact that, in its response to the initial questionnaire, NSC stated that a theoretical weight to actual weight conversion factor could not be supplied because coils sold on a theoretical basis are never weighed. Respondent states that it believed this statement to be true at the time of filing. NSC argues that it corrected this error within the Department's time limits for submitting new information. In the alternative, NSC argues that the conversion data it presented constitutes a minor correction. Thus, the Department should have accepted the information under the minor corrections rule. NSC states that the Department never rejected the filings containing the corrections as untimely, and therefore abused its discretion by refusing to verify this information and by applying adverse facts available to the affected sales. NSC also argues that to reject the information now would severely prejudice NSC's rights, that this information meets the criteria set forth in section 782(e) of the Tariff Act and, thus, that the Department must consider this information in calculating a margin for NSC. Finally, NSC argues that the Department incorrectly applied an adverse inference in the preliminary determination regarding the theoretical-actual conversion factor, because it did not first find that NSC had not acted to the best of its ability to provide this information to the Department. To the contrary, NSC argues its responses to the Department's requests for information establish a pattern of cooperation and accuracy.

NSC further states that it was placed under extreme time pressures in attempting to comply with the Department's accelerated schedule in this investigation, and that this contributed to NSC's failure to identify the mistake regarding the weight conversion factor.

NSC states that it realized in preparing for verification that all hot-rolled coils are weighed during the production process, and that these actual weight data are recorded at the production facilities. NSC adds that the production databases do not overlap with the sales databases at NSC's headquarters. NSC stated it obtained the actual weight information, calculated a conversion factor and submitted this information to the Department on February 22, 1999, prior to both the cost and sales verifications. NSC also states that it filed additional information on this subject on March 1, 1999.

NSC disagrees with the Department's statement in the *Preliminary Determination* (February 19, 1999) that NSC had ''refused'' to provide a conversion factor. NSC argues that this statement baselessly implies that NSC intentionally withheld information, whereas, it claims, the record shows that NSC cooperated fully but committed an inadvertent error in its initial questionnaire response.

NSC states that the Department took no action to remove the conversion factor from the record, and included in the verification agenda an instruction that NSC explain how its production and sales systems capture actual weight. NSC alleges that at verification, ''Department representatives repeatedly assured NSC that the theoretical weight conversion factor would be verified. Those assurances notwithstanding, NSC claims, the Department abruptly informed it approximately two hours before the end of verification that ''Washington'' had directed that the conversion factor not be verified. The Department also refused to allow NSC's representatives to even explain the background of its initial mistake. The reasons for those decisions have never been disclosed on the record and the verification report was silent on theoretical weight.'' *NSC Brief* at 16. NSC concludes that the Department's failure to verify this issue was unwarranted and unexplained.

NSC further argues that (1) its correction was submitted more than seven days prior to verification, (2) the conversion factor is not a substantial revision to NSC's response, but is similar to the type of corrections

allowed by the Department on the first day of or during verification and (3) the Department had adequate time to analyze the conversion factor prior to verification.

NSC cites § 351.301(b)(1) of the Department's regulations, which states that in an investigation, the time limit for submitting factual information is no later than seven days before the commencement of verification. NSC argues that it is the Department's practice to allow respondents to amend questionnaire responses to correct limited errors within this period, and to verify the accuracy of this information at verification, and use the corrected data. *See, e.g., Porcelain-on-Steel Cooking Ware from the People's Republic of China; Final Results of Administrative Review,* 62 FR 32757, 32,759 (June 17, 1997); *Notice of Final Determination of Sales at Less than Fair Value: Certain Partial-Extension Steel Drawer Slides from the People's Republic of China,* 60 FR 54472 (October 24, 1995); *Notice of Determination of Sales at Not Less than Fair Value: Stainless Steel Bar from Italy,* 59 FR 66921, 66926 (December 28, 1994). *See also Final Determination of Sales at less than Fair Value: Certain Corrosion-Resistant Carbon Steel Flat Products from Australia,* 58 FR 37079, 37081 (July 9, 1993). NSC acknowledges that the Department has rejected timely submissions which are substantial revisions of previously submitted data or attempts to respond to a questionnaire for the first time. *See, e.g., Koenig & Bauer-Albert AG* v. *United States,* 15 F. Supp. 2d 834, 847 n.6 (CIT 1998); *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Steel From the People's Republic of China,* 62 FR 61964, 61987 (November 20, 1997). NSC argues, however, that because submitting its conversion factor is not comparable to submitting a substantial quantity of new information, and because it answered the questionnaire (albeit incorrectly as to this point) within the questionnaire deadline, it properly corrected its response by submitting the correction within the terms of the seven-day rule.

NSC argues that the Department accepts minor corrections even when the correcting submissions are untimely filed. *See Bowe-Passat* v. *United States,* 17 CIT 335, 337–8 (1993). NSC asserts that it is the Department's practice to allow respondents to make minor revisions to or to supplement questionnaire responses after the preliminary determination, both prior to and during verification. *See, e.g., Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany,* 54 FR 18992, 19034 (May 3, 1989); *Notice of Final Determination of Sales at Less than Fair Value: Certain Pasta from Italy,* 61 FR 30326, 30352 (June 15, 1996); *Notice of Final Determination of Sales at Less than Fair Value: Certain Cut-to Length Carbon Steel Plate from the Russian Federation,* 62 FR 61787, 61789 (November 19, 1997); *Notice of Final Determination of Sales at Less than Fair Value: Certain Freshwater Crawfish Tail Meat from The People's Republic of China,* 62 FR 41347, 41356 (August 1, 1997); *Usinor Sacilor* v. *United States,* 872 F. Supp. 1000, 1008 (CIT 1994). NSC argues that the Department has allowed this type of revision where the correction is limited and the corrected information is submitted early enough to allow adequate time for the Department to analyze the revision. NSC argues that its correction, which affects only a limited number of its U.S. sales, qualifies as a minor correction.

NSC states that the timing of its correcting submissions allowed the Department and petitioner adequate time to review its changes. *See Brother Indus. Ltd.* v. *United States,* 771 F. Supp. 374, 383–84 (CIT 1991); *Final Determination of Sales at Less than Fair Value; Steel Wire Rope from Korea,* 58 FR 11029, 11031 (February 23, 1993); *Antidumping: Circular Welded Carbon Steel Pipes and Tubes from Thailand; Final Determination of Sales at Less than Fair Value,* 51 FR 3384, 3386 (January 27, 1986).

NSC states, furthermore, that its conversion factor is so simple that there was no analysis that the Department or petitioners could have performed on it, and therefore the petitioner suffered no disadvantage or prejudice from NSC's submission of the conversion factor prior to verification. NSC adds that it would not have been difficult for the Department to incorporate the factor into the margin calculation. NSC also argues that use of its conversion factor, rather than use of facts available, contributes to the accuracy of the record on which the margin is calculated—a goal of the antidumping statute. *See Rhone-Poulenc, Inc.* v. *United States,* 899 F.2d 1185, 1191 (Fed. Cir. 1990).

NSC argues that, if the Department believed that the submissions containing its conversion factor were untimely, the Department was required under § 351.301(c) and 351.302.(d) of its regulations to reject and return the submissions to NSC with written notice stating the reason for the return. *See Koenig & Bauer-Albert AG* v. *United States,* 15 F. Supp. 2d at 847 n.6 (CIT 1998); *Kerr-McGee Chem. Corp.* v. *United States,* 955 F. Supp. 1466, 1469–70 (CIT 1997); *Usinor Sacilor* v. *United States,* 872 F. Supp. 1000, 1007 (CIT 1994); *Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review,* 64 FR 13148, 13153 (March 17, 1999); *Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Steel Plate from the People's Republic of China,* 62 FR 61964, 61985 (November 20, 1997). Because these submissions were on the record at the time of verification, NSC states that the Department could not refuse to verify the conversion factor. NSC also states that the Department would prejudice the rights of parties by removing information from the record without following the procedures established in the regulations, since the record serves as the basis for the parties' arguments before the Department or in a subsequent appeal. *See Kerr-McGee Chem. Corp.* v. *United States,* 955 F. Supp. 1466, 1472 (CIT 1997).

NSC also notes that the Department has broad discretion in choosing to accept untimely filed information onto the record, and thus the parties must rely on the Department's notice of rejection to determine the status of each submission. *See Bowe-Passat* v. *United States,* 17 CIT at 338 (1993). Thus, NSC argues that to reject the information now would deprive it of the opportunity to respond to the Department's rationale for rejecting the submission, and to demonstrate that the conversion factor could have been easily derived, which will prejudice NSC by leading to the continued use of facts available.

NSC argues that if, notwithstanding the above arguments, the Department wishes to resort to use of the facts available as to this issue, pursuant to section 776(a)(2)(B) of the Act (19 U.S.C. § 1677e(a)(2)(B)), because NSC did not submit its conversion factor within the questionnaire deadlines, the Department must also consider the provisions of 782(e) of the Tariff Act (19 U.S.C. § 1677m(e)). *See* 19 U.S.C. § 1677(e)(a)(2)(B); *Borden, Inc.* v. *United States* (''*Borden*''), 4 F. Supp. 2d 1221, 1244–45 (CIT 1998). NSC argues that the conversion factor submission meets the criteria set forth in § 1677m(e) (*i.e.,* it is complete, capable of being verified, capable of being used without undue difficulty, provided by NSC acting to the best of its ability, and submitted within the deadline established for its submission) and thus is appropriate for use in the final determination.

NSC argues that its submission was timely because ''in the context of § 1677m(e)(1), the 'deadline' cannot be

interpreted as the due date for the initial or supplemental questionnaires because such an interpretation would nullify the express reference to § 1677m(e) in § 1677e(a)(2)(B).'' *NSC Brief* at 31. NSC argues that untimely information can still be considered for a final determination, provided that it meets the requirements set out in § 1677m(e). NSC states that the reference to a ''deadline'' in § 1677m(e) should be interpreted as compliance with the seven-day rule or the minor error rule, and thus NSC's conversion factor should be used in the final determination.

The Department, according to NSC, may rely on information it does not examine at verification. *See Floral Trade Council* v. *United States,* 822 F. Supp. 766, 722 (CIT 1993); *Micron Tech., Inc.* v. *United States,* 117 F.3d 1386, 1396 (Fed. Cir. 1997); *Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Duty Administrative Review,* 61 FR 13834, 13840 (1996). Moreover, NSC argues, there is no reason to doubt the accuracy of its conversion factors given the accuracy of other NSC information demonstrated at verification.

NSC argues that, in the *Preliminary Determination,* the Department did not make the requisite finding under section 776(b) of the Tariff Act (19 U.S.C. § 1677e(b)) and 19 C.F.R. § 351.308.(a) that NSC had failed to cooperate to the best of its ability; instead, it found only that NSC had not provided the conversion factor requested. Therefore, NSC argues, the Department was not justified in using an adverse inference in selecting facts available to apply to the affected sales. *See Ferro Union, Inc.* v. *United States,* Ct. No. 97–11–01973, Slip Op. 99–27, 1999 CIT LEXIS 24, at *54 (March 23, 1999); *D&L Supply Co.* v. *United States,* Ct. No. 92–06–00424, Slip Op. 98–81, 1998 CIT LEXIS 79, at *4 (June 22, 1998). *See also Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews,* 64 FR 12927, 12947 (Mar. 16, 1999). NSC states that this two-part process the Department must undertake before using an adverse inference differs from the Department's former BIA standard under prior law. *See Antidumping Duties; Countervailing Duties: Proposed Rule,* 61 FR 7308, 7327 (1996).

NSC argues that the Department may only apply an adverse inference if the Department determines that a party's failure to provide information is ''deliberate.'' *See Preamble to Proposed Rule,* 61 FR at 7328; *Borden Inc.* v. *United States,* 4 F. Supp. 2d at 25 (CIT 1998); *Ferro Union Inc.* v. *United States,* 1999 CIT LEXIS 24, at *7. NSC states that the Department refused to verify the circumstances surrounding NSC's failure to provide the actual weight data, although NSC sought to have it do so. NSC contends that the Department cannot prevent inclusion on the record of information relating to whether its initial failure to provide these data was deliberate, and then conclude that it was unwilling to provide the data. *See Usinor Sacilor* v. *United States,* 872 F. Supp. 1000, 1007 (CIT 1994).

NSC also states that the record as a whole evidences its extraordinary level of cooperation. NSC states that the Department cannot hold NSC to the ''standard of perfection'' that it appears to have applied in the preliminary determination (*see NTN Bearings Corp.* v. *United States,* 74 F.3d 1204, 1208 (Fed. Cir. 1995)), and that the selection of adverse facts available was improper given the minor adjustment in data involved (see Usinor Sacilor v. *United States,* 872 F. Supp. 1000,1007 (CIT 1994)). NSC argues that the Department should not treat a respondent that simply errs the same way it treats a respondent that refuses to reply to part or all of a questionnaire.

NSC argues that the rate assigned to it in the *Preliminary Determination* was punitive, and that antidumping law prohibits imposing punitive duties, calling instead for remedial measures. *See NTN Bearings Corp.* v. *United States,* 74 F.3d 1204, 1208 (Fed. Cir. 1995). For this reason, NSC contends, in choosing the ''facts available,'' the Department must, at a minimum, select margins that are ''nonaberrant,'' and not abnormal. *See National Steel Corp.* v. *United States* (''*National Steel I*''), 870 F. Supp. 1130, 1134–37 (CIT 1994). NSC argues that it is a Department policy upheld by the court that a margin used as facts available must correspond to a substantial commercial quantity of a respondent's sales that fall within the mainstream of that respondent's sales. *See National Steel Corp* v. *United States* (''National Steel III''), 929 F. Supp. 1577, 1579–80 (CIT 1996). NSC argues that the margin the Department used in the *Preliminary Determination* for the sales affected by this issue was the highest possible, and that therefore it is ''aberrant.'' Finally, NSC argues that the extent of increase in the total margin as a result of this issue constitutes an impermissible penalty.

Petitioners argue that NSC's case brief and letters submitted after the *Preliminary Determination* regarding the theoretical-actual weight conversion factor amount to admissions that NSC did not act to the best of its ability in responding to the Department's questionnaires and did not provide information in a timely manner. Petitioners point out that NSC stated that in preparing its responses, it failed to check the records at the manufacturing facilities, despite two Department requests for information maintained there. Petitioners argue that NSC's failure to cooperate to the best of its ability warrants using adverse inferences.

Petitioners stated that NSC's arguments that its post-*Preliminary Determination* submissions regarding the conversions factor were timely under the seven-day rule ignore 19 CFR § 351.301(c)(2), which authorizes the Department to set time limits for questionnaire responses, and 19 CFR § 351.302(d), which authorizes the Department to return untimely filed questionnaire responses. Petitioners note that the Department cited § 351.302(d) in its supplemental questionnaire issued on January 4, 1999. Petitioners contend that, under 19 CFR § 351.301(c)(2), the seven-day rule does not apply in these circumstances.

Petitioners state that, because NSC indicated that it would not and could not provide this data, and because the Department did not request it again, the time for submitting new information other than specific corrections had passed. For these reasons, petitioners argue that the Department was authorized to use facts available. *See Cut-to-Length Steel from the People's Republic of China,* 62 FR 61964, 61987 (November 20, 1997) (''*Steel from China*'').

Petitioners state that the cases cited by NSC at pages 17 and 18 of its case brief are off point, because the respondents in those cases sought to correct minor errors prior to verification. Petitioners argue that, in the instant case, NSC is seeking to present new information which contradicts earlier statements that the information did not exist. Petitioners argue that *Steel from China,* also cited in NSC's brief, is on point, in that the Department rejected information a respondent had previously failed to provide in a questionnaire response.

Petitioners also argues that even under the seven-day rule, the conversion submission was untimely filed. Petitioners then argue that NSC's three post-*Preliminary Determination* submissions reveal that NSC did not make a reasonable inquiry to obtain the weight conversion information in response to the Department's questionnaires. For this reason, petitioners argue that NSC's case brief argument regarding the Department's

failure to verify the information it submitted after the preliminary determination is out of place and without merit. Finally, petitioners argue that NSC incorrectly characterized its submission of the conversion information as a minor correction. Petitioners state that NSC's submission attempted to supply new information it had previously characterized as unattainable and nonexistent. This type of information, petitioners argue, is not eligible for untimely admission. Petitioners argue that the Department acted correctly and should continue to use adverse inferences in the final results.

Petitioners argue that all NSC information relating to the weight conversion factor was submitted after the questionnaire deadlines and was therefore untimely filed. Petitioners argue that under section 776(a)(2) of the Tariff Act (19 U.S.C. § 1677e(a)(2)), the Department was justified in rejecting this information and applying facts available. Petitioners add that the statute mandates the use of facts available in these circumstances, and that to refrain from using facts available would run contrary to the intent of the law, which is to encourage compliance with the Department's questionnaires. *See SAA* at 868.

Petitioners also argue that NSC's claim that the Department improperly rejected its weight conversion factor is without merit. Petitioners state that, contrary to NSC's position, the seven-day rule does not apply to the correlation submissions, since it does not serve to extend the established deadlines for responses to the Department's questionnaires. *See* 19 C.F.R. § 351.301(b) and (c). The information NSC attempted to submit, petitioners argue, was the subject of a specific request in a Department questionnaire and was not provided by the deadline set in that questionnaire.

Petitioners also rebut NSC's argument that its weight conversion information was properly submitted as a minor correction. Petitioners state that NSC's submission does not meet the standard for minor corrections established in *Titanium Sponge from the Russian Federation,* 61 FR 58525, 58531 (November 15, 1996). According to petitioners, the information NSC submitted was not a correction to anything, but was instead information supplied for the first time after being repeatedly withheld.

Petitioners state that NSC improperly relied on section 782(e) of the Act (19 U.S.C. § 1677m(e)) (the Department ''shall not decline to consider information that is submitted by an interested party'') because NSC did not submit its weight conversion information within the deadlines established in the Department's questionnaires, and failed to act to the best of its ability to comply with the Department's requirements for supplying this information. *See Borden,* 4 F. Supp. 2d at 1245. Petitioners note that NSC stated in its original questionnaire response that, despite the Department's request, the factor was unnecessary, and stated in its supplemental questionnaire response that it could not calculate a factor, when in fact the required information was within its records. Petitioners also point to NSC's statement that the conversion factor was ''hardly the most pressing issue for NSC's staff'' when preparing its response. *See NSC Brief* at 13. Petitioners conclude that the requirements of section 782(e) are not met because, if NSC had acted to the best of its ability, the information would have been timely filed and NSC would not have presented inaccurate explanations for its failure to provide this information.

Petitioners reject as irrelevant NSC's claims that its weight conversion information should be accepted because its failure to provide the data when they were originally requested was inadvertent. Petitioners state that the statute does not require the Department to determine whether a reporting failure is in good faith, and that the Department cannot excuse inaccurate responses on the grounds of ''honest mistake.'' Petitioners argue that this would undermine the Department's ability to gather information. Petitioners state that the Department's rejection of NSC's responses regarding the conversion factor as untimely was warranted under the statute and the Department's practice.

Petitioners argue that the Department properly applied adverse facts available because NSC failed to provide information under its possession and control to the Department in a timely manner. These circumstances, petitioners contend, show that NSC did not act to the best of its ability in preparing this aspect of its questionnaire response. *See Borden,* 4 F. Supp. 2d at 1246; *Ferro Union* 1999 CIT LEXIS 24, at * 55. Petitioner notes that, contrary to NSC's inference in its case brief, affirmative evidence of bad faith is not required before the Department can make an adverse inference. *See Preamble,* 62 FR at 27340.

Further, petitioners reject NSC's argument that the Department should be precluded from making an adverse inference because much of NSC's other information was timely submitted and verified. Petitioners state that use of partial facts available is appropriate in these circumstances. Petitioners state that NSC has pointed to no justification for its claim that the adverse facts available margin applied to NSC's U.S. theoretical weight sales was aberrant, and that this may constitute the best information available. *See National Steel I,* 870 F. Supp. at 1136; *accord National Steel Corporation* v. *United States* (''*National Steel II*''), 913 F. Supp. at 596–597; *see also Stainless Steel Sheet and Strip in Coils from Mexico,* 64 FR 124, 128 (January 4, 1999). The facts available margin, petitioners claim, was based on NSC mainstream sales made under customary selling practices.

Finally, petitioners state that NSC was incorrect when it argued that its only act of non-cooperation was to make a mistake in its answer. Petitioners argue that NSC repeatedly withheld information within its control, and issued statements as to why this information was not provided which were shown to be untrue.

Department's Position: We agree with petitioners that the Department should continue to apply adverse facts available with respect to NSC's U.S. sales which are based on theoretical weight. Section 776(a)(2) of the Act provides that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, as provided in section 782(i), the Department shall, subject to subsection 782(d), use facts otherwise available in reaching the applicable determination. Section 776(b) of the Act further provides that adverse inferences may be used where an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also, SAA* at 870.

NSC reported most of its U.S. and home market sales on an actual weight basis, with the exception of a small percentage of U.S. and home market sales. The Department requested conversion factors for these transactions in its original and supplemental questionnaires. Section 351.301(b)(1) of the Department's regulations provides generally that, in an investigation, factual information can be submitted up to seven days prior to verification. However, section 351.301(c)(2) states that ''[n]otwithstanding paragraph (b)'',

when requesting information pursuant to a questionnaire, the Department will specify the deadlines by which time the information is to be provided by the parties. Thus, NSC is incorrect in asserting that the requested conversion data is timely because it was submitted within the general deadline in section 351.301(b)(1). Any information submitted after the deadline specified in the questionnaire is untimely, regardless of whether the general deadline in section 351.301(b)(1) has passed.

In the instant case, NSC failed to submit the requested information by December 21, 1998 (the deadline for the original section B and C questionnaire responses), nor did it provide this information by January 25, 1999 (the deadline for submission of information requested in the section B and C supplemental questionnaire). Despite repeated requests for this information, NSC did not provide the requested data until March 1, 1999 (nearly 3 months after the initial questionnaire deadline).

NSC also argues that the conversion data falls within the Department's practice of accepting ''minor corrections'' to questionnaire responses after the response deadline has passed, provided the Department has the information in time to verify it. However, a minor correction is normally a correction to information that was timely submitted. In this case, NSC did not timely submit the conversion data that it subsequently sought to correct. NSC's only response was that the data did not exist. While NSC characterizes that statement as a correctable minor error, we disagree. The evidence indicates that the requested information was routinely maintained by NSC in the normal course of business, but that obtaining it was simply not a priority. Regardless of who specifically knew about this information, the sales department or the production department, the data existed and could have easily been obtained. The fact that NSC was able to provide this information shortly after the preliminary determination also supports the conclusion that it could have done so within the time requested. Moreover, it is impossible for the Department to determine whether NSC's claims of inadvertent error are valid or merely self-serving. Thus, they are insufficient to rebut the evidence establishing that the requested information was readily available.

Furthermore, timely, accurate conversion information is necessary to the margin calculation and can have a significant impact. In recognition of steel industry practices, the Department routinely requests respondents in proceedings involving steel to provide either the actual and theoretical weights of the transactions in both markets, or in the alternative, to provide conversion factors to ensure apples to apples comparisons on the same weight basis. *See Preliminary Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Brazil*, 57 FR 17883, 17884 (April 28, 1992). The need for timely filed, verifiable actual weights or conversion factors is particularly acute with flat rolled steel products in coils, including those at issue. Assuming that the coils meet the specifications of the ordered product, the actual width and the actual thickness of the coils will vary within the allowed tolerances, but the lengths of the coils are not specified in the available sales-related documentation. Therefore, the total actual weight of the coils sold in transactions denominated in theoretical weight can vary by a significant, but unknown amount, as the actual dimensions of the coils cannot be determined. Accordingly, the resulting unit values that would be used in the Department's price-to-price comparisons could also vary by a significant, but unknown amount. The Court of International Trade has addressed the issue, upholding the Department's decision to apply best information available when a theoretical-to-actual conversion factor could not be verified. *See Persico Pizzamiglio, S.A.* v. *United States*, 18 CIT 299, 305 (CIT 1994).

Because NSC's conversion data was untimely and did not constitute a minor correction, the Department informed NSC at verification that it would not accept the theoretical to actual weight conversion factors and returned the data on April 12, 1999. Section 351.302(d) of the Department's regulations provides that the Department will not retain in the record information that is untimely or unsolicited. 19 C.F.R. § 351.302(d)(2). The fact that the Department did not reject this information prior to verification did not prejudice NSC. Many decisions are made between the preliminary and final determinations, including, in some instances, the rejection of submissions. While the Department must explain the basis for those decisions in its final determination, it is under no obligation to do so before then. As evidenced by NSC's case brief and the hearing transcript, the company was well aware of the issue and has had ample opportunity to defend its interests. See also Department's response to Comment 13, ''Ex Parte Communications'', above.

Section 776 of the Act states that, if a party fails to provide information by the established deadline, the Department shall, subject to section 782(d), use the facts otherwise available. See also 19 C.F.R. 351.301(c)(2)(ii) (''failure to submit requested information in the requested manner by the date specified may result in use of facts available under section 776 of the Act and section 351.308.''). Section 782(d) of the Act provides that, subject to 782(e), the Department may disregard a deficient response. NSC argues that the Department should have used the conversion factor data because it meets the criteria of section 782(e), *i.e.*, it is complete, capable of being verified, capable of being used without undue difficulty, provided by NSC acting to the best of its ability, and submitted within the deadline established for its submission. We find this argument unpersuasive. The provision of the statute relied upon by NSC sets forth the circumstances under which the Department will consider information provided by a respondent, even though it may be deficient in some respects. For example, if the freight information in a timely questionnaire response is missing or cannot be used, the Department will not reject the entire response; it will consider the remaining information, provided that it is verified. There is simply no support for NSC's argument that this provision is essentially an exception to rejecting information that is submitted after the established deadline. To the contrary, the first criterion in this provision is that ''the information is submitted by the deadline established for its submission.'' As noted above, NSC's conversion data was not submitted by the deadline established in the questionnaire. Therefore, it does not meet the criteria of section 782(e) and the use of facts available for theoretical weight sales is warranted.

Because NSC failed to timely provide requested information, in accordance with section 776 of the Act, the Department has made its determination with respect to the theoretical weight sales on the basis of the facts available. Further, the Department finds that NSC, by not submitting a theoretical weight conversion factor it could have provided when originally requested until well after the time for response had passed, failed to cooperate by not acting to the best of its ability. NSC's claims that it could provide a conversion factor in March of 1999, but was unable to derive such a factor when the questionnaire responses were due, does not withstand scrutiny. Although NSC argues that it lacked the data necessary to calculate a conversion factor, as required by section

782(c)(1) of the Act, it should have proposed to the Department the sort of conversion factor it ultimately did calculate, explaining why a more accurate one might not be practicable. Instead, NSC merely dismissed the Department's repeated requests. As noted above, the data requested was routinely maintained by NSC in the normal course of business. It was readily available and would not have been burdensome to produce in a timely manner. Moreover, NSC had other information to use in providing a conversion factor. Nevertheless, NSC did not provide the information until well after the established deadline. As noted above, NSC's claims of inadvertent error are insufficient to overcome these basic facts. The fact that NSC ultimately did provide such a factor is proof that it could have done so much earlier. Thus, because NSC failed to timely provide the requested conversion data, it has ''failed to cooperate by not acting to the best of its ability to comply with an information request.'' Therefore, in accordance with section 776(b) of the Act, the Department is authorized, to use an adverse inference in choosing the facts otherwise available.

We have considered, but rejected, the suggestion made by NSC that the Department use a theoretical-to-actual conversion factor from another source as facts available. Because of the potential differences in theoretical-to-actual variances among producers and for different flat rolled products, particularly those sold in coils, we cannot determine that an alternative theoretical-to-actual conversion factor would be appropriate in this situation. Therefore, we have used a facts available margin for these sales.

In selecting a facts available margin, we sought a margin that is sufficiently adverse so as to effectuate the statutory purposes of the adverse facts available rule, which is to induce respondents to provide the Department with complete and accurate information in a timely manner. We also sought a margin that is indicative of NSC's customary selling practices and is rationally related to the transactions to which the adverse facts available are being applied. To that end, we selected margins from individual sales of CONNUMs that involved substantial commercial quantities and fell within the mainstream of NSC's transactions. Thus, as adverse facts available, we have calculated an average of the highest calculated sale-specific margins for each of the CONNUMs involved in the theoretical weight sales; that is, we used margins from sales of the same CONNUMs with actual weight sales for which we had all necessary information to calculate a margin. Finally, we found nothing on the record to indicate that the transactions that we selected were not conducted in a normal manner.

Comment 30: Use of Facts Available for NKK's Theoretical Weight Sales.

NKK argues that the Department should reverse its decision to reject the submitted prices for all of its home market sales sold on a theoretical weight basis and to apply adverse facts available to these sales. NKK claims that (1) its failure to provide conversion factors for these sales prior to the preliminary determination was based on a legitimate misunderstanding of what the Department desired, (2) upon learning what the Department desired, NKK promptly submitted the requested conversion factors and (3) the Department fully verified the calculation of the conversion factors.

NKK first explains that its failure to provide the conversion factor requested by the Department was based on a legitimate misunderstanding of what the Department required. NKK asserts that, in its original questionnaire, the Department asked NKK to specify, for each and every transaction, whether the quantity sold was based on actual weight or some other basis, and if more than one weight was reported, to provide the conversion factor to arrive at a uniform quantity measure. NKK responded by stating that providing such conversion factor was either impracticable or impossible, because it did not weigh the coils sold on a theoretical basis, and therefore did not have the actual weights for these sales. NKK states that when, in its supplemental questionnaire, the Department requested that NKK provide the conversion factor that it ''used'' to arrive at a uniform quantity measure, NKK assumed that the Department had misunderstood NKK's initial response, so it repeated its rationale for not providing a conversion factor. After NKK complained that it was wrongly penalized in the *Preliminary Determination,* the Department pointed to KSC's ability to respond to the same question. NKK states that KSC had provided not a conversion factor, but a more accurate estimate of the actual weight, and states that if the Department had clarified earlier that this was what it wanted, it could have complied earlier.

Finally, NKK asserts that after it had a clearer understanding of what the Department required, it was able to prepare a conversion factor (on a basis involving proprietary information) which could be used to calculate a more accurate estimate of the weight for the theoretical weight sales. NKK provided this factor one week before verification and argues that, pursuant to § 351.301(b)(1) of the Department's regulations, this was within the established time limits. In addition, NKK argues that the Department was able to verify fully all submitted information. Therefore, NKK argues, the Department cannot rely on section 776 of the Act to apply facts available, since none of the criteria in that provision apply in this case.

Petitioners, on the other hand, argue that, in the *Final Determination,* the Department should reject the theoretical-to-actual weight conversion factor provided by NKK in its February 22, 1999 filing, and should apply adverse facts available to NKK's theoretical weight transactions. Petitioners assert that the Department asked NKK to provide a theoretical-to-actual weight conversion factor in the Department's initial and supplemental section B questionnaires. Thus, petitioners argue, the Department made two clear requests for a theoretical-to-actual weight conversion factor, which it needed in order to calculate CONNUM-specific DIFMERs and costs. According to petitioners, NKK twice refused to provide the conversion and, by choosing to provide the conversion factor only after the Department had applied adverse facts available to NKK's theoretical weight transactions, demonstrated a clear intent to not comply with the Department's request. This refusal to comply, in the opinion of petitioners, warrants the application of adverse facts available pursuant to section 776 of the Tariff Act (19 U.S.C. § 1677e).

Petitioners argue that the Department should not allow NKK to selectively choose what information the company will provide the Department. They characterize NKK's refusal to provide a theoretical-to-actual weight conversion until adverse facts available had been applied in the preliminary determination as ''cherry picking'' and assert that in antidumping investigations the Department, not the respondent, should decide what information is required to ensure the integrity of the process. *See Ansaldo Componenti, S.p.A.* v. *United States,* 628 F. Supp. 198, 205 (CIT 1986); *see also Olympic Adhesives, Inc.* v. *United States,* 899 F. 2d 1565, 1572 (Fed. Cir. 1990).

In its rebuttal brief, NKK reiterates that it did not ''refuse'' to comply; instead it misunderstood the Department's request for a theoretical weight conversion factor. NKK stresses

that it maintained that it could not calculate the actual differences between the theoretical and actual weight of its coils because, unlike the merchandise of another respondent, NKK's theoretical weight sales were not, in fact, weighed. *See Olympic Adhesives,* 899 F. 2d at 1573 (Fed. Cir. 1990) (it is not a refusal to provide requested information when a respondent answers that such information is not available). NKK rebuts petitioners' assertion that NKK did not comply with the Department's request for a theoretical weight conversion factor and, furthermore, rebuts petitioners claim that NKK did not cooperate to the best of its ability.

NKK argues that once it understood the Department's request, it provided the appropriate theoretical weight conversion factor. NKK argues that because actual weight was not available for its theoretical weight sales and because it communicated this fact to the Department, it did not provide the requested data as it believed that this data was not available. *See Olympic Adhesives,* 899 F. 2d at 1573. NKK further argues that the conversion factor does not calculate the actual weight. NKK admits that it filed its conversion factor after the original and supplemental questionnaire deadlines but asserts that, ultimately, the conversion factor was filed with the Department seven days prior to verification. NKK asserts that the Department's own regulations establish this as the latest date on which factual information is due. *See* 19 C.F.R. § 351.301(b)(1).

NKK in its rebuttal brief, argues that the Department routinely accepts untimely information when circumstances of a particular case warrant the need to accept untimely filings. *See Bowe-Passat* v. *United States,* 17 CIT at 337–38. NKK further argues that if certain conditions are met, the Department cannot legally decline to consider certain information, even if the information does not meet all of the Department's requirements. NKK argues that its case meets the necessary legal criteria and, thus, its theoretical weight conversion factor should be considered by the Department. *See* section 782(e) of the Act. Specifically, NKK argues in its rebuttal brief that ''first, the conversion factor was submitted before the latest deadline for submission of factual information; second, the conversion factor can be and was verified; third, NKK fully explained how the conversion factor was arrived upon and is therefore a reliable basis on which to reach an applicable determination; fourth, NKK provided the factor as soon as it understood the Department's specific request; and fifth, the application of NKK's conversion factor is easily accomplished in the Department's programming.'' In summary, NKK argues that there is no reasonable basis on which the Department can reject its theoretical weight conversion factor.

Petitioners rebut NKK's argument that NKK acted to the best of its ability. Petitioners argue that NKK failed to respond to the Department's specific requests for an actual to theoretical weight conversion factor. Petitioners argue that the Department should therefore draw an adverse inference in selecting adverse facts available for NKK's theoretical weight transactions. *See* section 776(b) of the Act (19 U.S.C. § 1677e(b)). Petitioners assert that the Department, in its final determination, should continue to apply adverse facts available to NKK's theoretical weight sales because NKK should not be allowed to benefit through its failure to comply with the Department's requests. *See* SAA at 868, 896 (1994).

Department's Position: We agree with petitioners that the Department should continue to apply adverse facts available for NKK's home market theoretical weight sales. Section 776(a)(2) of the Act provides that, if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, as provided in section 782(i), the Department shall, subject to subsection 782(d), use facts otherwise available in reaching the applicable determination. Further, section 776(b) of the Act provides that adverse inferences may be used where an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See* also SAA at 870.

NKK reported all its U.S. and home market sales on an actual weight basis, with the exception of less than one percent of home market sales. Although the Department requested conversion factors for these transactions, NKK refused to provide conversion factors for these sales within the deadline established in the questionnaire. Rather, it submitted these factors on February 22, 1999, almost 2 months after the deadline for the original questionnaire response and one month after the deadline for the supplemental questionnaire response. Because the Department requested these conversion factors in questionnaires with earlier deadlines, and these data were not submitted in accordance with those deadlines, the conversion factors submitted on February 22, 1999, constituted untimely submitted information within the meaning of 19 C.F.R. § 351.301(c)(2)(ii). Because these data were required to be provided in NKK's questionnaire responses, the more general provision upon which NKK relies in stating that the factors were timely provided (*i.e.,* 19 C.F.R. § 351.301(b)(1)) does not apply. Because NKK's conversion factor data were not timely submitted, the Department rejected these factors in a letter dated April 12, 1999. The Department, therefore, has not considered these data or retained them in the official record of the proceeding. *See* 19 C.F.R. § 351.302(d)(1). The Department does not agree with NKK's assertion that these data were verified. Rather, at verification the Department specifically informed NKK and its counsel that the Department would not accept the conversion factor and would specifically instruct NKK to submit this information on the record if the Department determined that it was timely. However, any arguments as to the accuracy of these data are moot because the data in question are no longer part of the record before the Department.

Because NKK failed to timely provide requested information, in accordance with section 776 of the Act, the Department has made its determination with respect to the theoretical weight sales on the basis of the facts available. Further, the Department finds that NKK, by not submitting a theoretical weight conversion factor it could have provided when originally requested until well after the time for response had passed, failed to cooperate by not acting to the best of its ability. NKK's claims that it could calculate a conversion factor in February of 1999, but was unable to derive such a factor when the questionnaire responses were due, does not withstand scrutiny. Although NKK argues that it did not understand what the Department wanted when it originally requested a ''conversion factor'', although this was not stated at the time, and that it lacked the data necessary to calculate one, as required by section 782(c)(1) of the Act, it should have proposed to the Department the sort of conversion factor it ultimately did calculate, explaining why a more accurate one might not be practicable. Instead, NKK merely dismissed the Department's repeated requests. The fact that NKK ultimately did provide such a factor is the proof that they could have

done so much earlier. Thus, because NKK failed to timely provide the requested conversion data, it has ''failed to cooperate by not acting to the best of its ability to comply with an information request.'' Therefore, in accordance with section 776(b) of the Act, the Department is authorized, to use an adverse inference in choosing the facts otherwise available.

The only NKK sales affected by this failure to provide data were home market sales. Therefore, as adverse facts available we assigned the highest calculated adjusted price (NV) for any CONNUM to the relevant transactions.

Comment 31: Use of Facts Available for KSC's U.S. Sales Through CSI.

KSC asserts that the Department erred both by including in its margin calculation sales made through its U.S. affiliate California Steel Industries (''CSI'') and in using adverse facts available in connection with those sales. Sumitomo Metal Industries, Ltd. (''SMI''), a non-selected respondent whose margin will be affected by KSC's margin, also urges that the Department should not use adverse facts available for KSC's sales to CSI, arguing that the fact that CSI is a petitioner shows that KSC cannot ''control'' CSI, and is not, therefore, responsible for CSI's refusal to provide data requested by the Department.

With respect to the first point, KSC argues that the Department should have based the margins for its CSI sales on sales made to unaffiliated companies, in accordance with § 772(e) of the Act (the ''Special Rule for Merchandise With Value Added After Importation''). With respect to the second point, KSC argues that, if The Department does calculate a margin based on the CSI sales, it should not treat CSI's refusal to provide the requested data as a lack of cooperation on the part of KSC. Therefore, KSC argues, The Department should not apply adverse facts available to the KSC's CSI sales.

Decision Not To Apply the ''Special Rule''

Respondent contends that the Department's application of adverse facts available in its *Preliminary Determination* was unlawful because the subject merchandise from KSC which is further processed by CSI qualifies for the simplified reporting provision or ''special rule for merchandise with value added after importation'' contained in the statute at 19 U.S.C. § 1677a(e)(1). The purpose of this provision, according to the *SAA*, is to give the Department a ''simpler and more effective method for determining export price'' in situations where the value added after importation to the United States is likely to exceed substantially the value of the subject merchandise.'' *See SAA* at 825. As explained in the SAA, this level is reached when ''value added in the United States is estimated to be substantially more than half the price of the merchandise as sold in the United States.'' *See Id.*

Respondent states that 19 C.F.R. § 351.402(c)(2) provides that the Department will ''normally determine that the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise if the [Department] estimates the value added to be at least 65 percent of the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States.'' Respondent states that the use of terms such as ''normally'' and ''estimates'' indicates that the 65 percent test is not a bright line rule. Respondent cites *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Component Thereof, From Japan,* 63 FR 37344 (1998), as evidence that the Department has applied the special rule without requiring the value added to be more than 65 percent. CSI added substantial value to the subject merchandise it obtained from KSC, contends the respondent, because the value added by CSI represents more than half of the price charged to the first unaffiliated customer buying galvanized steel and is ''on the cusp'' of being over half the price charged for cold-rolled steel and pipe. Respondent concludes that the significant value added by CSI, combined with the provision's purpose of simplifying the Department's determination, should permit the application of the special rule. Therefore, KSC urges, the Department should use the weighted average margin of other sales of identical subject merchandise sold by KSC for the volume of hot-rolled steel sold to CSI in making its determination.

Use of Adverse Facts Available for the CSI Sales

Respondent's overall conclusion that the Department's application of adverse facts available as to the CSI sales is unsupported by law or fact is based on five broad arguments.

First, respondent states that the Department cannot draw an adverse inference unless it has found that a party did not act to the best of its ability in responding to the Department's information requests. Respondent argues that, in determining whether a party acted to the best of its ability, the Department considers, among other things, the accuracy and completeness of the information submitted, and whether the party has hindered the calculation of accurate dumping margins. As a result of the *Uruguay Round Agreements Act* (''URAA''), respondent asserts, the Department cannot apply an adverse inference without first making factual findings on the record to support any conclusion that a party failed to act to the best of its ability. *See Preamble,* 62 FR at 27340. Furthermore, the Court of International Trade decisions in *Borden, Inc.* v. *United States,* 4 F. Supp. 2d 1221 (1998) (''Borden'') and *Ferro Union, Inc.* v. *United States* (''*Ferro Union*''), Ct. No. 97–11–01973, Slip Op. 99–27 (March 23, 1999), 1999 CIT LEXIS 24, at *54 , hold that the Department must base any finding that a respondent failed to cooperate on record evidence, not on the mere absence of information on the record. Therefore, respondent concludes that the Department must either correct its preliminary decision to apply an adverse inference to these sales or provide a factual basis for its conclusion that KSC did not act to the best of its ability.

KSC's second argument is that the administrative record for this case establishes beyond question that KSC acted to the best of its ability. *See Preamble,* 62 FR at 27341 (the Department will make determinations regarding a respondent's acting to the best of its ability on a fact-and case-specific basis); *see also, NEC Home Electronics, Ltd.* v. *United States,* 54 F. 3d 736, 742 (Fed. Cir. 1995); *Atlantic Sugar, Ltd.* v. *United States,* 744 F. 2d 1556, 1559 (Fed. Cir. 1984) (The Department's determinations must be based on a complete and objective evaluation of the actual evidence on record). Respondent contends that all the evidence in the instant case demonstrates that KSC acted to the best of its ability, with no implication that KSC was uncooperative or that KSC impeded the investigation. Specifically, KSC claims that the record shows that it: (1) made repeated written and oral requests urging CSI to cooperate in providing the data The Department had requested, (2) offered to provide CSI with assistance in furnishing this data to The Department, (3) offered CSI the option of reporting proprietary information it did not want to reveal to KSC directly to the Department, and (4) submitted a voluminous amount of information during the course of the investigation and answered all

questions posed by the Department at verification, including those relating to the CSI issue. Thus, KSC concludes that the absence of data on the CSI sales should be attributed to the non-cooperation of CSI, but not of KSC.

KSC's third point is that its extensive cooperation prohibits use of the most adverse facts available, even if the Department should find that it did not meet the ''best of its ability'' standard, because KSC ''substantially cooperated'' in this investigation. *See Roller Chain, Other Than Bicycle from Japan: Final Results and Partial Recission of Antidumping Duty Administrative Review,* 63 FR 63,674 (1998); *Certain Cut-to-Length Carbon Steel Plate from Sweden,* 62 FR 46,947, 46,948 (1997); *Final Results of Review of Antidumping Duty Administrative Review of Certain Pasta from Italy,* 61 FR 30326, 30329 (1996) (the Department's normal practice is to refrain from applying the most adverse inference possible in calculating a margin when a party has been cooperative).

Respondent also refers to the previous distinction between cooperative and uncooperative parties under the Department's pre-URAA two-tiered Best Information Available (''BIA'') methodology. Under this methodology, the most adverse BIA was reserved only for parties that refused to provide requested information, not those parties that were cooperative and made every effort to obtain and provide information requested by the Department. Respondent contends that, even under the pre-URAA law, the Department would have been prohibited from applying an adverse inference against KSC in the instant case. Respondent states that the Department's failure to follow its own practice as to KSC in this case ''constitutes abusive agency action'' and that it is incomprehensible and unjustifiable for the Department to ignore KSC's immense efforts to comply with the Department's requests for information.

KSC's fourth argument is that the Department's application of an adverse inference based on the ''erroneous presumption'' that, because they are affiliated KSC has sufficient ''control'' over CSI to compel that company to provide the requested data disregards the contrary evidence on record. Thereby, KSC argues, The Department violates both the antidumping statute and the Constitution. Respondent asserts that the Department's decision to apply adverse facts available was based on the erroneous assumption that KSC has operational or legal control over CSI and, as a result, could have obtained the requested information from CSI. Respondent does not dispute that KSC and CSI are affiliated parties, as defined by the statute, and agrees that normally it is reasonable to presume that closely affiliated parties have access to each other's documents and employees. What is illegal, KSC contends, is that the Department has refused to take into consideration the record evidence rebutting such a presumption in this case. KSC also claims that the Department's application of the affiliation definition in this manner raises federal due process concerns.

Respondent points out that 19 U.S.C. § 1677(33) provides that one party is deemed to ''control'' another party when the first party is ''legally or operationally in a position to exercise restraint or direction over the other person.'' Respondent argues that, although it is reasonable to presume that if parties are related under the statute they are in the best position to obtain information from each other, the judicial precedents supporting this proposition do not also support the Department's application of a non-rebuttable presumption that this is the case. Thus, KSC argues, the Department may not ignore evidence on the record that demonstrates that the parties do *not* have access to each other's documents or employees. *See Koyo Seiko Co.* v. *United States,* 92 F. 3d 1162 (Fed. Cir. 1996); *Helmerich & Payne, Inc.* v. *United States* (''*Helmerich*''), 24 F. Supp. 2d 304 (CIT 1998); *Usinor Sacilor* v. *United States* (''*Usinor*''), 907 F. Supp. 426, 428–29 (CIT 1995); *Koyo Seiko Co.* v. *United States,* 905 F. Supp. 1112 (CIT 1995); *Holmes Prods. Corp* v. *United States,* 795 F. Supp. 1205, 1206–07 (CIT 1992).

Respondent argues that, in *Helmerich,* although the Court upheld the Department's decision to apply the facts available in that pre-URAA case in which the respondent twice failed to complete the questionnaire, it made a point of noting that it would have reached a different decision under the post-URAA law. In *Usinor,* respondent asserts, the Court had held that the Department should not have applied severely adverse BIA when missing data were beyond the control of the respondent; on remand, the Department agreed that the respondent could not realistically have collected the required data from its related subsidiaries. Respondent notes that, in the *Preamble* to its ''facts available'' regulation (19 C.F.R. § 351.308), the Department acknowledged that it agreed with the substance of an argument that where a respondent has made a good-faith effort to obtain information from an affiliate, failure of the affiliate to provide the information should not give rise to an adverse inference. *See* 62 FR at 2341. Thus, the Department stated that it would continue to determine the application of adverse inferences on a fact- and case-specific basis.

KSC asserts that the federal courts have been vigilant in rejecting claims that related corporate entities necessarily have access to each other's data. KSC argues that, in this respect, the federal courts have looked to other factors such as whether the requested documents were available during the regular course of business and whether the two parties operated as a single business unit. *See Cooper Industries, Inc.* v. *British Aerospace,* Inc., 102 F.R.D. 918, 919–20 (S.D.N.Y. 1984); *Camden Iron & Metal, Inc.,* v. *Marubeni Am. Corp.,* 138 F.R.D 438, 442 (D.N.J. 1991); *see also Glaxo, Inc.* v. *Boehringer Ingelhaim* Corp., 40 U.S.P.Q. 2d (BNA) 1848, 1850, 1851 n.4 (D.Conn. 1996) (the mere fact that documents are in the possession of a joint venturer does not automatically establish ''control'' over them). Respondent claims that the evidence on record demonstrates that KSC did not have the ability to obtain the requested information from CSI and that the Department learned during verification that, because of the structure and past practice of the joint venture, it was impossible for KSC to impose its will upon CSI. The fact that CSI is a petitioner (as well as a respondent) in this case is, according to KSC, the best evidence that KSC does not have operational control over CSI.

Respondent argues that any action by a federal agency that is taken in total disregard of the administrative record raises due process concerns. *See NEC Corp.* v. *United States,* 151 F. 3d 1361, 1370 (Fed. Cir. 1998) *cert. denied,* 119 S. Ct. 1029 (1999) (if application of an excessive dumping margin as a result of an adverse inference deprives importers of significant property interests, a cognizable due process claim under the Fifth Amendment of the Constitution will exist); *see also Techsnabexport, Ltd.* v. *United States,* 795 F. Supp. 428, 435–36 (CIT 1992) and cases cited therein.

Respondent asserts that the Supreme Court has established a three-part test to determine what procedures are required to comport with due process. This test balances the competing rights and interests at issue. *See Mathews* v. *Eldridge,* 424 U.S. 319, 334 (1976). If a statute is found to involve an ''irrebuttable presumption,'' the focus of this balance shifts to whether ''the presumption is not necessarily or universally true in fact,'' and whether ''the government has available a

'reasonable alternative means of making the crucial determination.'" *See Rogers* v. *United States,* 575 F. Supp. 4, 9–10 (D. Mont. 1982); *Vlandis* v. *Kline,* 412 U.S. 441, 452 (1973) *Universal Restoration, Inc.* v. *United States,* 798 F. 2d 1400, 1406 (Fed. Cir. 1986). Respondent contends that the Department's application of adverse facts available against KSC in the instant case based on the refusal of an ''adverse affiliate'' to provide information requested by the Department amounts to a denial of due process rights by improperly raising an irrebuttable presumption. Respondent argues that the facts on the record show that it is not ''universally true'' that a respondent can control the actions of its affiliate, particularly when the affiliate is a petitioner in the case. *See Steven M.* v. *Gilhool,* 700 F. Supp. 261, 264–65 (E.D.P. 1988) (irrebuttable presumption can only survive if it is universally true). In this case, respondent argues, the Department has a reasonable alternative to an irrebuttable presumption available. The facts on record enable it to determine whether KSC actually does ''control'' CSI, rather than presuming such control exists.

KSC's fifth and final point is that the Department's decision to use the most adverse facts available contradicts important policy considerations underlying the antidumping law. One purpose of the adverse inference provision is to ensure that parties do not obtain a more favorable result by not cooperating in an agency proceeding. In this case, however, if the Department applies the adverse inference, CSI, the uncooperative petitioner, will benefit from refusing to provide information as a result of increased antidumping duties assessed on competing imports, whereas KSC, which has been a cooperative respondent, will be penalized by a significantly increased margin. Respondent contends that it is arguable that KSC would have been in a better position if it had refused to cooperate altogether, given that the highest margin alleged in the petition was lower than the margin calculated by the Department for KSC in its preliminary determination.

Finally, respondent claims that CSI, by controlling what information the Department has available for calculating a margin, has ''usurped the investigatory role'' assigned to the Department by defining the scope of the record. *See Allied-Signal Co. Aerospace* v. *United States,* 996 F.2d 1185, 1191 (Fed. Cir. 1993). Respondent concludes that the Department cannot allow any party, including a petitioner, to benefit from an attempt to control the results of the administrative process through its own unresponsiveness.

In their rebuttal, petitioners allege that the Department's application of adverse facts available for KSC's sales through its affiliate CSI is warranted by the facts and the law, and should not be modified in the Department's final determination. Petitioners' rebuttal argument is based on two points. First, they argue, the Department's decision to apply adverse facts available is appropriate under § 776 of the Act. Petitioners argue that KSC failed to act to the best of its ability by not responding to Section E of the Department's questionnaire regarding CSI's further manufactured sales. KSC's claim that, based on the record, the Department can find only CSI to be uncooperative, and its claim that the Department's decision to apply adverse facts available is unlawful because it is based on the presumption that KSC has operational or legal control over CSI, lack merit. According to the petitioners, the factual basis underlying the Department's decision to apply adverse facts available is supported in the record and provides adequate justification for the decision. Petitioners state that the Department has determined that it will consider an affiliated party's non-compliance with the Department's requests ''as an omission imputable to the respondent'' which merits the application of adverse facts available. *See Silicomanganese From Brazil,* 62 FR 37869, 37873 (1997) (''*Silicomanganese From Brazil* '') and *Roller Chain, Other Than Bicycle, From Japan,* 61 FR 64328, 64329 (1996). Due to KSC's significant ownership interest, CSI is undisputedly affiliated with KSC. As a result, petitioners argue, KSC had the burden of obtaining the requested information and providing it to the Department without regard to any alleged lack of cooperation from CSI. Therefore, the omission of CSI's further manufactured sales information is imputed to KSC and subjects KSC to the application of adverse facts available.

Petitioners cite *Silicomanganese From Brazil* and *Koyo Seiko Co., Ltd.* v. *United States,* 92 F. 3d 1166 (Fed. Cir. 1996) as evidence that the respondent, in order to be excused from submitting requested information in the possession of the affiliate, bears the burden of demonstrating that it does not have control over and cannot compel an affiliated party to submit such information. Petitioners also cite *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From the People's Republic of China,* 63 FR 63842, 63857 (1998) and *Silicomanganese From Brazil* as evidence that the Department will apply adverse facts available when a respondent fails to meet its burden of demonstrating that it cannot obtain requested information in the possession of another party. According to petitioners, KSC failed to meet its burden to establish in that it acted in the best of its ability to obtain the requested information from CSI and that it could not have exerted control over CSI to obtain the information. Petitioners conclude that, despite CSI's Shareholders' Agreement, which shows that KSC had the right and the powers to exert such control, KSC did not attempt to exercise any of these rights and powers.

Petitioners support this conclusion by arguing that KSC failed to have its representatives on CSI's Board of Directors call a board meeting to address the lack of cooperation received by KSC from CSI, that the lack of cooperation was not discussed during a regular quarterly CSI board meeting, that during verification KSC officials acknowledged that this issue was not discussed among the joint venture partners, and more significantly, nothing on the record shows that KSC made any efforts to enforce its right under the Shareholders' Agreement. Petitioners argue that KSC should have exerted control over CSI and states that the fact that CSI is a petitioner in the immediate investigation does not establish that KSC lacked control over CSI. Petitioners also argue that KSC has not substantiated on the record its claims that CSI's officers refused to cooperate in responding to the Department's requests. The three letters from CSI's CEO placed on the record by KSC, according to petitioners, do not constitute refusals by CSI to provide the requested information. Petitioners cite letters dated October 29, 1998, November 6, 1998 and December 14, 1998 as evidence for this conclusion. Petitioners point out that KSC's counsel claimed for the first time during verification that, in response to CSI's concern regarding the disclosure of highly sensitive information as evidenced in these letters, KSC's counsel offered to compile a response maintaining the confidentiality of the CSI's information, but that the offer was rejected by CSI. Petitioners argue that there is no evidence of such an offer by KSC counsel in the letters provided for the record or in KSC's responses to the Department's supplemental questionnaires. Because KSC failed to substantiate and establish that it acted to the best of its ability in regard to CSI's further manufactured sales, petitioner

conclude that the Department's decision to apply adverse facts available is justified and the Department should continue to use adverse facts available in its final determination.

Petitioners' second point is that the Department's choice of facts available represents a valid exercise of its discretion and is consistent with the statutory purpose of applying adverse fact available. Petitioners disagree that KSC's cooperation in other aspects of the investigation prohibits the use of adverse facts available and that this remedy contravenes the purpose underlying the use of adverse inferences. Petitioners cite § 776(b) of the Act which discusses the information the Department may rely on in selecting adverse facts available and the discretion afforded to the Department in the application of adverse facts available. Petitioners contend that the Department's analysis in employing adverse facts available for KSC's sales through CSI in the its *Preliminary Determination* was in complete accordance with the Department's practice. *See Stainless Steel Wire Rod From Italy,* 63 FR 40422, 40428 (1998). Petitioners also cite *National Steel I,* 870 F. Supp. at 1136 and *Certain Welded Carbon Steel Pipes and Tubes from Thailand,* 62 FR 53808, 53820–53821 (1997) as evidence that, even assuming that KSC was substantially cooperative, the Department had broad discretion to select a level of adverse facts available that appropriately addressed KSC's failure to respond to the Department's Section E questionnaire for its sales through CSI. In response to KSC's claims that the remedy violates the purpose of the underlying use of adverse inferences, petitioner argue that this remedy of applying adverse facts available will serve to induce respondents to use all reasonably available means to exercise control over their affiliates in order to ensure that complete and accurate reporting of data is made to the Department for the calculation of accurate dumping margins. In conclusion, petitioner state that the Department, in its final determination, should adhere to its decision to apply adverse facts available.

Substantial Value Added

Petitioners contend that KSC's argument that it should not have been required to report further manufacturing information because CSI added substantial value to KSC's subject merchandise is devoid of merit. *See* § 772(e) of the Act (19 U.S.C. § 1677a(e)); *SAA* at 825; and 19 C.F.R. § 351.402(c)(2). Petitioners contend that, based on average purchase prices and reselling prices set forth by KSC in its November 10, 1998 letter to the Department, CSI's sales of further manufactured merchandise, which include cold-rolled steel, corrosion-resistant steel and pipe, do not meet the 65 percent threshold outlined in the Department's regulations. Petitioners argue that KSC's claim that the 65 percent test should not be seen as a ''bright-line rule'' must be rejected because the Department has stated that the 65 percent rule is, in fact, a ''bright-line test.'' *See Preamble,* 62 FR at 27352. Even if KSC could satisfy the Department's test, petitioners argue that the special rule would not excuse KSC's failure to report CSI's further manufacturing information requested by the Department because the special rule is intended to relieve administrative burden, not excuse the reporting of required data. Petitioners contend that, in this case, the Department's calculations would not have been burdensome given that CSI's further manufacturing consisted predominantly of one or two additional processes. Petitioners conclude that, even if the 65 percent threshold had been met, it is likely that the Department would have used the actual further manufacturing data rather than one of the alternatives permitted by the statute. Accordingly, state petitioners, there is no justification for KSC's failure to respond to the Department's Section E questionnaire and as a result, the Department's application of adverse facts available remains appropriate.

Department's Position: We disagree with KSC with respect to the use of the ''special rule'' and with KSC and Sumitomo with respect to the Department's decision to use adverse facts available for the CSI sales.

Decision Not To Apply the ''Special Rule''

As KSC has implicitly acknowledged, the extent to which CSI adds value to KSC merchandise through further processing does not meet the Department's normal 65 percent standard even for the further manufactured products with the highest level of value added. Furthermore, for products further manufactured into cold-rolled steel and pipe, the value added is less than half of the price charged to CSI's unaffiliated customer and a small amount of KSC's subject merchandise is resold by CSI ''as is,'' with no value added at all.

Although the 65 percent benchmark is not an inflexible rule, it does provide useful guidance as to when it is no longer appropriate to consider certain sales in determining a producer's margin. The degree of value added by CSI simply does not reach this threshold, especially in view of the fact that the CSI sales represent a very significant portion of KSC's total U.S. sales. It would not be appropriate to abandon the Department's normal practice in this case for a much vaguer standard whereby the Department would obtain proxy values for sales through any affiliate whose value added could be considered ''substantial.'' Thus, the Department properly has not applied the ''special rule'' of section 772(e) of the Act to the CSI sales.

Use of Adverse Facts Available for the CSI Sales

It is undisputed that KSC's sales of subject merchandise through its affiliate CSI are constructed export price (''CEP'') sales. Therefore, the statute requires that the U.S. price of these sales for margin calculation purposes be calculated by using CSI's price to the first unaffiliated U.S. customer and adjusted, pursuant to section 772(c) and (d) of the Act, to account for certain expenses incurred by CSI and KSC. These adjustments include, but are not limited to, the costs associated with further manufacturing performed by CSI prior to its sale to the unaffiliated customer. In essence, for purposes of the CEP calculation, the statute treats the exporter and the U.S. affiliate collectively, rather than independently, regardless of whether the exporter controls the affiliate. Accordingly, KSC's argument that it does not ''control'' CSI is misplaced and irrelevant.

Because the statute requires that the Department base its margin calculations for the CSI sales on record information concerning the CSI sales themselves, the Department required that KSC and CSI, collectively, provide the necessary price and cost data for KSC's U.S. sales through CSI. It is also undisputed that KSC and CSI failed to provide this necessary information. Because the information possessed by a U.S. affiliate such as CSI is essential to the dumping determination, the antidumping law is thwarted if the affiliate refuses to provide the necessary information.

Section 776(a) of the Act requires that the Department use facts otherwise available when necessary information is not on the record, or an interested party withholds requested information, fails to provide such information in a timely manner, significantly impedes a proceeding, or provides information that cannot be verified. As the necessary information with respect to these sales is not on the record, the Department

must use the facts otherwise available in calculating the margins for the CSI sales.

Section 776(b) of the Act authorizes the Department to use an adverse inference in determining the facts otherwise available whenever an interested party has failed to cooperate with the Department by not acting to the best of its ability to comply with requests for information. KSC and CSI have neither provided the data on CSI's sales, as requested by the Department, nor demonstrated to the Department's satisfaction that this is not possible. Therefore, the Department finds that KSC and CSI have failed to cooperate by not acting to the best of their ability to comply with the Department's requests for information with respect to the CSI sales. Therefore, we have used an adverse inference in selecting the facts available with respect to the CSI sales.

Allowing a producer and its U.S. affiliate to decline to provide U.S. cost and sales data on a large portion of their U.S. sales would create considerable opportunities for such parties to mask future sales at less than fair value through the U.S. affiliate. The fact that the affiliate is a petitioner does not allay such concerns. Thus, this fact does not constitute an exception to the principle that the Department may make an adverse inference with respect to sales for which data is not provided unless the foreign exporter and its U.S. affiliate have acted to the best of their ability to provide such data.

While it is clear that KSC and CSI collectively have not acted to the best of their ability, we also disagree with KSC's claim that it alone acted to the best of its ability. At verification, the Department investigated this claim. *See KSC Verification Report at* 20–23. After careful consideration of all of the evidence on record, the Department finds that KSC did not act to the best of its ability with respect to the requested CSI data.

CSI is a joint venture between KSC and a large Brazilian mining operation, Companhia Valle do Rio Doce (''CVRD''). Through their respective U.S. affiliates, KSC and CVRD each own 50 percent of CSI. KSC's claim that it acted to the best of its ability with respect to this issue rests on its assertion that it was powerless to compel CSI to provide the Department with this data, given that CSI, as a petitioner in this case, refused to cooperate. Some of the most important evidence contradicting KSC on this issue, including information pertaining to the board and the Shareholders' Agreement, constitutes business proprietary information, and are discussed only in our proprietary *Analysis Memorandum*, which is hereby incorporated by reference. Generally, however, the record shows that, although KSC could have been much more active in obtaining the cooperation of CSI in this investigation, it limited its efforts to merely requesting the required data and otherwise took a ''hands-off'' approach with respect to CSI's alleged decision not to provide this data. For example, KSC officials stated that KSC did not instruct its members of the CSI board to address the issue, did not invoke the Shareholder's Agreement, and did not discuss this issue with its joint venture partner. This does not reach the ''best efforts'' threshold embodied in § 776(b). Furthermore, the fact that KSC has provided a great deal of information and has substantially cooperated with respect to other issues does not relieve it of the requirement to act to the best of its ability to provide the requested CSI information. With respect to the CSI sales, KSC has provided only minimal volume and value information and has not acted to the best of its ability to obtain further information. Thus, as to the missing CSI data, it cannot be said that KSC was fully cooperative and made every effort to obtain and provide the information requested by the Department. Therefore, even though full cooperation by KSC alone would not constrain the Department from using adverse facts available specifically with respect to the CSI sales, we do not agree with KSC's argument that it has ''substantially cooperated'' during this investigation.

As indicated above, the Department has based its decision to use adverse facts available on its finding that KSC and CSI collectively did not act to the best of their ability with respect to the CSI data, not, as KSC claims, on any ''presumption'' that solely because the two companies are ''affiliated'' within the meaning of the statute, KSC necessarily has sufficient control to compel CSI to provide this data. As KSC has noted, the Department makes such decisions on a case-specific basis, using the totality of the record evidence. *See Preamble*, 62 FR at 27341. That is what the Department has done in this case. The Department provided KSC with extensive opportunities, prior to and at verification, to explain and document its efforts to obtain the necessary data, and has considered all of this data in making its determination. While the Department has considered that the record supports KSC's claim that it did make some effort to obtain the data and that CSI's management rebuffed these efforts, the record also shows that KSC essentially acquiesced in CSI's decision not to provide this data. Given KSC's relationship with this 50/50 joint venture, as detailed in the *Home Market Sales Verification Report*, dated March 26, 1999, this did not constitute making its best efforts to obtain the data. Because the Department did not rely upon any ''irrebuttable presumption'' of control arising out of the statutory definition of affiliation in reaching this determination, KSC's arguments based on this theory, including its due process argument, have no merit with respect to this case.

Finally, KSC's claim that use of an adverse inference in this case will contradict the Department's policy of not rewarding uncooperative parties is likewise incorrect. As KSC notes, one purpose of an adverse inference is to ensure that parties do not obtain a more favorable result by not cooperating. However, KSC misconstrues this to mean that the Department can or should somehow take into account the effect of a dumping margin on other business interests of an interested party. We disagree. In applying an adverse inference, the Department can only reasonably ensure that the dumping margin determined for the subject merchandise is not less than the actual margin we would have found had the parties cooperated. We cannot reasonably predict or weigh the multitude of effects this might or might not have on the parties involved. In this case, we can only ensure that KSC and CSI do not obtain a more favorable dumping margin on subject merchandise. As an affiliated importer and/or seller of KSC's subject merchandise, CSI will be affected by any margin assigned to KSC's exports of this merchandise. Neither KSC nor CSI will be rewarded with more favorable dumping margins. Any benefit accruing to CSI from its non-cooperation will flow not from its role as an affiliate-respondent, but from its role as a U.S. producer of non-subject merchandise. Furthermore, KSC, as a 50 percent shareholder in CSI, will share in any such benefit. In addition, we note that it is not the use of the adverse inference which allows KSC's U.S. affiliate to restrict the scope of data on the record—it is CSI's decision to withhold that data and KSC's decision to acquiesce in this posture. Neither KSC nor CSI should be relieved of the obligation to report data on sales through CSI in this or future proceedings. Thus, while KSC's business relationships may involve certain internal conflicts of interest, the use of an adverse inference in determining the dumping margins on CSI sales does not contradict the Department's policies.

For the final determination, the Department has used as adverse facts available the second highest calculated margin for an individual CONNUM. Although no party commented on the rate chosen as facts available in the preliminary determination, we have reexamined our choice for this final determination. In the preliminary determination, we used as the facts available margin the highest margin by CONNUM. However, upon reexamining that decision, we find that the margin chosen was not sufficiently within the mainstream of KSC's sales in that the rate was derived from sales of a product that accounted for a very small portion of KSC's total sales as well as the highest rate by CONNUM. In selecting the facts available margin for the final determination, we sought a margin that is sufficiently adverse so as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner. We also sought a margin that is indicative of KSC's customary selling practices and is rationally related to the transactions to which the adverse facts available are being applied. To that end, we selected a margin for a CONNUM that involved substantial commercial quantities and thus fell within the mainstream of KSC's transactions based on quantity. Finally, we found nothing on the record to indicate that the sales that we selected were not transacted in a normal manner.

Changes to the Department's SAS Computer Programming

Comment 32: NKK's Clerical Error Allegation.

NKK requests that the Department correct a ministerial error in the Department's preliminary calculation of NKK's dumping margin. NKK states that, in accordance with the Department's instructions, it reported all values in its U.S. and home market databases in the currency in which these values were incurred. NKK therefore reported all selling expenses in Japanese yen. NKK states that the Department, in its margin calculation program, intended to convert reported home market and U.S. price and expense amounts to U.S. dollars before determining NKK's sales-specific and weighted-average dumping margin. However, NKK concludes, the Department failed to convert U.S. direct and indirect expenses from Japanese yen to U.S. dollars when calculating the actual dumping margin.

Specifically, NKK asserts that the Department, in calculating foreign unit price in U.S. dollars (FUPDOL), did not apply the appropriate exchange rate. NKK states that when the Department calculates FUPDOL in an exporter price calculation, U.S. direct and indirect expenses are not deducted from U.S. price in the calculation of net U.S. price (NETPRIU). Thus, U.S. direct and indirect expenses, through a commission offset adjustment, are added to normal value when calculating FUPDOL. However, in calculating NKK's preliminary dumping margin, the Department did not convert U.S. direct and indirect expenses prior to the FUPDOL calculation and, as a result, yen expenses were mistakenly added to a dollar unit value in calculating FUPDOL. NKK provided suggested computer programming language for use in correcting this error. Petitioners have not commented on this issue in their rebuttal brief.

Department's Position: The Department agrees that this was an error, and has corrected the yen to dollar exchange rate conversion error in its final determination. Pursuant to § 351.224 of the Department's regulations, the effective date of this correction will be 30 days after the filing of the alleged clerical error.

Comment 33: Changes to NKK's Preliminary Margin Calculation.

Petitioners assert that the Department should correct three ministerial errors in the arm's length and model match programs used in calculating NKK's dumping margin. First, petitioners state that the Department should add the variable OVERRUNH to the KEEP statement for home market sales at line 786 of the model match program. Second, petitioners argue that The Department should revise line 98 (pertaining to the arm's length test) in the manner indicated in its case brief. Finally, petitioners argue that the Department should revise line 863 of the model match program in the manner indicated in its case brief. Petitioners provided suggested computer programming language to implement these corrections. NKK did not rebut petitioners' allegation in their rebuttal brief.

Department's Position: The Department agrees with petitioners and has made the appropriate changes to the arm's length program, model match program and margin calculation program.

Comment 34: Changes to NSC's Preliminary Margin Calculation Program.

NSC argues that the Department erred by including the sales to which it had assigned a facts available margin in its calculations of the margins for NSC's ''mainstream'' sales. NSC contends that these sales should have been excluded from the calculation once the facts available margins were assigned. Petitioners argue that the Department should reject NSC's argument and follow its established practice of determining the overall weighted average percent margin across all CONNUMS by using the value (U.S. price by CONNUM quantity by CONNUM), not just the quantity. Petitioners argue that unless this value is used in the calculation, the impact of facts available will be diminished.

Secondly, NSC argues that because the Department matches prime products to prime products, and because there were no U.S. sales of non-prime merchandise, sales of non-prime merchandise were effectively eliminated from the preliminary results margin calculation program. However, NSC states, the Department erred by combining home market sales of prime and non-prime merchandise in the same CONNUM to calculate the percentage of sales above and below the cost of production. NSC argues that this creates a distorting error in the determination of whether sales of a particular CONNUM were made below cost. Thus, NSC argues, the preliminary margin determination is contrary to the Department's policy of conducting separate cost tests on prime and non-prime products. *See Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Plate in Coils (''SSPC'') from the Republic of Korea,* 64 FR 15444, 15455 (March 31, 1999); *Notice of Final Results of Antidumping Duty Administrative Review: Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands,* 61 FR 48465, 48466 (September 13, 1996). Petitioners have not commented on this argument.

Department's Position: The Department agrees that prime and non-prime merchandise should not be combined to determine whether sales fell above or below cost. As noted by NSC, it is the Department's longstanding policy to conduct separate cost tests for prime and non-prime materials. Therefore, for the final determination, the Department has excluded non-prime merchandise from its analysis.

However, the Department agrees with petitioners reasoning as to why some sales should be used in the calculation of the overall margin and continues to use the same analysis it did in the preliminary determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to

suspend liquidation of all entries of subject merchandise from Japan that were entered, or withdrawn from warehouse, for consumption on or after November 21, 1998 (90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**) for KSC and those companies which fall under the ''all-others'' rate. In addition, we will continue to suspend liquidation of all entries of subject merchandise from Japan that were entered, or withdrawn from warehouse, for consumption on or after February 19, 1999 (the date of publication of the Department's preliminary determination) for NSC and NKK. We shall refund cash deposits and release bonds for NSC and NKK for the period between November 21, 1998 and February 19, 1999 (i.e., the critical circumstances period). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Company	Margins (percent)
Nippon Steel Corporation	19.65
NKK Corporation	17.86
Kawasaki Steel Corporation	67.14
All Others	29.30

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. Because our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: April 28, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–11286 Filed 5–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–817]

Oil Country Tubular Goods from Mexico; Antidumping Duty Administrative Review; Extension of Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary determination in antidumping duty administrative review of oil country tubular goods from Mexico.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on oil country tubular goods from Mexico. This review covers the period August 1, 1997 through July 31, 1998.

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: John Drury or Linda Ludwig, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0195 or 482–3833, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the time limits mandated by the Tariff Act of 1930, as amended, the Department is extending the time limit for completion of the preliminary results until August 31, 1999, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994 (19 U.S.C. § 1675 (a)(3)(A)). *See* memorandum to Robert S. LaRussa from Joseph A. Spetrini regarding the extension of the case deadline, xxxxxx, 1999.

Dated: April 26, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 99–11424 Filed 5–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–201–810]

Certain Cut-to-Length Carbon Steel Plate From Mexico: Postponement of Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (Department) is extending by no longer than 120 days the time limit of the preliminary results of the administrative review of the countervailing duty order on certain cut-to-length carbon steel plate from Mexico, covering the period January 1, 1997, through December 31, 1997, since it is not practicable to complete this review within the time limits mandated by the Tariff Act of 1930, as amended (19 U.S.C. 1675 (a)(3)(A)).

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Eric Greynolds, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0984 and 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR Part 351 (April 1998).

Background

On September 29, 1998, the Department initiated an administrative review of the countervailing duty order on certain cut-to-length carbon steel plate from Mexico, covering the period January 1, 1997, through December 31, 1997 (63 FR 51893). In our notice of initiation, we stated our intention to issue the final results of this review no later than August 31, 1999. The preliminary results of review are

currently due no later than May 3, 1999. Due to the complexity of the issues and the fact that certain subsidy allegations are being examined for the first time, the Department has determined that it is not practicable to complete this review within the time limits mandated by the Act (19 U.S.C. 1675 (a)(3)(A)).

Postponement of Preliminary Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) allows the Department to extend this time period to a maximum of 365 days and 180 days, respectively.

We determine that it is not practicable to complete the preliminary results of this review within the original time frame. *See* Memorandum from Bernard Carreau to Robert S. LaRussa, ''Extension of Preliminary Results: Certain Cut-to-Length Carbon Steel Plate from Mexico,'' dated April 13, 1999.

The deadline for issuing the preliminary results of this review is now no later than August 31, 1999, which is the full amount of time the Department can extend the preliminary results under section 751(a)(3)(A) of the Act. The deadline for issuing the final results of this review will be no later than 120 days from the publication of the preliminary results.

Dated: April 13, 1999.

Bernard Carreau,

Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 99–11284 Filed 5–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 043099B]

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This request is being submitted under the emergency processing procedures of the Paperwork Reduction Act.

Agency: National Oceanic and Atmospheric Administration.

Title: Beluga Whale Harvest Report.

Agency Form Number(s): None.

OMB Approval Number: None.

Type of Request: New Collection—Emergency Collection Request.

Burden: 5 hours.

Number of Respondents: 10.

Avg. Hours Per Response: 30 minutes.

Needs and Uses: The National Marine Fisheries Service will require Alaskan Natives who harvest beluga whales in Cook Inlet to report certain information and to submit the labeled jawbones on the whales taken. The information will be used to evaluate the health and stability of this stock and to construct a management regime that will provide for a sustainable subsistence harvest by Alaskan Natives.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent by Monday, May 10, 1999, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: April 29, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–11397 Filed 5–5–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042199A]

Marine Mammals; File No. 782–1355–02

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Seattle, WA 98115 has been issued an amendment to scientific research Permit No. 782–1355.

ADDRESSES: The amendment 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); and

Regional Administrator, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On March 22, 1999, notice was published in the **Federal Register** (64 FR 13780) that an amendment of Permit No. 782–1355, issued July 15, 1997 (62 FR 39826), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*),and the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 782–1355 authorizes the National Marine Mammal Laboratory to take Pacific Harbor seals (*Phoca vitulina*) in the following manner: harass during census flights; capture, restrain, measure (weight length, girth), sample (flipper punch, vibrissa, blood, blubber/muscle biopsy, ultra sound, enema), radio tag, flipper tag, and release 500 animals; and incidentally harass up to 2500 during the conduct of these activities, and during collection of scat samples from haulouts.

The Holder is now authorized to capture, restrain, mark measure, flipper tag, instrument, and sedate (when necessary), ringed seals (*Phoca hispida*); and harass ringed seals, bearded seals (*Erignathus barbatus*), ribbon seals (*Phoca fasciata*), and spotted seals (*Phoca largha*) during aerial stock assessments.

Dated: April 29, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–11396 Filed 5–5–99; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee; Eighth Renewal

The Commodity Futures Trading Commission has determined to renew again for a period of two years its advisory committee designated as the ''Commodity Futures Trading Commission Agricultural Advisory Committee.'' The Commission certifies that the renewal of the advisory committee is in the public interest in connection with duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1, *et seq.*, as amended.

The objectives and scope of activities of the Agricultural Advisory Committee are to conduct public meetings and submit reports and recommendations on issues affecting agricultural producers, processors, lenders and others interested in or affected by agricultural commodities markets, and to facilitate communications between the Commission and the diverse agricultural and agriculture-related organizations represented on the Committee.

Commissioner David D. Spears serves as Chairman and Designated Federal Official of the Agricultural Advisory Committee. The Committee's membership represents a cross-section of interested and affected groups including representatives of producers, processors, lenders and other interested agricultural groups.

Interested persons may obtain information or make comments by writing to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

Issued in Washington, DC on April 29, 1999, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–11323 Filed 5–5–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Petition for Exemption From the Statutory Dual Trading Prohibition in Affected Contract Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of petition for exemption from the prohibition on duel trading in an affected contract market.

SUMMARY: The Chicago Mercantile Exchange (''CME'' or ''Exchange'') has submitted to the Commodity Futures Trading Commission (''Commission'') a petition for exemption from the statutory prohibition against dual trading in two contract markets. The petition requests an exemption for two newly affected contract markets that trade electronically on CME's Globex$_2$ system. Copies of the entire file, including any future submissions, will be available to the public upon request, except to the extent the Exchange has requested confidential treatment.

ADDRESSES: Copies of the file are available from the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Reference should be made to the CME Globex$_2$ dual trading exemption petition file.

FOR FURTHER INFORMATION CONTACT: Adam E. Wernow, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581; telephone: (202) 418–5042; electronic mail: awernow@cftc.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Sections 4j(a)(1) and (3) of the Commodity Exchange Act (''Act'') and Commission Regulation 155.5 thereunder, a board of trade may submit a petition to the Commission to exempt any of its affected contract markets (markets with an average daily trading volume equal to or in excess of 8,000 contracts for four consecutive quarters) from the prohibition against dual trading. Regulation 155.5(d)(6) authorizes the Director of the Division of Trading and Markets to publish notice of each exemption petition deemed complete under Regulation 155.5(d) and to make the petition available to the public as required by Section 4j(a)(5) of the Act.

CME submitted a petition for a dual trading exemption dated November 17, 1998, and received by the Commission on November 20, 1998, for all of its contracts that electronically trade on the Exchange's Globex$_2$ system. Presently, only CME's E-Mini S&P 500 and Eurodollar futures contracts qualify as affected contract markets for purposes of the dual trading prohibition. Consequently, the Commission only will consider these markets for an exemption.

Copies of the file containing this petition and supporting materials, as well as any future submissions, except to the extent the Exchange has requested confidential treatment in accordance with 17 CFR 145.9, are available for inspection at the Commission's Office of the Secretariat, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, and may be obtained by mail at that address or by telephone at (202) 418–5100.

Petition materials subject to CME's request for confidential treatment may be available upon request pursuant to the Freedom of Information Act (''FOIA'') (5 U.S.C. § 552) and the Commission's regulations thereunder (17 CFR Part 145), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to FOIA, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with 17 CFR 145.7 and 145.8.

Application of the prohibition in the contract markets covered by the petition has been suspended in accordance with Commission Regulation 155.5(d)(5) and will remain suspended until the petition is acted upon.

Issued in Washington, DC, on April 29, 1999.

Alan L. Seifert,

Deputy Director, Division of Trading and Markets.

[FR Doc. 99–11367 Filed 5–5–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Application of the KCBT for Designation as a Contract Market in Western Natural Gas Index Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Kansas City Board of Trade (KCBT or Exchange) has applied for designation as a contract market in western natural gas index futures contracts. The proposal was submitted under the Commission's 45-day Fast Track procedures. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal 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 May 21, 1999.

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 KCBT western natural gas index futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Joseph Storer of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, telephone (202) 418–5282. Facsimile number: (202) 418–5527. Electronic mail: jstorer@cftc.gov

SUPPLEMENTARY INFORMATION: The proposed designation application was submitted pursuant to the Commission's Fast Track procedures for streamlining the review of futures contract rule amendments and new contract approvals (62 FR 10434). Under those procedures, the proposal, absent any contrary action by the Commission, may be deemed approved at the close of business on June 7, 1999, 45 days after receipt of the proposal. In view of the limited review period under the Fast Track procedures, the Commission has determined to publish for public comment notice of the availability of the terms and conditions for 15 days, rather than 30 days as provided for proposals submitted under the regular review procedures.

Copies of the proposed contract terms 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 can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the internet on the CFTC website at www.cftc.gov under ''What's New & Pending''.

Other materials submitted by the KCBT in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (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 materials 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 proposal, or with respect to other materials submitted by the KCBT, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on April 28, 1999.

John R. Mielke,

Acting Director.

[FR Doc. 99–11322 Filed 5–5–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 6, 1999.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the United States Total Army Personnel Command, ATTN: TAPC–OPD–C (Annette Bush), 200 Stovall Street, Alexandria, Virginia 22332–0413. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title, Associated Form, and OMB Number: Application and Contract for Establishment of a Junior Reserve Officers' Training Corps Unit, DA Form 3126, OMB Number 0702–0021.

Needs and Uses: The DA Form 3126 will be initiated by the school desiring to host a unit and countersigned by a representative of the Secretary of the Army. The contract (DA Form 3126) is necessary to establish a mutual agreement between the secondary institution and the U.S. Government while keeping within the parameters of the law. The data provided on the application is used to determine which school will be selected.

Affected Public: State, Local or Tribal Government.

Annual Burden Hours: 70.

Number of Respondents: 70.

Responses Per Respondent: 1.

Average Burden Per Response: 1 hour.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: Educational institutions desiring to host a Junior ROTC unit may apply by using a DA Form 3126. The DA Form 3126 documents the agreement and becomes a contract signed by both the institution and the U.S. Government. The DA Form 3126 provides information on the school's facilities and states specific conditions if a JROTC unit is placed at the institution. The data provided on the application is used to determine which school will be selected.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–11411 Filed 5–5–99; 8:45 am]

BILLING CODE 3710–08–P

DEPARMENT OF DEFENSE

Corps of Engineers

Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Dade County Beach Erosion Control and Hurricane Protection Project, for a Test Beach Fill Using a Domestic Upland Sand Source Based on a Generic Sand Specification

AGENCY: Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers intends to prepare a Draft Environmental Impact Statement for the Dade County Beach Erosion Control and Hurricane Protection Project, for a Test Beach Fill using a domestic upland sand source.

The source of sand will be determined from prospective contractor proposals based on a generic sand specification developed by the Jacksonville District. The study is a cooperative effort between the U.S. Army Corps of Engineers and the Dade County Department of Environmental Resources Management (DERM), the non-Federal sponsor for the project.

FOR FURTHER INFORMATION CONTACT: Kenneth Dugger, 904–232–1686, Environmental Branch, Planning Division, PO Box 4970, Jacksonville, Florida 32232–0019.

SUPPLEMENTARY INFORMATION: The Beach Erosion Control and Hurricane Protection (BEC & HP) Project for Dade County, Florida was authorized by the Flood Control Act of 1968. The authorized project provides for the nourishment of 9.3 miles of shoreline between Government Cut and Bakers Haulover Inlet and for the nourishment of 1.2 miles of shoreline at Haulover Beach Park. The Supplemental Appropriations Act of 1985 and the Water Resources Development Act 1986 (Pub. L. 99–662) provided authority for extending the northern limit of the authorized project to include the construction of protective beach along the 2.5 mile reach of shoreline north of Haulover Beach Park (Sunny Isles) and for periodic nourishment of the of the overall project for 50 years.

Offshore borrow sources of beach quality sediment along the Dade County shoreline have been almost completely depleted, and alternative sources of material will be required in the near future to provide continued renourishment of the project. Although sediment from offshore borrow sites has traditionally been used for project renourishment, the use of sand from other sources may provide an effective alternative for future renourishment requirements.

The purpose of the test fill, in addition to providing nourishment to an eroded portion of the Federal project along northern Miami Beach, is to evaluate the economic, engineering and environmental performance of an upland sand source on the beach erosion control project.

The proposed test fill site would be located along northern Miami Beach, and would extend along approximately 1.5 miles of shoreline which has been an erosional area since the project was constructed. The proposed site is located far from adjacent inlets, and no significant structures exist in this vicinity to disrupt the ''natural'' coastal processes. The total volume of the test fill is expected to be approximately 600,000 cubic yards. The currently proposed location for the test fill is between 83rd and 63rd Streets in Miami Beach (DEP monuments R–36 to R–47). The exact source of sand for the test beach would be determined during the procurement process. Sand sources proposed by contractors would have to meet a set of generic sand specifications and pass a screening process for sand characteristics and potential environmental impacts.

In order to evaluate the performance of the test fill, a monitoring program will be established. The monitoring program would consist of physical surveys, sediment sampling and analysis, and aerial photography. In addition, environmental monitoring of the test fill would be performed. The environmental studies would focus mainly on the impacts of the material on sea turtle nesting and benthic infaunal communities.

Alternatives: At this time, the only known alternative to performing the test beach fill is not performing the test or the no-action alternative.

Issues: The EIS will consider impacts on coral reefs and other hardbottom communities, endangered and threatened species, shore protection, water quality, aesthetics and recreation, fish and wildlife resources, cultural resources, energy conservation, socio-economic resources, and other impacts identified through scoping, public involvement, and interagency coordination.

Scoping: A copy of this notice will be sent to interested parties to initiate scoping. All parties are invited to participate in the scoping process by identifying any additional concerns on issues, studies needed, alternatives, procedures, and other matters related to the scoping process. At this time, there are no plans for a public scoping meeting.

Public Involvement: We invite the participation of affected Federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties.

Coordination: The proposed action is being coordinated with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service under Section 7 of the Endangered Species Act, with the FWS under the Fish and Wildlife Coordination Act, and with the State Historic Preservation Officer. In addition, we have coordinated with the Florida Department of Environmental Protection, the dredging industry, academic experts, and other interests on this matter.

Other Environmental Review and Consultation: The proposed action would involve evaluation for compliance with guidelines pursuant to section 404(b) of the Clean Water Act; application (to the State of Florida) for Water Quality Certification pursuant to section 401 of the Clean Water Act; certification of state lands, easements, and rights of way; and determination of Coastal Zone Management Act consistency.

Agency Role: As the non-Federal sponsor and leading local expert; DERM will provide extensive information and assistance on the resources to be impacted, mitigation measures, and alternatives.

DEIS Preparation: It is estimated that the DEIS will be available to the public on or about July 16, 1999. We plan to post the DEIS on the environmental documents page of the Jacksonville District's web site (http//www.saj.usace.army.mil/pd/env-doc.htm).

Dated: April 22, 1999.

James C. Duck,

Chief, Planning Division.

[FR Doc. 99–11409 Filed 5–5–99; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Department of Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council, and invites people to participate. Notice of this meeting is required under section 644(c) of the Reauthorization Individuals with Disabilities Education Act (IDEA) and is intended to notify the general public of their opportunity to attend this meeting. The meeting will be accessible to individuals with disabilities.

DATE AND TIME: Thursday, June 10, 1999, from 1:00 p.m. to 4:30 p.m.

ADDRESS: Holiday Inn, 550 C Street, S.W., Washington, D.C. 20202, near the Federal Center Southwest and L'Enfant metro stops.

FOR FURTHER INFORMATION CONTACT: Libby Doggett or Kim Lawrence, U.S. Department of Education, 330 C Street, SW, Room 3080, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–9754.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 644(c) of the Reauthorization Individuals with Disabilities Education Act (20 U.S.C. 1484a). The Council is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

The FICC will attend to ongoing work including reports from a technical assistance survey and a Department of Defense Task Force. A list of Minimum Health Benefits for Children with Disabilities, which has been distributed to agencies and other organizations for comment, will be considered. A presentation by Marie Bristol on autism will also be held. New Family Representatives will be introduced.

To request a packet of materials or accommodations such as interpreters for persons who are hearing impaired, materials in Braille, large print, or cassette please call Kim Lawrence at (202) 205–5507 (voice) or (202) 205–9754 (TDD) my May 21, 1999.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW, Room 3080, Switzer Building, Washington, DC 20202–2644, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal Holidays.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Service.

[FR Doc. 99–11417 Filed 5–05–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket No. EA–121–A]

Application To Export Electric Energy; Electric Clearinghouse, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Electric Clearinghouse, Inc. (ECI) has applied for renewal of its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before June 7, 1999.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202-586–4708 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: On February 24, 1997, the Office of Fossil energy (FE) of the Department of Energy (DOE) authorized ECI to transmit electric energy from the United States to Mexico as a power marketer using the international electric transmission facilities of San Diego Gas and Electric Company, El Paso Electric Company, Central Power and Light Company and Comision Federal de Electricidad, the national electric utility of Mexico. That two-year authorization expired on February 24, 1999. On April 8, 1999, ECI filed an application with FE for renewal of this export authority and requested that the Order be issued for a 5-year term.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA–121. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–121 proceeding.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on ECI's request to export to Mexico should be clearly marked with Docket EA–121–A. Additional copies are to be filed directly with Daniel A. King, Esq., Electric Clearinghouse, Inc., 805 15th Street, N.W., Suite 510–A, Washington, D.C. 20005–2207 and Kathryn L. Patton, Esq., Electric Clearinghouse, Inc., 1000 Louisiana, Suite 5800, Houston, TX 77002–5050.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Regulatory Programs,'' then ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, D.C., on April 30, 1999.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–11404 Filed 5–5–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: The Department is providing notice of a proposed ''subsequent arrangement'' under the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning the Civil Uses of Atomic Energy and the Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of Korea Concerning Civil Uses of Atomic Energy. This notice is

being issued under the authority of Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160).

The subsequent arrangement RTD/KO(CA)–8 concerns the retransfer of one low enriched uranium fuel bundle (one type contains 36-Element, another type contains 18-Element) consisting of 100,000 grams of uranium, of which 19,750 grams of the isotope U–235 is enriched to less than 20 percent, from Canada to Republic of Korea for use as additional fueling for the HANARO research reactor. This material is U.S. origin and thus requires U.S. approval for retransfer to a third country.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: April 30, 1999.

For the Department of Energy.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 99–11405 Filed 5–5–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Opportunity for Public Comment, Regarding Bonneville Power Administration's Subscription, Power Sales to Customers and Customers' Sales of Firm Resources

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of draft policy proposal.

SUMMARY: BPA is publishing a draft policy proposal for addressing certain issues under sections 5(b) and 9(c) of the Northwest Electric Power Planning and Conservation Act, (the Northwest Power Act), Pub. L. 96–501, and section 3(d) of the Act of August 31, 1964 (the Northwest Preference Act), Pub. L. 88–552, regarding the amount of Federal power a customer may purchase under BPA subscription power sales contracts.

BPA is initiating development of a policy that will provide policy guidance on implementation of the Power Subscription Strategy under applicable statutes and describe how certain factual determinations needed for BPA subscription power sales contracts will be made.

DATES: Public meeting dates: May 27, 1999, and June 2, 1999. Close of comment date: June 11, 1999.

ADDRESSES: If you are interested in commenting on the policy proposal regarding the amount of Federal power a customer may purchase under BPA subscription power sales contracts, you have several options.

1. You can send written comments to Bonneville Power Administration, P.O. Box 12999, Portland, OR 97212, or you can fax comments to (503) 230–4019. If you wish to send your comments electronically, email comments to: *comment@bpa.gov*. Comments must be received by close of business Friday, June 11, 1999.

2. You also can attend one or both of the two public comment meetings. One meeting will be held on Thursday, May 27, 1999, in Spokane, Washington, at Cavanaugh's Inn at the Park, 303 W. North River Drive. Another meeting will be held in Portland, Oregon, on Wednesday, June 2, 1999, at the Sheraton Portland Airport Hotel, at 8235 NE Airport Way. Both meetings will begin at 10:00 a.m. Comments also will be collected on BPA's Standards for Service proposal. If any additional meetings are scheduled, the information will be posted on the web site listed below.

http://www.bpa.gov/Power/subscription

FOR FURTHER INFORMATION CONTACT: Mr. Michael Hansen, Public Involvement and Information Specialist, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621, telephone (503) 230–4328 or 1–800–622–4519. Information can also be obtained from your BPA Account Executive or from:

Ms. Ruth Bennett, Acting Vice President, Power Marketing, 905 NE 11th, P.O. Box 3621, Portland, OR 97208, telephone (503) 230–7640

Mr. Rick Itami, Manager, Eastern Power Business Area, 707 W. Main Street, Suite 500, Spokane, WA 99201, telephone (509) 358–7409

Mr. John Elizalde, Acting Manager, Western Power Business Area, 700 NE Multnomah, Suite 400, Portland, OR 97232, telephone (503) 230–7597

SUPPLEMENTARY INFORMATION: On December 21, 1998, BPA published its Power Subscription Strategy and Record of Decision for selling Federal power under new contracts with its public utility, investor-owned utility and direct service industrial customers. The Power Subscription Strategy stated overall policies for determining the amount of power that would be offered to Pacific Northwest public utilities and investor-owned utilities under section 5(b)(1) of the Northwest Power Act.

This **Federal Register** Notice presents BPA's draft proposal for implementing the Power Subscription Strategy under its post-2001 power sales contracts. The proposal recommends contract mechanisms for determining the amount of electric power BPA will offer to public and investor-owned utilities. It also proposes contract mechanisms for determining the amount of electric power BPA will offer investor-owned utilities, based on a firm power requirement load, in settlement of their rights to service under the residential exchange program created under section 5(c) of the Northwest Power Act. Based on section 3(d) of the Northwest Preference Act and 9(c) of the Northwest Power Act, the proposal recommends principles for determining the effect a customer's sale of its non-Federal firm resources may have on the amount of Federal power that BPA will offer to the customer under its BPA power sales contract.

The Northwest Power Act provisions are:

5(b)(1) Whenever requested, the Administrator shall offer to sell to each requesting public body and cooperative entitled to preference and priority under the Bonneville Project Act of 1937 [16 U.S.C. 832 *et seq.*] and to each requesting investor-owned utility electric power to meet the firm power load of such public body, cooperative or investor-owned utility in the region to the extent that such firm power load exceeds—

(A). the capability of such entity's firm peaking and energy resources used in the year prior to December 5, 1980, to serve its firm load in the region, and

(B). Such other resources as such entity determines, pursuant to contracts under this chapter, will be used to serve its firm load in the region.

5(b)(1) In determining the resources which are used to serve a firm load, for purposes of subparagraphs (A) and (B), any resources used to serve a firm load under such subparagraphs shall be treated as continuing to be so used, unless such use is discontinued with the consent of the Administrator, or unless such use is discontinued because of obsolescence, retirement, loss of resource, or loss of contract rights. 16 U.S.C. 839c(b)(1)

9(c) Any contract of the Administrator for the sale or exchange of electric power for use outside the Pacific Northwest shall be subject to limitations and conditions corresponding to those provided in sections 2 and 3 of the Act of August 23, 1964 (16 U.S.C 837a and 837b) for any contract for the sale, delivery, or exchange of hydroelectric energy or peaking capacity generated within the Pacific Northwest for use outside the Pacific Northwest. In applying such sections for the purposes of this subsection, the term ''surplus energy'' shall mean electric energy for which there is no market in the Pacific Northwest at any rate established for the

disposition of such energy, and the term ''surplus peaking capacity'' shall mean electric peaking capacity for which there is no demand in the Pacific Northwest at the rate established for the disposition of such capacity. The authority granted, and duties imposed upon, the Secretary by sections 5 and 7 of such Act (16 U.S.C. 837d and 837f) [16 U.S.C. 837d and 837f] shall also apply to the Administrator in connection with resources acquired by the Administrator pursuant to this chapter. *The Administrator shall, in making any determination, under any contract executed pursuant to section 839c of this title, of the electric power requirements of any Pacific Northwest customer, which is a non-Federal entity having its own generation, exclude, in addition to hydroelectric generated energy excluded from such requirements pursuant to section 3(d) of such Act (16 U.S.C. 837b(d)), any amount of energy included in the resources of such customer for service to firm loads in the region if (1) such amount was disposed of by such customer outside the region, and (2) as a result of such disposition, the firm energy requirements of such customer other customers of the Administrator are increased. Such amount of energy shall not be excluded, if the Administrator determines that through reasonable measures such amount of energy could not be conserved or otherwise retained for service to regional loads. The Administrator may sell as replacement for any amount of energy so excluded only energy that would otherwise be surplus.* 16 U.S.C. 389f(c) (emphasis supplied).

The Northwest Preference Act provision is:

3(d) The Secretary, in making any determination of the energy requirements of any Pacific Northwest customer which is a non-Federal utility having hydroelectric generating facilities, shall exclude any amounts of hydroelectric energy generated in the Pacific Northwest and disposed of outside the Pacific Northwest by the utility which, through reasonable measures, could have been conserved or otherwise kept available for the utility's own needs in the Pacific Northwest. The Secretary may sell the utility as a replacement therefor only what would otherwise be surplus energy. 16 U.S.C. 837b(d).

Net Requirements

The term ''net requirement'' means the amount of Federal power that a public utility, cooperative or investor-owned utility is entitled to purchase from BPA to serve its regional consumers' loads. The definition is based on section 5(b)(1) of the Northwest Power Act of 1980 under which BPA offers to sell firm power in excess of a customer's own firm resources. In calculating net requirements obligation to any customer, Congress directed BPA to consider exports of the customer's non-Federal resources outside the Pacific Northwest. These considerations are based on section 9(c) of the Northwest Power Act as well as section 3(d) of the Northwest Preference Act.

The method of calculating net requirements is an important issue because it determines the amount of Federal power an eligible customer can receive for its firm consumer loads in the region. Section 5(b)(1) of the Northwest Power Act says that a BPA customer is entitled to purchase an amount of cost-based Federal power needed to meet its net requirement. A customer's net requirement is equal to the difference between its regional consumer firm loads and the amount of its non-Federal generation and firm power purchase contracts that the customer uses to serve those loads.

BPA first implemented the net requirements mandate of the Northwest Power Act through mechanisms in its 1981 contracts including the Firm Resource Exhibit (FRE), the Assured Capability Exhibit and other contract provisions. A FRE is a list of firm resources to be used by the customer in serving its regional load. A firm resource is one that can contribute a specific amount of electricity for operational and power planning purposes to serve a customer's loads. All of the current power sales contracts negotiated in 1981 will terminate by October 1, 2001 and must be replaced. The wholesale electricity market has undergone major changes since 1981. As a result, this is only the second time, since the Northwest Power Act became law that BPA has addressed the issue of how net requirements should be determined for its utility customers.

The Context: Net Requirements in a Changing Market

In 1992 Congress passed the National Energy Policy Act deregulating the wholesale power side of the electric industry. BPA sells Federal power at wholesale under contracts with eligible customers. Deregulation has changed the playing field of the wholesale electricity marketplace causing BPA and other utilities to change the way they do business. These changes have forced BPA to re-assess how it implements sections 5(b) and 9(c) of the Northwest Power Act and 3(d) of the Northwest Preference Act. The following provides a general overview of the context of these changes and how they may affect BPA's determinations of a customer's net requirements.

The Market as a Firm Resource

In 1981 relatively few BPA customers owned generating resources that were used to serve a portion of their load. The operation of most of these resources was managed by the region through the Pacific Northwest Coordination Agreement as if all of the region's Federal and non-Federal generating resources were operated by a single utility. The region's utilities knew who owned what resources and what loads they served. Increasingly, BPA's utility customers are relying less on generation and more on market power purchases to serve their firm consumer loads. Others have developed new generation resources which they have chosen not to apply to their consumer load and do not specify in their Firm Resource Exhibit in their current BPA power sales contract. Most investor-owned utilities have not taken their consumer load service from BPA and have not made power purchases under the 1981 contracts. In 1996, BPA offered a number of contract amendments to its public utility customers allowing them to reduce their purchases from BPA and serve a portion of their load from the wholesale marketplace. These examples mean that BPA, working with customers and other regional constituents, needs to re-assess how a customer's use of the marketplace should be factored into BPA's calculation of net requirements.

Separation of Utilities' Transmission and Power Sales Business Lines

The purpose of passage of the Energy Policy Act of 1992 was deregulation of the wholesale electricity market. Federal Energy Regulatory Commission orders 888 and 889 accelerated this process. Among the requirements of FERC order 889 is that utilities functionally separate their transmission and power marketing business lines so that a utility's power marketing business has access to no more information about its transmission system than any other participant in the market. The intent of functional separation is to encourage full competition in the wholesale electricity market by providing all marketers equal access to the means of delivery. BPA has chosen to voluntarily comply with the FERC orders. One of the ways BPA identified a customer's export of its non-Federal resources when determining a customer's power requirements under its 1981 contracts was by examining transmission schedules of non-Federal utilities to other utilities outside the Northwest. Under FERC order 889, BPA's Power Business Line no longer has access to this information.

Retail Load Loss for BPA Customers

Changes are occurring in the retail electricity industry as well as in the wholesale market. In most states each utility has a service area in which it is the exclusive supplier of electric service

to retail consumers. BPA sells its power to these utilities on a wholesale basis and they resell the electricity to their retail consumers. Under retail electric market deregulation, a utility may continue to operate its distribution system but other marketers may compete to supply electricity to residential, commercial and industrial consumers. The substitution of electric power suppliers raises a risk of retail load loss for some BPA customers. As more states deregulate their retail electricity markets, the effect of retail load loss on a customer's net requirements in the region becomes increasingly important. One concern is how the loss of industrial and commercial load by a BPA customer will change BPA's obligation to provide net requirement load service. The Northwest Power Act does not distinguish between the various types of consumer loads when calculating BPA's net requirements. Loss of load service by the utility to another provider may affect the total amount of power a customer could continue to buy from BPA.

Effects of Sales of Generating Resources and Other Assets on Net Requirements

As a result of deregulation, some utilities have sold or are likely to sell generating resources on the market which have historically been dedicated and used to serve Northwest retail consumer load. The buyers of these resources will likely sell their output for the highest price they can receive, either inside or outside of the region.

By law, BPA is required to make factual determinations regarding the sale of certain resources and its effect on BPA's service obligations to all customers and BPA's cost-based rates. Section 9(c) of the Northwest Power Act and section 3(d) of the Regional Preference Act require that BPA reduce the amount of power a utility receives under its BPA contracts based on findings regarding its exports out of the region. Complying with this legal mandate in a competitive market is much more complex now than when the wholesale market was regulated and there were comparatively few customers with non-Federal generating resources.

Other utilities have decided to sell portions of their electricity supply and distribution businesses in certain parts of the region. In certain instances, new public power entities are forming and proposing to take over the business formerly provided by investor-owned utilities. Section 5(b)(1) directs BPA to sell power to meet the firm power loads of a utility customer in the Pacific Northwest. BPA must address how changes will be made to the amounts of power BPA sells a customer when that customer no longer serves a particular regional load or serves new loads.

Proposed Principles

BPA is offering the following draft proposal as an approach to determining firm power net requirements obligations. It is intended to answer the following general questions:

1. In negotiating a new post-2001 power sales subscription contract, how should BPA determine a customer's net requirement based on the customer's use of firm resources and its consumer loads?
2. How will changes in a customer's net requirement be made during the term of its subscription contract?
3. How will BPA determine, as required by section 9(c) of the Northwest Power Act and section 3(d) of the Regional Preference Act, the effect of a customer's export of its resources on BPA's net requirements obligation to supply power to the customer?
4. How should BPA implement its policy on the factual determinations for treatment of customer's firm resources under its statutes?

I. Initial Determination of Net Requirements

In the remainder of this notice, proposed principles are in regular type with explanatory material in italic.

This section describes how BPA will contractually limit and define its obligation to provide power to a customer under the Power Subscription Strategy. It is based on language in the Northwest Power Act that requires BPA to offer power to serve a customer's regional consumer load. Some products meet a utility's full load minute by minute, while other products provide power services based on the difference between a customer's own resources used for load and their BPA purchases. Two products offer service on a planned or forecasted load, a fixed block product and a SLICE product. For these products, the amount of Federal power offered must be based on reasonable and verifiable estimate of the customer's regional consumer load. BPA's Power Products Catalog of the Power Subscription Strategy proposed a principle in which the fixed block products and the SLICE products are based on the customer's existing regional consumer load without consideration of changes for load growth. These products use an annual estimate of consumer loads, which is done once, at the start of the contract. They assume the customer and not BPA will serve any load growth. Thus, there would be no increase in the amount of the purchase over the term of the agreement. Under these products, the customer agrees to provide non-Federal resources to serve its load growth.

(A) BPA's initial offer will be based on the utility's actual loads or a reasonable and verifiable estimate of the utility's retail load in the region identified in its projected business plan at the time of the offer.

This principle is based on section 5(b)(1) of the Northwest Power Act. BPA is to offer power to serve a customer's firm consumer load in the region. In a deregulated market, the longer the term of the contract, the greater the likelihood that changes will occur in a customer's regional consumer load. This principle seeks to address this concern by limiting the application of the forecast used to initially determine a customer's net requirements to one year. Principle II.A. below requires a mechanism for a BPA annual review of a customer's net requirements load.

(B) Except as provided in I.D. below, BPA will require that the utility continue to apply all current generation and long-term power purchase contracts to serve that customer's regional consumer load under a subscription contract. These resources are included in the Firm Resource Exhibit of a BPA customer's current 1981 or 1996 power sales contracts for the 1998–1999 operating year. BPA also will require all current long-term surplus power purchase contracts or excess Federal Power purchase contracts that extend beyond 2001 to be applied to serve a customer's regional consumer load under a subscription contract.

(C) BPA will consider any purchase contract that terminates after September 30, 2001, to be a long-term power purchase contract that extends beyond 2001.

(D) BPA will offer the customer power products and services at the Priority Firm (PF) rate and without a PF surcharge for consumer loads that are no longer served by generation resources and long term power purchase contracts due to resource retirement, obsolescence, or other loss of resource, or loss of contract right. Purchases of Federal surplus power and Excess Federal power that extend beyond 2001 are treated as long term power purchase contracts. Post-2001 PF power sales for resource replacement shall commence on the dates such resources are lost, provided that BPA has been notified in writing of the resource loss in time to permit the agency to include the additional load in the BPA rate process and that the generating resource or

contract meets the standards described in II.E below.

Principles I. B., C. and D. are based on sections 5(b)(1)(A) and 5(b)(1)(B) of the Northwest Power Act. The Subscription Strategy stated that a customer must continue to serve its loads currently served by a customer's generating resources or long-term power purchase contracts that continue beyond 2001. Principle I.B. clarifies that the resources a customer is required to apply to load is limited to those resources included in the customer's current Firm Resource Exhibit for the 1998–1999 operating year. These principles state that all power purchase contracts with termination dates beyond 2001 are included in the customer's firm resources. Under the subscription contract, the customer must use these resources to serve its regional consumer loads. These long-term power purchase contracts that continue beyond 2001 include presubscription contracts and other long-term contracts to purchase Federal power from BPA. The principles also acknowledge that there are a number of these power purchase contracts which customers know will expire prior to the end of the BPA rate period.

The proposed principle allows the customer to purchase net requirements load service from BPA at the PF rate and without the PF surcharge as long as BPA is informed of the expiration dates of the contracts and the cost of such service has been identified and included in BPA's rate case. The customer must consult with BPA and obtain BPA's agreement in writing to receive requirements load service from BPA for a generating resource the customer believes should be permanently discontinued due to obsolescence or retirement. Resources or contracts that are lost after BPA submits its final rate case to the Federal Energy Regulatory Commission will incur a PF surcharge to cover any additional power costs BPA faces to serve the additional load.

BPA considered whether the customer's use of the market as a resource should also be considered. Many customers who use the market as a resource would likely face a loss of contract right for their short-term contract purchases. Additionally, some customers have been serving their consumer load in the region with generation resources not included in their Firm Resource Exhibits of their current power sales contract. Instead of the market, they are using their own non-Federal generation to serve their load. The proposed principles address a customer's use of those resources in serving its regional load based on section 9(c) of the Northwest Power Act. 16 U.S.C. 839(f)c.

(E) In determining a customer's net requirements load, BPA will follow the Declaration Parameters included in the Power Products Catalog under Actual Partial Service in establishing the capabilities of the customer's firm resources under the Subscription contract.

Principle I.E. follows the approach established in BPA's Power Products Catalog for Actual Partial Products for determining the capabilities of the customer's resources to be applied to its loads. BPA considered whether there might be a simpler method for determining customer resource capability. However, there are enough unique customer perspectives on estimating resource capability that this approach appears to best meet the needs of resource determination in a deregulated market.

(F) BPA will determine what, if any, amount of thermal and/or hydroelectric peaking capacity and electric energy a customer has exported from the region that could be conserved or otherwise retained for service to regional loads. The customer's net requirements must be reduced to the extent that BPA determines the exported energy increased BPA's obligation to any customer to provide power to meet regional loads.

Principle I.F. is based on section 9(c) of the Northwest Power Act. This principle states that BPA will implement section 9(c) by determining whether a customer has exported power from a thermal resource, whether BPA's net load requirements have increased as a result and whether the power could be conserved or otherwise retained for service to any regional loads by reasonable means. The proposed principle states that BPA will implement section 3(d) of the Regional Preference Act by determining whether a customer has exported power from a hydroelectric resource and whether the hydro resource could be conserved or kept available. In its 1994 9(c) policy, BPA adopted a policy stating that a customer's hydroelectric resources could always be applied to load in the region. This principle also continues BPA's past determinations for specific resources that resulted in reductions in net requirements of customers.

Il. Changes in Net Requirements During Term of the Contract

This section addresses reductions in BPA's net firm load requirements obligation due to changes on or sale of a customer's system which will change the amount of regional firm consumer load served by that customer or that reduce its net requirements. The principles are based on sections 5(b)(1) and 9(c) of the Northwest Power Act and 3(d) of the Regional Preference Act. The following principles propose a contract mechanism for making additional sales of power to utilities and the circumstances under which BPA would apply the PF Surcharge, Targeted Adjustment Surcharge to such purchases by public agency customers, or the NR rate for purchases by investor-owned utilities (IOUs). The actual rates that apply to any increased amounts of power sold for net requirements loads will be established in the BPA rate case.

These principles focus on the transition from the 1981 contract model to the Power Subscription Strategy model. Under the 1981 contract, BPA obligated itself to serve the entire regional load of a utility based upon notice periods and availability of power for acquisitions. A BPA goal under the Power Subscription Strategy is only to acquire new resources to serve a customer's net requirements load increase beyond its initial subscription amount based on a bilateral agreement in which the requesting customer takes all the financial risk. (Note: The initial subscription amount includes load growth for a customer purchasing that right.) BPA will still have to meet all of its total regional load obligations to all customers. Accounting for reductions in loads is part of meeting BPA's total regional firm load obligations.

(A) BPA will require, at least annually, that a customer report specified events causing a reduction in its consumer load. For fixed block and SLICE purchasers, if the reductions cause a customer's net requirements to fall below the amount of power being purchased from BPA, the agency will implement the mitigation measure for retail load loss specified in the customer's contract. For investor-owned utilities, BPA will provide the remarketing product option.

Principle II.A. is based on section 5(b)(1) of the Northwest Power Act which limits BPA's net requirement obligation to a utility's firm consumer load in the region. This principle addresses the issue of the loss of retail consumer load by a utility and the use of the remarketing product mitigation measure specified in section IV.H.2. of the Subscription Strategy. This remarketing provision provides a financial benefit to residential loads for IOUs that no longer can purchase requirements power due to the utility's retail load losses. BPA considered other alternatives such as a conditioned consent to the removal of customer

resources dedicated to serving regional load under their subscription contract. Under such an alternative, BPA would allow a customer to reduce the amount of resources serving its load equal to the reduction in requirements service caused by the retail load loss. BPA is interested in comments on this alternative and other alternatives to address this issue.

(B) BPA will reduce a customer's net requirements by the amount of any exports of hydroelectric or thermal resources if BPA determines such resources could have been conserved or otherwise retained to meet regional firm power requirements of any BPA customer. On an annual basis, BPA will determine whether a customer's export of thermal or hydroelectric resources could have been conserved or otherwise retained to serve any regional loads.

Principle II.B. is based on existing BPA policy for export sales of hydroelectric resources and thermal resources applied to regional load. See 1994 Non-Federal Participation Capacity Ownership, and Section 9(c) Policy. Reductions in BPA power requirements obligations due to a customer's export of power from its resources can come at any time. For example, a customer could end a contractual sale to another customer, where such other customer had dedicated the power purchase to serve its firm loads. By giving six months' notice, the customer losing the power purchase could request additional service from BPA at the PF Surcharge rate. If the customer owning the resource has sold power from its resource on the market after it was withdrawn, then it would face a section 9(c) determination and would potentially be subject to a reduction in its net requirements. In this example, the withdrawal of the power could cause BPA's obligation to the second customer to increase. BPA's policy on hydroelectric resources under section 3(d) of the Regional Preference Act is hydroelectric resources can always be operated or applied against regional load by reasonable means. BPA's policy on thermal resources applied by a customer to its regional consumer load is that such resources can be conserved or retained for service to regional load. BPA is proposing changes in its policy on export of thermal resources under this Federal Register Notice.

(C) Within the following limits, BPA will reduce a customer's take-or-pay obligation by an amount equal to the customer's dedication for a specified contract period of new renewable resources developed by that customer. Alternatively, a customer may develop new non-hydro renewable resources and export these outside the region without reducing its net requirement. This right to reduce BPA purchases shall apply only to the first 200 average megawatts of all new renewable resources developed by all BPA customers within the region. The new renewable resources must meet the standards for BPA's conservation and renewable resources discount, and be dedicated to serving the customer's load.

Principle II.C. is based on the regional interest to encourage the development of renewable resources and follows statutory language in section 5 (b)(1)(B) of the Northwest Power Act that allows the Administrator to consent to resources changes under a requirements contract. This principle would allow customers to dedicate a new renewable resource to serve their retail consumer load. BPA has consistently interpreted section 5(b)(1) as allowing the Administrator to specify by contract the customer's dedication of additional resources to serve its load. BPA's Subscription Strategy requires customers to take the risks on their non-Federal resource placement commensurate with BPA's risks in covering future costs of Federal resources.

BPA requires customers to specify the amount of firm resources they dedicate to serve their retail consumer loads for the term of their contract. BPA is willing to sign a Subscription contract for terms ranging from 1 to 20 years. This renewable resource principle provides an exception to the policy that a customer's firm resources must be known and dedicated at the start of the BPA contract and for the entire term of a contract. The exception provides for the Administrator's consent to the addition of new renewable resources during the term of the contract and allowing removal of such renewable resources at a point prior to the end of the contract. BPA has placed two conditions on this exception: (1) qualified renewable resource dedications are limited to the first 200 average megawatts of renewable resources that customers request to dedicate during any year; and (2) only resources that would qualify for BPA's conservation and renewable resources discount are eligible.

(D) BPA will provide net firm requirements service under the PF Surcharge rate or the New Resource Firm Power (NR) rate for a customer's regional loads not included in the rate case and which are served by the customer's dedicated generation resources and its long term power purchase contracts that extend beyond 2001, if such dedicated resources are lost for specified reasons described in principle II.E. during the rate period.

(E) Generation resources and long term power purchase contracts extending beyond 2001 are considered lost if they are permanently discontinued during the rate period due to retirement, obsolescence, loss of the resource, or loss of a contract right. Loss of a resource must result from factors beyond the reasonable control of the customer and which the best efforts of the customer are unable to remedy. BPA will consider such resources lost due to permanent discontinuance because of obsolescence or retirement only if the customer has consulted with BPA and BPA has agreed in writing to such discontinuance.

Principles II. D. and E. continue BPA's existing contract standards regarding a customer's loss of firm resources. These principles have worked for 20 years and allow BPA to consider all the facts in determining when BPA must replace a customer's lost resource with Federal resources.

BPA will provide replacement firm power service for the regional consumer load served by the resource as net requirements power only if the customer has lost a resource or lost a contract for the reasons specified above. For example, expiration of a customer's non-Federal power purchase contract is considered a loss of a contract beyond the reasonable control of a customer, and which the best efforts of the customer are unable to remedy. If a customer requests additional power purchases from BPA for its regional firm load served by its resources for any other reasons, BPA would make such purchases of replacement power from the market under separate contracts and its section 7(f) surplus power rates.

(F) BPA will assume the market will provide resources to the customer to serve any increased consumer loads. BPA load service for new annexed loads resulting from open access or actual annexations or mergers will be provided under the Targeted Adjustment Charge or the NR rate. Additional service for lost generation resources and lost long term power purchase contracts extending beyond 2001 will be provided at the PF Surcharge or NR Rate, upon the customer's request for service and notification to BPA that such an event has occurred. Service to replace the above qualified renewable resources at the end of their dedicated contract period will be provided at the PF rate. BPA will provide firm power service for annexed loads, lost resources, and replacements of qualified renewable resources six months following

determination that such event has occurred or as mutually agreed.

Principle II.F. states that BPA will provide firm power requirements service to annexed loads or for lost resources for all customers. However, the rate arranged for such service may include an adjustment for costs BPA incurs to provide the additional service. BPA considered making changes to its net requirements service only at its annual review of load or customer resource changes when determining any reductions in the customer's net requirements purchase. However, BPA decided that a rolling notice period for annexation or loss of resource would better serve the sporadic nature of these events. BPA has assumed that six months would be the minimum time needed to determine the facts surrounding the annexed load or loss of resource and allow BPA to prepare to provide service. It would also give BPA time to purchase any additional resources necessary to serve the load. Principle II.F. would give BPA the discretion to provide service on shorter notice if it is able to do so.

III. How BPA Will Determine if a Customer Has Exported a Resource From the Region Requiring a Reduction in the Customer's Net Requirements

Section 9(c) of the Northwest Power Act requires BPA to make several factual determinations when customers sell or dispose of power from their resources on the market for export outside the region. Section 3(d) of the Northwest Preference Act requires BPA to reduce its sale of requirements power to any customer that sells or disposes of hydroelectric power outside the region which cannot be conserved or kept available for use. These determinations are particularly difficult in a deregulated market where sales are often made to marketers at the generator busbar, and where schedules of transmission are not available to BPA's Power Business Line. Adding to the difficulty is the fact that merchant activity by all customers is confidential so that commercial information is not readily available for factual determinations.

(A) Subject to certain showings, the output of any customer's thermal generating resource existing on the date the subscription strategy was published and that has been used to serve regional firm load at some time during its life will be treated as exported from the region in a manner that increases the firm energy requirements of the Administrator. The customer's net requirement will be reduced unless the customer can demonstrate one or more of the following:

1. The resource fits within the definition of a ''market resource'' as described in section III. D. 2. of Appendix B of BPA's NFP Section 9(c) Policy;

2. The resource is under a current post-2001 contract committed to serving a BPA customer's regional load; or

3. The resource is subject to a prior BPA written section 9(c) determination that the resource could not be conserved or otherwise retained to serve regional load.

4. The Administrator determines a thermal resource could not be conserved or otherwise retained to serve regional load by reasonable means under principle III.B.

(B) The policy BPA proposes for determining when a thermal resource could not be conserved or otherwise retained to serve regional load is met when:

(i) There were no purchasers after the resource was offered for sale in the region to BPA and all of its regional customers for a period of at least one year through a public process at cost plus a reasonable rate of return. In the case of a resource offered for a fixed term, the output of such thermal resource shall not be deducted from the owner's or purchaser's maximum firm requirements for the term of the offer or the term of the export, whichever is less.

(ii) The resource is permanently auctioned through a public process and was not purchased by a regional purchaser. In the case of a resource permanently auctioned, the output of such thermal resource shall not be deducted from the owner's net requirements.

(iii) The Administrator determines that the market price for power makes it unreasonable to retain that resource to serve regional load.

Principle III.A. addresses the difficulty in a deregulated wholesale market of determining whether power from a customer's resource has been exported in a manner that increases the Administrator's firm energy requirements. The proposed principle states a rebuttable presumption that all power from a customer resource which has been used to serve regional loads and which is sold on the market shall be treated as power exported by the seller. Such a sale shall be deemed to increase the Administrator's firm power requirements under the customer's or another customer's BPA power sales contracts. Power sold from the resource will not be treated as an export if the customer can demonstrate the resource was: Not used for load and developed solely for sale in the market, or that the power from the resource is being used by a Direct Service Industry (DSI) or another BPA utility customer to serve retail load in the region;, or that a prior BPA determination under Section 9(c) allowed the resources to be exported.

If a customer demonstrates that the resource has been sold to a DSI or another utility in the region, the purchasing utility must demonstrate that power from the resource is dedicated by contract with BPA and is being used to serve its retail load in the region.

To implement this principle, the customer must provide that commercial information it wishes to share with BPA on its power sales, so BPA can make the required factual determinations. BPA considered whether it should continue the practice stated in the 1994 Non-Federal Participation Section 9(c) Policy of examining a customer's transmission schedules to points outside the Pacific Northwest. This alternative was rejected due to limitations on the flow of information from transmission functions to power sales functions arising from functional separation under FERC orders 888 and 889.

Principle III.B.4 addresses a customer's sale of resources, which are determined to increase the Administrator's power requirements obligations to serve load in the region. Such a sale must meet one of three tests in order for BPA to determine that the resource could not be conserved or otherwise retained to serve regional load. Unless at least one test is met, the amount of power, capacity and energy sold and deemed exported would be treated as a resource that could be used or retained to serve firm load in the region and whose sale will result in BPA's obligations increasing. Thus, BPA would reduce its section 5 electric power requirements contract obligations to that customer by the amount of the power sold from the resource.

The first test provides that a customer may offer power from a resource for sale in the region to BPA and its eligible customers for a period of at least one-year at cost and a reasonable rate of return. If BPA or a BPA customer in the region does not offer to purchase the resource, then the Administrator would determine that the output of the resource could not be conserved or otherwise retained to serve regional load for a period equal to the duration of the offer of the resource or the term of the export whichever is less.

The second test provides an alternate mechanism in which a customer may auction the resource to the highest bidder as long as BPA and all BPA

regional customers are reasonably notified of the auction and have a reasonable opportunity to bid on the sale. If the resource is auctioned and the customer can demonstrate that BPA and its regional customers had a reasonable opportunity to participate, the Administrator would determine that the resource could not be conserved or otherwise retained to serve regional load.

BPA considered a possible alternative to the second test that would limit the use of auctions based on an economic standard of paying the stranded costs of a utility. Under that test, BPA would reduce its net requirements obligation to the utility if the proceeds of the auction and export of a resource resulted in net positive benefits above the cost and reasonable rate of return for the resource, and if such benefits were not paid to the consumers of a utility. The purpose of such a limitation is to preserve the benefits of low cost resources for regional loads.

The third test allows the Administrator to determine that a resource could not be conserved or retained to serve regional load based on current market conditions and prices in the region for a specified period. If the Administrator makes that determination, then a customer would be allowed to sell a resource during the period without a reduction in BPA's obligation to provide power under its Subscription contract.

(C) All new thermal generating resources developed by BPA customer utilities after the December 21, 1998, publication date of the Federal Power Subscription Strategy will be treated as meeting the ''market resource test,'' unless power from the resource is dedicated by a BPA customer under its BPA contracts to serve consumer load. In such event, the thermal generating resource will be treated in the same manner as existing non-Federal resources dedicated by customers to regional load under Subscription contracts.

Principle III.C. proposes to change the definition of ''market resources'' under the Section 9(c) Policy to create a presumption that new resources are developed for sale in the deregulated market and not for service to a customer's retail load. The exception would be where a customer specifically chooses to dedicate part or all of the output of the resource to serve its own load or regional load of another customer as stated below. Otherwise, all such resources sold on the market would not increase the Administrator's power requirements obligation to any customer under its BPA section 5 contracts.

(D) Any customer's sale on the market or export of the output of thermal resources that is included in any other BPA customer's Firm Resource Exhibit for the 1998–1999 Operating Year (under a 1981 contract or a resource exhibit under a 1996 contract) shall be considered to meet the section 9(c) tests of increasing the Administrator's electric power load requirements under the Subscription contracts. The output of such resources shall be deducted from the selling customer's net requirements unless BPA determines the resource could not be conserved for service to load in the region under III.B. above.

(E) Any customer's sale on the market or export of the output of thermal resources that are currently being used to serve that customer's or another customer's regional load but are not included in either customer's Firm Resource Exhibit for the 1998–1999 Operating Year (under a 1981 contract or a resource exhibit under a 1996 contract) shall be considered to meet the section 9(c) test of increasing the Administrator's electric power load requirements under the Subscription contracts. The power output of such resources shall be deducted from the customer's net requirements unless BPA determines the resource could not be conserved for service to load in the region under III.B. above.

Proposed principles III.D. and III.E. divide all customer firm resources currently used to serve load into two classes: (1) those resources that are currently in any BPA customer's Firm Resource Exhibits; and (2) those resources that are not included in Firm Resource Exhibits. BPA has proposed that it will require only resources currently specified in any of its customer's Firm Resource Exhibits to be dedicated by the customer to serve its regional load under its BPA contracts. Customer's resources that are currently used to serve regional load but which are not included in Firm Resource Exhibits, if sold on the market, will result in increases in BPA's firm power requirements obligations under section 5 contracts. The customer selling the output of the resource will be required to demonstrate that the resource has either been sold to a regional utility to serve that utility's consumer load in the region, or demonstrate how the resource could not have been conserved or otherwise retained to serve any BPA customer's regional loads.

Principle III.D. also recognizes that BPA would face an increase in its power requirements obligations if the owner of a resource terminated a contract purchase used by another utility to serve its regional retail load. The owner of the resource would be required to demonstrate that the resource has either been sold to another regional utility to serve its consumer load in the region or could not have been conserved or otherwise retained to serve any BPA customer's regional loads.

(F) Any regional hydroelectric resources exported by a customer shall reduce the customer's BPA power requirements under its BPA contracts, unless the resource is contractually committed to serving another customer's regional load or such resource was previously determined to be serving that customer's load and the customer replaces the resource by a market purchase or new generation.

Principle III.F. requires the reduction of a customer's BPA power requirements obligation under its BPA contracts, if the customer exports any hydroelectric power from the region. If a customer demonstrates that the resource has been sold to a DSI or another BPA customer utility in the region, then the purchaser must demonstrate that its purchase is dedicated to and is being used to serve retail load in the region. If in calculating the customer's net requirements, BPA determines the resource was already dedicated to serving the customer's firm load, BPA will treat the hydro resource as remaining dedicated and will not further reduce its net requirements obligation to the customer, nor will BPA replace the resource.

Responsible Official: Mr. Steve Oliver, Manager, Bulk Power Marketing, is the official responsible for the development of the draft policy proposal for addressing issues under sections 5(b) and 9(c) of the Northwest Power Act regarding the amount of Federal power a customer may purchase under BPA subscription power sales contracts.

Issued in Portland, Oregon, on April 26, 1999.

Judith A. Johansen,

Administrator and Chief Executive Officer.

[FR Doc. 99–11407 Filed 5–5–99; 8:45 am]

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DEPARTMENT OF ENERGY

Bonneville Power Administration

Opportunity for Public Comment Regarding Bonneville Power Administration's Subscription Power Sales and Standards for Service

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of draft policy proposal.

SUMMARY: This notices announces a draft policy proposal to modify BPA's standards for service to permit the purchase of Federal power.

One of the BPA's current eligibility standards for potential public agency utility customers and privately owned companies selling to the general public requires the utility or company to own its own distribution facilities. BPA is proposing that it modify this standard to permit in the future that a customer either (1) own a distribution system, or (2) have an ownership-type lease arrangement for a distribution system. The reason for this proposal is driven by the Federal Power Subscription Strategy, ongoing changes to the electric power industry and increased interest by some regional parties in becoming eligible to buy Federal power at the PF rate.

This Notice on Eligibility and Standards of Service for Purchasing Federal Power will afford a 30-day public review and comment period on the proposal to permit ownership-type lease arrangements to be used by potential customers to meet one of the qualifications to purchase Federal power from BPA. BPA's proposal and background information on BPA's current eligibility requirements and standards for service regarding potential public agency and other customers follows below. BPA is also putting forward other concepts for consideration and invites comments on these as well.

DATES: Public meeting dates: May 27, 1999, and June 2, 1999. Close of comment date: June 11, 1999

ADDRESSES: If you are interested in commenting on the Eligibility and Standards for Service Policy Proposal, you have several options.

1. You can send written comments to Bonneville Power Administration, P.O. Box 12999, Portland, OR 97212, or you can fax comments to (503) 230–4019. If you wish to send your comments electronically, email comments to: comment@bpa.gov. Comments must be received by close of business Friday, June 11, 1999.

2. You also can attend one or both of the two public comment meetings. One meeting will be held on Thursday, May 27, 1999, in Spokane, Washington, at Cavanaugh's Inn at the Park, 303 W. North River Drive. Another meeting will be held in Portland, Oregon, on Wednesday, June 2, 1999, at the Sheraton Portland Airport Hotel, at 8235 N.E. Airport Way. Both meetings will begin at 10:00 a.m. Comments also will be collected on the Determining Net Requirements 5(b) and 9(c) Policy Proposal. If any additional meetings are scheduled, the information will be posted on the web site listed below.

http://www.bpa.gov/Power/subscription

FOR FURTHER INFORMATION CONTACT: Mr. Michael Hansen, Public Involvement and Information Specialist, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621, telephone (503) 230–4328 or 1–800–622–4519. Information can also be obtained from your BPA Account Executive or from:

Ms. Ruth Bennett, Acting Vice President, Power Marketing, 905 N.E. 11th, P.O. Box 3621, Portland, OR 97208, telephone (503) 230–7640

Mr. Rick Itami, Manager, Eastern Power Business Area, 707 W. Main Street, Suite 500, Spokane, WA 99201, telephone (509) 358–7409

Mr. John Elizalde, Acting Manager, Western Power Business Area, 700 N.E. Multnomah, Suite 400, Portland, OR 97232, telephone (503) 230–7597

Mr. Steve Oliver, Manager, Bulk Power Marketing, 905 N.E. 11th, P.O. Box 3621, Portland, OR 97208, telephone (503) 230–3295

SUPPLEMENTARY INFORMATION: In its Federal Power Subscription Strategy, dated December 21, 1998, the Bonneville Power Administration stated that new public agencies that form and qualify for service within the period of the subscription contract window would be offered power at the priority firm (PF) rate for the post 2001 rate period for their entire general requirements load obligation, except for any new large single loads. The strategy further states that new preference tribal utilities that form and qualify for service will be treated the same as other new public agency utilities with respect to the availability of power at the PF rate.

Public Body and Cooperative Customer Eligibility Under Bonneville Project Act

To be eligible to purchase power from BPA on a preference and priority basis, an applicant must meet two fundamental statutory requirements found in the Act of August 20, 1937, (the Bonneville Project Act) Pub. L. 75–329. First, the applicant must meet the statutory definition of one or the other of the terms ''public body'' or ''cooperative.'' Section 3 of the Bonneville Project Act defines the term ''public body'' or ''public bodies'' to mean ''States, public power districts, counties, and municipalities, including agencies or subdivisions of any thereof.'' Section 3 also defines the term ''cooperative'' or ''cooperatives'' to mean ''any form of nonprofit-making organization or organization of citizens supplying, or which may be created to supply, members with any kind of goods, commodities, or services, as nearly as possible at cost.''

BPA has indicated that a Federally recognized tribe that forms a cooperative utility pursuant to its tribal constitution and laws would be eligible for preference status. Further, a tribe with the legal right could serve non-tribal members within its reservation boundaries, but would otherwise need to comply with state law for service outside the tribe's jurisdiction.

For potential public customers who will resell Federal power to retail consumers, the second requirement is that a public body or cooperative applicant be in the public business of selling and distributing the Federal power to be purchased from BPA.[1] If not presently in business, section 4(c) of the Bonneville Project Act directs BPA to afford the prospective customer a reasonable time, as determined by the Administrator, to allow it to get into the public business of selling and distributing power. BPA may not deny the request of a preference applicant that has not yet obtained necessary financing to get itself into the business of selling and distributing electric energy until after the reasonable time has passed.

Finally, section 4(d) declares several policies regarding the preferential status of public bodies and cooperatives. They reinforce the directives found in section 4(c).[2] First, preference to public bodies

[1] Section 5(a) of the Bonneville Project Act authorizes the Administrator to sell Federal power at wholesale to public bodies for direct consumption of the Federal power. In order to receive Federal power for its own use a potential public body end use customer needs to meet BPA's standards for service specific to direct consumption. BPA is not proposing any changes in its current standards for this class of potential customers.

[2] Section 4(c) provides in pertinent part: ''An application by any public body or cooperative for an allocation of electric energy shall not be denied, or another application competing or in conflict therewith be granted * * * on the ground that any proposed bond or other security issue of any such public body or cooperative, the sale of which is necessary to enable such prospective purchaser to enter into the public business of selling and distributing the electric energy proposed to be purchased, * * *''

Section 4(d) provides in pertinent part: ''It is declared to be the policy of the Congress, as expressed in this chapter, to preserve the said preferential status of the public bodies and cooperatives herein referred to, and to give to the people of the States within economic transmission distance of the Bonneville project reasonable opportunity and time to hold any election or elections or take any action necessary to create such public bodies and cooperatives as the laws of such states authorize and permit, and to afford such public bodies or cooperatives reasonable time and

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and cooperatives is to be preserved. Second, people are to be given reasonable opportunity and time to hold any elections or to take any other necessary action to create a public body or cooperative. Third, once created the public body or cooperative is to be afforded a reasonable time and opportunity to authorize and issue bonds or to arrange other financing necessary to construct or acquire necessary and desirable electric distribution facilities, and to become in all other respects qualified purchasers and distributors of Federal power. To date, BPA has interpreted section 4(c) and 4(d), particularly the language ''to construct or acquire necessary and desirable distribution facilities,'' to require that the applicant own its distribution system.

Regarding nonpreference applicants for Federal power which will be resold to the general public, BPA has required that such entities be properly formed under state law, including compliance with any approvals, filing or regulatory orders to which such businesses are subject under the laws of the states. BPA has required that such private utilities also own their own distribution system for making retail resale of Federal power. This requirement is based on section 5(a) of the Bonneville Project Act which distinguishes between a privately owned public utility buying Federal power for resale to the general public from other sales to private persons.[3] It is not based on sections 3 and 4 discussed above.

Standards for Service

The Northwest Electric Power Planning and Conservation Act on 1980, Pub. L. 96–501, section 5(b)(4) directs the Administrator to require all potential customers requesting a contract for firm power under section 5(b) of the Act to comply with the Administrator's standards for service in effect on December 5, 1980, or as subsequently revised.[4] BPA has traditionally made its determination regarding eligibility for preference and meeting BPA standards for service on a case-by-case basis and communicated its standards and assessment of a party's qualifications in correspondence to parties seeking to purchase Federal power under section 5(b). The following describes the standards for service, including the eligibility requirements under sections 4(c) and (d) of the Bonneville Project Act, applicable to potential public agency customers.

As a practical and legal matter, BPA's determination of a customer's eligibility to purchase preference power is included in an overall review to determine if the customer is in compliance with the Administrator's standards for service. To comply with the existing standards for service an applicant must:

1. Be legally formed in accordance with local, state and Federal laws;
2. Own a distribution system and be ready, willing and able to take power from BPA within a reasonable period of time;
3. Have a general utility responsibility within the service area;
4. Have the financial ability to pay BPA for the Federal power it purchases;
5. Have adequate utility operations and structure; and
6. Be able to purchase power in wholesale, commercial amounts.

Following is a more detailed explanation of the existing criteria.

Legal Formation

BPA will request an applicant to demonstrate that all required steps under applicable law have been taken to authorize its formation as a public body or cooperative. It also ensures that the applicant is in the public business of buying and distributing, at retail, power to be purchased from BPA, or is in the process of going into such a business. The applicant must provide copies of filings of certificates and approvals from designated officials, such as by-laws and articles of incorporation, regulatory approvals as required, and information on whether public elections were required and held. This standard is applicable to potential new preference customers and to new private utilities selling to the general public.

Distribution Function

This criterion assures that BPA sells power consistent with the legal requirement that it be sold to public bodies and cooperatives engaged in the public business of buying and distributing power through distribution facilities owned by the customer. The performance of the distribution function by the party applying for preference status has been viewed as an assurance that the purposes of selling Federal power on a preference basis are realized. The same considerations are applicable to BPA sales to privately owned utilities selling Federal power to the general public. That is, they have a distribution system and are able to provide the power to retail consumers. Parties that do not own, operate and maintain, or control the costs of the distribution may face the issue of how to demonstrate that they are able to provide the benefits of cost based Federal power to retail consumers. This standard is applicable to potential new preference customers and to new private utilities selling to the general public.

BPA must give the applicant a reasonable opportunity to achieve ownership including time needed to finance the acquisition or construction of the necessary distribution. In general, State law grants public bodies the power of eminent domain allowing them to acquire the distribution facilities of another utility through condemnation. In general, cooperatives have been able to construct or purchase their own systems through low-cost financing obtained from loans made by the Federal Rural Electric Administration (predecessor to the Rural Utility Service).

General Utility Obligation To Serve

This criterion assures that Federal power will be sold by the applicant in a non-discriminatory manner for the benefit of the general public and particularly of domestic and rural consumers. BPA has always required that a customer serving retail consumer load have a ''utility responsibility'' to serve. This means that any retail consumers may request and obtain service from the potential customer, limited only by service area or franchise allocation restrictions. An applicant must have obtained authorization to serve certain loads or areas prior to receiving power from BPA for service to such loads or areas. Any legal action that challenges such service must be resolved by final order before BPA begins service. This standard is

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opportunity to take any action necessary to authorize the issuance of bonds or to arrange other financing necessary to construct or acquire necessary and desirable electric distribution facilities, and in all other respects legally to become qualified purchasers and distributors of electric energy available under this chapter.''

[3] Section 5a of the Bonneville Project Act provides in pertinent part: ''Subject to the provisions of this chapter and to such rate schedules as the Secretary of Energy may approve, as provided in this chapter, the administrator shall negotiate and enter into contracts for the sale at wholesale of electric energy, either for resale or direct consumption, to public bodies and cooperatives and to private agencies and persons and for the disposition of electric energy to Federal agencies. Contracts for the sale of electric energy to any private person or agency other than a privately owned public utility engaged in selling electric energy to the general public, shall contain a provision forbidding such private purchaser to resell any of such electric energy so purchased to any private utility or agency engaged in the sale of electric energy to the general public, and requiring the immediate canceling of such contract of sale in the event of violation of such provision.''

[4] Section 5(b)(4) of the Northwest Power Act provides, ''Sales under this subsection shall be made only if the public body, cooperative, Federal agency or investor-owned utility complies with the Administrator's standards of service in effect on December 5, 1980 or as subsequently revised.''

applicable to potential new preference customers and to new private utilities selling to the general public.

Financial Health and Ability To Pay

This criterion assures BPA that the applicant is able to pay for the power it receives. BPA examines the applicant's authority to collect money for the services it renders to its retail consumers—the ability to bill—and the applicant's authority to sue and be sued. BPA reviews the applicant's organizational structure to see if there is a financial officer and staff that performs a billing and collection function. BPA will also examine, particularly in the case of a municipal or tribal applicant, whether the applicant has the authority to segregate utility funds from a general fund, if one exists. This standard is applicable to potential new preference customers and to new private utilities selling to the general public.

Operations and Structure

This criterion is used to provide BPA reasonable assurance that the applicant has the ability to fulfill responsibilities and duties under a power sales contract. BPA examines the applicant's ability to perform utility functions such as metering, billing, or operation and maintenance on utility facilities, or contract for such functions and control the costs of such functions. This standard is applicable to potential new preference customers and to new private utilities selling to the general public.

Commercial Quantities

Because BPA is directed to sell power at ''wholesale,'' BPA has generally required that customers purchase power in wholesale, commercial amounts of one megawatt or more. This standard is applicable to potential new preference customers and to new private utilities selling to the general public.

Connection to BPA Transmission System

The BPA standards for service have also addressed matters related to the configurations and operations of electrical facilities. Requirements for interconnection to the BPA transmission system are governed by the Open Access Transmission Tariff. The Transmission Business Line is currently revising its Interconnection Standards. These aspects of standards for service are not addressed in this Notice.

BPA Proposal To Change Its Standards for Service

The advent of retail electricity deregulation in the wholesale market and in some western states at retail, as well as the interest of some tribes and other parties in forming and operating an electric utility, has prompted BPA to assess whether or not a change in its existing standards for service may be warranted. Some parties have questioned whether BPA should continue to require that preference customers who serve retail consumers own and operate a distribution system. A similar issue arises as to BPA's sales of Federal power to new private entities, as to the legal distinction between a utility selling to the general public and other sales.

In response, BPA is inviting comments from interested parties on this proposal to allow ownership-type lease arrangements which, in addition to direct ownership of a distribution system, qualify a potential public agency customer to be able to purchase PF power. All other eligibility criteria would continue to apply. BPA proposes that a potential new customer who would sell power to retail consumers may use an ownership-type lease arrangement in order to provide for distribution to retail consumers. A customer could lease a distribution system for delivery of Federal power to retail consumers. In this concept, in order to qualify as an ownership-type lease, the agreement would (1) be a long term arrangement for the life of the facilities or for a duration equal to the term of the BPA power supply obligation, and (2) give to the preference customer the right to operate, maintain and have repairs performed on the system, as well as have complete decision authority over costs of the distribution system. In addition, the customer would perform, or be responsible for, all other utility functions such as meter reading, billing, retail rate setting, and other services and functions provided by a serving utility. The proposal is to have the potential customer and the distribution owner enter into an arms length commercial transaction. The potential customer should have the ability under such transactions to have a third party provide for the system maintenance functions in an open competitive process.

This proposal to use an ownership-type lease arrangement is consistent with Department of Energy policy which allows the use of a lease by a potential public agency customer to obtain a distribution system. See DOE General Counsel, ''Request of City of Needles for Reinstatement of Sales of Federal Power for Benefit of Its Citizens'' (Nov. 21, 1978). This policy was affirmed in *Salt Lake City et al.* v. *Western Area Power Administration, et al.* 926 F.2d 974 (10th Cir. 1991).

For Discussion: Concepts Regarding Standards for Service

In addition to the ownership-type lease arrangement, some parties have suggested other concepts which may meet the standards for service requirement. The concepts presented below are for discussion purposes. BPA is not making a proposal regarding these concepts.

Contractual Capacity Rights

A customer could obtain long-term contracts for use of capacity on distribution facilities or for access to distribution according to state law which assure delivery of Federal power to retail consumers. The distribution owner would operate and maintain the distribution system. The preference customer would contract for use of distribution and would perform, or be responsible for, meter reading, billing, retail rate setting and all other services normally provided by a serving utility.

The Utility's Obligation To Serve

Retail access legislation may raise issues regarding the standard for service requirement that a customer have a general utility responsibility or obligation to serve. An obligation to serve standard is linked with the distribution function. Decisions made regarding distribution should guide the issues on a customer's obligation to serve standard. Following are variations on the obligation to serve depending on how the utility accomplishes the distribution function:

- If a utility contracts for long-term capacity rights on the distribution system or has access to a distribution system according to state law, the distribution owner would operate, maintain, and have complete decision authority over costs. In this case the leasing utility should have the obligation to serve, if it has the distribution capacity or can obtain the necessary capacity to serve the load. If the leasing utility does not have and can not obtain the necessary capacity, then the distribution owner would potentially have the obligation to serve.
- Another concept would be to rely on governing law, including retail access law, to determine who will have the obligation to serve in specific circumstances.

Responsible Official: Mr. Fred Rettenmund, Customer Account Executive, Power Business Line, is the official responsible for the development of the draft policy proposal for modifying BPA's standards for service

to permit the purchase of Federal power.

Issued in Portland, Oregon, on April 26, 1999.

Judith A. Johansen,

Administrator and Chief Executive Officer.

[FR Doc. 99–11408 Filed 5–5–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–361–000]

Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

April 30, 1999.

Take notice that on April 28, 1999, Texas Gas Transmission corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP99–361–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon a transportation meter, located in St. Mary Parish, Louisiana, under Texas Gas' blanket certificate issued in docket No. CP82–407–000, 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Texas Gas proposes to abandon a 2-inch skid-mounted meter run known as the Smith Production-Charenton Meter and is located at Mile 2.9866 on Texas Gas' Jeanerette-Southwest 6-inch Line, located in St. Mary Parish, Louisiana. Texas Gas states the cost of removal is estimated to be $850.

Texas Gas declares that this meter was constructed to transport gas for various shippers. Texas Gas asserts that the last flow of gas through this meter was in March 1992, and the producer plugged and abandoned its well in August 1992.

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.

David P. Boergers,

Secretary.

[FR Doc. 99–11349 Filed 5–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–358–000]

Transcontinental Gas Pipe Line Corporation; Notice of Request Under Blanket Authorization

April 30, 1999.

Take notice that on April 27, 1999, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP99–358–000 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 install and operate a sales delivery point for Resource Acquisitions Corporation (RAC), under Transco's blanket certificate issued in Docket No. CP82–426–000 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rms.htm (call 202–208–2222 for assistance).

Transco states that it is proposing to install, own and operate a new sales delivery point to RAC on the existing 4-inch East White Lake Lateral in Vermillion Parish, Louisiana. The gas will be delivered through a new meter to be installed, owned and operated by Transco. It is stated that at such location, there is an existing Transco meter which measures gas delivered by RAC to Transco. Transco states that it will also install, own and operate electronic flow measurement equipment.

Transco further states that the new delivery point will enable RAC to receive up to 500 Mcf of gas per day from Transco on an interruptible basis. Such gas will be used by RAC for gas lift purposes. It is stated that transportation service will be rendered to RAC through the new delivery point pursuant to Transco's Rate Schedule IT and Part 284(G) of the Commission's regulations. Transco states that the addition of this delivery point will have no significant impact on Transco's peak day or annual deliveries and is not prohibited by Transco's FERC Gas Tariff.

Transco has estimated the total costs of Transco's proposed facilities to be approximately $31,300.00. RAC will reimburse Transco for all costs associated with such facilities.

Transco also states that the installation and operation of Transco's facilities will be performed in compliance with the environmental requirements set forth in Section 157.206(d) of the Commission's regulations, and that Transco will obtain all required environmental clearances prior to the commencement of installation.

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.

David P. Boergers,

Secretary.

[FR Doc. 99–11348 Filed 5–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–366–000]

Williston Basin Interstate Pipeline Company, Notice of Application

April 30, 1999.

Take notice that on April 28, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), Post Office Box 1560, Bismarck, North Dakota 58506–5601, filed in Docket No. CP99–366–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a farm tap, which includes the plugging of the tap and the removal of the meter and regulator, in Fallon

County, Montana, all as more fully set forth in the application on file with the Federal Energy Regulatory Commission (Commission) and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Any person desiring to be heard or to make any protest with reference to said application should on or before May 21, 1999, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Williston Basin Interstate Pipeline Company to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–11350 Filed 5–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP97–315–000 et al; CP97–319–000; CP98–200–000; CP98–540–000]

Independence Pipeline Company; ANR Pipeline Company; National Fuel Gas Supply Corporation; Transcontinental Gas Pipe Line Corporation; Notice of Additional Public Meetings in New Jersey on the Draft Environmental Impact Statement for the Proposed Independence Pipeline and Market Link Expansion Projects

April 30, 1999.

At the request of Congressmen William Pascrell and Rodney Frelinghuysen of New Jersey, the staff of the Federal Energy Regulatory Commission (FERC or Commission) will hold two additional meetings to receive oral comments on the Draft Environmental Impact Statement (DEIS) of the Independence Pipeline and Market Link Expansion Projects, as referenced in the above dockets.

The time and locations of the meetings are listed below:

Nutley, New Jersey: May 24, 1999, 8:00 p.m.

Franklin Middle School, 325 Franklin Avenue, Nutley, New Jersey 07011, (973) 661–8871

Chatham, New Jersey: May 25, 1999, 7:00 p.m.

Chatham Middle School, 480 Main Street, Chatham, New Jersey 07928, (973) 635–7200

Interested groups and individuals are encouraged to attend and present oral comments on the DEIS. Transcripts of the meetings will be prepared.

Additional information about the proposed projects is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208–1088; or may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Access to texts of formal documents issued by the Commission with regards to these dockets, such as orders and notices, is also available on the FERC website using the ''CIPS'' link. For assistance with access to CIPS, the CIPS Help line can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 99–11347 Filed 5–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

April 30, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11684–000.

c. *Date Filed:* February 19, 1999.

d. *Applicant:* Simplicity Hydro.

e. *Name of Project:* Taylorsville Lake Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Taylorsville Dam on the Salt River, near the Town of Taylorsville, Spencer County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. David Brown Kinloch, Soft Energy Associates, 414 S. Wenzel Street, Louisville, Kentucky 40204, (502) 589–0975.

i. *FERC Contact:* Ed Lee (202) 219–2808 or E-mail address at Ed.Lee@FERC.fed.us.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Taylorsville Dam and Reservoir, and would consist of the following facilities: (1) three new submersible generating units to be located in the existing intake tower for an installed capacity of 1.135 megawatts; (2) a new 12.5-kilovolt transmission line; and (3) appurtenant facilities. The proposed average annual generation is estimated to be 6

gigawatthours. The cost of the studies under the permit will not exceed $5,000. All project generation would be sold to a local utility.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference ad Files Maintenance Branch, located at 888 First Street, N.E., Room 2–A, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Simplicity Hydro, David Brown Kinlock, 414 S. Wenzel Street, Louisville, Kentucky 40204, (502) 589–0975. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.32 (a) and (b)(1).

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application (see 18 CFR 4.36). Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.32 (a), (b), and (c).

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

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 and .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.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''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 and an additional copy must be sent to Director, Division of Project Review, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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.

David P. Boergers,

Secretary.

[FR Doc. 99–11351 Filed 5–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

April 30, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11722–000.

c. *Date Filed:* April 14, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Salamonie Lake Dam Hydroelectric Project.

f. *Location:* On the Salamonie River near the town of Wabash, in Wabash County, Indiana. The project would utilize the U.S. Army Corps of Engineers Salamonie Lake Dam and reservoir.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–824(r).

h. *Applicant Contact:* Ronald S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Tom Dean, thomas.dean@ferc.fed.us, 202–219–2778.

j. *Deadline for filing comments, motions to intervene, and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would be located at the existing U.S. Army Corps of Engineers Salamonie Lake Dam and would consist of the following proposed facilities: (1)

Two 50-foot-long, 84-inch-diameter penstocks; (2) a powerhouse on the downstream side of the dam housing two turbine generating units with a total installed capacity of 2.0 MW; (3) a 5-mile-long, 14.7 kV transmission line; and (4) other appurtenances.

Applicant estimates that the average annual generation would be 12,500 MWh and that the cost of the studies under the permit would be $800,000.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.32(a) and (b)(1).

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application (see 18 CFR 4.36). Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.32(a), (b), and (c).

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impact. Based on the results of these studies, the applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

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 and .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.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'' ''PROTEST'', ''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 and an additional copy must be sent to Director, Division of Project Review, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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.

David P. Boergers,

Secretary.

[FR Doc. 99–11352 Filed 5–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

April 30, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit

b. Project No.: 11723–000

c. Date Filed: April 14, 1999

d. Applicant: Universal Electric Power Corporation

e. Name of Project: Cagles Mill Lake Dam Hydroelectric Project

f. Location: On the Mill Creek near the town of Bowling Green, in Putnam County, Indiana. The project would utilize the U.S. Army Corps of Engineers Cagels Mill Lake Dam and reservoir.

g. Field Pursuant to: Federal Power Act, 16 USC §§ 791(a)–825(r).

h. Applicant Contact: Ronald S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. FERC Contact: Tom Dean, thomas.dean@ferc.fed.us, 202–219–2778.

j. Deadline for filing comments, motions to intervene, and protests: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would be located at the existing U.S. Army Corps of Engineers Cagles Mill Lake Dam and would consist of the following proposed

facilities: (1) a 50-foot-long, 62-in-diameter penstock; (2) a powerhouse on the downstream side of the dam housing a single turbine generating unit with an installed capacity of 938 kW; (3) a 600-foot-long, 14.7 kV transmission line; and (4) other appurtenances.

Applicant estimates that the average annual generation would be 5,800 MWh and that the cost of the studies under the permit would be $500,000.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.32(a) and (b)(1).

Preliminary Permit—Any qualified development application desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application (see 18 CFR 4.36). Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.32(a), (b), and (c).

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

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 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments field, 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.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTESTS'', ''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 and an additional copy must be sent to Director, Division of Project Review, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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.

David P. Boergers,

Secretary.

[FR Doc. 99–11353 Filed 5–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

April 30, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 11725–000.

c. Date Filed: April 14, 1999.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: Aberdeen Lock and Dam Hydroelectric Project.

f. Location: On the Tombigbee River near the town of Aberdeen, in Monroe County, Mississippi. The project would utilize the U.S. Army Corps of Engineers Aberdeen Lock and Dam and reservoir.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)—825(r).

h. Applicant Contact: Ronald S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. FERC Contact: Tom Dean, thomas.dean@ferc.fed.us, 202–219–2778.

j. Deadline for filing comments, motions to intervene, and protests: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of the document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would be located at the existing U.S. Army Corps of Engineers Aberdeen Lock and Dam and would consist of the following proposed

facilities: (1) two 80-foot-long, 72-inch-diameter penstocks; (2) a powerhouse on the downstream side of the dam housing two turbine generating units with a total installed capacity of 2.7 MW; (3) a 700-foot-long, 14.7 kV transmission line; and (4) other appurtenances.

Applicant estimates that the average annual generation would be 17,000 MWh and that the cost of the studies under the permit would be $1,000,000.

1. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.32(a) and (b)(1).

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application (see 18 CFR 4.36). Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.32(a), (b), and (c).

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

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 and .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.

Filing and Service of Representative Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'' ''PROTEST'', ''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 and an additional copy must be sent to Director, Division of Project Review, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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.

David P. Boergers,

Secretary.

[FR Doc. 99–11354 Filed 5–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

April 30, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor License.

b. *Project No.:* P–11727–000.

c. *Date Filed.:* April 6, 1999.

d. *Applicant:* City of Granite Falls, Minnesota.

e. *Name of Project:* Minnesota Falls Hydro Project.

f. *Location:* On the Minnesota River in Chippewa and Yellow Medicine Counties, near Granite Falls, Minnesota.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* William P. Levin, City Manager, City of Granite Falls, 885 Prentice Street, Granite Falls, MN 56241–1598, (320) 564–3011.

i. *FERC Contact:* Ed Lee (202) 219–2809 or E-mail address at Ed. Lee@FERC.fed.us

j. *Deadline for filing additional study requests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *Description of Project:* The proposed run-of-river Minnesota Falls Project consists of: (1) an 18-foot-high and 500-foot-long embankment and

gravity dam; (2) a 150-acre reservoir at normal pool elevation of 883.9 feet msl; (3) a conduit intake structure; (4) a powerhouse housing two 580-kW generating units for an installed capacity of 1,160 kW; (5) a proposed substation; and (6) appurtenant facilities. The applicant estimates that the total average annual generation would be 3,300 MWh. All generated power is utilized within the applicant's electric utility system.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the MINNESOTA STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at § 800.4.

o. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

David P. Boergers,

Secretary.

[FR Doc. 99–11355 Filed 5–5–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6336–7]

Notice of Availability of Funds for Source Water Protection

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is soliciting proposals to fund projects that support local ground water and source water protection efforts for small, rural or economically disadvantaged communities in priority watersheds.

DATES: All project proposals must be received by the respective EPA Regional or Headquarters office no later than June 7, 1999.

ADDRESSES: Project proposals should be sent to the appropriate address listed below based on the location of the project:

FOR FURTHER INFORMATION CONTACT: EPA Headquarters or Regional contacts listed in the **SUPPLEMENTARY INFORMATION**.

SUPPLEMENTARY INFORMATION:

Background

In keeping with the objectives of the Safe Drinking Water Act, EPA is soliciting partners through a competitive solicitation to assist Agency efforts to protect the drinking water sources (both ground water and surface water sources) of small, rural or economically disadvantaged communities in priority watersheds. Priority watersheds are those river basins and water bodies identified by the States in their Unified Watershed Assessments, developed under the Clean Water Action Plan.

Proposals under this solicitation may support source water assessment and protection activities at the community level as well as activities related to stormwater, non-point source or wet weather related management activities, that: assist in the integration of ground water concerns into watershed assessment and restoration plans; support the implementation of local wellhead protection programs; and /or, provide technical support to communities considering new ground or surface water protection or contaminant source management plans or ordinances targeted at high risk watersheds. All project proposals must address one or more of these activities to support ground water and source water protection efforts of small communities, economically disadvantaged communities, and/or rural areas in priority watersheds. These projects must also serve as useful prototypes with results that can be transferred to other community-based drinking water protection efforts. Priority consideration will be given to proposals that directly involve and demonstrate community level implementation actions or activities that clearly lead to such results.

Available Funding

Regional Support

A total of $1,625,000 is available from EPA to fund one or more projects in each EPA Region according to the Region-by-Region allocation formula shown below. Individual project proposals may be budgeted at no less than $10,000, and no more than any specific Region's allocation. Each Region will determine how many projects to fund and at what level to fund them. Those interested in applying for funding should submit their proposal to the appropriate Regional contacts as listed below. Collaborative submissions are also encouraged. Project submissions must be made in accordance with the criteria contained in this notice.

Nation-wide Support

An additional $375,000 is available from EPA Headquarters for projects that are targeted to similar objectives but focus on activities that are either national, multi-State or multi-Region in scope. These proposals are to be submitted to the EPA Headquarters contact listed below. National projects should be budgeted at no less than $50,000 and no more than $100,000.

Funding Eligibility

State, local and Tribal governments, not-for-profit community water systems that meet the definition of a public water supply (40 CFR 142.2), and not-for-profit organizations that have demonstrated a field-based capacity to provide technical assistance on drinking water and source water protection issues to small, rural or economically disadvantaged communities are eligible to compete for these funds. While preference may be given to projects located in priority watersheds, projects outside of those watershed areas will be eligible for funding consideration, especially if they have a creative approach to implementing the objectives previously outlined.

Evaluation Criteria

In keeping with the aforementioned objectives of this solicitation, the following other criteria will be used in the evaluation of all proposals submitted by offerors in response to this proposal.

- Well written and organized presentation. *5 points*
- Project objectives, deliverables/milestones, and measures of success are viable and clearly stated. *15 points*
- Project clearly identifies the need for the activity and the expected environmental and public health benefits that are readily transferable to other communities. *30 points*
- Project uses the collaboration of relevant partners (multi-organization/community focused) to achieve the project goals. *25 points*
- Project builds the capacity of local communities and organizations to protect public health through drinking water protection by identifying needed institutional arrangements and management responsibilities to carry out project objectives. *25 points*

Total: 100 points

Project Proposal Due Date

All project proposals must be received by the respective EPA Regional or Headquarters office no later than 30 days from May 6, 1999. Project proposals should be sent to the appropriate address listed below based on the location of the project:

EPA office	Contact and address	States	Allocation
Region 1	Mary Jo Feuerbach, U.S. EPA, Region I, Suite 1100, One Congress Street (CMA), Boston, MA 02203–0001, 617–918–1578.	CT, ME, MA, NH, RI, VT	$117,813
Region 2	Benita Best-Wong, U.S. EPA, Region 2, 290 Broadway, New York, NY 10007–1866, 212–637–3852.	NJ, NY, PR, VI	134,063
Region 3	Dale Long, U.S. EPA, Region 3, 1650 Arch Street, Philadelphia, PA 19103, 215–814–5779.	DE, DC, MD, PA, VA, WV	146,251
Region 4	Stallings Howell, U.S. EPA, Region 4, 61 Forsyth Street, SW, Atlanta GA 30303, 404–562–9329.	AL, FL, GA, KY, MS, NC, SC, TN	243,749
Region 5	Thomas Poy, U.S. EPA, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604–3507, 312–886–5991.	IL, IN, MI, MN, OH, WI	211,250
Region 6	Ken Williams, U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733, 214–665–7129.	AR, LA, NM, OK, TX	215,310
Region 7	Stephanie Lindberg, U.S. EPA, Region 7, 726 Minnesota Avenue, Kansas City, KS 66101, 913–551–7423.	IA, KS, MO, NE	146,250
Region 8	Marcella Hutchinson, U.S. EPA, Region 8, 999 18th Street, Suite 500, Denver, CO 80202–2466, 303–312–6753.	CO, MT, ND, SD, UT, WY	121,875
Region 9	Judy Bloom, U.S. EPA, Region 9, 75 Hawthorne Street San Francisco, CA 94105, 415–744–1829.	AZ, CA, HI, NV	150,313
Region 10	Jeff Kenknight, U.S. EPA, Region 10, 1200 Sixth Avenue, Seattle, WA 98101, 206–553–0226.	AK, ID, OR, WA	138,126
Headquarters	Evyonne Harris, U.S. EPA (4606), 401 M Street, SW, Washington, DC 20460, 202–260–1399.	National, Multi-State or Multi-Region.	375,000

Description of Project Proposals

Proposals should be succinct and to the point. Proposals should not exceed 3–5 pages in total length. The 3–5 pages should include background, a description of proposed project and the environmental need to be addressed, financial information on the costs of the project, a schedule of activities and milestones, supporting documentation, and (any available) letters of support.

Proposals should clearly address the substantive evaluation criteria, in particular, the expected health and environmental benefits and the transferability of the project effort. Other materials, multimedia or otherwise, will not be accepted or evaluated during the competition. Applicants whose proposals are selected for funding will be required to submit the ''Application for Federal Assistance'' (SF 424). The paperwork burden for this form is approved under EPA's Information Collection request #938.06, OMB Control Number 2030–0020. Do not submit the SF 424 with this proposal application. Projects that receive funding will have specific conditions on reporting progress.

Project Narrative

Proposed project text should include a general overview summarizing planned project activities in accordance with the specifications for project descriptions. The project narrative should briefly describe how the project proposal addresses and supports one or more of the following program objectives:

- Source water assessment and protection activities at the local level, especially in rural areas;
- Integration of ground water concerns into watershed assessment and restoration plans;
- Implementation of wellhead protection programs locally; and/or
- Providing the assistance of field technicians supporting communities considering new ground water/source water ordinances targeted at high-risk watersheds.

In addition, the narrative should briefly describe how the project proposal addresses the following factors:

- Ability of project to support the overall advancement of ground water and source water protection efforts;
- Innovation and transferability of project outcomes to multiple state, Tribal, or local source water protection initiatives; and,
- Past experience, if any, that demonstrates an ability to manage complex projects.

Project Activities

A description of planned project activities including a definition of the project's time span, lists of deliverables and milestones.

Budget Narrative

Each proposal must include a budget summary that identifies cost associated with each activity. Cost estimates should include the following object class categories:

✔ Personnel
✔ Fringe
✔ Travel
✔ Supplies
✔ Indirect Charges

Schedule of Activities

This schedule for the review and award portion of this process is provided only as an example. Each Region may establish timelines that vary beyond the initial submission date, 30 days from the date of this document.

- Day 30: proposals due after publication of **Federal Register** notice.
- Day 60: complete 30 day review of proposals by either EPA Headquarters or Region.
- Day 70: applicant notified of Agency determination on project.
- Day 85: selected applicants prepare and submit SF 424.
- Day 90: applications forwarded to the respective grants offices.
- Day 120: grants processing completed/Congressional notifications.
- Day 125: awards package mailed to grantee.

Dated: April 30, 1999.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 99–11387 Filed 5–5–99; 8:45 am]

BILLING CODE: 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Tuesday, May 11, 1999 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting will be closed to the Public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. § 437g. Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, May 13, 1999 at 10;00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting Will be Open to the Public.

ITEMS TO DISCUSSED: Correction and Approval of Minutes. Advisory Opinion 1999–10: Nationwide Political Participation Committee by counsel, Andrew B. Clubok. Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 99–11491 Filed 5–4–99; 11:21 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMSSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–009831–019.

Title: New Zealand/United States Container Lines Association.

Parties: P&O Nedlloyd Limited, Columbus Line, Australia-New Zealand Direct Line.

Synopsis: The proposed modification would revise the agreement's independent action and service contract provisions consistent with the requirements of the Ocean Shipping Reform Act of 1998. The parties have requested expedited review.

Agreement No.: 202–011526–002.

Title: Mitsui O.S.K. Lines Ltd/Hoegh-Ugland Auto Liners A/S Space Charter Agreement.

Parties: Hoegh-Ugland Auto Liners A/S Mitsui O.S.K. Lines, Ltd.

Synopsis: The proposed Amendment modifies Article 4 of the Agreement to include trade to the Dominican Republic. The parties request expedited review.

Agreement No.: 203–011547–006.

Title: Israel Discussion Agreement.

Parties: China Ocean Shipping (Group) Company, Farrell Lines Incorporated, Zim Israel Navigation Co., Ltd., Israel Trade Conference.

Synopsis: The proposed Amendment revises Article 5 of the Agreement to authorize joint contracting; discussion of terms, information and other data concerning individual service contracts, as well as the discussion and implementation of voluntary guidelines relating to individual service contracts. The Article is further amended to authorize ad hoc space chartering authority among the parties. In addition, technical and conforming changes are made to Articles 7 and 9 of the Agreement.

Agreement No.: 202–011572–004.

Title: Colombia Independent Carrier Agreement.

Parties: Frontier Liner Services, King Ocean de Colombia, Seaboard Marine, LTd.

Synopsis: The proposed Amendment: (1) revises Articles 5.3, 13, 14, and 18 of the Agreement to bring the Agreement into conformity with the Ocean Shipping Reform Act and Commission's regulations, (2) clarifies the space charter authority under Article 5.5, and (3) specifies the voting procedure by which Members of the Agreement may open and close rates. The members request expedited review.

Agreement No.: 218–011661.

Title: Crowley/MLL Transshipment Agreement.

Parties: Crowley American Transport, Inc. (''Crowley''), Mexican Lines Limited (''MLL''), Transportacion Maritima Grancolombiana S.A. (''MLL'').

Synopsis: Under the proposed Agreement Crowley will provide transshipment services to MLL for MLL cargo in the trade between United States Gulf and Pacific Coast ports and ports in Colombia, Ecuador, Peru, and Chile via transshipment ports in Venezuela, Colombia, and Panama.

Agreement No.: 217–011662.

Title: CMA/Great Western Space Charter Agreement.

Parties: Compagnie Maritime d'Affretement, S.A. (''CMA''), Great Western Steamship Co. (''Great Western'').

Synopsis: The proposed Agreement would permit CMA to charter space to Great Western in the trade between United States West Coast ports, and inland points via such ports, and ports and points in the Far East. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: May 3, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–11401 Filed 5–5–99; 8:45 am]

BILLING CODE 6730–01–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, DC 20573. International Commodity Express Co. d/b/a I.C.E., 2090 Commerce Drive, Medford, OR 97504, Officer: Henry Dewey Wilson, III, President (Qualifying Individual).

Dated: May 3, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–11399 Filed 4–5–99; 8:45 am]

BILLING CODE 6730–01–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, DC 20573. S.A.T. Sea & Air Transport Inc., 1200 South 192nd Street, Suite 200, Seattle, WA 98148, Officers: Peter J. Beckett, President, George M. Goodwin, Secretary/Treasurer.

Dated: May 3, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–11400 Filed 5–5–99; 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 May 20, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Lepago Enterprises, Inc., Tampa, Florida, and Constantino Gonzalez, Rosa Gonzales, Anthony F. Gonzalez, and Silvia Martinez, all of Tampa, Florida, as shareholders; to acquire voting shares of Manufacturers Bancshares, Inc., Tampa, Florida (in organization), and thereby indirectly acquire voting shares of Manufacturers Bank of Florida, Tampa, Florida.

2. Llaneza Enterprises, Inc., Tampa, Florida, and Frank A. Llaneza and Diana Llaneza, all of Tampa, Florida, as shareholders; to acquire voting shares of Manufacturers Bancshares, Inc., Tampa, Florida (in organization), and thereby indirectly acquire voting shares of Manufacturers Bank of Florida, Tampa, Florida.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Edward J. Snyder, Cedar Vale, Kansas and Caroline S. Blakeslee, Boise, Idaho, as Co-Trustees of the M.F. Jarvis Trust, to acquire voting shares of Cornerstone Alliance, Ltd., Winfield, Kansas; and thereby indirectly acquire voting shares of First National Bank of Winfield, Winfield, Kansas, and Cornerstone Credit Company, Winfield, Kansas.

Board of Governors of the Federal Reserve System, April 30, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11313 Filed 5–5–99; 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 May 31, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Manufacturers Bancshares, Inc., Tampa, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Manufacturers Bank of Florida.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Delta Bancshares of Louisiana, Inc., Oak Grove, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of West Carroll Community Bank, Oak Grove, Louisiana (in organization).

In connection with this application, Applicant also has applied to merge with Delta Bancshares, Inc., Eudora, Arkansas, and thereby indirectly acquire The Eudora Bank, Eudora, Arkansas.

2. Central Bancompany, Inc., Jefferson City, Missouri; to acquire 100 percent of the voting shares of Mid-Continent Bancshares, Inc., and thereby indirectly acquire Bank of Jacomo, Blue Springs, Missouri.

3. First Premier Financial Corporation, St. Louis, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Premier Bancshares, Inc., Jefferson City, Missouri, and thereby indirectly acquire Premier Bank, Jefferson City, Missouri.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Bank Capital Corporation, Strasburg, Colorado; to acquire 100 percent of the voting shares of Citizens Holding Corporation, Keensburg, Colorado, and thereby indirectly acquire Citizens State Bank, Keensburg, Colorado.

Board of Governors of the Federal Reserve System,

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11314 Filed 5–5–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or

assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. 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 May 20, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Philippine National Bank Metro Manila, The Philippines, and Century Holding Corporation, Beverly Hills, California; to acquire PNB Remittance Centers, Inc., Los Angeles, California, and thereby engage in money remittance activities, as previously approved by Board order; See *Philippine Commercial International Bank, 77 Fed. Res. Bull. 270, (1991); Bergen Bank A/S. 76 Fed. Res. Bull. 457 (1990); and Norwest Corporation, 81 Fed. Res. Bull. 974 (1995).*

Board of Governors of the Federal Reserve System, April 30, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11315 Filed 5–5–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

President's Commission on the Celebration of Women in American History

AGENCY: General Services Administration.

ACTION: Meeting notice.

SUMMARY: Notice is hereby given that the President's Commission on the Celebration of Women in American History will hold an open meeting from 12 p.m. to 5 p.m. on Thursday, May 20, 1999, at the Kennedy Space Center (KSC), Florida, Visitor Complex, Center for Space Education, Pad-A. The telephone number for the KSC Visitors Center if 407–452–2121. Inquiries may be emailed to *www.ksc.nasa.gov.*.

PURPOSE: To discuss the report to the President, the recommendation related to the ''How to Guide'', and to solicit input from the community on implementation plans for this and other recommendations for celebrating women in American history.

Under 41 CFR 101–6.1015(b)(2) less than 15 days notice of the meeting is provided due to delays in organizing schedules.

FOR FURTHER INFORMATION CONTACT: Martha Davis (202) 501–0705, Assistant to the Associate Administrator for Communications, General Services Administration. Also, inquiries may be sent to *martha.davis@gsa.gov.*

Dated: April 30, 1999.

Beth Newburger,

Associate Administrator for Communications.

[FR Doc. 99–11420 Filed 5–5–99; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–16]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received with 60 days of this notice.

Proposed Projects

1. Diffusion of Needle-stick Prevention Strategies—NEW—National Institute for Occupational Safety and Health (NIOSH)—Occupational exposure to bloodborne pathogens (including the hepatitis B and C viruses and the human immunodeficiency virus) poses a risk to workers in the health care industry and related occupations. The primary route of exposure to bloodborne pathogens is accidental percutaneous injury by a needle or similar sharp object.

In 1991 the Occupational Safety and Health Administration (OSHA) enacted the final Bloodborne Pathogen Standard. Although the OSHA standard has increased compliance and awareness of needle-stick injury prevention strategies, needle-stick injuries are still occurring.

Studies have demonstrated that the use of safer needle-stick prevention devices can reduce the incidence of needle-stick injuries and resulting costs. Little is known however, about how many hospitals have adopted devices such as, safer blood collection needles (SBCN) designed to prevent percutaneous injuries, and the variables that can influence their adoption by hospitals.

This study will conduct a random sample national survey of 960 infection control practitioners to evaluate how widespread the adoption of SBCN and other needle-stick prevention devices is in hospitals; and some of the internal and external environmental variables that can influence their adoption. The survey data may be used to indicate a hospital's readiness to adopt SBCN, to assess the extent of the diffusion of SBCN, and to cluster hospitals according to their stage of adoption for SBCN.

The goal of this study is to (1) inform future NIOSH communication/dissemination strategies to promote safer blood collection and related medical devices in hospitals, (2) inform policy makers about variables that can influence the adoption of safer blood collection devices, and (3) provide data that reveals national trends for the adoption of safer needles-tick prevention devices in hospitals. There cost to the respondents is $0.00.

Respondent	Number of Respondents	Number of responses/respondent	Avg. Burden/response (in hrs.)	Total burden (in hrs.)
Infection control nurses	960	1	.1166	112

2. PHS Supplements to the Application for Federal Assistance SF 424 (0920–0428)—Extension—The Centers for Disease Control and Prevention (CDC) is requesting a three-year extension of the currently approved OMB forms that are Supplements to the Request for Federal Assistance Application (SF–424). The Checklist, Program Narrative, the Public Health System Impact Statement (third party notification) (PHSIS), a new Substance Abuse and Mental Health Services Administration (SAMHSA) form and a new CDC form are a part of the standard application for state and local governments and for private non-profit and for-profit organizations when applying for financial assistance from PHS grant programs. The Checklist assists applicants to ensure that they have included all required information necessary to process the application. The Checklist data helps to reduce the time required to process and review grant applications, expediting the issuance of grant awards. The PHSIS Third Party Notification Form is used to inform State and local health agencies of community-based proposals submitted by non-governmental applicants for Federal funding. SAMHSA's new form will be used in lieu of the PHSIS in specific instances. CDC's new forms will be used in lieu of the 5161–1 form for state and local governments requesting federal funding that is limited to state and local governments only.

The current OMB approval for the supplements was previously submitted and approved as an emergency clearance and we are asking for a full three clearance to continue data collection The total annual cost to the respondents is estimated to be $1,184,452.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Program Narrative and Checklist	6,231	1	4	24,924
CDC Form 0.0126 (E)	990	1	4	3,960
Public Health Impact Statement (PHSIS)	2,845	2.5	.1666	1,185
SSA (SAMHSA)	1,125	1	.1666	187
Total				30,256

3. Safety for Workers' Eyes: Testing the Effectiveness of Theoretically-Based Eye Injury Prevention Messages—NEW—National Institute for Occupational Safety and Health (NIOSH) -Despite evidence that at least 90% of workplace eye injuries are preventable, safety eye wear use among workers is disappointingly low. According to the National Institute for Occupational Safety and Health (NIOSH) and results from the 1988 National Health Interview Survey Occupation Health Supplement, more than 600,000 occupational eye injuries occur annually. Sixteen percent of eye injuries occur among construction with carpenters being at particular risk given the nature of their work.

Research has been conducted on the nature and extent of eye injuries among workers, but few studies have explored the behavioral aspects of the use of safety eye wear. To date, no one has used behavioral theory to examine the use of safety eye wear among union carpenters or develop a program that would increase safety eye wear use.

The goals of this investigation are to: (1) Estimate the number of carpenters who are currently wearing protective eye wear by direct observation and pre-intervention survey in the study sample; (2) develop an eye wear safety promotion campaign geared toward carpenters, their first-line supervisors, and contractors based on results from focus groups and using the theory of planned behavior; (3) increase the use of protective eye wear among carpenters by administering the eye safety messages to carpenters, their first-line supervisors, and contractors; and (4) determine the effectiveness of the messages by comparing the use of safety eye wear among carpenters before and after the campaign by direct observation, post-intervention survey, and focus groups.

The pre- and post-intervention survey instruments will assess carpenters' use of eye wear before and after the health communication message. In addition, based on the theory of planned behavior, the questionnaire will address workers behavioral intentions, attitudes, subjective norms, and perceived behavioral control.

Using a quasi-experimental design, the data collected in this study will assess the effectiveness of theory-based messages to increase the use of safety eye wear when compared to a control group. This information will provide public health investigators as well as carpenter safety officers with a theory-driven effective eye injury prevention program and the tools to implement it. The total cost to respondents is $2,257.00.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Carpenters	150	2	.33	99

4. Hepatitis C Virus Lookback Evaluation -NEW- National Center for Infectious Disease (NCID)—The Food and Drug Administration (FDA) has recently issued guidelines for notification of persons who received

blood or blood components from donors who subsequently tested positive for antibody to hepatitis C virus (anti-HCV) using a licensed multiantigen assay.[1] Blood collection establishments will identify potentially HCV-contaminated blood products and inform transfusion services of these units. The transfusion services will then attempt to notify the recipients of these products and encourage these recipients to be tested for HCV infection. CDC, in collaboration with the Agency for Health Care Policy and Research (AHCPR) and the FDA, has been charged with the responsibility of evaluating this nationwide notification process. The objective of this study is to evaluate the effectiveness of the targeted lookback for identifying persons infected with HCV, obtaining appropriate medical follow-up, and promoting healthy lifestyles and behaviors. The evaluation has three specific aims:

1. Determine the effectiveness of targeted lookback for identifying prior transfusion recipients with HCV infection, including the proportion of recipients identified who are ultimately tested, the proportion of those tested who are HCV positive, the reasons persons do not receive notification, and the reasons persons do not avail themselves of testing.

2. Determine the effectiveness of targeted lookback for encouraging and obtaining appropriate medical follow-up and promoting healthy lifestyles and behaviors among persons found positive for HCV infection, including proportion of HCV-positive persons who seek medical evaluation and outcome of that evaluation (severity of liver disease, anti-viral therapy, quality of counseling), and reactions/impact of notification on HCV-negative persons.

3. Determine the cost-effectiveness of targeted lookback, including resources (cost, personnel, etc.) utilized by blood collection groups and transfusion services for implementation and costs of medical evaluation and management.

The evaluation will comprise the following components:

1. A nationwide survey of blood collection establishments.

2. A nationwide survey of transfusion services.

3. A follow-up study of transfusion recipients presumed to have been notified of their potential HCV exposure. This detailed study will involve contacting and interviewing transfusion recipients from a sample of transfusion services in defined geographic areas.

4. A follow-up study of notified transfusion recipients who obtain HCV testing offered by blood collection centers.

The total cost to respondents is estimated to be $346,063.

Respondents	Number of respondents	Number of responses/respondents	Avg. burden/response (in hours)	Total burden (in hours)
Blood collection establishments	140	1	5	700
Transfusion services	5,000	1	5	25,000
Transfusion recipients (first telephone contact)	5,000	1	0.2	1,000
Transfusion recipients (second telephone contact)	2,000	1	0.5	1,000
Transfusion recipients (follow-up interview and study)	200	3	0.5	300
Transfusion recipients (first interview of recipients tested at ARC/ABC	500	1	0.2	100
Transfusion recipients (follow-up interview and study of recipients tested at ARC/ABC)	100	3	0.5	150
Total				28,250

Dated: April 30, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–11339 Filed 5–5–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99119]

Centers for Excellence in Health Statistics; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC), through the Office of Prevention Research and the National Center for Health Statistics (NCHS) invites applications to establish Centers for Excellence in Health Statistics (CEHS). The goal of these cooperative agreements is to support research to enhance the capability of the statistical sciences to meet the rapidly changing needs of health surveillance, public health research, and in particular prevention research. This program addresses the ''Healthy People 2000'' priority area(s) of Surveillance and Data.

The purposes of this program are to:

1. Build Infrastructure (Administrative Core): Provide an organizational setting to promote research on methods for health statistics, drawing upon multiple disciplines and involving collaboration with multiple partners. Serve as a model for outreach, input, and collaboration that helps assure that research can be applied to solving priority problems nationally or in the local community.

2. Research Component: Support methodological and analytic research projects aimed at advancing the state of the art of collection, analysis, and interpretation of health statistics to inform prevention research and evaluation. Integrate the fields of statistics, health services research, survey research, public health, epidemiology, behavioral and social sciences, computer science and technology among others. Through such multi-disciplinary research, explore new approaches to enhance the capability of the statistical system to meet the rapidly changing needs of health surveillance, public health research, and prevention research.

3. Recruitment and Outreach (Promote Training): Enhance opportunities for research training, career development, and mentoring.

[1] Food and Drug Administration. Guidance For Industry. Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Tests for Antibody to Hepatitis C Virus (Anti-HCV); (2) Supplemental Testing, and the Notification of Consignees and Blood Recipients of Donor Test Results for Anti-HCV. Rockville, MD: Center for Biologics Evaluation and Research, FDA; September 1998.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $750,000 is available in FY 1999 to fund approximately two awards. It is expected that the average award will be $375,000 in total costs, ranging from $250,000 to $500,000. It is anticipated that the awards will begin on or about September 30, 1999 and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by progress reports and the availability of funds.

D. Use of Funds

Applicants should include sufficient travel funds within their budgets to travel to NCHS, Hyattsville, Maryland facility for an annual meeting of all awarded research center principal investigators.

E. Programmatic Interests

There is programmatic interest in developing CEHS that would conduct a wide range of research, analytic and implementation activities pertaining to health statistics and information systems for health promotion and disease prevention research and application. Examples of relevant research topics include but are not limited to those listed below:

1. Survey methodology: New sampling approaches, new designs for hard to reach populations, new approaches for linking and integrating health surveys, improved capabilities for conducting longitudinal and cross sectional studies, improved methods for addressing language and cognitive issues in conducting surveys.

2. Health Promotion and Disease Prevention: Development of standards in terms, definitions and methods; development of health status indicators for within population group comparison; examination of protective or wellness factors and health seeking behaviors particular to population groups.

3. Data linkages: Improved use of existing administrative data sets (e.g., Medicare, Medicaid, Veterans Administration, National Death Index, hospital discharges, and employer health files), expanded use of data sources from outside the public health arena, approaches to tracking patient health episodes across different providers, and methods for linking or matching different data sources to move toward broader population coverage.

4. Data analysis: Analytic approaches to interpreting poverty and socioeconomic status and their effect on population subgroups, analytic approaches to assessing the impact of managed care on health as well as impact of other changes in health care systems, and enhancement of epidemiological studies of disease and illness including the impact of behavior and environmental exposures, improved strategies for combining qualitative data to enhance insight into statistical research, examination of demographic aspects of health, morbidity, disability, and mortality—including issues related to the influence of early life on later life, algorithms for measuring health outcomes and quality of care, and validation of aggregated variables.

5. Information technology: Expanded research and development of automation technologies, including the development of new electronic methods for data collection, improved analytic tools, and new approaches to electronic data dissemination.

6. Special populations: Improved data on populations particularly vulnerable to changes in the health care system and those with unique health problems (racial/ethnic minorities, poor, disabled, elderly, highly mobile populations) of particular interest is the reliability of race and ethnic information on vital and medical records (self-report versus proxy) with a focus on mortality statistics and misreporting.

7. Medical informatics: Approaches to defining, accessing and using computerized patient records, the development of uniform data elements and definitions, developing methods for greater linkage between medical informatics and population-based health information, developing standardized instruments for recording utilization (especially preventive services) for illness episodes that can be used by primary care service providers in a variety of settings.

8. Measurement: Improved techniques for describing and measuring health status, functional status, health outcomes, and the impact of care and the environment, behavior, family, and community on health status.

9. Non-sampling error: Examination of biases associated with the sampling frame, mode of survey, non-response, and measurement bias.

10. Confidentiality and data sharing: Development of innovative methods and techniques to ensure the confidentiality of information provided by respondents, while at the same time maximizing the sharing of micro-data for analysis, e.g., employing random transformations and imputed synthetic variables and evaluating the resulting analytic losses; development and evaluation of alternative approaches to obtain informed consent.

F. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities:

a. Build Infrastructure (Administrative Core)

(1) Establish an appropriate organizational setting and institutional infrastructure (administrative core) that is supportive of a set of research projects. This setting must facilitate collaboration between multiple disciplines and involve multiple partners.

(2) Establish relationship(s) with organizations relevant to the success of the Center's research agenda, demonstrated by letters of agreement. Cooperation with private-sector programs is encouraged.

(3) Establish relationship(s) with organizations or individuals that can help assure that research can be applied to solving priority problems nationally or (if appropriate) in the local community.

b. Research Component

(1) Develop and organize a prevention/promotion research theme (or set of themes) and a research agenda. For example, themes and research agendas can address Programmatic Interests research topics outlined in that section of the announcement, or can be focused on problems unique to the community in which the CEHS would be located.

(2) Design and conduct one or more research projects within the research agenda developed by the particular CEHS that involves specialists or experts in sophisticated methodology

and individuals or organizations from the community, if appropriate, to identify priorities and link research activities to important public health, prevention and health statistics research issues.

(3) Develop a plan to disseminate research findings as widely as is practicable.

c. Recruitment and Outreach (Promote Training): Establish program for enhancing opportunities, career development and training including mentoring of junior researchers, and programs for training mid-career or transitional professionals who have not previously worked in the specialties of health statistics and prevention research.

2. CDC/NCHS Activities:

a. Provide technical assistance on projects as necessary.

b. If needed, assist in the development of controlled access environment which allows micro-data applications.

c. If needed, assist in the development of a research protocol for IRB review by all cooperating institutions participating in the research.

d. The CDC Institutional Review Board (IRB) will review and approve the protocol initially and on at least an annual basis until the research project is completed.

G. Application Content

In developing the application, applicants should follow the information in the Program Requirements, the Other Requirements, and Evaluation Criteria sections.

H. Submission and Deadline

1. Letter of Intent (LOI)

The letter of intent should be submitted to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement by June 2, 1999. The letter of intent should not exceed two pages and include the following information.

a. Name, address, telephone and fax numbers, and E-mail address of the proposed Principal Investigator and the identities of other key personnel and participation institutions.

b. A descriptive title of the proposed research.

Although the letter of intent is required, it is not binding, and does not enter into the review of a subsequent application, the information that it contains allows NCHS staff to estimate the potential review workload and avoid conflicts of interest in the review process.

2. Application

Submit the original and five copies of PHS–398 (OMB Number 2420925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit.

On or before deadline date of July 6, 1999, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

I. Evaluation Criteria

Applications may be subjected to a preliminary evaluation by a peer review group to determine if the application is of sufficient technical and scientific merit to warrant further review (triage); the CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process. Each competitive application will be evaluated individually against the following criteria by a Special Emphasis Panel (SEP) appointed by CDC. The SEP will score each proposal based on scientific and technical merit. Factors to be considered by the SEP include:

1. Build Infrastructure (Administrative Core)

a. Organizational Infrastructure: Does the applicant demonstrate a multi-disciplinary approach to achieve the mission? Will the approach lead to the development of a body of knowledge that can yield results beyond that accomplished with individual projects alone? Will the CEHS attract established investigators and develop genuine collaboration among investigators with diverse backgrounds and areas of expertise.

b. Environment: Does the scientific, technical and administrative environment of the center contribute to excellence and the probability of success? Does the center take advantage of unique features of the scientific and public health environments or employ useful collaborative arrangements? Is there evidence of a high level of institutional commitment and support? Does the Center Director (Principal Investigator) have specific authority and responsibility to carry out the project? Is the Center Director located organizationally at a level to garner the support needed for the center (i.e., report to an appropriate institutional official, e.g., dean of a school, vice president of a university, or commissioner of health)? Is the time and effort indicated for the Center Director adequate (minimum of 25 percent effort devoted solely to this project with an anticipated range of 25 to 50 percent)?

c. Community Collaboration: Ability to build coalitions and partnerships with critical organizations and individuals (such as distinguished scientists as well as potential researchers in training, universities, colleges, research institutions, state and local governments, hospitals and academic health centers, managed care organizations, and other public and private nonprofit organizations) and to facilitate collaboration and coordination to assure the accomplishment of CEHS goals.

d. Organization: The quality and appropriateness of the organizational structure, the quality and experience of the administrative staff, the plans for quality control through in-house consultation and outside review (e.g., Scientific Advisory Board), and the quality of the plans for the allocating and monitoring of resources.

e. Budget: Reasonableness of proposed budget and time frame for the project in relation to the work proposed.

2. Research Component

a. Research Theme: Is the concept of a center fulfilled, i.e., is there an organizing prevention/promotion research theme (or set of themes) and a research agenda that defines the mission of the particular CEHS?

b. Public Health Significance: Does the center address an important public health problem? If the aims of the application are achieved, how will the field or health statistics and prevention research benefit? What will be the effect of the center and its affiliated studies on fundamental advances in the development, testing, and dissemination of health statistics and prevention

research and on informing public health policy?

c. Leadership: Are the center director and other senior investigators at the forefront of their respective fields? Do they have the experience and authority to organize, administer and direct the center?

d. Research projects: Are the specific research projects of exceptional scientific merit?

e. Innovation: Does the Center propose to develop novel concepts, approaches, measures or methods in basic research that will inform and guide health promotion and disease prevention? Are the aims original and innovative? Do the projects extend existing approaches or develop new methodologies or technologies?

f. Study Populations: 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.

(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.

g. Human Subjects: When applicable, the adequacy of the proposed means for protecting human subjects.

h. Budget: Reasonableness of proposed budget.

3. Recruitment and Outreach (Promote Training)

a. Does the applicant include a research development component for new, mid-career or transitional professionals through research training and career development mechanisms?

b. To what extent are special efforts made to recruit minority professionals and students to the CEHS?

A second-level review will be conducted by a panel of senior Federal officials. The following will be considered in making funding decisions: (1) Results of the initial review, (2) program balance, and (3) availability of funds.

J. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Annual progress reports due 30 days after the end of the budget period;

2. Financial status report, no more than 90 days after the end of the budget period, and;

3. Final financial report and performance report, no more than 90 days of the project.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. (See Addendum I)

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial Ethnic Minorities in Research
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions

K. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 306 of the Public Health Service Act, 42 U.S.C. section 242k as amended. The Catalog of Federal Domestic Assistance number is 93.283.

L. Where to Obtain Additional Information

The application kit and program announcement can be downloaded from the CDC home page on the Internet: http://www.cdc.gov. (Click on funding).

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, address, and phone number and will need to refer to Announcement 99119. You will receive a complete program description, information on application procedures, and application forms. CDC will not send application kits by facsimile or express mail. Please refer to Program Announcement 99119 when you request information.

If you have questions after reviewing the contents of all documents business management and technical assistance may be obtained from: Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99119, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341, telephone (770) 488–2721, Email address: vxw1@cdc.gov.

For programmatic technical assistance, contact: Jennifer Madans, Ph.D. and/or Audrey Burwell, MS, National Center for Health Statistics, 6525 Belcrest Road, Room 1140, Hyattsville, MD 20782, Phone: 301–436–7016, Phone: 301–436–7062, Email: JHM4@cdc.gov, Email: AZB2@cdc.gov.

For additional programmatic information, see also the NCHS home page on the Internet: http://www.cdc.gov/nchswww.

Dated: April 30, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–11338 Filed 5–5–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee on Mental Retardation; Notice of Meeting

AGENCY HOLDING THE MEETING: President's Committee on Mental Retardation.

TIME AND DATE: May 23, 1999—9:30 a.m.–5 p.m.

PLACE: Hilton New Orleans Riverside Hotel, New Orleans, Louisiana.

STATUS: Full Committee Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All meeting sites are barrier free.

TO BE CONSIDERED: The Committee plans to discuss critical issues concerning Federal Policy, Federal Research and Demonstration, State Policy Collaboration, Minority and Cultural Diversity and Mission and Public Awareness, relating to individuals with mental retardation.

The PCMR acts in an advisory capacity to the President and the Secretary of the U.S. Department of Health and Human Services on a broad range of topics relating to programs, services, and supports for persons with mental retardation. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs and supports for persons with mental retardation, and for reviewing legislative proposals that impact the quality of life that is experienced by citizens with mental retardation and their families.

CONTACT PERSON FOR MORE INFORMATION: Jane L. Browning, Room 701 Aerospace Building, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, (202) 619–0634.

Dated: April 30, 1999.

Jane L. Browning,

Executive Director, PCMR.

[FR Doc. 11403 Filed 5–5–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1010]

Agency Information Collection Activities: Proposed Collection; Comment Request; Investigational New Drug Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements governing applications for FDA's approval to market a new drug.

DATES: Submit written comments on the collection of information by July 6, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the 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 in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Investigational New Drug (IND) Regulations—21 CFR Part 312 (OMB Control Number 0910–0014—Extension)

FDA is requesting OMB approval for the reporting and recordkeeping requirements contained in FDA's regulation ''Investigational New Drug Application'' (part 312 (21 CFR part 312)). This regulation implements provisions of section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) to issue regulations under which the clinical investigation of the safety and effectiveness of unapproved new drugs and biological products can be conducted.

FDA is charged with implementing statutory requirements that drug products marketed in the United States be shown to be safe and effective, properly manufactured, and properly labeled for their intended uses. Section 505(a) of the act provides that a new drug may not be introduced or delivered for introduction into interstate commerce in the United States unless FDA has previously approved a new drug application (NDA). FDA approves an NDA only if the sponsor of the application first demonstrates that the drug is safe and effective for the conditions prescribed, recommended, or suggested in the product's labeling. Proof must consist, in part, of adequate and well-controlled studies, including studies in humans, that are conducted by qualified experts. The IND regulations establish reporting requirements that include an initial application as well as amendments to that application, reports on significant revisions of clinical investigation plans, and information on a drug's safety or effectiveness. In addition, the sponsor is required to give FDA an annual summary of the previous year's clinical experience. Submissions are reviewed by medical officers and other agency scientific reviewers assigned responsibility for overseeing the specific study. The IND regulations also contain recordkeeping requirements that pertain to the responsibilities of sponsors and investigators. The detail and complexity of these requirements are dictated by the scientific procedures and human subject safeguards that must be followed in the clinical tests of investigational new drugs.

The IND information collection requirements provide the means by which FDA can: (1) Monitor the safety of ongoing clinical investigations; (2) determine whether the clinical testing of a drug should be authorized; (3) ensure production of reliable data on the metabolism and pharmacological action of the drug in humans; (4) obtain timely information on adverse reactions to the drug; (5) obtain information on side effects associated with increasing doses; (6) obtain information on the drug's effectiveness; (7) ensure the design of well-controlled, scientifically valid studies; and (8) obtain other information pertinent to determining whether clinical testing should be continued and information related to the protection of human subjects. Without the information provided by industry in response to the IND regulations, FDA cannot authorize or monitor the clinical investigations which must be conducted prior to authorizing the sale and general use of new drugs. These reports enable FDA to monitor a study's progress, to assure subject safety, to assure that a study will be conducted ethically, and to increase the likelihood that the sponsor will conduct studies that will be useful in determining whether the drug should be marketed and available for use in medical practice.

The following two forms are required under part 312: Form FDA–1571 entitled ''Investigational New Drug Application.''A person who intends to conduct a clinical investigation submits this form to FDA. It includes: (1) A cover sheet containing background information on the sponsor and investigator; (2) a table of contents; (3) an introductory statement and general investigational plan; (4) an investigator's brochure describing the drug substance;

(5) a protocol for each planned study; (6) chemistry, manufacturing, and control information for each investigation; (7) pharmacology and toxicology information for each investigation; and (8) previous human experience with the investigational drug.

Form FDA–1572 entitled ''Investigator Statement.'' Before permitting an investigator to begin participation in an investigation, the sponsor must obtain and record this form. It includes background information on the investigator and the investigation, and a general outline of the planned investigation and the study protocol.

FDA is requesting OMB approval for the following reporting and recordkeeping requirements in part 312:

TABLE 1.—REPORTING REQUIREMENTS

21 CFR Section	Explanations
312.7(d)	Applications for permission to sell an investigational new drug.
312.10(a)	Applications for waiver of requirements under part 312. Only emergency requests are estimated under this section; other requests are included under §§ 312.23 and 312.31.
312.20(c)	Applications for investigations involving an exception from informed consent under § 50.24 (21 CFR 50.24). Estimates for this requirement are included under § 312.23.
312.23	IND (content and format).
312.23(a)(1)	Cover sheet FDA–1571.
312.23(a)(2)	Table of contents.
312.23(a)(3)	Investigational plan for each planned study.
312.23(a)(5)	Investigator's brochure.
312.23(a)(6)	Protocols—Phase 1, 2, and 3.
312.23(a)(7)	Chemistry, manufacturing, and control information.
312.23(a)(7)(iv)(*a*), (*b*), (*c*)	A description of the drug substance, a list of all components, and any placebo used.
312.23(a)(7)(iv)(*d*)	Labeling—copies of labels and labeling to be provided each investigator.
312.23(a)(7)(iv)(*e*)	Environmental impact analysis regarding drug manufacturing and use.
312.23(a)(8)	Pharmacological and toxicology information.
312.23(a)(9)	Previous human experience with the investigational drug.
312.23(a)(10)	Additional information.
312.23(a)(11)	Relevant information.
312.23(f)	Identification of exception from informed consent.
312.30	Protocol amendments.
312.30(a)	New protocol.
312.30(b)	Change in protocol.
312.30(c)	New investigator.
312.30(d)	Content and format.
312.30(e)	Frequency.
312.31	Information amendments.
312.31(b)	Content and format.
	Chemistry, toxicology, or technical information.
312.32	Safety reports.
312.32(c)(1)	Written reports to FDA and to investigators.
312.32(c)(2)	Telephone reports to FDA for fatal or life-threatening experience.
312.32(c)(3)	Format or frequency.
312.32(d)	Followup submissions.
312.33	Annual reports.
312.33(a)	Individual study information.
312.33(b)	Summary information.
312.33(b)(1)	Adverse experiences.
312.33(b)(2)	Safety report summary.
312.33(b)(3)	List of fatalities and causes of death.
312.33(b)(4)	List of discontinuing subjects.
312.33(b)(5)	Drug action.
312.33(b)(6)	Preclinical studies and findings.
312.33(b)(7)	Significant changes.
312.33(c)	Next year general investigational plan.
312.33(d)	Brochure revision.
312.33(e)	Phase I protocol modifications.
312.33(f)	Foreign marketing developments.
312.35	Treatment use of investigational new drugs.
312.35(a)	Treatment protocol submitted by IND sponsor.
312.35(b)	Treatment IND submitted by licensed practitioner.
312.36	Requests for emergency use of an investigational new drug.
312.38(b) and (c)	Notification of withdrawal of an IND.
312.44(c) and (d)	Opportunity for sponsor response to FDA when IND is terminated.
312.45(a) and (b)	Sponsor request for or response to inactive status determination of an IND.
312.47(b)	''End-of-Phase 2'' meetings and ''Pre-NDA'' meetings.

TABLE 1.—REPORTING REQUIREMENTS—Continued

21 CFR Section	Explanations
312.53(c)	Investigator information. Investigator report (Form FDA–1572) and narrative; Investigator's background information; Phase 1 outline of planned investigation; and Phase 2 outline of study protocol; financial disclosure information.
312.54(a) and (b)	Sponsor submissions concerning investigations involving an exception from informed consent under § 50.24.
312.55(b)	Sponsor reports to investigators on new observations, especially adverse reactions and safe use. Only ''new observations'' are estimated under this section; investigator brochures are included under § 312.23.
312.56(b), (c), and (d)	Sponsor monitoring of all clinical investigations, investigators, and drug safety; notification to FDA.
312.58(a)	Sponsor's submission of records to FDA on request.
312.64	Investigator reports to the sponsor.
312.64(a)	Progress reports.
312.64(b)	Safety reports.
312.64(c)	Final reports.
312.64(d)	Financial disclosure reports.
312.66	Investigator reports to Institutional Review Board. Estimates for this requirement are included under § 312.53.
312.70	Investigator disqualification; opportunity to respond to FDA. Estimates for this requirement are not included in the estimates for part 312.
312.83	Sponsor submission of treatment protocol. Estimates for this requirement are included under §§ 312.34 and 312.35.
312.85	Sponsors conducting phase 4 studies. Estimates for these post-marketing studies are not included in the estimates for part 312.
312.110(b)	Request to export an investigational drug.
312.120(b) and (c)(2)	Sponsor's submission to FDA for use of foreign clinical study to support an IND.
312.120(c)(3)	Sponsor's report to FDA on findings of independent review committee on foreign clinical study.
312.130(d)	Request for disclosable information for investigations involving an exception from informed consent under § 50.24.

TABLE 2.—RECORDKEEPING REQUIREMENTS

21 CFR Section	Explanations
312.52(a)	Transfer of obligations to a contract research organization.
312.57(a) and (b)	Sponsor recordkeeping.
312.59	Sponsor recordkeeping of disposition of unused supply of drugs. Estimates for this requirement are included under § 312.57.
312.62(a)	Investigator recordkeeping of disposition of drugs.
312.62(b)	Investigator recordkeeping of case histories of individuals.
312.160(a)	Records maintenance—shipment of drugs for investigational use in laboratory research animals or in vitro tests.
312.160(c)	Shipper records of alternative disposition of unused drugs.

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS[1]

21 CFR Section	No. of Respondents	No. of Responses Per Respondent	Total Annual Responses	Hours per Response	Total Hours
312.7(d)	7	1	7	24	168
312.10(a)	0	0	0	0	0
312.23(a) and (f)	1,601	1.25	1,996	1,600	3,193,600
312.30(a) through (e)	918	14.85	13,629	284	3,870,636
312.31(b)	760	8.87	6,738	100	673,800
312.32(c) and (d)	459	14.33	6,576	32	210,432
312.33(a) through (f)	1,841	2.35	4,318	350	1,511,300
312.35(a) and (b)	1	1	1	300	300
312.36	643	1.2	720	16	11,520
312.38(b)	621	1.24	773	28	21,644
312.38(c)	621	1.24	773	160	123,680
312.44(c) and (d)	710	1.10	780	16	12,480
312.45(a) and (b)	294	1.32	389	12	4,668
312.47(b)	252	1	252	160	40,320
312.53(c)	4,500	1	4,500	80	360,000
312.54(a) and (b)	4	1	4	48	192

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS[1]—Continued

21 CFR Section	No. of Respondents	No. of Responses Per Respondent	Total Annual Responses	Hours per Response	Total Hours
312.55(b)	4,500	1	4,500	48	216,000
312.56(b), (c), and (d)	5	1	5	80	400
312.58(a)	337	1	337	8	2,696
312.64(a) through (d)	8,200	1	8,200	24	196,800
312.110(b)	150	2	303	75	22,725
312.120(b) and (c)(2)	100	2	200	168	33,600
312(c)(3)	100	2	200	40	8,000
312.130(d)	4	1	4	8	32
Total Reporting Burden					10,514,993

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 4.—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR HUMAN DRUGS[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
312.52(a)	360	1	360	2	720
312.57(a) and (b)	4,000	2.05	8,200	100	400,000
312.62(a)	8,200	1	8,200	40	328,000
312.62(b)	8,200	12.2	100,000	40	328,000
312.160(a)	3,400	7.35	25,000	30 min	1,700
312.160(c)	3,400	2.35	8,000	30 min	1,700
Total Recordkeeping Burden					1,060,120
Human Drugs Total Burden Hours					11,575,113

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 5.—ESTIMATED ANNUAL REPORTING BURDEN FOR BIOLOGICS[1]

21 CFR Section	No. of Respondents	No. of Responses Per Response	Total Annual Responses	Hours per Response	Total Hours
312.7(d)	9	1.3	12	24	288
312.10(a)	1	1	1	40	40
312.23(a) and (f) and 312.120(b), (c)(2), and (c)(3)	278	1.8	492	1,600	787,200
312.30(a) and (e)	975	6.5	6,411	284	1,820,724
312.31(b)	975	9.2	9,005	100	900,500
312.32(c) and (d) and 312.56(c)	602	6.7	4,034	32	129,088
312.33(a) and (f) and 312.56(c)	1,253	1.6	1,989	350	696,150
312.35(a) and (b)	1	1	1	300	300
312.36	22	5.5	122	16	1,952
312.38(b)	128	1.7	212	28	5,936
312.38(c)	128	1.7	212	160	33,920
312.44(c) and (d)	55	1.9	107	16	1,712
312.45(a) and (b)	74	1.4	105	12	1,260
312.47(b)	150	1.8	274	160	43,840
312.53(c)	672	6.6	4,421	80	353,680
312.54(a) and (b)	4	1	4	48	192
312.55(b)	374	6.1	2,288	48	109,824
312.56(b) and (d)	12	1.6	20	80	1,600
312.58(a)	10	1	10	8	80
312.64(a) and (d)	5,014	1	5,014	24	120,336
312.110(b)	10	1.3	13	75	975
312.130(d)	1	1	1	0.5	0.5
Total Reporting Burden					5,009,597.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 6.—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR BIOLOGICS[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
312.52(a)	27	2.5	67	5	135
312.57(a) and (b)	1,253	2	2,506	100	125,300
312.62(a)	5,014	1	5,014	40	200,560
312.62(b)	8,200	12.2	100,000	40	328,000

TABLE 6.—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR BIOLOGICS[1]—Continued

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
312.160(a)	3,400	7.35	25,000	30 min	1,700
312.160(c)	320	1	320	0.5	160
Total Biologic Recordkeeping Hours					655,855
Total Biologics Burden Hours					5,665,452.5
Total Human Drugs Burden Hours					11,575,113
Total Combined Burdens					17,240,565.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 29, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–11310 Filed 05–05–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0811]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Guidance for Industry: Designation, Development, and Application Review for Products in Fast-Track Drug Development Programs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by June 7, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry: Designation, Development, and Application Review for Products in Fast-Track Drug Development Programs

Section 112(a) of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115) amends the Federal Food, Drug, and Cosmetic Act (the act) by adding section 506 (21 U.S.C. 356) and authorizes FDA to take appropriate action to facilitate the development and expedite the review of new drugs, including biological products, intended to treat a serious or life-threatening condition and that demonstrate a potential to meet an unmet medical need. The issuance of the guidance will be under section 112(b) of FDAMA, which requires the agency to issue guidance regarding fast-track policies and procedures within 1 year of the date of enactment of FDAMA, November 21, 1997. The guidance will discuss collections of information that are expressly specified under section 506 of the act, other sections of the Public Health Service Act (the PHS Act), or implementing regulations. For example, under section 506 of the act, an applicant who seeks fast-track designation must submit a request to FDA. Some of the support for such a request may be required under regulations, such as parts 312, 314, and 601 (21 CFR parts 312, 314, and 601), which specify the types and format of information and data that should be submitted to FDA for evaluation of the safety and effectiveness of investigational new drug applications (IND's) (part 312), new drug applications (part 314), or biological license applications (part 601). The guidance will describe three general areas involving collection of information: Designation requests, premeeting packages, and requests to submit portions of an application. Of these, designation requests, and premeeting packages in support of obtaining a fast-track program benefit will provide for additional collections of information not provided elsewhere in statute or regulation. Information in support of fast-track designation or fast-track program benefits that has previously been submitted to the agency, in some cases, may be incorporated by referring to them rather than by resubmission. In some instances, a summary of data and information may be submitted in support of fast-track designation or fast-track program benefits. Therefore, FDA anticipates that the PRA reporting burden under the guidance will be minimal.

Under section 506(a)(1) of the act, an applicant who seeks fast-track designation is required to submit a request to the agency. In order to receive a fast-track designation, the requester must establish that the product meets the statutory standard for designation, i.e., that: (1) The product is intended for a serious or life-threatening condition; and (2) the product has the potential to address an unmet medical need. In most cases, the agency expects that information to support a designation request will have been gathered under existing provisions of the act, the PHS Act, or the implementing regulation. Such information, if already submitted to the agency, may be summarized in a fast-track designation request.

The guidance will also recommend that a designation request include, where applicable, additional information not specified elsewhere by statute or regulation. For example, additional information may be needed to show that a product has the potential to meet an unmet medical need where approved therapy exists for the serious or life-threatening condition to be treated. Such information may include: Clinical data, published reports, summaries of data and reports, and a list of references. The amount of information and discussion in a designation request need not be voluminous, but it should be sufficient to permit a reviewer to assess whether the criteria for fast-track designation have been met. After the agency makes a fast-track designation, a sponsor or applicant may submit a premeeting

package, which may include additional information to support a request to participate in certain fast-track programs. As with the request for fast-track designation, the agency expects that most sponsors or applicants will have gathered such information to meet existing requirements under the act, the PHS Act, or implementing regulations, such as descriptions of clinical safety and efficacy trials not conducted under an IND (i.e., foreign studies), and information to support a request for accelerated approval. If information has been previously submitted to FDA under an OMB approved collection of information, the discussion of such information in a fast-track premeeting package may be summarized. Consequently, FDA anticipates that the additional collection of information attributed solely to the guidance will be minimal.

Section 506(c) of the act requires a collection of information before an applicant may be permitted to submit to FDA portions of an application for review. Under this provision of the fast-track statute, a sponsor must submit clinical data sufficient for the agency to determine, after preliminary evaluation, that a fast-track product may be effective. Section 506(c) of the act also requires that an applicant provide a schedule for the submission of information necessary to make the application complete before FDA can commence its review. The guidance will not provide for any new collection of information regarding the submission of portions of an application that is not required under section 506(c) of the act or any other provision of the act. All forms that will be referred to in the guidance have valid OMB control numbers. These forms include: FDA Form 1571 (OMB Control No. 0910–0104, expires December 31, 1999); FDA Form 356h (OMB Control No. 0910–0338, expires April 30, 2000); and FDA Form 3397 (OMB Control No. 0910–0297, expires April 30, 2001). Respondents to this information collection are sponsors and applicants that seek fast-track designation under section 506 of the act. The agency estimates that the aggregate annual number of respondents submitting requests for fast-track designation to the Center for Biologics Evaluation and Research (CBER) and the Center for Drug Evaluation and Research (CDER) will be approximately 60. To obtain this estimate, FDA extrapolated from the number of requests for fast-track designation actually received by CBER and CDER in a 6-month period since November 21, 1997, the date of enactment of FDAMA. Within this time period, CBER received 9 requests, and CDER received 20 requests. FDA estimates that the number of hours needed to prepare a request for fast-track designation may generally range between 40 and 80 hours per request, depending on the complexity of each request, with an average of 60 hours per request, as indicated in Table 1 of this document. Not all requests for fast-track designation may meet the statutory standard. The agency estimates that approximately 90 percent of all annual requests, approximately 54 respondents, for fast-track designation would be granted. Of those respondents who receive fast-track designation for a product, FDA expects that all will submit a premeeting package and that a premeeting package would generally need more preparation time than needed for a designation request because the issues may be more complex and the data may need to be more developed. FDA estimates that the preparation hours may generally range between 80 and 120 hours, with an average of 100 hours per package, as indicated in Table 1 of this document. The hour burden estimates contained in Table 1 of this document are for information collections requests in the guidance only and do not include burden estimates for statutory requirements specifically mandated by the act, the PHS Act, or implementing regulations. FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Designation Request	60	1	60	60	3,600
Premeeting Packages	54	1	54	100	5,400
Totals	114		114		9,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 29, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–11311 Filed 5–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–1170]

Ciba Specialty Chemicals Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Specialty Chemicals Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2-methyl-4,6-bis-[(octylthio)]methyl] phenol as a stabilizer for repeat use rubber articles.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4660) has been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., P.O. Box 2005, Tarrytown, NY 10591–9005. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010)to provide for the safe use of 2-methyl-4,6-bis-[(octylthio)]methyl] phenol as a stabilizer for repeat use rubber articles.

The agency has determined under 21 CFR 25.32(i) 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.

Dated: April 26, 1999.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–11309 Filed 05–05–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99P–1041]

Salad Dressing Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Kraft Foods, Inc., to market test a product designated as ''salad dressing'' that deviates from the U.S. standard of identity for salad dressing. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility, in support of a petition to amend the standard of identity for salad dressing.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than August 4, 1999.

FOR FURTHER INFORMATION CONTACT: Loretta A. Carey, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity issued under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Kraft Foods, Inc., Three Lakes Dr., Northfield, IL 60093–2753.

The permit covers limited interstate marketing tests of products identified as ''salad dressing'' that deviate from the U.S. standard of identity for salad dressing (21 CFR 169.150) by adding potassium sorbate, phosphoric acid, and lactic acid, which are not permitted under the current standard, and by reducing the amount of egg below the amount required by the current standard and adding polysorbate 60 and propylene glycol alginate, which are not permitted under the currrent standard, as safe and suitable emulsifiers other than egg. In all other respects, the test product will conform to the standard for salad dressing. The test product meets all the requirements of the standard with the exception of the reduced amount of egg level in the product and the addition of potassium sorbate, phosphoric acid, lactic acid, polysorbate 60, and propylene glycol alginate. Because test preferences vary by area, along with social and environmental differences, the purpose of this permit is to test the product throughout the United States.

Under this temporary permit, the salad dressing will be test marketed as ''salad dressing.''

This permit provides for the temporary marketing of approximately 390 million pounds of product during the entire 15-month period. The test product will be manufactured by Kraft Foods, Inc., at 2340 Forest Lane, Garland, TX 75040; 1701 West Bradley Ave., Champaign, IL 61821; and 7352 Industrial Blvd., Allentown, PA 18106. The product will be distributed throughout the United States.

The information panel of the labels will bear nutrition labeling in accordance with 21 CFR 101.9. Each of the ingredients used in the food must be declared on the labels as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than August 4, 1999.

Dated: April 27, 1999.

Kenneth J. Falci,

Acting Director, Office of Food Labeling, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–11346 Filed 5–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0024]

Immunotoxicity Testing Guidance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Immunotoxicity Testing Guidance.'' This guidance is intended to provide FDA reviewers and manufacturers with a coherent strategy for assessing whether testing for potential adverse effects involving medical devices or constituent materials and the immune system is needed. The guidance is also intended to aid in developing a systematic approach to such testing.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies on a 3.5'' diskette of the guidance entitled ''Immunotoxicity Testing Guidance'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments on the ''Immunotoxicity Testing Guidance'' to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: John J. Langone, Center for Devices and Radiological Health (HFZ–113), Food and Drug Administration, 12709 Twinbrook Pkwy., Rockville, MD 20852, 301–443–2911.

SUPPLEMENTARY INFORMATION:

I. Background

In May 1995, FDA adopted the General Program Memorandum G95–1, an FDA-modified version of International Standard ISO–10993, entitled ''Biological Evaluation of Medical Devices—Part 1: Evaluation and Testing.'' It was pointed out that in addition to the general guidance for toxicity testing contained in that document, additional guidance might be needed for evaluation of specific organ or system toxicity. As a result, the Office of Device Evaluation, CDRH, developed the ''Immunotoxicity Testing Guidance'' to deal specifically with testing for adverse effects of medical devices or constituent materials on the immune system. The guidance is intended to ensure a consistent and scientifically sound approach to the overall evaluation of product safety.

In addition to explanatory text, the guidance contains: (1) A flowchart to determine if immunotoxicity testing is recommended, and (2) three tables that lead sequentially from potential immunological effects, to potential responses commonly associated with

those effects, to examples of testing that might be considered as part of the overall safety evaluation of finished devices or constituent materials.

FDA published a notice of availability of the original draft guidance in the **Federal Register** of March 18, 1997 (62 FR 12832). Comments were received from 28 respondents, including medical device manufacturers, industry trade groups, and individuals. These comments were reviewed by the CDRH Immunotoxicology Working Group. Based on these comments, the draft guidance was revised to include additional didactic and technical information. The revised draft guidance was reviewed by a group of regulatory reviewers as well as senior CDRH management to obtain the final version of ''Immunotoxicity Testing Guidance.''

II. Significance of Guidance

This guidance represents the agency's current thinking on immunotoxicity testing of medical devices and constituents. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive ''Immunotoxicity Testing Guidance'' via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (635) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes ''Immunotoxicity Testing Guidance,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at ''http://www.fda.gov/cdrh''. The ''Immunotoxicity Testing Guidance'' document will be available at ''http://www.fda.gov/cdrh/ost/ostggp/immunotox.html''.

IV. Comments

Interested persons may, at any time, submit written comments regarding this guidance to the contact person listed previously. Such comments will be considered when determining whether to amend the current guidance.

Dated: April 28, 1999.

Linda S. Kahan,

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

[FR Doc. 99–11345 Filed 5–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following 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 Cancer Institute Initial Review Group Subcommittee C—Basic & Preclinical.

Date: June 11, 1999.

Time: 1:30 PM to 4:30 PM.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Blvd. 6th Floor, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Florence E. Farber, Ph.D., Executive Secretary, Office of Advisory Activities, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, EPN 609, Rockville, MD 20892, 301/496–2378.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 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, National Institutes of Health, HHS)

Dated: April 30, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11430 Filed 5–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following 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 Cancer Institute Initial Review Group Subcommittee H—Clinical Groups.

Date: June 7–8, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Deborah R. Jaffe, PHD, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, Rockville, MD 20892, (301) 496–7221.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 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, National Institutes of Health, HHS)

Dated: April 30, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11431 Filed 5–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Research Resources Council, May 20, 1999, 8:30 a.m. to May 21, 1999, 11 a.m., National Institutes of Health, 9000 Rockville Pike, Conference Room 6, Building 31C, Bethesda, MD 20892 which was published in the **Federal Register** on March 24, 1999, 99–7202.

An additional open session of the meeting will be held on May 21, 1999, beginning at 9:30 a.m. and lasting until the meeting is adjourned. The meeting is partially closed to the public.

Dated: April 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11325 Filed 5–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings 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: Heart, Lung, and Blood Program Project Review Committee.

Date: June 17, 1999.

Time: 8:00 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Jeffrey H. Hurst, PhD, Scientific Review Administrator, Review Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7208, Bethesda, MD 20892, 301/435–0303.

Name of Committee: Clinical Trials Review Committee.

Date: June 20–22, 1999.

Time: June 20, 1999, 6:30 pm to 10:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Time: June 21, 1999, 8:00 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person:

Time: June 22, 1999, 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Joyce A. Hunter, PhD, NHLBI/DEA/Review Branch, Rockledge Building II, Room 7192, MSC 7924, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–0287.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11326 Filed 5–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of 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 a meeting of the National Advisory Council for Human Genome Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should notify the Contact Person listed below in advance of the 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/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Human Genome Research.

Date: May 17–18, 1999.

Open: May 17, 1999, 8:30 a.m. to 1:00 p.m.

Agenda: The meeting will be open to the public on Monday, May 17, 8:30 a.m. to approximately 1:00 p.m. to discuss administrative details or other issues relating to committee activities.

Place: Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD 20910.

Closed: May 17, 1999, 1:00 p.m. to adjournment on May 18, 1999.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Elke Jordan, PHD, Deputy Director, National Human Genome Research Institute, National Institutes of Health, PHS, DHHS, 31 Center Drive, Building 31, Room 4B09, Bethesda, MD 20892, 301 496–0844.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: April 30, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11426 Filed 5–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: May 18, 1999.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11327 Filed 5–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given to the following meetings.

The meetings 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: Training Grant and Career Development Review Committee.

Date: June 18, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, N.W., Washington, DC 20037.

Contact Person: Lillian M. Pubols, PhD, Chief, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, Ip28e@nih.gov.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders B.

Date: June 21–22, 1999.

Time: 7:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Paul A. Sheehy, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders A.

Date: June 24–25, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.

Contact Person: Katherine M. Woodbury, Phd, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institute of Health, HHS)

Dated: April 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11328 Filed 5–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

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 of Environmental Health Sciences Special Emphasis Panel, Conference Grants (R13).

Date: May 10, 1999.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS-East Campus, 79 T W Alexander Dr., Bldg. 4401, Rm EC–122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: J. Patrick Mastin, PhD, 79 Alexander Drive, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: April 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11329 Filed 5–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

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 of Mental Health Special Emphasis Panel.

Date: May 13–14, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Robert H. Stretch, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–4728.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: April 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11330 Filed 5–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following 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 of Allergy and Infectious Diseases Special Emphasis Panel, Adult Therapeutic Clinical Trials Program for AIDS.

Date: June 6–9, 1999.

Time: June 6, 1999, 7:00 PM to recess.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Time: June 7, 1999, 8:30 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Paula S. Strickland, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C02, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–402–0643.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 30, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–11427 Filed 5–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following 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 of Allergy and Infectious Diseases Special Emphasis Panel, Sexually Transmitted Diseases.

Date: May 21, 1999.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, Kaleidoscope Room, 2101 Wisconsin Avenue, Washington, DC 20007.

Contact Person: Anna Ramsey-Ewing, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C37, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301/435–8536.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 30, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–11428 Filed 5–5–99; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings 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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; ZDK1 GRB–C (M1)P.

Date: May 11–13, 1999.

Time: May 11, 1999, 7:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Remont Hotel, 2101 5th Avenue, North Birmingham, AL 35203.

Contact Person: Dan E. Matsumoto, PHD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; ZDK1 GRB–6 M2.

Date: May 12–14, 1999.

Time: May 12, 1999, 8:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: The Envoy Club, 377 East 33rd Street, New York, NY 10015.

Contact Person: Neal A. Musto, PHD, Scientific Review Administrator.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB D (M3)S.

Date: May 13, 1999.

Time: 11:00 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Bldg., 45 Center Drive, Room 6AS–37, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ann A. Hagan, PHD, Chief, Review Branch, National Institute of Diabetes, Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Rm. 6AS37, Bldg. 45, Bethesda, MD 20892, (301) 594–8886.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 30, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–11429 Filed 5–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program Support Center

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Program Support Center (PSC), will periodically publish summaries of proposed information collection projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the PSC Reports Clearance Officer on (301) 443–2045.

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

1. Proposed Project: Application to the Board of Correction of Public Health Service (PHS) Commissioned Corps Records (PSC–54) (Formerly PHS–6190)—0937–0095—Revision.

An application is submitted by commissioned officers of the PHS Commissioned Corps, former officers, their spouses or heirs who appeal to the Board for Correction to request remsoval of an alleged error or injustice in an officer's record. The information submitted is used by the Board for Correction to determine if an error or injustice has occurred and to rectify such error or injustice. An appeal cannot be considered without the information furnished on this form. The form has been revised to reflect: (1) Organizational changes which have occurred since its last revision in May 1985; (2) a streamlined form to permit a more logical entry of data; and (3) a need for additional information to process appeals and release records. Respondents: Individuals of households and Federal employees. Total Number of Respondents: ten per calendar year. Number of Responses per Respondent: one response request. Average Burden per Response: four hours.

Estimated Annual Burden: 40 hours.

Send comments to Douglas F. Mortl, PSC Reports Clearance Officer, Room 17A08, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 29, 1999.

Lynnda M. Regan,

Director, Program Support Center.

[FR Doc. 99–11308 Filed 5–5–99; 8:45 am]

BILLING CODE 4168–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4445–N–11]

Notice of Proposed Information Collection: Comment Request; Request for Termination of Multifamily Mortgage Insurance

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: July 6, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Peter Giaquinto, Office of Multifamily Housing Programs, telephone number (202) 708–4162, this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Request for Termination of Multifamily Mortgage Insurance.

OMB Control Number, if applicable: 2502–0416.

Description of the Need for the Information and Proposed Use: Form HUD–9807 is used to notify HUD that a mortgage has been paid in full or that a mortgagor and mortgagee mutually agree to terminate the contract of mortgage insurance with HUD.

Agency Form Numbers, if applicable: HUD–9807.

Status of the proposed information collection: Reinstatement without change or a previously approved collection.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and

hours of response: The estimated number of respondents is 500, frequency of responses is 1, and the hours of response is .125 hour per response.

Authority. The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 30, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–11419 Filed 5–5–99; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Nos. FR–4412–C–02; FR–4413–C–02; FR–4414–C–02; and FR–4415–C–03]

Technical Corrections to Notices of Funding Availability for Fiscal Year 1999 for: Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans; Rental Assistance for Non-Elderly Persons with Disabilities Related to Certain Types of Section 8 Project-Based Developments and Sections 202, 221(d)(3), and 236 Developments; Family Unification Program; and Mainstream Housing Opportunities for Persons with Disabilities (Mainstream Program)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice; technical corrections.

SUMMARY: This notice makes two technical corrections to each of the following four Fiscal Year 1999 Notices of Funding Availability (NOFAs):

—Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans

—Rental Assistance for Non-elderly Persons with Disabilities Related to Certain Types of Section 8 Project-Based Developments and Sections 202, 221(d)(3), and 236 Developments

—Mainstream Housing Opportunities for Persons with Disabilities (Mainstream Program)

—the Family Unification Program

FOR FURTHER INFORMATION CONTACT: George C. Hendrickson, Housing Program Specialist, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, Room 4216, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–1872, ext. 4064. (This is not a toll-free number.) Persons with hearing or speech impairments may access this number via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339. (This is a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 8, 1999, HUD published NOFAs for the following programs:

—Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans (64 FR 11294)

—Rental Assistance for Non-elderly Persons with Disabilities Related to Certain Types of Section 8 Project-Based Developments and Sections 202, 221(d)(3), and 236 Developments (64 FR 11310)

—Mainstream Housing Opportunities for Persons with Disabilities (Mainstream Program) (64 FR 11302)

On March 5, 1999, HUD published a NOFA for the Family Unification Program. (64 FR 10904)

This correction notice, published in today's **Federal Register**, makes the following two corrections to paragraph V.(B)(2)(b) in all four NOFAs:

1. The lease-up rate for a PHA's Section 8 rental certificate and voucher program should be calculated on a combined basis and not on the basis of ''each'' program.

2. The parenthetical phrase ''(excluding the impact of the three-month statutory delay requirement effective in FY 1997 and 1998 for the reissuance of rental vouchers and certificates)'' should be removed.

Accordingly, the four NOFAs are corrected as follows:

1. FR Doc. 99–5576, Notice of Funding Availability for: Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans (FR–4412–N–01), published in the **Federal Register** on March 8, 1999 (64 FR 11294), is corrected as follows:

On page 11298, in the first column, paragraph (b) at the top is corrected to read as follows:

* * * * *

(b) The PHA has serious unaddressed, outstanding Inspector General audit findings, HUD management review findings, or independent public accountant (IPA) findings for its rental voucher or rental certificate programs; or the PHA has failed to achieve a lease-up rate of 90 percent of units in its HUD-approved budget for the PHA fiscal year prior to application for funding in its rental voucher and certificate programs combined. The only exception to this category is if the PHA has been identified under the policy established in Section I.(D) of this NOFA and the PHA makes application with a designated contract administrator.

* * * * *

2. FR Doc. 99–5578, Notice of Funding Availability for: Rental Assistance for Non-elderly Persons with Disabilities Related to Certain Types of Section 8 Project-Based Developments and Sections 202, 221(d)(3), and 236 Developments (FR–4413–N–01), published in the **Federal Register** on March 8, 1999 (64 FR 11310), is corrected as follows:

On page 11314, in the first column, paragraph (b) at the bottom is corrected to read as follows:

* * * * *

(b) The PHA has serious unaddressed, outstanding Inspector General audit findings, HUD management review findings, or independent public accountant (IPA) findings for its rental voucher or rental certificate programs; or the PHA has failed to achieve a lease-up rate of 90 percent of units in its HUD-approved budget for the PHA fiscal year prior to application for funding in its rental voucher and certificate programs combined. The only exception to this category is if the PHA has been identified under the policy established in Section I.(D) of this NOFA and the PHA makes application with a designated contract administrator.

* * * * *

3. FR Doc. 99–5577, Notice of Funding Availability for: Mainstream Housing Opportunities for Persons with Disabilities (Mainstream Program) (FR–4415–N–01), published in the **Federal Register** on March 8, 1999 (64 FR 11302), is corrected as follows:

On page 11307, in the middle column, paragraph (b) at the top is corrected to read as follows:

* * * * *

(b) The PHA has serious unaddressed, outstanding Inspector General audit findings, HUD management review findings, or Independent Public Accountant (IPA) findings for its rental voucher or rental certificate programs; or the PHA has failed to achieve a lease-up rate of 90 percent of units in its HUD-approved budget for the PHA fiscal year prior to application for funding in its rental voucher and certificate programs combined. The only exception to this category is if the PHA has been identified under the policy established in Section I.(D) of this NOFA and the PHA makes application with a designated contract administrator.

* * * * *

4. FR Doc. 99–5535, Notice of Funding Availability for: Family

Unification Program (FR–4414–N–01), published in the **Federal Register** on March 5, 1999 (64 FR 10904), is corrected as follows:

On page 10909, in the middle column, paragraph (b) at the middle is corrected to read as follows:

* * * * *

(b) The PHA has serious unaddressed, outstanding Inspector General audit findings, HUD management review findings, or independent public accountant (IPA) findings for its rental voucher or rental certificate programs, or the PHA has failed to achieve a lease-up rate of 90 percent of units in its HUD-approved budget for the PHA fiscal year prior to application for funding in its rental voucher and certificate programs combined. The only exception to this category is if the PHA has been identified under the policy established in Section I(D)(2) of this NOFA and the PHA makes application with another agency or contractor that will administer the family unification assistance on behalf of the PHA.

* * * * *

Dated: April 30, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–11418 Filed 5–5–99; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Consultation on Indian Education Topics

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of tribal consultation meetings.

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs (BIA) will conduct consultation meetings to obtain oral and written comments concerning potential issues in Indian education. The potential issues which will be set forth in a tribal consultation booklet to be issued prior to the meetings are:

1. Revision of the application for construction replacement of the education facilities, instructions and ranking criteria.

2. Open Item.

3. Need for additional Family and Child Education Programs.

4. Grants to Tribally Controlled Community Colleges and Navajo Community College.

DATES: May 17, 18, 19, 20, 21, 26, 25, 27, and 28, 1999, for all locations listed. Several dates and locations were scheduled to coincide with meetings of various Indian education organizations. All meetings will begin at 9:00 a.m. and continue until 3:00 p.m. (local time) or until all meeting participants have an opportunity to make comments.

MEETING SCHEDULE

Date	Location	Local contacts	Phone Numbers
May 26, 1999	Bismarck, ND	Cherie Farlee	(605) 964–8722
May 28, 1999	Folsom, CA	Fayetta Babby	(916) 979–2560
May 19, 1999	Gallup, NM	Beverly Crawford	(520) 674–5131
May 17, 1999	New Orleans, LA	LaVonna Weller	(703) 235–3233
May 25, 1999	Oklahoma City, OK	Joy Martin	(405) 605–6051
May 18, 1999	Billings, MT	LaVonne French	(406) 247–7953
May 20, 1999	Cloquet, MN	Terry Portra	(612) 373–1000
May 27, 1999	Phoenix, AZ	Ray Interpreter	(520) 338–5441
May 20, 1999	Fairbanks, AK	Robert Pringle	(907) 271–4120
May 19, 1999	Grand Ronde, OR	John Reimer	(503) 872–2743
May 21, 1999	Anchorage, AK	Robert Pringle	(907) 271–4120
May 26, 1999	Jemez Pueblo, NM	Ben Atencio	(505) 346–2431
May 19, 1999	Bethel, AK	Robert Pringle	(907) 271–4120

ADDRESSES: Written comments should be mailed, to be received, on or before July 30, 1999, to the Bureau of Indian Affairs, Office of Indian Education Programs, MS–3512–MIB, OIE–32, 1849 C Street, NW, Washington, D.C. 20240, Attn: Larry Holman: OR, may be hand delivered to Room 3512 at the same address. Comments may also be faxed to (202) 273–0030 or E-mail to OIEPCONS@IOS.DOI.GOV.

FOR FURTHER INFORMATION CONTACT: Dr. James Martin or Goodwin K. Cobb III at the above address or call (202) 208–3550.

SUPPLEMENTARY INFORMATION:

The meetings are a follow-up to similar meetings conducted by the OIEP/BIA since 1990. The purpose of the consultation, as required by 25 U.S.C. 2010(b), is to provide Indian tribes, school boards, parents, Indian organizations and other interested parties with an opportunity to comment on potential issues raised during previous consultation meetings or being considered by the BIA regarding Indian education programs. A consultation booklet for the May meetings is being distributed to Federally recognized Indian Tribes, Bureau Area and Agency Offices and Bureau-funded schools. The booklets will also be available from local contact persons and at each meeting.

Dated: April 28, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–11312 Filed 05–05–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–066–99–1990–00; CACA–20139 and CACA–22901]

Proposed Sand and Gravel Mining Operation, Los Angeles County, CA

AGENCY: Bureau of Land Management, Department of the Interior, Palm Springs-South Coast Field Office, Desert District, CA.

ACTION: Notice of availability, draft environmental impact statement.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969 and 40 CFR 1503.1(a), notice is hereby given that the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (EIS) for the Transit Mixed Concrete (TMC) Company Sand and Gravel Mining Project proposed for

construction and operation off of Soledad Canyon Road and State Highway 14, Los Angeles County, California. The project site is within an unincorporated area of the County, north of Soledad Canyon Road, south of Antelope Valley Freeway, and west of Agua Dulce Canyon.

Interested citizens are invited to review the Draft EIS and submit comments. Copies of the Draft EIS may be obtained by telephoning or writing to the contact person listed below. Public reading copies of the Draft EIS are available at the following County of Los Angeles public libraries: Canyon Country Library, 18536 Soledad Canyon Road, Santa Clarita, CA 91351; Newhall Library, 22704 W. Ninth Street, Santa Clarita, CA 91321; Valencia Library, 23743 W. Valencia Boulevard, Santa Clarita, CA 91355.

DATES: Comments must be submitted in writing no later than July 6, 1999.

ADDRESSES: Written comments shall be mailed to the following address: Mr. James G. Kenna, Field Manager, Bureau of Land Management, Palm Springs—South Coast Field Office, 690 W. Garnet Avenue, PO Box 1260, North Palm Springs, California, 92258. Comments may also be submitted by electronic mail (e-mail) to the following address: Palm Springs FO CA–EMAIL. The response to comments will be provided in the Final EIS.

PUBLIC MEETING: On June 2, 1999, the BLM will hold a public meeting for the purpose of receiving oral comments on the scope and content of the Draft EIS. There will be two sessions, from 4 to 5 p.m. and from 7 to 9 p.m. The public is invited to attend either session or both. The location of the meeting is at the Sulphur Springs Elementary School, 16628 W. Lost Canyon Road, Canyon Country, CA 91351.

SUPPLEMENTARY INFORMATION: TMC plans to mine a total of 83 million tons of materials and produce and sell approximately 56 million tons of Portland cement concrete sand and gravel over a 20-year period. The project plan includes the transport of processed material off-site in trucks as either aggregate product or ready-mixed concrete. All proposed mining and processing operations are located north of Soledad Canyon Road and outside the floodplain of the Santa Clara River and its tributaries. Mining will begin on the south side of a northeast-southwest trending ridge on-site, and progress through four successive excavation cuts. Fill areas for excess natural fines will be established on the south and north sides of the ridge. Reclamation and revegetation will be concurrent with mining operations and measures have been incorporated into project design to minimize erosion, provide watershed control, and protect water quality in the Santa Clara River. A full range of alternatives to the proposed action are considered in the Draft EIS.

The project site is on ''split-estate'' lands where the surface is privately owned and the minerals are federally-owned and administered by the BLM. Thus, the project is also subject to approval of a Surface Mining Permit through preparation of an Environmental Impact Report (EIR) in compliance with the California Environmental Quality Act (CEQA). The County of Los Angeles is the lead agency responsible for preparation of the EIR which has been prepared concurrently with the EIS.

FOR ADDITIONAL INFORMATION CONTACT: Ms. Elena Misquez, BLM, Palm Springs—South Coast Field Office, PO Box 1260, North Palm Springs, CA 92258, telephone 760–251–4804.

Dated: April 30, 1999.

James G. Kenna,

Field Manager.

[FR Doc. 99–11342 Filed 5–5–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–99–940–1610–00]

Extension of Scoping Period for the Statewide Environmental Impact Statement (EIS) and Multiple Plan Amendments To Consider Establishment of New Wilderness Study Areas (WSAs) on Selected Public Lands in Utah

AGENCY: Bureau of Land Management, Interior.

NOTICE: Notice of extension of scoping period for the statewide environmental Impact Statement (EIS) and multiple plan amendments to consider establishment of new wilderness study areas (WSAs) on selected public lands in Utah.

SUMMARY: On March 18, 1999 (64 FR 13439), the Bureau of Land Management (BLM) published notice in the **Federal Register** of a proposed multiple plan amendment process for up to 136 wilderness inventory areas on approximately 2.6 million acres of Federal land throughout Utah. Several public inquiries have been received requesting extension of the public scoping period for this proposal.

FOR FURTHER INFORMATION CONTACT: Thomas F. Slater, Resource Manager (Phone: 801–539–4063 or E-mail: tslater@ut.blm.gov) or Holly Roberts, Planning Coordinator (Phone 801–539–4272 or E-mail h1robert@ut.blm.gov), BLM, Utah State Office (Attention: Wilderness Project), PO Box 45155, Salt Lake City, Utah 84145.

DATES: The formal scoping period for the subject amendments is now extended to June 21, 1999. Submission of written information by regular mail or by electronic mail via Internet access at: HTTP://WWW.UT.BLM.GOV/WILDERNESS will now be accepted until June 21, 1999.

SUPPLEMENTARY INFORMATION: Issue identification is considered integral to the Environmental Impact Statement (EIS) and planning processes. Given the extent of this statewide proposal, and at public request, the BLM authorizes an extention of the public scoping period. Comments on the preliminary issues, alternatives and planning criteria will now be accepted until June 21, 1999.

Scoping comments should still specifically address areas in the inventory that the BLM determined have wilderness characteristics, including:

(a) Any additional information concerning wilderness characteristics in the wilderness inventory units,

(b) Information regarding the manageability of potential WSAs. Such information may address things such as valid existing rights which could be exercised (developed) within the next ten to fifteen years and thereby preclude effective management under the IMP,

(c) Specific information on other resource uses within each wildness inventory unit which should be considered. Such uses could involve grazing practices, rights of way, corridor development and use, recreation development or mechanical uses, off highway vehicle use, development for mineral extraction, or oil and gas exploration and production, etc.

Dated: April 29, 1999.

Linda S. Colville,

Acting State Director.

[FR Doc. 99–11341 Filed 5–5–99; 8:45 am]

BILLING CODE 4310–DQ–P

INTERNATIONAL TRADE COMMISSION

Submission for OMB Review; Comment Request

AGENCY: United States International Trade Commission.

ACTION: Agency proposal for the collection of information submitted to the Office of Management and Budget (OMB) for review; comment request.

SUMMARY: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35), the Commission has submitted a proposal for the collection of information to OMB for approval. The proposed information collection is a survey to be sent to participants in Commission injury investigations (primarily countervailing duty, antidumping, and safeguard investigations) to obtain feedback on the procedures used by the Commission in the conduct of such investigations. Any comments submitted to OMB on the proposed information collection should be specific, indicating which parts of the survey are objectionable, describing the problem in detail, and including specific revisions or language changes.

DATES: To be assured of consideration, comments should be submitted to OMB on or before June 7, 1999.

ADDRESSES: Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: David Rossker, Desk Officer for U.S. International Trade Commission. Copies of any comments should be provided to Robert Rogowsky (U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436).

FOR FURTHER INFORMATION CONTACT: Copies of the proposed survey and Supporting Statement submitted to OMB are posted on the Commission's World Wide Web site at http://www.usitc.gov or may be obtained from Lynn Featherstone, Office of Investigations, U.S. International Trade Commission, telephone 202–205–3160. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server.

SUPPLEMENTARY INFORMATION: In its Strategic Plan (also available on the agency's World Wide Web site), the Commission set itself the goal of obtaining feedback on investigative procedures from users of the agency's import injury investigation process. The proposed 1-page survey seeks to gather that feedback to allow the Commission to ensure that its procedures are fair and equitably implemented.

The survey asks if the Commission's rules and other written guidance make clear to participants what the Commission expects of them procedurally in an investigation; if there are area(s) where additional guidance would be of benefit to their participation in investigations; if Commission personnel responded to procedural inquiries in a helpful way; if their access to information collected by/submitted to the Commission was satisfactory; if their opportunity to present information for consideration by the Commission was satisfactory; and if they have any other comments or recommended improvements. It will be sent to firms that have participated in an antidumping, countervailing duty, or safeguard investigation during the period October 1, 1998–September 30, 1999. Responses are voluntary. While the survey will be made available on the Commission's Web site, responses must be in paper form.

The Commission estimates that the survey will impose an average burden of less than 1 response hour each on 50 respondents. No recordkeeping burden is known to result from the proposed collection of information.

By order of the Commission.

Issued: April 30, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–11412 Filed 5–5–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,449A]

ARCO, dba ARCO Exploration and Production Technology (AEPT) Plano, TX; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of April 5, 1999, the petitioners requested administration reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to petition number TA–W–35,449A. The denial notice was signed on February 24, 1999 and will soon be published in the **Federal Register**.

The petitioners allege that the workers at ARCO Exploration and Production Technology (AEPT) are engaged in domestic exploration of oil and gas and provided information for consideration which was not provided during the original investigation.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 21st day of April 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11376 Filed 5–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,663 and TA–W–35,663H]

Baker Hughes Inteq Headquartered in Houston, TX, Operating in the State of West Virginia; 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 March 25, 1999, applicable to all workers of Baker Hughes Inteq headquartered in Houston, Texas. The notice will be published soon in the **Federal Register.**

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations have occurred at Baker Hughes Inteq operating at various locations in the State of West Virginia. The workers are engaged in employment related to exploration and drilling of crude oil wells for unaffiliated customers.

The intent of the Department's certification is to include all workers of Baker Hughes Inteq adversely affected by increased imports. Accordingly, the Department is amending the certification to cover workers of Baker Hughes Inteq operating at various locations in the State of West Virginia.

The amended notice applicable to TA–W–35,663 is hereby issued as follows:

All workers of Baker Hughes Inteq, Headquartered in Houston, Texas (TA–W–35,663) and operating at various locations in the State of West Virginia (TA–W–35,663H) who became totally or partially separated from employment on or after February 2,

1998 through March 25, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 20th day of April, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11377 Filed 5–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,711AA, TA–W–35,711AS and TA–W–35, 711AT]

Baroid Drilling Fluids Headquartered in Houston, TX and Operating in the Following States; Mississippi, Alabama; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 22, 1999, applicable to all workers of Baroid Drilling Fluids headquartered in Houston, Texas. The notice will be published soon in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations have occurred at Baroid Drilling Fluids operating at various locations in Mississippi and Alabama. The workers are engaged in various activities related to the drilling for crude oil and natural gas.

The intent of the Department's certification is to include all workers of Baroid Drilling Fluids adversely affected by increased imports. Accordingly, the Department is amending the certification to cover workers of Baroid Drilling Fluids operating at various locations in Mississippi and Alabama.

The amended notice applicable to TA–W–35,711AA is hereby issued as follows:

''All workers of Baroid Drilling Fluids, headquartered in Houston, Texas (TA–W–35,711AA), operating at various locations in Mississippi (TA–W–35,711AS) and Alabama (TA–W–35,711AT) who became totally or partially separated from employment on or after February 17, 1998 through March 22, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 23rd day of April, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11374 Filed 5–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,309 and TA–W–35,309Q]

BP/AMOCO (Formerly Amoco Corporation) Amoco Exploration and Production Amoco Shares Services A/K/A Amoco Production Company, Inc. Headquartered in Houston, Texas Operating in the State of Tennessee; 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 19, 1999, applicable to workers of Amoco Exploration and Production and Amoco Shared Services, Headquartered in Houston, Texas and operating at various locations in Texas and other States. The certification was subsequently amended to reflect a company name change and to include workers whose wages were reported under a separate Unemployment Insurance tax account. The amended notice was published in the **Federal Register** on April 6, 1999 (64 FR 16755).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State show that worker separations have occurred in Tennessee for Amoco workers engaged in activities related to exploration and production of crude oil and natural gas.

The intent of the Department's certification is to include all workers of the subject firm who are adversely affected by increased imports. Accordingly, the Department is amending the certification to include the subject firm workers in Tennessee.

The amended notice applicable to TA–W–35,309 is hereby issued as follows:

''All workers and BP/Amoco (Formerly Amoco Corporation), Amoco Exploration and Production, Amoco Shares Services, also known as Amoco Production Company, Inc., headquartered in Houston, Texas (TA–W–35,309) and operating in the State of Tennessee (TA–W–35,309Q), who became totally or partially separated from employment on or after October 1, 1998 through February 19, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 12th day of April, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11380 Filed 5–5–99; 8:45]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,600]

EXOLON–ESK Company Tonawanda, NY; 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 Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on April 12, 1999, applicable to workers of EXOLON–ESK Company located in Tonawanda, New York. The notice will be published soon in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of silicon carbide and aluminum oxide. Findings show that the Department incorrectly set the worker certification impact date at December 28, 1998. The impact date should be December 28, 1997, one year prior to the date of the petition. Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to TA–W–35,600 is hereby issued as follow:

All workers of EXOLON–-ESK Company, Tonawanda, New York who became totally or partially separated from employment on or after December 28, 1997 through April 12, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 20 day of April 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11375 Filed 5–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,123]

Guilford Fibers, Incorporated Gainesville, GA; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of February 19, 1999 the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to petition number TA–W–35,123. The denial notice was signed on January 29, 1999 and will soon be published in the **Federal Register**.

The company provided additional information regarding its decision to close the Gainesville facility which warrants review and supports reconsideration of the case.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 23rd day of April 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11373 Filed 5–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,000]

Guilford Mills, Inc. Herkimer, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 12, 1999 in response to a worker petition filed on behalf of workers at Guilford Mills, Inc., Herkimer, New York (TA–W–36,000).

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA–W–35,564). Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 22nd day of April 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11382 Filed 5–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,486; TA–W–35,486A; TA–W–35,486B; and TA–W–35,486C]

Key Energy Services, Inc.—Rocky Mountain Division, A/K/A Frontier Well Service, A/K/A Teton Well Service, A/K/A Dunbar Well Service, A/K/A Updike Brothers Well Service, A/K/A Flint Engineering and Construction and A/K/A J.W. Gibson Well Service; Williston, ND and Operating at Various Locations in: North Dakota, Montana and Wyoming; 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 Regarding Eligibility to Apply for Worker Adjustment Assistance on February 17, 1999, applicable to workers of Key Energy Services, Inc., Rocky Mountain Division, Williston, North Dakota, and operating at various locations in North Dakota and Montana. The notice will soon be published in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information provided by the company reveal that worker separations have occurred at Key Energy Services, Inc., Rocky Mountain Division, at locations in the State of Wyoming. Other findings on review show that Key Energy Services Inc., Rocky Mountain Division has acquired several companies in the recent past, Frontier Well Service, Teton Well Service, Dunbar Well Service, Updike Brothers Well Service, Flint Engineering and Construction, and J.W. Gibson Well Service. The workers provide oilfield services for unaffiliated customers.

The intent of the Department's certification is to cover all workers of Key Energy Services, Inc., Rocky Mountain Division, who were adversely affected by increased imports. Accordingly, the Department is amending the certification to expand coverage to all workers of the subject firm in Wyoming and to workers of those firms acquired by Key Energy Services, Inc., Rocky Mountain Division. Additionally, workers of J.W. Gibson Well Service in Williston, North Dakota were certified eligible to apply for TAA on August 11, 1998, petition number TA–W–34,818. Since that certification does not expire until August 11, 2000, the earliest impact date that can be established to cover any workers of Key Energy Services, Inc., Rocky Mountain Division, formerly employed by J.W. Gibson Well Service in Williston, North Dakota, is Asugust 12, 2000.

The amended notice applicable to TA–W–35,486 is hereby issued as follows:

All workers of Key Energy Services, Inc., Rocky Mountain Division, also known as Frontier Well Service, also known as Teton Well Service, also known as Dunbar Well Service, also known as Updike Brothers Well Service, also known as Flint Engineering and Construction, Williston, North Dakota (TA–W–35,486), and operating at various locations in North Dakota (TA–W–35,486A), Montana (TA–W–35,486B) and Wyoming (TA–W–35,486C), who became totally or partially separated from employment on or after December 23, 1997 through February 17, 2001; and all workers of Key Energy Services, Inc., Rocky Mountain Division, also known as J.W. Gibson Well Service, Williston, North Dakota, who became totally or partially separated from employment on or after August 12, 2000 through February 17, 2001, are eligible to apply for worker adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 15th day of April 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11378 Filed 5–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,615]

Shape Global Sanford, Maine; 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 Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on April 14, 1999, applicable to workers of Shape Global, Sanford, Maine. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification

for workers of the subject firm. The workers produce audio cassettes. New findings show that there was previous certification, TA–W–31,954, issued on April 23, 1998 for workers of the subject firm. That certification expired April 23, 1998. To avoid an overlap in worker group coverage, the certification for TVA–W–35,615 is being amended to change the impact date to April 24, 1999.

The amended notice applicable to TA–W–35,615 is hereby issued as follows:

''All workers of Shape Global, Sanford, Maine, who became totally or partially separated from employment on or after April 24, 1998 through April 14, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 23rd day of April 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11372 Filed 5–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,240]

Siemens Energy & Automation Industrial Products Division—Nema Motors, Little Rock, Arkansas; 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 Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on December 4, 1998, applicable to workers of Siemens Energy & Automation Industrial Products Division—NEMA Motors located in Little Rock, Arkansas. The notice was published in the **Federal Register** on December 23, 1998 (63 FR 71165).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of electric induction three phase motors. Findings show that the Department incorrectly set the worker certification impact date at November 10, 1998. The impact date should be November 10, 1997, one year prior to the date of the petition. Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to TA–W–35,240 is hereby issued as follows:

''All workers of Siemens Energy and Automation, Industrial Products Division—NEMA Motors, Little Rock, Arkansas who became totally or partially separated from employment on or after November 10, 1997 through December 4, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 23rd day of April 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11371 Filed 5–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,465; TA–W–35,465G and TA–W–35,465H]

Union Pacific Fuels, Incorporated, a Subsidiary of Union Pacific Resources Company, and Union Pacific Resources Company a Division of Union Pacific Resources Group Incorporated Headquartered in Fort Worth, TX and Operating in the Following States; Kansas and New Mexico; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 21, 1999, applicable to workers of Union Pacific Fuels, Incorporated, a subsidiary of Union Pacific Resources Company, and Union Pacific Resources Company, a division of Union Pacific Resources Group Incorporated headquartered in Fort Worth, Texas. The notice was published in the **Federal Register** on February 25, 1999 (64 FR 9354).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that workers have been separated from employment at the subject firm's Kansas and Wyoming locations. The workers are engaged in employment related to the production of crude oil, natural gas and natural gas liquids.

The intent of the Department's certification is to provide coverage to all workers of the subject firm adversely affected by increased imports. Accordingly, the Department is amending the certification to include workers of the subject firm at the Kansas and New Mexico locations.

The amended notice applicable to TA–W–35,465 is hereby issued as follows:

All workers of Union Pacific Fuels, Incorporated, a subsidiary of Union Pacific Resources Company, and Union Pacific Resources Company, a division of Union Pacific Resources Group, Incorporated, headquartered in Forth Worth, Texas (TA–W–35,465), and operating in Kansas (TA–W–35,465G) and New Mexico (TA–W–35,465H), who became totally or partially separated from employment on or after December 14, 1997 through January 21, 2001, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of April 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11379 Filed 5–5–99; 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 petitions 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 May 17, 1999.

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 May 17, 1999.

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, NW., Washington, DC 20210.

Signed at Washington, DC, this 5th day of April, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 04/05/99]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
35,962	Wilson Supply (Wrks)	Houston, TX	03/17/99	Distribute Oilfield Tools and Equipment.
35,963	OshKosh B'Gosh, Inc (Comp)	Celina, TN	03/24/99	Wash and Press Garments.
35,964	Avery Dennison (Comp)	Rancho Cucamong, CA.	03/24/99	Rools and Sheets of Paper and Film.
35,965	Uniroyal Chemical Co (USWA)	Painesville, OH	03/22/99	Nitrile Rubber.
35,966	Smith Food and Vending (Wrks)	Joplin, MO	03/18/99	Provides Food Service.
35,967	Siemens Information (Wrks)	Cherry Hill, NJ	03/18/99	Telephone Systems.
35,968	Mark Steel Jewelry (Wrks)	Spring City, NJ	03/05/99	Costume Jewelry.
35,969	Buster Brown Apparel (Comp)	Norton, VA	03/16/99	Children's Apparel.
35,970	Glenoit Corp (UNITE)	Jacksboro, TN	03/18/99	Fleece Fabric.
35,971	Barry Callebaut USA, (Wrks)	Pennsauken, NJ	03/19/99	Cocoa Powders.
35,972	M. Wile and Co (Comp)	Whiteville, NC	03/19/99	Mens' Suits and Sportcoats.
35,973	EST (Wrks)	Pittsfield, ME	03/26/99	Smoke Alarms.
35,974	Lou Levy and Sons Fashion (Comp)	New York, NY	03/16/99	Ladies' Coats.
35,975	Goodyear Tire and Rubber (USWA)	Logan, OH	03/26/99	Instrument Panels for Automobiles.
35,976	Revere Ware (Comp)	Clinton, IL	03/19/99	Stainless Steel Cookware.
35,977	A and M Manufacturing (Wrks)	Cosby, MO	03/22/99	Machined Metal Pins.
35,978	Acordis Cellulosic Fibers (Comp)	Axis, AL	03/19/99	Tencel Fiber.
35,979	Vishay Sprague (Wrks)	Concord, NH	03/17/99	Tantalum Capacitors.
35,980	International Paper (Comp)	Corinth, NY	03/16/99	Paper.
35,981	Corning, Inc. (Wrks)	Greenville, OH	03/01/99	Cookware.
35,982	Logistix (Wrks)	Freemong, CA	03/08/99	Electronic Printing.
35,983	Good Lad Corp (Wrks)	Philadelphia, PA	03/19/99	Children's and Infants Apparel.
35,984	Royal Mandarin (Wrks)	Beaver Falls, PA	03/24/99	Commercial China.
35,985	Emerson Electric Co (Comp)	Independence, KS	03/20/99	Fractional Horsepower Electric Motors.
35,986	BASF (Wrks)	Detroit, MI	03/25/99	Paint, Resins & Colorants.
35,987	Calgon Carbon Corp (Wrks)	Catlettsburg, KY	03/23/99	Coal Based Activated Carbon.
35,988	Mitsubishi International (Wrks)	Durham, NC	02/26/99	Warehouse—Memory Chips.
35,989	LeTourneau, Inc (Comp)	Longview, TX	03/23/99	Steel Plate, Front End Loaders.
35,990	Magestic Shapes (Wrks)	Bronx, NY	03/11/99	Shoulder Pads.
35,991	Miller Brothers Ind., Inc (Comp)	Corsicana, TX	03/23/99	Constructed Caps.
35,992	Bayer Corporation (Wrks)	Baytown, TX	03/03/99	Baypren Polychloroprene.
35,993	Duet Textiles, Inc (Comp)	New York, NY	03/12/99	Greige Goods.
35,994	National Roll Company (USWA)	Avonmore, PA	03/26/99	Mills Rolls for Flat Rolled Steel.
35,995	Mid Oregon Industries (Comp)	Bend, OR	03/25/99	Wood Working Machinery.
35,996	Quicksilver Contracting (Comp)	Bend , OR	03/25/99	Wood Chips.
35,997	Beau Mode (Comp)	New York, NY	03/24/99	Ladies' Apparel.
35,998	GWW, Inc (Wrks)	Elkhorn, Wi	03/05/99	Carring Cases.

[FR Doc. 99–11370 Filed 5–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3094]

Oro Nevada Exploration, Incorporated Reno, NV; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.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), and investigation was initiated on April 12, 1999, in response to a worker petition which was filed on behalf of workers at Oro Nevada Exploration, Incorporated of Reno, Nevada.

The petitioner did not file a valid petition; only two workers signed to petition, and one of the petitioners was laid off more than a year before the petition was submitted. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of April, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11381 Filed 5–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99–16; Exemption Application No. D–10693, et al.]

Grant of Individual Exemptions; Standard Bank Employees Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Standard Bank Employees Profit Sharing Plan (the Plan) Located in Hickory Hills, Illinois

[Prohibited Transaction Exemption 99–16; Exemption Application No. D–10693]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, as of October 1, 1998, to the purchases by the Plan of certain residential mortgage notes (the Notes) from Standard Bank and Trust Company (the Employer), a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(1) An independent qualified fiduciary will decide which Notes will be purchased for the Plan;

(2) Only first mortgage Notes will be purchased by the Plan;

(3) The Notes which will be purchased by the Plan will have: (a) A borrower payment history with the Employer of at least three months; (b) A maximum 15 year maturity; and (c) the loan to value ratio of the collateral will be at least 150% of the principal amount of the Note;

(4) If the mortgage loan is an original acquisition mortgage loan, the Note will not exceed two-thirds of the lower of the purchase price or of the appraised value of the collateral mortgaged by the borrower to the Employer to secure the Note;

(5) If the mortgage loan is a refinancing of the original acquisition mortgage loan, the Note will not exceed two-thirds of the appraised value of the collateral mortgaged by the borrower to the Employer to secure the Note;

(6) No more than twenty-five percent (25%) of the value of the Plan's total assets will be invested in the Notes;

(7) No more than ten percent (10%) of the value of the Plan's total assets will be invested in any one Note or Notes to any one borrower;

(8) The fees received by the independent fiduciary for serving in that capacity with respect to the Plan for the transactions described herein, combined with any other fees derived from the Employer or related parties, will not exceed one percent (1%) of his gross annual income for each fiscal year that he continues to serve in the independent fiduciary capacity with respect to the transactions described herein; and

(9) The conditions of Prohibited Transaction Exemption (PTE) 93–71 (58 FR 51109, September 30, 1993) have been met. PTE 93–71, which expired September 30, 1998, provided prospective relief for the purchases by the Plan of certain Notes from the Employer.[1]

Part II. Repurchases of Residential Mortgage Notes

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the repurchases of the Notes (the Repurchases) by the Employer: (a) In the event of default; (b) if the limitations set forth in Part I (6) and/or (7) are exceeded; and (c) at other times as determined by the independent fiduciary,[2] provided that the Repurchases will be at a price which is equal to the greater of the outstanding principal balance of the Note plus accrued interest through the date of repurchase, or the current fair market value of the Note as determined by the independent fiduciary.

EFFECTIVE DATE: This exemption is effective as of October 1, 1998.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on February 16, 1999 at 64 FR 7672.

Written Comments

The Department received one written comment with respect to the Notice and no requests for a public hearing. The comment was filed by the Employer and states that paragraph 1 of the Summary of Facts and Representations contained in the Notice incorrectly states that Deloitte & Touche are the accountants for the Plan. The Plan accountants are Desmond & Ahern, Ltd. Certified Public Accountants.

[1] The applicant represents that, as mandated by PTE 93–71, the Employer has filed Form 5330 (Return of Initial Excise Taxes for Pension and Profit Sharing Plans) and paid the applicable excise taxes for certain past purchases by the Plan of the Notes from the Employer which occurred prior to the effective date of PTE 93–71.

[2] The Department notes that if a violation of any of the terms and conditions of Part I occurs, the exemptive relief provided by Part I for purchases of the Notes by the Plan will no longer be available. However, the Department further notes that the loss of exemption under Part I will not affect the use of Part II to dispose of the Notes previously acquired by the Plan pursuant to the exemption.

The Department concurs with this correction.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Plumbers and Pipefitters National Pension Fund (the Pension Plan) and Pipefitters Local No. 211 Joint Educational Trust (the Welfare Plan) (Collectively, the Plans) Located in Alexandria, VA and Houston, TX, respectfully

[Prohibited Transaction Exemption No. 99–17 Application Nos. D–10700 and L–10709]

Exemption

The restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the sale (the Sale) of certain real property (the Property) by the Pension Plan to the Welfare Plan, a party in interest with respect to the Pension Plan; provided the following conditions are satisfied:

(A) The terms and conditions of the transaction are no less favorable to the Pension Plan and the Welfare Plan than those which either the Pension Plan or the Welfare Plan would receive in an arm's-length transaction with an unrelated party;

(B) The Sale is a one-time transaction for cash;

(C) The Pension Plan and the Welfare Plan incur no expenses, fees, or commissions from the Sale other than their own respective appraisal, recording, and legal expenses;

(D) The Welfare Plan pays as consideration for the Property no more than the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale;

(E) The Pension Plan sells the Property for a price that is not less than the fair market value of the Property as determined by qualified, independent appraiser on the date of the Sale; and

(F) The fiduciaries for the Pension Plan and the Welfare Plan, respectfully, will enforce the terms of the exemption.

Written Comments: The Department received five written comments which were found to be not relevant to the transaction; and therefore, the Department has determined to grant the exemption as proposed.

Correspondence received from the applicant's representative during the comment period stated that the Welfare Plan is interested in purchasing the Property in part for future expansion. Initially, upon purchase, the Welfare Plan will use the Property for parking. Thereafter, it is anticipated that the fiduciaries of the Welfare Plan will contract for a study regarding the feasibility of constructing new classroom facilities.

In this regard, the Department notes that the Act's standards of fiduciary conduct will apply to the purchase and ultimate development of the Property. Section 404(a)(1) of the Act requires that a fiduciary discharge his or her duties with respect to a plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of a enterprise of a like character and with like aims. Accordingly, the fiduciaries of the Welfare Plan must act ''prudently'' with respect to the decision to purchase the Property, as well as to the ultimate development of the Property (including where relevant, the determination as to whether to develop the Property, the types of improvements that are appropriate and the Plan's ability to finance any such improvements). The granting of this exemption should not be viewed as an endorsement by the Department of the Plan's subsequent use of such Property. Finally, we note that, if the decision by the fiduciaries to purchase and develop the Property is not prudent, the fiduciaries would be liable for any loss resulting from such breach even though the purchase of the Property was the subject of an administrative exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 27, 1999, at 64 FR 4142.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

State Bankshares Inc. 401(k) Profit Sharing Plan (the Plan) Located in Fargo, North Dakota

[Prohibited Transaction Exemption 99–18; Exemption Application No. D–10703]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain limited partnership interests (the Interests) to Northern Capital Trust Company (Northern), the Plan's trustee and a party in interest with respect to the Plan, for $93,552.93 in cash, provided the following conditions are satisfied: (a) The sale is a one-time transaction for cash; (b) no commissions are charged in connection with the transaction; (c) the Plan receives not less than the fair market value of the Interests at the time of the transaction; and (d) the fair market value of the Interests is determined by a qualified entity independent of the Plan and of Northern.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 8, 1999 at 64 FR 11062.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

vonRoll isola Savings Plan (the Plan) Located in Schenectady, New York

[Prohibited Transaction Exemption 99–19; Exemption Application No. D–10729]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The making by State Street Bank and Trust Company (the Bank) of interest-free advances of cash (the Advances) to the Plan during the period from July 8, 1997 through June 22, 1998, in the aggregate amount of $824,812.60; and (2) the repayment of the Advances by the Plan, without interest, on June 22, 1998, provided the following conditions were satisfied:

(a) No interest or expense was incurred by the Plan in connection with the Advances;

(b) The proceeds of the Advances were used only to facilitate the payment of benefits (including participant loans and in-service withdrawals) to Plan participants, and to facilitate the making of investment transfers elected by Plan participants;

(c) The Advances were unsecured;

(d) The Plan participants who remained invested in the Plan's stable value fund, which consisted primarily of a Group Flexible Annuity Contract (the GIC) from the Travelers Insurance Company (Travelers), continued to receive the full contract rate on the full amount of the GIC;

(e) The Plan's sponsor was notified of the Advances;

(f) The repayment of the Advances was made at the direction of the Plan's sponsor and was restricted to amounts received from the proceeds of the installment payments made by Travelers under the GIC, and no other plan assets were used for that purpose;

(g) The Bank will maintain or cause to be maintained for a period of six years from the date of the granting of the exemption proposed herein the records necessary to enable the persons described in paragraph (h) to determine whether the conditions of this exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred, if due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest, other than the Bank, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (h); and

(h)(1) Except as provided in paragraph (h)(2) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (g) are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of the Plan, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of the Plan or duly authorized representative of such participant or beneficiary;

(2) None of the persons described in paragraph (h)(1)(B) and (h)(1)(C) shall be authorized to examine trade secrets of the Bank or commercial or financial information which is privileged or confidential.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 4, 1999 at 64 FR 10503.

EFFECTIVE DATES: This exemption is effective from July 8, 1997 through June 22, 1998.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 28th day of April, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 99–11004 Filed 5–5–99; 8:45 am]

BILLING CODE 4510–29–P '

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before June 21, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Modern Records Programs (NWM), National

Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, telephone (301) 713–7110.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Commerce, Bureau of the Census (N1–29–99–2, 16 items, 11 temporary items). Files maintained by the director, deputy director, and principal associate directors relating to routine administrative subjects such as travel requests, itineraries, vouchers, training forms, personnel matters, printing, and procurement. Also included are reading or chronological files consisting of duplicate copies of official correspondence and electronic copies of documents created using word processing and electronic mail. Proposed for permanent retention are recordkeeping copies of biographical sketches, photographs, appointment schedules and calendars, program subject files, official speeches and other presentations, and committee, meeting, and conference files.

2. Department of Energy, Federal Energy Regulatory Commission, (N1–138–99–6, 8 items, 8 temporary items). Commuter transportation records relating to applications for use of parking facilities, parking violations, and tracking and monitoring permit applications. Included are electronic copies of documents created using electronic mail and word processing.

3. Department of Energy, Agency-wide (N1–434–98–17, 7 items, 5 temporary items). Media relations records such as speeches by lower level employees and contractors, press clippings, and non-mission related press releases. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of speeches of high officials, and press releases and other records documenting program activities are proposed for permanent retention.

4. Department of Justice, Civil Rights Division (N1–60–98–5, 3 items, 2 temporary items). Case files relating to the Church Arson Prevention Act of 1996 that consist of only a single section (binder) of documents. Included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of files that consist of more than one section are proposed for permanent retention.

5. Department of Justice, Civil Rights Division (N1–60–98–6, 3 items, 2 temporary items). Case files relating to the Freedom of Access to Clinic Entrances Act of 1994 that consist of a single section (binder) of documents. Included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of files that consist of more than one section are proposed for permanent retention.

6. Department of Justice, Civil Rights Division (N1–60–98–7, 3 items, 2 temporary items). Case files relating to police misconduct that consist of only a single section (binder) of documents. Included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of files that consist of more than one section are proposed for permanent retention.

7. Department of Justice, Office of Community Oriented Policing Services (N1–60–99–3, 2 items, 2 temporary items). Records of successful grant applications consisting of applications and related correspondence. Included are electronic copies of documents created using electronic mail and word processing.

8. Department of Justice, United States Marshals Service (N1–527–99–1, 11 items, 11 temporary items). Remands, orders to deliver, receipts, prisoner death investigations, jail inspections, and tracking records in paper and electronic form relating to Federal prisoners in the custody of the U.S. Marshals Service for transporting for court appearances, transferring to a penal institution, and similiar actions. Included are electronic copies of documents created using electronic mail and word processing.

9. Department of State, Bureau of Finance and Management Policy (N1–59–99–11, 8 items, 5 temporary items). Records relating to periodic accountability reports and financial policy and management. Included are electronic copies of reports and other documents created using electronic mail and word processing. Recordkeeping copies of the reports are proposed for permanent retention.

10. Department of State, Foreign Service Posts (N1–84–99–1, 2 items, 2 temporary items). Files relating to the social and representational activities of Ambassadors and Chiefs of Mission, including electronic copies of documents created using electronic mail and word processing.

11. Department of the Treasury, United States Secret Service (N1–87–99–1, 1 item, 1 temporary item). Audio recordings of radio traffic between the Command Post and agents during Presidential and Vice Presidential trips. This schedule covers recordings made during trips when nothing out of the ordinary occurs. Tapes made during trips in which an assassination attempt takes place were previously approved for permanent retention.

12. Federal Communications Commission, Financial Analysis and Compliance Division (N1–173–99–2, 2 items, 2 temporary items). Case files of cable television operator rate filings, consisting of cable subscriber complaints regarding cable television rates, along with cable operator rate justifications submitted to the FCC for

review and analysis. Electronic copies of documents created using electronic mail and word processing are also included.

13. National Aeronautics and Space Administration, Agency-wide (N1–255–99–1, 2 items, 2 temporary items). Employee training plans and other records documenting on-the-job or other general training (but not specialized technical training). Electronic copies of documents created using electronic mail and word processing are included.

14. Tennessee Valley Authority, Communications Program (N1-142–97–19, 3 items, 2 temporary items). Correspondence, approval forms, and other administrative records generated in processing funding requests for community activities. Procedural manuals, publications, program reports, and related program subject files are proposed for permanent retention.

15. Tennessee Valley Authority, Agency-wide (N1–142–99–3, 2 items, 2 temporary items). Electronic copies of documents, created using electronic mail and word processing, pertaining to record series included in TVA Schedule 1, Records Common to Most Offices, of the TVA Comprehensive Records Schedule. Records relate to a wide variety of housekeeping functions such as announcing position vacancies, business credit card support, and employee authorizations.

16. Export-Import Bank (N1–275–98–1, 2 items, 2 temporary items). Draft loan agreements reflecting technical changes including electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of files relating to policy issues and minutes of meetings as well as final loan agreements were previously approved for permanent retention.

17. Federal Home Loan Banks, Office of Finance (N1–485–99-1, 13 items, 13 temporary items). Records relating to dealers whom the office serves, market indications, term funding issues, bonds arranged, settlement confirmations, daily securities transactions, audits, and meeting agendas. Also included are sound recordings of investment transactions.

Dated: April 30, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–11368 Filed 05–04–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Agenda; Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, May 11, 1999.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5299E—''Most Wanted'' Safety Recommendations Program Status Report and Suggested Modifications.

7155—Safety Report on the Status of Operator Fatigue.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

FOR FURTHER INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Dated: May 3, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99–11473 Filed 5–3–99; 5:05 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Boston Edison Company; (Pilgrim Nuclear Power Station, Unit No. 1); Order Approving Transfer of Licenses and Conforming Amendments

I

Boston Edison Company (Boston Edison) is owner of the Pilgrim Nuclear Power Station (Pilgrim), and is authorized to possess, use, and operate the facility as reflected in Operating License No. DPR–35. Boston Edison also is the holder of Materials License No. 20–07626–04, which authorizes Boston Edison to possess, use, and transport certain materials in the form of contamination on reactor components. The Atomic Energy Commission issued Operating License No. DPR–35 on September 15, 1972, pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50). Materials License No. 20–07626–04 was issued on March 21, 1997, pursuant to 10 CFR Parts 30, 40, and 70. The facility is located in Plymouth County, on the southeast coast of the State of Massachusetts.

II

Under cover of a letter dated December 21, 1998, Boston Edison and Entergy Nuclear Generation Company (Entergy Nuclear) jointly submitted an application requesting approval of the proposed transfer of Operating License No. DPR–35 and Materials License No. 20–07626–04 from Boston Edison to Entergy Nuclear. The application also requested approval of conforming amendments to reflect the transfer. The application was supplemented by submittals dated January 28, February 18, April 2, April 15, and April 16, 1999. The initial application and the supplements are hereinafter collectively referred to as ''the application'' unless otherwise indicated.

Boston Edison is a wholly-owned subsidiary of BEC Energy, a Massachusetts business trust. Entergy Nuclear, a Delaware corporation, is an indirect wholly owned subsidiary of Entergy Corporation. According to the application, Boston Edison has agreed to sell its ownership interest in Pilgrim to Entergy Nuclear, subject to obtaining all necessary regulatory approvals. After the completion of the proposed sale and transfer, Entergy Nuclear would be the sole owner and operator of Pilgrim. The conforming amendments, which would be issued pursuant to 10 CFR 30.38, 40.44, 50.90, and 70.34, would remove references to Boston Edison from the Operating License and Materials License, and replace them with references to Entergy Nuclear, as well as make miscellaneous changes to the Operating License, administrative in nature, to reflect the transfer.

Notice of the initial application and an opportunity for a hearing was published in the **Federal Register** on January 26, 1999 (64 FR 3984) and supplemented on February 5, 1999 (64 FR 5841). Pursuant to such notice, the Attorney General of the Commonwealth of Massachusetts and Local Unions 369 and 387 filed hearing requests. By letter dated April 7, 1999, Local Unions 369 and 387 formally withdrew their request. Similarly, on April 16, 1999, the Attorney General of the Commonwealth of Massachusetts withdrew his request. The Commission, in light of the withdrawals, terminated the pending proceeding on April 26, 1999, *Boston Edison Co.* (Pilgrim Nuclear Power Station), CLI–99–17, 49 NRC __, slip op. (April 26, 1999). Certain municipalities which purchase power from Pilgrim filed written comments, and Citizens Urging Responsible Energy filed written comments and requested a public hearing. The written comments have been considered by the staff in connection with the issuance of this Order.

Under 10 CFR 50.80, no license for a production or utilization facility, or any right thereunder, shall be transferred, directly or indirectly, through transfer of

control of the license, unless the Commission shall give its consent in writing. Under 10 CFR 30.34, 40.41, and 70.32, no byproduct, source, or special nuclear material license shall be transferred in violation of the provisions of the Atomic Energy Act of 1954, as amended, which require, *inter alia*, Commission consent. Upon review of the information in the application by Boston Edison and Entergy Nuclear, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Entergy Nuclear is qualified to hold the licenses, and that the transfer of the licenses to Entergy Nuclear is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The foregoing findings are supported by a Safety Evaluation dated April 29, 1999.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 30.34, 40.41, 50.80, and 70.32, *It is hereby ordered* that the Commission consents to the transfer of the licenses as described herein to Entergy Nuclear, subject to the following conditions:

(1) For purposes of ensuring public health and safety, Entergy Nuclear shall provide decommissioning funding assurance of no less than $396 million, after payment of any taxes, in the decommissioning trust fund for Pilgrim upon the transfer of the Pilgrim licenses to Entergy Nuclear.

(2) Entergy Nuclear shall maintain the decommissioning trust funds in accordance with the application, this Order, and the related Safety Evaluation dated April 29, 1999, supporting this Order.

(3) Entergy Nuclear shall provide a Provisional Trust fund in the amount of $70 million, after payment of any taxes, in the Provisional Trust for Pilgrim upon the transfer of the Pilgrim licenses to Entergy Nuclear. The Provisional Trust shall be established and maintained in conformance with the representations made in the application.

(4) The Decommissioning Trust agreement(s) shall be in a form which is acceptable to the NRC and shall provide, in addition to any other clauses, that:

(a) Investments in the securities or other obligations of Entergy Nuclear, Entergy Corporation, their affiliates, subsidiaries or associates, or their successors or assigns shall be prohibited. In addition, except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants is prohibited.

(b) The Director, Office of Nuclear Reactor Regulation, shall be given 30 days prior written notice of any material amendment to the trust agreement(s).

(5) Entergy Nuclear shall have access to a contingency fund of not less than fifty million dollars ($50m) for payment, if needed, of Pilgrim operating and maintenance expenses, the cost to transition to decommissioning status in the event of a decision to permanently shut down the unit, and decommissioning costs. Entergy Nuclear will take all necessary steps to ensure that access to these funds will remain available until the full amount has been exhausted for the purposes described above. Entergy Nuclear shall inform the Director, Office of Nuclear Reactor Regulation, in writing, at such time that it utilizes any of these contingency funds. This provision does not affect the NRC's authority to assure that adequate funds will remain available in the plant's separate decommissioning trust fund(s), which Entergy Nuclear shall maintain in accordance with NRC regulations. Once the plant has been placed in a safe-shutdown condition following a decision to decommission, Entergy Nuclear will use any remainder of the $50m contingency fund that has not been used to safely operate and maintain the plant to support the safe and prompt decommissioning of the plant, to the extent such funds are needed for safe and prompt decommissioning.

(6) Entergy Nuclear shall, prior to completion of the sale and transfer of Pilgrim to it, provide the Director, Office of Nuclear Reactor Regulation, satisfactory documentary evidence that Entergy Nuclear has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(7) After receipt of all required regulatory approvals of the transfer of Pilgrim, Boston Edison and Entergy Nuclear shall inform the Director, Office of Nuclear Reactor Regulation, in writing of the date of the closing of the sale and transfer of Pilgrim no later than one business day prior to the date of closing. Should the transfer of the licenses not be completed by December 31, 1999, this Order shall become null and void, provided, however, on written application and for good cause shown, such date may in writing be extended.

It is further ordered that, consistent with 10 CFR 2.1315(b), license amendments that makes changes, as indicated in Enclosure 1 to this Order, to conform the licenses to reflect their transfer are approved. Such amendments shall be issued and made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated December 21, 1998, and application supplements dated January 28, February 18, April 2, April 15, and April 16, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Plymouth Public Library, 132 South Street, Plymouth, Massachusetts 02360.

Dated at Rockville, Maryland, this 29th day of April 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11402 Filed 5–5–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23817; 812–11530]

Bankers Trust Company, et al.; Notice of Application

April 29, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act.

SUMMARY OF THE APPLICATION: The requested order would permit the implementation, without prior shareholder approval, of new investment advisory and subadvisory agreements (''New Advisory Agreements'') in connection with the merger of Bankers Trust Corporation (''BT Corp'') and Deutsche Bank AG (''Deutsche Bank''). The order would cover a period of up to 150 days following the later of the date the merger is consummated or the date the requested order is issued (but in no event later than November 30, 1999) (''Interim Period'').

APPLICANTS: Bankers Trust Company ''BT''), Investment Company Capital Corp. (''ICCC''), and Alex. Brown Investment Management (''ABIM'') (collectively, ''BT Advisers''); Brown Investment Advisory & Trust Company (''Brown Trust''); LaSalle Investment Management (Securities), L.P. (''LaSalle''); and The Glenmede Trust Company (''Glenmede'') (collectively with the BT Advisers, Brown Trust and LaSalle, ''Advisers'').

FILING DATES: The application was filed on March 5, 1999 and amended on April 28, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 24, 1999 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, c/o Willkie Farr & Gallagher, Attn: Burton M. Leibert, Esq. or Jon S. Rand, Esq., 787 Seventh Avenue, New York, NY 10019–6099.

FOR FURTHER INFORMATION CONTACT: Rachel H. Graham, Senior Counsel, at (202) 942–0583, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. BT, a New York banking corporation, serves as investment adviser or subadviser to various open-end management investment companies registered under the Act (''BT Advised Funds'') pursuant to separate investment advisory or subadvisory agreements (''Existing BT Agreements'').[1] ICCC, a Maryland corporation and wholly-owned subsidiary of BT Alex. Brown Incorporated, serves as investment adviser to various open-end management investment companies registered under the Act (''ICCC Funds'' and, together with the BT Advised Funds, ''Funds'') pursuant to separate investment advisory agreements (''Existing ICCC Agreements'').[2]

2. ABIM, a Maryland limited partnership, serves as investment subadviser to three ICCC Funds. Brown Trust, a Maryland trust company, serves as investment subadviser to two ICCC Funds. LaSalle, a Maryland limited partnership, and Glenmede, a Pennsylvania limited purpose trust company, each serve as investment subadviser to one ICCC Fund. Each of ABIM, Brown Trust, LaSalle, and Glenmede serves in this capacity pursuant to separate investment subadvisory agreements with ICCC (collectively, ''Existing Subadvisory Agreements,'' and together with the Existing BT Agreements and the Existing ICCC Agreements, ''Existing Advisory Agreements'').

3. BT and ICCC are wholly-owned subsidiaries of BT Corp, a registered bank holding company that also indirectly controls ABIM. BT Corp is not affiliated with Brown Trust, LaSalle, or Glenmede (each a ''Non-BT Subadviser'').

4. BT, Brown Trust, and Glenmede are exempt from registration as investment advisers under the Investment Advisers Act of 1940 (''Advisers Act'') pursuant to section 202(a)(11)(A) of the Advisers Act. ICCC, ABIM, and LaSalle are registered as investment advisers under the Advisers Act.

5. On November 30, 1998, BT Corp and Deutsche Bank entered into an agreement pursuant to which Circle Acquisition Corporation, a wholly-owned subsidiary of Deutsche Bank, will merge with and into BT Corp, with BT Corp continuing as the surviving entity (the ''Merger''). Applicants expect consummation of the Merger on or about May 31, 1999.

6. Applicants state that the Merger may result in the assignment, and thus termination, of the Existing Advisory Agreements under the terms of those agreements and the Act. Applicants request an exemption to permit (i) the implementation of the New Advisory Agreements without prior shareholder approval, and (ii) the Advisers to receive all advisory fees earned under the New Advisory Agreements during the Interim Period, subject to approval of the New Advisory Agreements by the Funds' shareholders. The requested exemption would cover the Interim Period of not more than 150 days beginning on the later of the date the

[1] BT serves as investment adviser for the following BT Advised Funds: BT Insurance Funds Trust, Cash Management Portfolio, Treasury Money Portfolio, Tax Free Money Portfolio, New York Tax Free Money Portfolio, International Equity Portfolio, Equity 500 Index Portfolio, Asset Management Portfolio, Capital Appreciation Portfolio, Intermediate Tax Free Portfolio, BT Investment Portfolios, Quantitative Equity Fund (a series of BT Investment Funds), Institutional Daily Assets Funds and Institutional Treasury Assets Fund (each a series of BT Institutional Funds), and BT Investment Equity Appreciation Fund (a series of BT Pyramid Mutual Funds). BT serves as investment subadviser for the following BT Advised Funds: AARP U.S. Stock Index Fund, a series of AARP Growth Trust; three series of American General Series Portfolio Company (Mid Cap Index Fund, Stock Index Fund, and Small Cap Index Fund); four series of American General Series Portfolio Company 2 (Small Cap ''Value'' Index Fund, Stock Index Fund, Midcap Index Fund, and Small Cap Index Fund); Small Cap Value Index Fund, a series of American General Series Portfolio Company 3; AST Bankers Trust Enhanced 500 Portfolio, a series of American Skandia Trust; three series of EQ Advisors Trust (BT Equity 500 Index Portfolio, BT Small Company Index Portfolio, and BT International Equity Index Portfolio); Spartan Market Index Fund, a series of Fidelity Commonwealth Trust; four series of Fidelity Concord Street Trust (Spartan Extended Market Index Fund, Spartan Total Market Index Fund, Spartan International Market Index Fund, and Spartan U.S. Equity Index Fund); Index 500 Portfolio, a series of Fidelity Variable Insurance Products Fund II; two series of Pacific Select Fund (Equity Index Portfolio and Small-Cap Index Portfolio); two series of SBL Fund (Series H and Series I); two series of Security Index Fund (International Series and Enhanced Index Series); International Equity Portfolio, a series of Style Select Series Inc.; and eight series of Seasons Series Trust (Large-Cap Growth Portfolio, Large-Cap Composite Portfolio, Large-Cap Value Portfolio, Mid-Cap Growth Portfolio, Mid-Cap Value Portfolio, Small Cap Portfolio, International Equity Portfolio, and Diversified Fixed Income Portfolio).

[2] The ICCC Funds are: Tax-Free Series, Prime Series, and Treasury Series (each a series of BT Alex. Brown Cash Reserve Fund, Inc.); Flag Investors Communications Fund, Inc.; Flag Investors Emerging Growth Fund, Inc.; Flag Investors Short-Intermediate Income Fund, Inc.; Flag Investors Value Builder Fund, Inc.; Flag Investors Real Estate Securities Fund, Inc.; Flag Investors Equity Partners Fund, Inc.; and Flag Investors International Fund, Inc.

merger is consummated (''Closing Date'') or the date the requested order is issued and continuing until the New Advisory Agreements are approved or disapproved by the Funds' shareholders, but in no event later than November 30, 1999.[3] Applicants state that the New Advisory Agreements will contain substantially the same terms and conditions as the Existing Advisory Agreements, except for the dates of commencement and termination.

7. Applicants state that, on March 11, 1999, six days after applicants filed this application with the Commission, the U.S. Attorney for the Southern District of New York filed a three-count felony information (''Information'') in the United States District Court for the Southern District of New York. The Information charges BT with making false entries on its books and records as a result of the conduct of certain employees in BT's processing services businesses in 1994–1996.[4] On March 11, 1999, BT pleaded guilty to the charges in the Information pursuant to a written cooperation and plea agreement (''Cooperation and Plea Agreement'').[5]

8. On March 12, 1999, BT filed an application pursuant to section 9(c) of the Act for a temporary order exempting it and entities of which it is or becomes an affiliated person (''Covered Entities'') from the provisions of section 9(a) of the Act. [6] On March 12, 1999, BT and the Covered Entities received a temporary conditional order from the Commission exempting them from section 9(a) of the Act with respect to the Cooperation and Plea Agreement (''Temporary Order'') (Investment Company Act Release No. 23737). The Temporary Order stated that it would expire when the Commission took final action on an application for a permanent order or, if earlier, May 11, 1999. On march 25, 1999, the BT Advisers filed an application under section 9(c) for (i) a permanent order exempting the Covered Entities from section 9(a) with respect to the Cooperation and Plea Agreement and (ii) an extension of the Temporary Order if the requested permanent order is not granted before the Temporary Order expires.

9. Applicants currently intend that the board of directors (''Board'') of each Fund will meet prior to the Closing Date to consider approval of the New Advisory Agreements and submission of the New Advisory Agreements to the shareholders for their approval, in accordance with section 15(c) of the Act.[7] Applicants state that each Board will evaluate whether the terms of the relevant New Advisory Agreement(s) are in the best interests of the Fund and its shareholders. Applicants state that a majority of the Boards already have convened and approved the New Advisory Agreements applicable to their Funds. Applicants represent that any Board that met prior to March 11, 1999 subsequently was apprised of the Cooperation and Plea Agreement and BT's requests for relief under section 9(c). Applicants also represent that all other Boards have been or will be apprised of the Cooperation and Plea Agreement and BT's requests for relief under section 9(c) before voting on the New Advisory Agreements applicable to their Funds. Applicants further represent that each Board has been or will be provided with all information reasonably necessary to evaluate whether retaining the relevant BT Adviser is in the best interests of the Fund and its shareholders.

10. Advisory fees earned by the Advisers under the New Advisory Agreements during the Interim Period will be maintained in interest-bearing escrow accounts with one or more financial institutions unaffiliated with the Advisers (each an ''Escrow Agent'').[8] The applicable Escrow Agent will release the amounts held in the escrow accounts (including any interest earned): (i) to the applicable Adviser upon approval of each New Advisory Agreement by the relevant Fund's shareholders; or (ii) to the Fund, if the Interim Period has ended and the Fund's shareholders have not approved the New Advisory Agreement.[9] Before any such release is made, the Board of the applicable Fund will be notified.

11. Proxy materials for the shareholders meeting of each Fund are expected to be mailed beginning in or about May, 1999. The proxy materials will include disclosure regarding the Corporation and Plea Agreement, the Temporary Order, and the BT Advisers' request for a permanent order of exemption from section 9(a). Applicants represent that if the Commission decides not to extend the Temporary Order or denies the BT Advisers' request for a permanent section 9(c) order prior to the time that the proxy materials are mailed, solicitation of shareholder votes with respect to the New Advisory Agreements will be limited only to approval of the release of amounts payable to the BT Advisers that were escrowed up to the date on which the Temporary Order or an extension of the Temporary Order expires if the permanent order has not been granted. Applicants further represent that if the Commission decides not to extend the Temporary Order or denies the BT Advisers' request for a permanent section 9(c) order while the proxies are outstanding, the BT Advisers will mail supplemental proxy materials with respect to the BT Advisers' New Advisory Agreements soliciting shareholder approval only for the release of amounts payable to the BT Advisers that were escrowed up to the date on which the Temporary Order or an extension of the Temporary Order expires if the permanent order has not been granted. In either instance, the ICCC Funds subadvised by the Non-BT Subadvisers will be permitted to solicit shareholder approval of the release of all escrowed fees payable to the Non-BT Subadvisers under the New Advisory Agreements.

[3] Applicants state that if the Closing Date precedes the issuance of the requested order, they will serve after the Closing Date and prior to the issuance of the order in a manner consistent with their fiduciary duty to provide investment advisory and subadvisory services to the Funds even though approval of the New Advisory Agreements has not yet been secured from the Funds' shareholders. Applicants submit that, in such an event, they will be entitled to receive, from the Closing Date until the issuance of the order, no more than their actual out-of-pocket costs for providing investment advisory and subadvisory services to the Funds.

[4] The conduct involved the transfer to reserve accounts and to income of aged credit items that should have been paid to customers, other third parties, or state abandoned property authorities.

[5] As part of the Cooperation and Plea Agreement, BT agreed to pay a $60 million fine and to place that amount in escrow pending sentencing. As a result of the matters underlying the Cooperation and Plea Agreement, BT also has agreed to pay a $3.5 million fine to the State of New York.

[6] Section 9(a), in relevant part, prohibits a person and any company of which the person is an affiliated person from serving or acting as an investment adviser, principal underwriter, or depositor for any registered investment company if the person has been convicted of any felony arising out of the person's conduct as, among other things, an underwriter, broker, dealer, investment adviser, or transfer agent. Section 9(c) of the Act provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the applicant, are unduly or disproportionately severe or that the applicant's conduct has been such as not to make it against the public interest or the protection of investors to grant the application.

[7] Applicants acknowledge that, to the extent that a Fund's Board cannot meet prior to the Closing Date, the applicable Adviser(s) may not rely upon the exemptive relief requested in this application.

[8] In certain cases, the fees payable to BT under the New Advisory Agreements include a portion of revenues earned from securities lending activities performed on behalf of certain BT Advised Funds. The portion of such revenues owned to the applicable BT Advised Funds, as opposed to BT, will not be placed into escrow.

[9] As described in representation 11 in this notice, if the Commission declines to extend the Temporary Order or denies the BT Advisers' request for a permanent section 9(c) order, the BT Advisers may only receive the fees payable to them that were escrowed up to the date on which the Temporary Order or an extension of the Temporary Order expires if the permanent order has not been granted.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to serve as an investment adviser to a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the investment company. Section 15(a) further requires the written contract to provide for its automatic termination in the event of its assignment. Section 2(a)(4) of the Act defines ''assignment'' to include any direct or indirect transfer of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. Applicants state that the Merger may result in an assignment of the Existing Advisory Agreements and that such agreements will terminate according to their terms.

2. Rule 15a–4 under the Act provides, in relevant part, that if an investment advisory contract with a registered investment company is terminated due to its assignment, an investment adviser may act as such for the company for 120 days under a written contract that has not been approved by the company's shareholders, provided that: (i) The new contract is approved by that company's board of directors, including a majority of the non-interested directors; (ii) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders; and (iii) neither the adviser nor any controlling person of the adviser ''directly or indirectly receive[s] money or other benefit'' in connection with the assignment. Applicants state that they may not rely on rule 15a–4 because BT Corp will receive benefits in connection with the Merger.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act or any rule thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with both the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard.

4. Applicants state that the terms and timing of the Merger were determined in response to a number of factors beyond the scope of the Act and substantially unrelated to the Funds. Applicants assert that there is insufficient time to obtain shareholder approval of the New Advisory Agreements before the Merger is consummated. Applicants further assert that the requested relief would prevent any disruption in the delivery of investment advisory services to the Funds during the period after the Merger.

5. Applicants represent that, under the New Advisory Agreements during the Interim Period, the Funds will receive the same scope and quality of investment advisory services, provided in the same manner, as they receive under the Existing Advisory Agreements. Applicants state that, in the event of any material change in investment management personnel providing services to the Funds, the applicable Adviser will apprise and consult with the relevant Fund's Board to ensure that the Broad, including a majority of the non-interested directors, is satisfied that the services provided by the Adviser will not be diminished in scope and quality. Applicants note that the fees payable to the Advisers under the New Advisory Agreements during the Interim Period will be at the same rate as the fees paid under the Existing Advisory Agreements.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. The New Advisory Agreements will contain substantially the same terms and conditions as the Existing Advisory Agreements, except for the date of commencement and termination.

2. The portion of the advisory fees earned by the Advisers during the Interim Period will be maintained in interest-bearing escrow accounts, and amounts in the accounts chargeable to the Funds (including interest earned on such amounts) will be paid to the applicable Adviser only upon approval of each New Advisory Agreement by the relevant Fund's shareholders or, in the absence of such approval, to the Fund.[10]

3. Each fund will schedule a meeting of its shareholders to vote on approval of the New Advisory Agreements, which will be held within 150 days following the commencement of the Interim Period (but in no event later that November 30, 1999).

4. The BT Advisers, or entities controlling them, will pay the costs of preparing and filing the application and the costs relating to the solicitation and approval of Fund Shareholders of the New Advisory Agreements necessitated by the Merger.

5. BT Corp, Deutsche Bank, and applicants will take all appropriate actions to ensure that the scope and quality of investment advisory and other services to be provided to the Funds by the advisers during the Interim Period will be least equivalent, in the judgment of the Boards, including a majority of the non-interested directors, to the scope and quality of services currently provided under the Existing Advisory Agreements. In the event of any material change in investment management personnel providing advisory services pursuant to the New Advisory Agreements, the applicable Adviser will apprise and consult with the relevant Fund's Board to ensure that the Board, including a majority of the non-interested directors, is satisfied that the services provided by the Adviser during the Interim Period will not be diminished in scope or quality.

6. The application and any exemption issued will be without prejudice to, and will not limit the Commission's rights in any manner with respect to, any Commission investigations or enforcement actions pursuant to the federal securities laws, or the consideration by the Commission of any application for exemption from statutory requirements, including without limitation, the consideration of a request for a permanent exemption pursuant to sections 9(c) of the Act, or the revocation, removal, or extension of the Temporary Order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11363 Filed 5–5–99; 8:45 am]

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[10] As described in representation 11 in this notice, if the Commission declines to extend the Temporary Order or denies the BT Advisers' request for a permanent section 9(c) order, the BT Advisers may only receive the fees payable to them that were escrowed up to the date on which the Temporary Order or an extension of the Temporary Order expires if the permanent order has not been granted.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41343; File No. SR–NASD–99–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. and Amendment No. 1 Thereto Relating to Agency Quotations and Access Fees

April 28, 1999.

On April 15, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its

wholly owned subsidiary the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq.[1] On April 22, 1999, the NASD amended the filing.[2] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to: (1) amend certain NASD quotation rules to remove any arguable prohibitions that could prevent market makers from charging a fee when their agency quote is accessed; and (2) require market makers and electronic communications networks (''ECNs'') to round their quotations to the next minimum quotation increment when the market maker or ECN charges another market participant a fee in excess of one-half of one cent to access its quote. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

3320. Offers at Stated Prices

No member shall make an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell. *It shall be consistent with this rule for a Nasdaq market maker to charge a fee to a market participant that accesses the market maker's Agency Quote (as defined in NASD Rule 4613(b)) so long as the market maker meets all NASD requirements for displaying the Agency Quote.*

IM–3320. Firmness of Quotations

Members and persons associated with members in the over-the-counter market make trading decisions and set prices for customers upon the basis of telephone and wire quotations as well as quotations in the National Quotation Bureau sheets. In some instances a dealer's quotations, purportedly firm, are, in fact, so qualified upon further inquiry as to constitute ''backing away'' by the quoting dealer. Further, dealers who place quotations in the sheets have been found to be unwilling to make firm bids or offers upon inquiry in such a way as to pose a question as to the validity of the quotations originally inserted. Such ''backing away'' from quotations disrupts the normal operation of the over-the-counter market.

Members, of course, change interdealer quotations constantly in the course of trading, but under normal circumstances where the member is making a ''firm trading market'' in any security, it is expected at least to buy or sell a normal unit of trading in the quoted stock at its then prevailing quotations unless clearly designated as not firm or firm for less than a normal unit of trading when supplied by the member. It should be realized, however, that at times contemporaneous transactions or substantial changes in inventory might well require dealers to quote a ''subject market'' temporarily.

In order to insure the integrity of quotations, every member has an obligation to correctly identify the nature of its quotations when they are supplied to others. In addition, each member furnishing quotations must insure that it is adequately staffed to respond to inquiries during the normal business hours of such member.

It shall be deemed conduct inconsistent with high standards of commercial honor and just and equitable principles of trade if a member fails to fulfill its obligations as outlined above. *It shall not be a violation of this rule or be deemed conduct inconsistent with high standards of commercial honor and just and equitable principles of trade if a Nasdaq market maker charges a fee for accessing its Agency Quote so long as the market maker meets all NASD requirements for displaying the Agency Quote.*

Rule 4613. Character of Quotations

(a)–(b) No Change.[3]

(c) Firm Quotations.

A market maker that receives an offer to buy or sell from another member of the Association shall execute a transaction for at least a normal unit of trading at its displayed quotations as disseminated in The Nasdaq Stock Market at the time of receipt of any such offer. If a market maker displays a quotation for a size greater than a normal unit of trading, it shall, upon receipt of an offer to buy or sell from another member of the Association, execute a transaction at least at the size displayed. *It shall be consistent with this rule for a Nasdaq market maker to charge a fee to a market participant that accesses through a Nasdaq-provided facility or telephone the market maker's Agency Quote (as defined in NASD Rule 4613(b)), so long as the market maker meets all NASD requirements for displaying the Agency Quote; provided however, a market maker may not charge a UTP Specialist a fee for accessing its quote when the UTP Specialist accesses the Agency Quote by telephone from the floor of the UTP exchange. For purposes of this rule a ''UTP Specialist'' shall mean a broker/dealer registered as a specialist in Nasdaq securities pursuant to the rules of an exchange that is a signatory to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis (''Nasdaq/NMS/UTP Plan'').*

(d)–(e) No Change.[4]

4615. Quotation Rounding and Other Requirements for Agency Quotations and ECNs

(a) An electronic communications network (''ECN'') included in Nasdaq pursuant to Rule 4623 or a Nasdaq market maker that displays an Agency

[1] This proposal was filed pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), and Rule 19b–4, 17 CFR 240.19b–4, thereunder.

[2] *See* letter from Robert E. Aber, Senior Vice President and General Counsel, Office of the General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission, dated April 22, 1999 (''Amendment No. 1''). In Amendment No. 1, the NASD made various technical and clarifying amendments which are reflected in the notice. Also in Amendment No. 1, the text of proposed NASD Rule 4615 and the accompanying explanatory text in the filing is amended to clarify that if the access fee that an ECN or market maker charges is greater than one minimum quotation increment, the market maker or ECN must round its bid down (or offer up) to the next minimum increment that *is equal to or* greater than the access fee. Finally, the NASD also explained that the instant proposed rule change is contingent upon the Commission's approval of its pending Agency Quote proposal (Exchange Act Release No. 41128 (March 2, 1999), 64 FR 41128 (March 11, 1999) (File No. SR–NASD–99–09)).

[3] In pending File No. SR–NASD–99–11, Nasdaq proposed amendments to NASD Rule 4613(a) which would functionally integrate Nasdaq's SOES and SelectNet system. *See* Exchange Act Release No. 41296 (April 15, 1999), 64 FR 19844 (April 22, 1999).

[4] Nasdaq recently filed a proposed rule change, SR–NASD–99–09, to permit the separate display of customer orders by market makers in Nasdaq through a market maker agency identification symbol (''Agency Quote''). Under that proposal, the Agency Quote rule would be designated as NASD Rule 4613(b). The current NASD Rule 4613(b), regarding Firm Quotations, would be redesignated as NASD Rule 4613(c), and current NASD rule 4613(c) would be redesignated as NASD Rule 4613(d). That proposal would also eliminate current NASD Rule 4613(d), regarding Reasonably Competitive Quotations, as the requirements of this subparagraph were eliminated as of October 13, 1997 by Exchange Act Release No. 39120 (Sept. 23, 1997), 62 FR 51170 (Sept. 30, 1997). *See* note 2, *above.* This filing reflects the proposed redesignations.

Quote (as defined in NASD Rule 4613) must round its bid down and/or its offer up by the next minimum quotation increment permitted by Nasdaq's system (or if the access fee, as described below, is larger than one minimum quotation increment, the market maker or ECN must round its bid(offer) down(up) to the next minimum increment that is equal to or greater than the access fee) if:

(1) the ECN charges non-subscribers that access its quote a fee in excess of one-half of one cent per share; or

(2) the Nasdaq market maker charges any participant that accesses the market maker's Agency Quote (as defined in NASD Rule 4613) a fee in excess of one-half of one cent per share.

(b) Prior to commencing to charge for a fee for accessing its Agency Quote, a Nasdaq market maker shall inform Nasdaq Market Operations in writing of the maximum fee it intends to charge any market participant that accesses its Agency Quote (Initial Notification Requirement). Additionally, the market maker shall immediately inform Nasdaq Market Operations in writing of any change in the maximum fee it charges any market participant (Continuous Notification Requirement). The Initial Notification and Continuous Notification requirements shall also apply to ECNs included in Nasdaq.

(c) It shall be deemed conduct inconsistent with high standards of commercial honor and just and equitable principles of trade if a member fails to fulfill its obligations as outlined above.

4623. Electronic Communications Networks

(a) No change.

(b) An ECN that seeks to utilize the Nasdaq-provided means to comply with the ECN display alternative shall:

(1)–(3) No Change.

(4) agree to provide for Nasdaq's dissemination in the quotation data made available to quotation vendors the prices and sizes of Nasdaq market maker orders (and other entities, if the ECN so chooses) at the highest buy price and the lowest sell price for each Nasdaq security entered in and widely disseminated by the ECN; and prior to entering such prices and sizes, register with Nasdaq Market Operations as an ECN; [and]

(5) provide an automated execution or, if the price is no longer available, an automated rejection of any order routed to the ECN through the Nasdaq-provided display alternative[.]*; and*

(6) comply with applicable requirements of NASD Rule 4615.

(c) No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 3320 regarding Offers at Stated Prices and NASD Rule 4613(c) regarding Firm Quotations, which arguably could be read to prohibit market makers from charging market participants fees when quotes are accessed. Nasdaq also is proposing to require market makers and ECNs to round their quotations to the next minimum quotation increment when: (1) the ECN charges non-subscribers a fee in excess of one-half of one cent to access its quote; and (2) the market maker charges another market participant a fee in excess of one-half of one cent to access its Agency Quote (as defined in NASD rule 4613).[5]

1. Background

Recently, Nasdaq filed with the Commission a proposal to allow market makers in Nasdaq National Market Securities (''NNM'') to display a second quotation separate from their proprietary quotation for the purpose of displaying customer interest (''Agency Quote Proposal'').[6] As noted in the Agency Quote Proposal filing,[7] Nasdaq's intended purpose of the Agency Quote was to give market makers an alternative method to display agency interests to the market and to return ''control'' over their quotes that market makers argue they lost with the implementation of the SEC's Order Handling Rules (''OHR'').[8] Additionally, the Agency Quote Proposal attempts to resolve the regulatory and administrative difficulties that market makers experience as a result of being required to display customer orders and other agency interests as well as market makers' proprietary interests in a single quote.

Also, as noted in the Agency Quote Proposal, many ECNs currently charge fees to market participants (and ECN subscribers) that execute against a customer order that is displayed in the ECN. Although market makers currently may not charge a similar fee when their public quotes are accessed, market makers have expressed a desire to do so, in particular since they often are acting as agent by displaying a customer's interest in their quote. Nasdaq believes that it is inequitable that ECNs are permitted to charge a fee when their quote is accessed, but market makers are prohibited from charging a fee in similar situations when they act as agent.

Nasdaq notes that concerns have been raised about this perceived inequity. Specifically, Nasdaq suggests that the present environment encourages market makers to send their customer limit orders to ECNs to comply with the OHR. Thus, market makers often must give up some of their business and incur ECN fees to process their customer's limit orders. Market makers argue that it is unfair that an ECN may charge a fee when its quote is accessed but they (market makers) are prohibited from charging a fee when they are representing an agency interest in their quote. Thus, there are strong incentives for market makers to register as ECNs to avoid some of the regulatory and other requirements imposed on market makers, as well as risk to capital that market makers assume. Additionally, market makers argue that they, like ECNs, should be able to charge an access fee when they are acting purely as agent. Similar to ECNs, the access fee charged would compensate market makers for costs incurred in representing orders in Nasdaq on an agency basis.

In adopting the OHR, the Commission required that ECNs provide broker-dealers access to market maker orders reflected in the ECN's public quote that was equivalent to broker-dealer access to the market maker's own quotes. Currently, the Firm Quote Rules and NASD rules generally require market makers to trade at their displayed

[5] *See id.*

[6] *Id.*

[7] *Id.* As noted in the Agency Quote Proposal, market makers assert that they have ''lost control'' of their quotes because they must change their proprietary quote to reflect certain limit orders and must ''advertise competing interests in their quotes.'' The original text in this footnote has been changed pursuant to a telephone conversation between John Malitzis, Assistant General Counsel, Office of the General Counsel, Nasdaq, and Marc McKayle, Attorney, Division, Commission (April 22, 1999).

[8] The OHR, comprised of amendments to Rule 11Ac1–1 (''Firm Quote Rule'') and the adoption of Rule 11 Ac1–4 (''Display Rule''), were adopted by the Commission on August 28, 1996. *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (''OHR Adopting Release'').

quotes, without any additional fees. Nonetheless, the OHR Adopting Release stated that an ECN could charge ''for access to its system, similar to the communications and systems charges imposed by various markets, if not structured to discourage access by non-subscriber broker-dealers.'' [9] Subsequently, Commission staff no-action letters affirmed that individual ECNs could be used by market makers in compliance with the OHR. In these letters the ECNs represented, as a condition of receiving the no-action relief, that they would charge non-subscriber orders fees no greater than the lesser of the fees charged a substantial number of active broker-dealer subscribers, and one and one-half cents per share.

Regulation ATS extended the OHRs' equivalent access standard for alternative trading systems publishing public quotations.[10] In Regulation ATS, the Commission acknowledged that a self-regulatory organization (''SRO'') has the authority to adopt rules limiting alternative trading systems fees, or requiring display of fees in the quote, to make alternative trading system quotes that are disseminated to the public comparable with other quotes in the SRO's market.[11]

The fees charged by ECNs to non-subscriber broker-dealers accessing ECN quotes have provoked much controversy. Market makers have argued that ECNs publishing quotes in Nasdaq should not be allowed to charge fees to trade with those quotes, on, in fairness, market makers should be allowed to charge ECNs and others that trade with the market maker's quotes. Broker-dealers say that while best execution principles compel them to trade with better-priced displayed ECN quotes to benefit their customers, these customers are generally unwilling to pay the fee charged by the ECN in that trade.

The ECNs say that their business model depends on charging both sides of a transaction an agency commission. They argue that they should still be able to charge these fees even when the OHR and Regulation ATS require them to display prices in the public quote.

The Nasdaq rule proposal would address these issues by allowing market makers, like ECNs, to charge fees to access their agency quotes. The proposal would, however, require both market makers and ECNs to round this quote to the next inferior increment if the fee exceeded half-a-cent per share.[12]

2. Agency Fee Proposal

In light of the foregoing, Nasdaq is proposing to permit market makers to charge a fee when their Agency Quote is accessed, similar to that ECNs currently charge non-subscribers. Under this proposal, a market maker would be permitted to charge a fee but would be required to round its bid down or its offer up by the applicable minimum quotation increment in Nasdaq if the maximum fee the market maker charges any market participant exceeded one-half of the one cent. If the access fee the market maker charges is greater than a single minimum increment, then the market maker would have to round its Agency Quote to the next minimum increment that is equal to or greater than the access fee.[13] In effect, the market maker's fee would be included in the market maker's Agency Quote if the charge exceeded one-half of one cent. A virtually identical rounding requirement would apply to ECNs.[14] Nasdaq believes that when a quote-access fee exceeds a half-a-cent per share, the net execution price materially differs from the quoted price, and thus the fee should be rounded to account for such differential.

For example, a bid of 20 for a market participant that charges a fee of .006 cents per share would be rounded down to $19 15/16, while an offer of 20 with the same charge would be rounded up to 20 1/16. As a second example, if a market participant charged a fee of twelve and a half cents per share (*i.e.*, 1/8th point) on a $20 buy limit order, the market participant would have to display that buy limit order at $19 7/8 (or 1/8th down).

There would be no cap on the fee market participants could charge, nor is Nasdaq mandating that market participants charge the same rate to all market participants that access the market participant's quote (*i.e.*, market makers and ECNs may vary access fees for different market participants).[15] Nasdaq notes, however, that it believes the Nasdaq UTP Plan would prohibit a market maker from charging a UTP Specialist an access fee when the UTP Specialist accesses the market maker's Agency Quote by telephone.[16] The proposal, accordingly, prohibits market makers from charging when a UTP Specialist accesses a market maker's quote by phone. The UTP Plan does not, however, explicitly prohibit market makers from charging UTP Specialists a fee when a market maker's quote is accessed by a means other than the telephone, such as a Nasdaq order delivery system.

The proposal would require all market makers and ECNs to inform the NASD of the maximum (or highest) fee the market maker or ECN intends to charge any single market participant, as well as any changes in previously established fees. The NASD intends to publish and widely distribute this fee information through a common facility, such as the Nasdaqtrader.com Web Site. Nasdaq is sensitive to the concerns that allowing market makers to charge the proposed fee could result in the imposition of administrative burdens and other costs on small firms, as firms would be required to calculate the fees they owe and are owed. To alleviate these concerns, Nasdaq intends to develop through a common facility (*e.g.*, the Nasdaqtrader.com Web Site) reports and data that firms may use to calculate the fees. In addition, to implement the Agency Quote proposal, Nasdaq is proposing amendments to current NASD rules (*e.g.*, NASD Rule 3320 regarding Offers at Stated Price and NASD Rule 4613 regarding Firm Quotations), which arguably could be read to prohibit market makers from charging market participants fees when their quotes are accessed.

Nasdaq believes that where a quote is subject to the rounding requirement, a market participant should make a number of disclosures to its customer to fulfill its best execution obligations. First, the market participant should disclose and explain that while rounding will result in price improvement by the amount rounded, the rounding may delay the execution of the order because the order will be reflected at a lower price, in the case of buy orders (or higher price, in the case of sell orders). Additionally, a market maker must disclose (if applicable) that when the quote is rounded down (up) the market maker will collect the access

[9] *Id.* at n. 272.

[10] *See* Exchange Act Release No. 40760 (Dec. 8, 1998), 63 FR 70844 (December 22, 1998) (''Regulation ATS Adopting Release'').

[11] *Id.*

[12] As explained in more detail below, the Commission is seeking comment not only on the NASD rule filing as currently proposed, but also on the broader questions raised by ECN and ATS fees for accessing quotes and possible ways of reconciling these fees with the existing Nasdaq market.

[13] Nasdaq notes that the half-a-cent level is equivalent to the average fee that most ECNs charge their professional customers.

[14] ECNs currently are not subject to a requirement that they round their quotes to reflect a fee.

[15] The proposed rule would not prevent market participants from rebating fees to a customer or customers.

[16] *See* Section IX (''Market Access''), Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis (''Nasdaq/NMS/UTP Plan '').

fee from the customer, since the accessing market participant has already paid the fee with the implicit inclusion of the fee in the quote. (An example of this situation is illustrated below.)

The following is an example of how the proposal would work. Three market makers and an ECN (MNA, MMB, MMC and ECN1) are at the inside (*i.e.*, best) price of each displaying in their quotes (Agency Quotes for the market makers), customer orders to buy 1,000 shares at $30. MMA charges no access fee, MMB charges a fee of .002 cents per share, MMC charges a fee of .007 cents per share, and ECN1 charges a fee of .015 cents per share. The following would be displayed in the Nasdaq montage:

MMID	Bid price	Shares
MMA@	$30	1,000
MMB@	30	1,000
MMC@	29 15/16	1,000
ECN1#	29 15/16	1,000

If two 1,000-share market orders to sell were entered into Nasdaq's Small Order Execution System (''SOES'') (or its successor system),[17] both orders would be executed automatically and reported to the tape at 1,000 shares at $30; to collect the access fee, MMB would directly bill the market participant who accessed its quote.

Next, assume that the best market moves to MMC's price, and a market order is delivered through SOES to MMC's bid, which represents a customer buy limit order for $30 that is rounded down to $29 15/16. In this case, the Nasdaq system would automatically execute and lock in the trade at $29 15/16 (not $30), and report that price to the tape. The incoming market order would be executed at $29 15/16, and the market maker would be required to give the customer buy limit order a fill of $29 15/16. As noted above, MMC must disclose to its customer that, based on the access fee it charges other market participants, it is required to round the customer's limit order price down, and that while rounding will result in price improvement of 1/16th, the rounding may also delay the execution of the order. Additionally, MMC must disclose that because the incoming market order is implicitly paying a fee by selling to MMC's customer for 1/16th less, MMC will collect the .007 cents per share from its customer (*i.e.*, MMC deducts the .007 cents per share from the .0625 cents per share in price improvement that the customer received).[18]

* * * * *

This proposal is contingent upon SEC approval of the Agency Quote Proposal, and would become effective concurrently with Nasdaq's implementation of the Agency Quote Proposal.[19] Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[20] and Section 11A of the Act.[21] Section 15A(b)(6)[22] requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Moreover, under Section 15A(b)(6) of the Act,[23] the rules of a registered national securities association must not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In Section 11A(a)(1)(C) of the Act,[24] Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investor's orders in the best market; and (5) an opportunity for investor's orders to be executed without the participation of a dealer.

Nasdaq believes that by requiring market participants to round their quotes and in effect display the fee in their quotation when the fee exceeds a certain level, the proposal will avoid the dissemination of potentially misleading quotation information. Nasdaq believes that when quote-access fee exceed a half-a-cent per share, the net execution price materially differs from the quoted price. To the extent that this results in a market participant having to pass on the quoted price to the customer, it may act to deter that market participant from acting as a market maker. On the other hand, if the market maker passes a fee on to its customer, this may result in dissatisfaction because the customer perceives that he or she did not obtain the best price in the market. In contrast, under Nasdaq's instant proposal, the firm will receive the quoted price, thus eliminating this concern. Finally, the proposal would address perceived inequities that currently exist between market makers and ECN's, as the proposal would allow market makers to charge a fee when they act as agent, similar to that which ECNs currently charge to non-subscribers.

Nasdaq notes that in the past the SEC staff has taken the position that it is inconsistent with the Firm Quote Rule, Rule 11Ac1–1 under the Act,[25] for market makers to charge a fee when their quotations are accessed.[26] Nasdaq believes that the SEC staff's position was, in part, premised on the fact that market makers would be charging when the market maker was acting as ''principal'' and in essence charging a mark-up customers it ordinarily would not levy such a charge on. Under the current proposal, market makers would be assessing a fee on customers (and

[17] *See* note 3, *above*.

[18] Since the market maker has already implicitly assessed a fee on the incoming market order by rounding the limit order price down 1/16th, Nasdaq believes that MMC should not charge the incoming market order an additional access fee; rather, Nasdaq believes that MMC should collect its .007 cents per share fee from its customer.

[19] *See* Amendment No. 1, note 3, *above*.

[20] 15 U.S.C. 78*o*–3(b)(6).

[21] 15 U.S.C. 78k–1.

[22] 15 U.S.C. 78*o*–3(b)(6).

[23] *Id*.

[24] 15 U.S.C. 78k–1(a)(1)(C).

[25] *See* 17 CFR 240.11Ac1–1.

[26] Specifically, the SEC staff has stated in response to a request for ''non-action relief'' that the Exchange Act Firm Quote Rule does not permit a market maker posting a quote impose a fee on market participants that customarily trade with the market maker at its quote without a mark-up. *See* letter from Robert L.D. Colby, Deputy Director, Division, Commission, to M. Joseph Messina, Vice President, M.H. Meyerson & Co., Inc., dated June 12, 1998. In reaching this conclusion, the SEC staff noted that the Firm Quote Rule provides that each responsible broker or dealer shall be obligated to execute any order to buy or sell a subject security presented to it by another broker or dealer or any other person, such as a retail customer, with whom such responsible broker or dealer deals, at a price at least as favorable to such buyers or sellers as the responsible broker's or dealer's published bid or published offer (exclusive of commission or commission equivalent or differential customarily charged by such responsible broker or dealer in connection with execution of any such order) in an amount up to its published quotation size. *Id*. The SEC staff has interpreted the above parenthetical as addressing mark-ups that are customarily charged to retail customers by brokers. *Id*. Thus, according to the SEC staff, the Firm Quote Rule does not permit a market posting quotations in the public quote to impose a fee, such as a liquidity or access fee, on market participants that customarily trade with a market maker at its quote without a mark-up. *Id*.

The SEC staff also stated that it interpreted NASD Rule 4613(b) (''NASD Firm Quote Rule'') as requiring market makers to include in their posted quote an access fee they may charge. *Id*. Nasdaq expresses no opinion as to whether it concurs with the SEC staff's prior interpretation of NASD Rule 4613, but notes that this filing would permit market makers to publish quotes without including the fee in its bid or offer, unless such fee exceeds a half-a-cent, in which case the fee would implicitly be included in the market maker's quote.

others) that is in essence a commission solely when they are acting in an agency capacity. Similar to ECNs. While a market maker may not be able to charge a fee when it is acting in a principal's capacity for the reasons previously cited by the SEC staff, Nasdaq believes that it would be consistent with the Exchange Act Firm Quote Rule to permit market makers to charge a fee when they are acting as agent. Accordingly, Nasdaq believes that this rule proposal is consistent with Section 11A of the Act.[27]

(B) Self-Regulatory Organization's Statement to Burden on Competition

Nasdaq does not believes that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. The Commission asks for comments in particular on the following questions:

1. Should market makers be permitted to charge a fee to trade with limit orders in their agency quote lines? In addition to charging for agency orders displayed in their agency quote lines, should market makers be permitted to charge a fee for proprietary orders displayed in their agency quote lines?

2. Should any fee charged by market makers for orders executed against their agency quote lines be included in the quoted price? Should ECN fees be included in an ECN's quote? If ECN fees are required to be included in the quote, how should the fact that an ECN may have a range of fees it charges its broker-dealer subscribers be addressed?

3. Should there be a maximum permissible fee charged by market makers and ECNs, and if so, what should that fee be? Should market makers and ECNs be prohibited from charging a fee that is greater than one trading increment? Would disparate fees create confusion in the marketplace?

4. Will competition ensure that fees are not used as a barrier to access?

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File No. SR–NASD–99–16 and should be submitted by June 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11361 Filed 5–5–99; 8:45 am]

BILLING CODE 8010–01–M

[27] 15 U.S.C. 78k–1.

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41346; File No. SR–NYSE–99–02]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change Permanently Approving the Pilot Program for the Listing Eligibility Criteria for Closed-End Management Investment Companies Registered Under The Investment Company Act of 1940

April 29, 1999.

I. Introduction

On January 26, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 under the Act,[2] a proposed rule change creating a pilot program (''pilot'') relating to the listing eligibility criteria for closed-end investment companies registered under the Investment Company Act of 1940 (''Funds'').

Notice of the proposal was published in the **Federal Register** on February 3, 1999.[3] The Commission received one comment letter on the proposal. On April 21, 1999, the NYSE submitted Amendment No. 1 to the proposed rule change.[4] This notice and order approves the proposed rule change as amended and seeks comment from interested persons on Amendment No. 1.

II. Description of the Proposal

The Exchange generally lists Funds either in connection with an initial public offering or shortly thereafter, when the fund does not have a three-year operating history and is thus considered newly formed. On January 26, 1999, the Exchange proposed to codify its policy regarding the listing of these newly organized Funds.[5] The same day, the Commission granted partial accelerated approval to the proposal as a three-month pilot, effective until April 29, 1999.

Under the pilot, if a Fund has at least $60 million in net assets, as evidenced by a firm underwriting commitment, the Exchange will generally authorize the listing of the Fund. This requirement is the minimum net asset requirement for listing. Additionally, the Exchange retains the discretion to deny listing to a Fund if it determines that, based upon a comprehensive financial analysis, it is unlikely that the particular Fund will be able to maintain its financial status. Any Fund with less than $60 million in net assets will not be considered for listing.

Lastly, Funds are subject to continued financial listing standards. The Exchange generates a monthly exception report to identify companies below the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 40979 (January 26, 1999), 64 FR 5332 (February 3, 1999).

[4] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, April 21, 1999 (''Amendment No. 1''). In Amendment No. 1, the NYSE added a requirement that an applicant Fund, which is a spin-off or carve-out, show that the new entity will satisfy the net assets test by submitting to the Exchange a letter from its parent company's investment banker or other financial advisor.

[5] The Exchange sought both accelerated approval to implement a three-month pilot program to amend its *Listed Company Manual* with respect to Funds and permanent approval of the rule change implemented in the pilot.

Exchange's continued listing standards. If a Fund is so identified by the Exchange's Financial Compliance Department, it will be subject to the same compliance and monitoring procedures imposed upon any other NYSE-listed company so identified.

The Exchange is proposing an exception to the ''Firm underwriting commitment'' required in the pilot.[6] The Exchange contends that spin-offs and carve-outs are not the subjects of an underwriting and, therefore, are unable to submit the requisite undertaking letter. Accordingly, an applicant Fund, which is a spin-off or carve-out, must show that the new entity will satisfy the net assets test by submitting to the Exchange a letter from its parent company's investment banker or other financial advisor.

III. Summary of Comments

The Commission received one comment letter from the Investment Company Institute (''ICI''),[7] which opposed the proposal.[8] The Exchange responded to this letter.[9]

In its letter the ICI questioned a number of aspects of the proposal, including: the reason for proposing solely a net asset based eligibility listing standard; the rationale for the proposed $60 million threshold; the application of the requirement (*i.e.*, whether funds currently listed are grandfathered from the requirements); and, the existence of any other listing standards and requirements.

In its response, the Exchange argued that the proposed rule change is merely a codification of an existing practice, which has evolved over time as a way to assess the financial viability of a newly organized Fund that does not have a three-year operating history against which the Exchange's general listing standards can be applied[10] The Exchange also explained that ICI's concern that the net asset standard is the only standard applicable to Funds is unfounded because Funds are also subject to the Exchange's distribution and corporate governance standards. Finally, the Exchange stated that grandfather provisions are not necessary because the $60 million threshold is the minimum requirement imposed. The Exchange also noted that it is developing specific standards to judge a Fund for continued listing status.

IV. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[12] requirements that the rules of an exchange be designed to promote just and equitable principals of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protest investors and the public.

The Commission recognizes that in many cases the applicant Fund is not a traditional operating entity and therefore it is not possible to apply the earnings standards specified in the Exchange's *Listed Company Manual* at the time of listing. Thus, the Commission believes that the Exchange's proposed listing standard serves as an acceptable means for screening out those Funds that the Exchange believes are unsuitable for listing because of insufficient assets. The Commission recognizes that the net assets test in intended as a minimum standard and that the Exchange may, with respect to a given Fund, determine that, notwithstanding sufficient net assets, the Fund may otherwise be unsuited for listing.

The Commission carefully considered the concerns expressed by the ICI in its letter opposing the proposal. Ultimately, the Commission concluded that the net asset standard codified by the Exchange in the proposal is a clear, nondiscriminatory standard that should promote transparency with respect to the Exchange listing standards for Funds and is not inconsistent with the Act. The Commission believes that the proposed standard should promote certainty and reduce costs in the listing process which should benefit investors and other market participants.

The Commission finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. The amendment addresses those Funds that would not be the subject of an underwriting (*i.e.*, spin-offs and carve-outs), and as such, would be unable to submit the requisite undertaking letter. The proposed amendment would permit these Funds to show the NYSE that they meet the asset test through another acceptable means (*i.e.*, through a representation by the parent company's investment banker or other financial advisor). Because the Commission believes the amendment is an appropriate accommodation for spin-offs and carve-outs, which could not comply with the original proposal, the Commission finds good cause for accelerating approval of Amendment No. 1.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether the proposed amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–02 and should be submitted by May 27, 1999.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSE–99–02), including Amendment No. 1, relating to the listing eligibility criteria for closed-end management investment companies registered under the Investment Company Act of 1940, is approved.

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[6] *See* Amendment No. 1, *supra* note 4.

[7] The ICI is a national investment company industry association. Its membership includes 7,408 open-end investment companies (''mutual fund''), 499 closed-end investment companies and eight sponsors of unit investment trusts. The ICI notes that mutual fund members have assets of about $5.468 trillion, accounting for approximately 95% of total industry assets, and have over 62 million individual shareholders.

[8] *See* letter from Ari Burstein, Assistant Counsel, ICI, to Jonathan G. Katz, Secretary, SEC, March 1, 1999.

[9] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, April 16, 1999.

[10] The NYSE noted that the proposal omitted a projected earnings requirement that the Exchange determined provided minimal incremental value.

[11] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11360 Filed 5–5–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41344; File No. SR–NYSE–99–04]

Self-Regulatory Organization; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amending Rule 347 To Expressly Allow Employees To Bring Employment Related Claims Before the EEOC, NLRB, or State or Local Anti-Discrimination Agencies

April 28, 1999.

I. Introduction

On February 5, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19B–4 thereunder,[2] a proposed rule change amending Exchange Rule 347 to expressly allow employees to bring employment related claims before the Equal Employment Opportunity Commission (''EEOC''), National labor Relations Board (''NLRB''), or state or local anti-discrimination agencies.

The proposed rule change was published for comment in the **Federal Register** on March 18, 1999.[3] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The proposed rule change codifies the Exchange's interpretation of Exchange Rule 347 regarding the arbitration of employment disputes. Generally, Exchange Rule 347 requires that any controversy between a registered representative and the member or member organization that employs him arising out of employment or the termination of employment be settled by arbitration. This requirement does not extend to statutory employment discrimination claims.[4] The proposed amendment to Exchange Rule 347 would clarify that the Exchange's Rule should not be interpreted to preclude employees from brining employment-related claims against members and member organizations before the EEOC, NLRB, or state or local antidiscrimination agencies.[5]

The proposed amendment would address an issue recently raised by a Teamsters Union Local with the NLRB. The Teamsters Union Local alleged that the Exchange's prior arbitration policy interfered with rights guaranteed by the National Labor Relations Act by prohibiting employees from filing and pursing charges with the NLRB. While the Exchange has never interpreted its arbitration rules to preclude employees of members or member organizations from pursuing such charges, the Exchange determined it would resolve the issue by amending Exchange Rule 347 to codify the existing Exchange interpretation.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[6] and in particular, with the requirements of Section 6(b)(5).[7] Specifically, the Commission finds that clarifying the rights of employees to bring employment-related claims before the EEOC, NLRB, or any state or local anti-discrimination agencies serves to promote just and equitable principles of trade, and, in general, to protect the public interest. The proposed rule change ensures that employees, members and member organizations have a fair and impartial forum for the resolution of their disputes.

By changing its rule, the Exchange codifies its current interpretation of Exchange Rule 347 to provide that Exchange Rules are not intended to, and should not be construed to prohibit employees from bringing employment-related claims against members or member organizations before the EEOC, NLRB, or any state or local anti-discrimination agencies. This interpretation is consistent with the Exchange's recent amendment to Rule 347, which excluded claims of employment discrimination from arbitration unless the parties have agreed to arbitrate the claim after it has arisen.[8]

Under the Act, self-regulatory organizations (''SROs'') like the Exchange are assigned rulemaking and enforcement responsibilities to perform their role in regulating the securities industry for the protection of investors and other related purposes. Pursuant to Section 19(b)(2) of the Act,[9] the Commission is required to approve an SRO rule change like the Exchange's if it determines that the proposal is consistent with applicable statutory standards.[10] These standards include Section 6(b)(5) of the Act,[11] which provides that the Exchange's rules must be designed to, among other things, ''promote just and equitable principles of trade'' and ''protect investors and the public interest.''

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSE–99–04) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11362 Filed 5–5–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region 1 Advisory Council; Public Meeting

The U.S. Small Business Administration Region 1 Advisory Council, located in the geographical area of Augusta, will hold a public meeting at 10:00 a.m. on Wednesday, May 26th, 1999 at the Augusta Civic Center, Civic Center Drive, Augusta, Maine, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mary McAleney, District Director, U.S.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41151 (March 10, 1999) 64 FR 13460.

[4] *See* Exchange Rules 347 and 600. Under the Exchange's Rules, discrimination claims are eligible for Exchange arbitration only where the parties have agreed to arbitrate the claim after it has arisen.

[5] The Commission notes that the amendment should not affect the obligation, under NYSE rules, of Exchange members of their employees to arbitrate claims brought by customers against them.

[6] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78F(b)(5).

[8] *See* Securities Exchange Act Release No. 40858 (December 29, 1998) 64 FR 1051 (January 7, 1999).

[9] 15 U.S.C. 78s(b)(2).

[10] The Commission oversees the arbitration programs of the SROs, including the Exchange's, through inspections of the SRO facilities and the review of SRO arbitration rules. Inspections are conducted to identify areas where procedures should be strengthened, and to encourage remedial steps either through changes in administration or through the development of rule changes.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

Small Business Administration, 40 Western Avenue, Augusta, Maine 04330, 207–622–8378.

Shirl Thomas,

Director, External Affairs.

[FR Doc. 99–11307 Filed 5–5–99; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Pub. L. 104–13; Proposed Collection; Comment Request

April 28, 1999.

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (WR 4Q), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to the Agency Clearance Officer no later than July 6, 1999.

SUPPLEMENTARY INFORMATION: *Type of request:* Regular submission, proposal to extend without revision a currently approved collection of information (OMB control number 3316–0016).

Title of Information Collection: Farmer Questionnaire-vicinity of Nuclear Power Plants.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, and farms.

Small Business or Organizations Affected: No.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 300.

Estimated Total Annual Burden Hours: 150.

Estimated Average Burden Hours Per Response: .5.

Need For and Use of Information: This survey is used to locate, for monitoring purposes, rural residents, home gardens, and milk animals within a five mile radius of a nuclear power plant. The monitoring program is a mandatory requirement of the Nuclear Regulatory Commission set out in the technical specifications when the plants were licensed.

William S. Moore,

Senior Manager, Administrative Services.

[FR Doc. 99–11414 Filed 5–5–99; 8:45 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Countries That Deny Adequate Protection, or Market Access, for Intellectual Property Rights Under Section 182 of the Trade Act of 1974

AGENCY: Office of the United States Trade Representative.

ACTION: Identification of countries that deny adequate protection for intellectual property rights or market access for persons who rely on intellectual property protection.

SUMMARY: The United States Trade Representative (USTR) is directed by section 182 of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2242), to identify those foreign countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to United States persons that rely upon intellectual property protection, and those foreign countries determined to be priority foreign countries. These identifications must be made within 30 days of the date on which the annual report is submitted to Congressional committees under section 181(b) of the Trade Act. They are presented below.

DATES: These identifications took place on April 30, 1999.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Claude Burcky, Director for Intellectual Property, (202) 395–6864, Andrew Bowen, Deputy Director for Intellectual Property, (202) 395–6864, or Geralyn S. Ritter, Assistant General Counsel (202) 395–6800.

SUPPLEMENTARY INFORMATION: Section 182 of the Trade Act requires the USTR to identify within 30 days of the publication of the National Trade Estimates Report all trading partners that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to United States persons that rely upon intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices that have the greatest adverse impact (actual or potential) on the relevant United States products must be identified as ''priority foreign countries,'' unless they are entering into good faith negotiations or are making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection for intellectual property rights. In identifying countries in this manner, the USTR is directed to take into account the history of intellectual property laws and practices of the foreign country, including any previous identifications as a priority foreign country, and the history of efforts of the United States, and the response of the foreign country, to achieve adequate and effective protection and enforcement of intellectual property rights. In making these determinations, the USTR must consult with the Register of Copyrights, the Commissioner of Patents and Trademarks, other appropriate officials of the Federal Government and take into account information from other sources such as information submitted by interested persons.

On April 30, 1999, the USTR identified 53 trading partners as failing to provide adequate and effective intellectual property protection and fair and equitable market access to persons who rely on such protection. In addition, China and Paraguay will be subject to continued monitoring under section 306 of the Trade Act.

Sixteen trading partners were placed on the administratively-created ''priority watch list,'' including Argentina, the Dominican Republic, Egypt, the European Union, Greece, Guatemala, India, Indonesia, Israel, Italy, Kuwait, Macao, Peru, Russia, Turkey and Ukraine. Of these countries, at least Israel and Kuwait will be subject to an interim review in 1999. Thirty-seven countries were placed on the special 301 ''watch list,'' including Australia, Belarus, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Czech Republic, Denmark, Ecuador, Hungary, Ireland, Jamaica, Japan, Jordan, Korea, Lebanon, Mexico, New Zealand, Oman, Pakistan, the Philippines, Poland, Qatar, Romania, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Taiwan, Thailand, U.A.E. (United Arab Emirates), Uruguay, Venezuela, and Vietnam. Of these, at least Colombia, the Czech Republic, Korea, Poland and South Africa will be subject to interim reviews during the coming year. The USTR also announced that Malaysia and Hong Kong would be subject to out-of-cycle reviews in September 1999. Finally, the USTR announced the initiation of WTO dispute settlement cases against

Argentina, Canada the European Union for violations of the Agreement of Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Claude Burcky,

Director of Intellectual Property.

[FR Doc. 99–11425 Filed 5–5–99; 8:45 am]

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Report on Trade Expansion Priorities Pursuant to Executive Order 13116 (''Super 301'')

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Notice if hereby given that the United States Trade Representative (USTR) has submitted the report on United States trade expansion priorities published herein to the Committee on Finance of the United States Senate and Committee on Ways and Means of the United States House of Representatives pursuant to the provisions (commonly referred to as ''Super 301'') set forth in Executive Order No. 13116 of March 31, 1999.

DATES: The report was submitted on April 30, 1999.

FOR FURTHER INFORMATION CONTACT: Demetrios Marantis, Assistant General Counsel, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508, 202–395–3581.

SUPPLEMENTARY INFORMATION: The text of the USTR report is as follows.

Identification of Trade Expansion Priorities Pursuant to Executive Order 13116

Last month, the United States Trade Representative (USTR) released the President's 1999 Trade Policy Agenda and the 1999 National Trade Estimate Report on Foreign Trade Barriers (NTE Report). This report builds on the prior two reports and is submitted pursuant to Executive Order 13116 of March 31, 1999. The ''Super 301'' provisions of the Executive Order direct the USTR to review U.S. trade expansion priorities and identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent.

I. Trade Expansion Priorities and Priority Foreign Country Practices

In preparing this report, USTR has reviewed the 1999 Trade Policy Agenda to identify U.S. trade expansion priorities and the 1999 NTE Report and public comments submitted to USTR to assess foreign country practices that we seek to eliminate. Based on this review, USTR has determined that the U.S. trade expansion priorities include the launching of a new, multilateral round of global trade negotiations; ensuring that WTO Members fully implement existing commitments; ongoing strategic enforcement of U.S. rights under bilateral, regional, and multilateral trade agreements and under U.S. trade laws; and integrating China and other economies into the world trading system. The USTR is not identifying any ''priority foreign country practices'' within the meaning of the Executive Order at this time, but does find that a number of practices warrant the initiation of WTO dispute settlement proceedings or other actions in the context of our bilateral trade relationships.

A. The Third Ministerial Conference and the New Round

Ambassador Charlene Barshefsky, the United States Trade Representative, will chair the WTO's Third Ministerial Conference in Seattle, Washington, November 30—December 3, 1999. The event, which will be the largest trade meeting ever held in the United States, will set the agenda for the WTO for the next decade and launch a new round of global trade negotiations. The Administration has engaged in an extensive consultative process to develop this agenda, involving the broadest range of citizens concerned about trade. Broadly speaking, the agenda will: set a negotiating agenda and work program; provide for institutional reform, including transparency, and ensure that the WTO will continue to be a forum for on-going trade liberalization and reform, by delivering results at Seattle.

At the meeting, Trade Ministers from around the world will focus on the important issues facing the trading system and the new economy of the 21st century. As a starting point, the United States joins other nations in emphasizing the important issue of implementation of existing agreements—from agriculture to textiles. As we approach January 1, 2000, the majority of transition periods in the Agreements on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Trade-Related Investment Measures (TRIMS), and Customs Valuation will expire for most developing countries. Ensuring compliance with these Agreements will be an important feature of our work as we shape the WTO's forward agenda.

Beyond implementation, the negotiations, to begin in early 2000, will be comprised of a new round of liberalization commitments in services trade, a new phase in agriculture policy reform and market-opening undertakings, and other negotiations on topics to be agreed at the meeting, possibly a new round of industrial tariff and non-tariff negotiations. Certain Members have also identified foreign direct investment and competition policy as possible topics for negotiation. The important relationship of trade and the environment, as identified in President Clinton's May 1998 address before the WTO, is an area that will require further work in the WTO, as will forging the consensus on addressing trade and labor.

Launching the round will also require attention to institutional improvements within the WTO to facilitate trade, to improve the participation of less developed economies in the world economy, and to coordinate effectively with other international bodies such as the IMF and World Bank. The United States seeks to strengthen public confidence in the WTO as an institution by improving its transparency and openness, particularly in WTO dispute settlement proceedings, including the review of the system that is to be completed before the Seattle meeting. Civil society must be able to contribute to the work of the WTO, to ensure both that the WTO hears many points of view including those from business, labor, environmental, consumer and other groups, and that its work will rest on the broadest possible consensus.

Finally, the U.S. vision for the new round requires that we set an agenda that accommodates rapid technological developments and addresses the broadest range of concerns. The Ministerial, and the time prior to the meeting itself, provide the United States the opportunity to showcase the relevance of the WTO to the information revolution, the development of electronic commerce, and other rapidly changing, high-technology fields. We seek to reach agreements expanding the product coverage in the landmark Information Technology Agreement (ITA) and expand on the 1998 Ministerial Declaration on Electronic Commerce which calls on WTO Members to refrain from imposing customs duties on electronic transmissions. We also intend to strengthen the system to contribute to the Administration's wider policy of eradicating the potential for bribery and corruption and promoting economic efficiency, by completing an agreement on transparency in government

procurement at the Seattle meeting. Expanding market access opportunities, including through early agreements to liberalize tariffs in sectors first identified in APEC (i.e., chemicals, energy and environment-related goods, medical and scientific equipment, forest products, fish, gems and jewelry, and toys), remains a priority.

B. Implementation of Existing WTO Commitments

Full implementation of existing WTO agreements is critical to ensuring that the United States achieves the full benefit of what it bargained for in the Uruguay Round of multilateral trade negotiations, as well as to maintaining public confidence in an open trading system and building public support for the new round of negotiations. There are five critical aspects of WTO implementation: compliance with WTO commitments that entered into effect in January 1995; compliance with WTO commitments that are subject to transition periods or phase-in provisions, many of which will enter into effect by January 1, 2000; acceptance of the protocols on basic telecommunications services and financial services and implementation of the corresponding commitments; compliance with accession protocols; and compliance with the rulings resulting from WTO dispute settlement proceedings in a timely and complete manner.

The primary means of enforcing WTO commitments that have entered into effect is the WTO dispute settlement mechanism, which is discussed in further detail below. In the coming months, one of USTR's top priorities will be to focus on Members' preparations for the phase-in by January 1, 2000 of commitments in three critical areas:

- Intellectual Property Protection—WTO developing country members are required to implement most of their commitments under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) by the end of this year. We are monitoring this closely and are prepared to both assist countries in developing laws and enforcement mechanisms at their request and invoke dispute settlement procedures in the event members fail to meet their obligations.
- Customs Valuation—More than 50 countries are required to fully implement the obligations of the Agreement on Customs Valuation—a critical obligation in realizing market access. Full and effective implementation of this Agreement will head off disputes in the future. The United States is also concerned about implementation of existing customs valuation obligations, which is discussed in further detail below.
- Trade Related Investment Measures (TRIMs)—December 31, 1999, is the deadline established in the TRIMs Agreement for developing countries to eliminate measures which they notified as inconsistent with the TRIMs Agreement. Throughout the remainder of 1999, the United States will be monitoring steps taken by those countries due to come into compliance by this deadline, and will be prepared to bring dispute settlement cases for measures which have not been removed by the agreed deadline.

In addition, USTR will work bilaterally and within the Council for Trade in Services to ensure the full implementation of Members' commitments under the Fourth Protocol to the General Agreement on Trade in Services (GATS), i.e., the Basic Telecom Agreement, which entered into force on February 5, 1998, and the Fifth Protocol to the GATS, i.e., the Financial Services Agreement, which entered into force on March 1, 1999. The United States will continue to insist that all countries that failed to meet the deadline for acceptance of these two agreements bring their commitments into force as soon as possible. For the Basic Telecom Agreement, those countries are: Brazil, Dominica, Guatemala, Papua New Guinea, and the Philippines. For the Financial Services Agreement, those countries are: Australia, Bolivia, Brazil, Bulgaria, Costa Rica, Dominican Republic, El Salvador, Luxembourg, Ghana, Honduras, Jamaica, Kenya, Nigeria, Nicaragua, the Philippines, Poland, Slovenia, and Uruguay.

USTR will continue to use WTO committees and bilateral mechanisms to address implementation issues. For example, the United States will work through the WTO Committee on Agriculture to seek compliance with the various obligations under the Agriculture Agreement, including those on tariff-rate quotas, domestic support and export subsidies. Likewise, the United States will be vigilant in its enforcement of textile quotas and implementation of textile market access requirements overseas. Preventing circumvention is a high priority as well. Last year, we reached an important new agreement with Hong Kong on measures to improve information-sharing and strengthen cooperation to prevent circumvention, and we are working with Macau, China and others on similar initiatives.

In addition, we will continue to work with other WTO Members under the aegis of the Committee on Antidumping Practices and its Ad Hoc Group on Implementation to secure better adherence to WTO rules and procedures governing the conduct of antidumping investigations and administrative reviews. The increased use of these remedies by a growing number of WTO Members with different legal systems and levels of experience poses special challenges to U.S. exporters. The United States expects strict compliance with the WTO Antidumping Agreement's substantive obligations, as well as its rules which guarantee transparency and due process, so that these remedies can remain a fair yet effective complement to ongoing trade liberalization.

C. Strategic Enforcement of WTO Rights and U.S. Trade Laws

One of this Administration's top trade expansion priorities is vigorous monitoring and enforcement of trade agreements, which includes the active use of the WTO dispute settlement process and strategic application of U.S. trade laws.

1. WTO Dispute Settlement Process

Since the WTO's creation in 1995, the United States has filed more complaints—44 to date—than any other WTO Member and has participated as a third party in a number of other cases. Our overall record of success is very strong. We have prevailed in 22 of the 24 U.S. complaints acted upon so far, either by successful settlement or panel victory. These favorable rulings and settlements have involved an array of sectors within the fields of manufacturing, agriculture, services, and intellectual property.

a. WTO Disputes

As a result of this year's review of its trade expansion priorities, and its monitoring of compliance with U.S. trade agreements, the Administration will take the following actions to enforce U.S. rights under those agreements:

EU—Avionics. The United States will request WTO consultations with the European Union (EU) on French government subsidies for avionics equipment under the WTO Agreement on Subsidies and Countervailing Measures. In an effort to displace U.S.-sourced flight management systems, the French government, with European Commission approval, has agreed to grant 140 million French francs (approximately 40 percent of the projected costs) between 1997–1999 for a project involving Sextant Avionique of France and Smiths Industries of the United Kingdom to jointly develop a

new flight management system adapted to Airbus aircraft. The aid takes the form of a ''reimbursable advance payment'' to be repaid on a percentage of sales of the new system; however no repayment is required if the program is unsuccessful.

India—Auto TRIMs. The United States will request WTO consultations with India on its new auto policy. Last year, India implemented new measures governing investments in the automotive industry. All new and existing firms wishing to operate auto manufacturing investments in India are required to sign a standardized agreement with the Government of India that contains local content and foreign exchange balancing requirements. The Indian program would inhibit the free flow of trade and investment and is inconsistent with India's obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMs). According to the American Automobile Manufacturers Association (AAMA) the approximate size of the vehicle market in India in 1998 was 604,000 units. A large portion of vehicles sold in India are produced locally. Auto parts sales into India are also reduced by these measures.

Korea—Barriers to the Import and Distribution of Foreign Beef. In response to a 1989 GATT panel ruling, Korea agreed to phase out its import restrictions on beef. However, Korea simply replaced its ban with a temporary quota and comprehensive restrictions on the ability to import and distribute beef, including a requirement that imported beef be sold in separate retail establishments. These and other barriers prevented U.S. exporters from fully utilizing the 1997 and 1998 minimum market access commitments Korea had made for beef. In 1998, the underfill of Korea's beef import quota was approximately 60 percent.

The U.S. Government has worked to establish a market-driven beef import system in Korea by seeking the elimination of Korean Government measures that impede the entry and distribution of foreign beef. In September and November 1998, the U.S. and Korean Governments held two rounds of talks, and convened again in January 1999, in an attempt to conclude an agreement providing for liberalized beef trade. In the absence of an agreement, the United States requested WTO dispute settlement consultations on February 1, 1999. On April 28, the United States requested the establishment of a WTO dispute settlement panel on Korea's beef import and distribution system after WTO consultations held on March 11 and 12 failed to resolve the U.S. concerns.

Customs Practices: The benefits of market access commitments are undermined when countries engage in certain customs practices, such as the use of minimum reference prices to determine the customs value of an imported good. The WTO Customs Valuation Agreement (CVA) stipulates that the transaction price is the primary basis for customs valuation determinations, and the U.S. Government is working to ensure that countries comply fully with their obligations under the CVA. We are actively pursuing the issue of reference prices in the WTO Committee on Customs Valuation and are closely examining reports of non-compliance with CVA commitments, particularly in those countries with current obligations, such as Brazil, India and Mexico. We are soliciting additional information on these practices and, as appropriate, will subsequently pursue dispute settlement consultations with the relevant countries that do not satisfactorily address these concerns.

b. Dispute Settlement Rules

USTR's review of trade expansion priorities has shown that, while the WTO dispute settlement system generally works well, improvements in the rules governing compliance with panel and Appellate Body reports are necessary. The EU's failure to implement a WTO-consistent banana regime following WTO dispute settlement proceedings, and its impending failure to eliminate its import ban on meat produced with hormones, illustrate how a Member that fails to implement WTO dispute settlement rulings can continue causing harm to U.S. exporters for an extended period of time. The United States is seeking improvements in the rules governing implementation of panel and Appellate Body reports in the context of this year's review of the WTO Dispute Settlement Understanding (DSU), and there is ongoing review regarding other possibilities for improvement.

In the interim, we will continue to exercise our rights to suspend concessions with respect to the trade of a Member that fails to implement WTO recommendations. On April 19, the United States suspended concessions in the amount of $191.4 million against the EU because of its failure to implement a WTO-consistent banana regime. USTR is now preparing to take similar action against EU imports if the EU does not implement WTO findings against its meat import ban by May 13, 1999, which is the deadline for implementation in that dispute.

2. U.S. Trade Laws

The U.S. trade laws are a vitally important means of ensuring respect for U.S. rights and interests in trade. We will continue to challenge aggressively market access barriers abroad using Section 301, Special 301, Section 1377, Super 301 and Title VII [1] to open foreign markets and ensure fair treatment for our goods and services, protect U.S. intellectual property rights, and ensure compliance with telecommunications agreements. These provisions work in tandem with dispute settlement procedures, and also assist us in completing and enforcing agreements with trading partners that are not WTO Members or in areas not covered by WTO rules. In addition, this Administration is fully committed to using U.S. antidumping, countervailing duty, and safeguards laws and will insist that America's trading partners play by the rules.

Section 301: On April 29, USTR initiated an investigation under Section 301 of the Trade Act of 1974, as amended, regarding Canadian regulations affecting tourism in the U.S.-Canada border region. Measures maintained by the Province of Ontario generally prohibit U.S. fishermen from keeping the fish they catch on lakes lying across the Minnesota-Ontario border if the U.S. fisherman does not spend the night in an Ontario commercial establishment or otherwise contribute to the Ontario tourist industry. Canadian federal measures impose work permit requirements on U.S. fishing guides who conduct tours on those lakes. These measures discriminate in favor of Canadian tourist establishments.

Special 301: Through the Special 301 process, USTR systematically monitors levels of intellectual property protection around the world. Each year, USTR identifies those foreign countries that deny adequate and effective protection of intellectual property rights or fair and equitable market access for U.S. persons that rely on intellectual property protection. As a result of the 1999 Special 301 review, USTR placed 17 trading partners on the ''Priority Watch List'' and 37 trading partners on the ''Watch List'', and announced the initiation of WTO dispute settlement

[1] These provisions can be found in: Sections 301–310 of the Trade Act of 1974 (''Section 301''); Section 182 of the Trade Act of 1974 (''Special 301''); and Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (''Section 1377''). The procedures set forth in Section 310 of the Trade Act of 1974 (''Super 301'') and Title VII of the Omnibus Trade and Competitiveness Act of 1988 (''Title VII'') were re-instituted by Executive Order 13116 of March 31, 1999.

proceedings involving Argentina, Canada and the European Union. See USTR Announces Results of Special 301 Review, released April 30, 1999, for further information concerning the protection of U.S. intellectual property rights.

Section 1377: This year's review, which was completed on March 30, 1999, focused on compliance with the WTO Basic Telecommunications Agreement by WTO Members, particularly the EU, Mexico, Japan and Germany. The review indicated that the WTO agreement has increased market access for U.S. telecommunications companies in foreign markets, but that ongoing enforcement of the agreement is needed to ensure continued growth in world-wide competition for telecommunications services. See USTR Press Release 99–29, March 30, 1999 for further information on this year's 1377 review.

Title VII: The Title VII report gives USTR the means to identify foreign countries that have failed to comply with their obligations under the WTO Agreement on Government Procurement (''GPA''), Chapter 10 of NAFTA, or other agreements relating to government procurement; or otherwise discriminated against U.S. products and services when making government purchases. In addition, USTR is directed to consider a number of other factors in making its determination of whether to identify a country in the Title VII report. The Title VII report, released simultaneously with this report and the Special 301 report, builds upon the information found in the President's 1999 Trade Policy Agenda and the 1999 NTE Report on Foreign Trade Barriers so as to be more flexible and effective in achieving its goal of eliminating unfair procurement practices. In the past, Title VII has been a useful and effective tool in challenging foreign governments' procurement barriers. For details on this year's report, see Title VII report, released on April 30, 1999.

Steel: It is critically important that we promote free and fair trade abroad and that we effectively enforce our trade laws in order to give Americans the confidence needed to keep our markets open. In response to the substantial increase in U.S. steel imports beginning in April 1998, the Administration responded with a comprehensive and effective set of actions which were outlined in the President's Steel Report to the Congress of January 7, 1999. Thanks to these measures, steel imports began to drop after November 1998. The Administration is committed to aggressively enforcing U.S. trade law to address the adverse impact that unfairly traded steel imports have on U.S. steel companies and U.S. jobs. In the report, the Administration stated its willingness, if needed, to self-initiate trade cases with respect to steel imports from Japan—the single largest source of the import surge—if imports did not return to appropriate pre-crisis levels. With respect to the antidumping cases filed by U.S. industry and workers concerning imports of carbon flat-rolled products, the Commerce Department expedited these investigations and, with respect to imports from Japan and Russia, invoked the critical circumstances provision with a view to retroactive application of the antidumping margins. Additionally, the Administration invoked, for the first time, the market disruption article of the 1992 U.S.-Russia Trade Agreement to negotiate a restraint agreement on imports into the United States from Russia of all steel products not already subject to restraints or dumping orders.

The Administration also expanded discussions on steel issues with Korea, the third largest source of the 1998 steel import surge, with the objective of substantial progress toward eliminating Korean government involvement in the steel sector. U.S. industry has long-standing concerns with the Korean government's support for Korean steel producers, for example, through directed lending, which has resulted in uneconomic steel capacity expansions in Korea. For example, the U.S. and Korean governments conducted an exchange of letters in August 1998 and April 1999 regarding steel.

These actions, grounded in U.S. trade law and fully consistent with U.S. international obligations, resulted in a sharp reduction of unfairly traded steel imports beginning in December 1998. Active import monitoring is underway with a view to prompt application of U.S. trade laws should injurious import growth resume.

D. Integrating Other Economies Into the WTO System

The WTO is engaged in accession negotiations with 30 separate economies, including China, Chinese Taipei, Russia, Ukraine, and Vietnam. Their accession to the WTO will make the trading system nearly universal. It will remove a source of distortion and frustration in trade for the United States and will give the newly-acceding members a greater stake in stability and prosperity beyond their borders—thus strengthening peace in the next century. To support both domestic reform and the rules of the trading system, these countries must be brought into the WTO on commercially meaningful terms. The result must be enforceable commitments to open markets in goods, services and agricultural products; transparent, non-discriminatory regulatory systems; and effective national treatment at the border and in the domestic economy.

In the months to come, we will negotiate intensely with all acceding economies, including China—the largest prospective WTO Member. We have made important progress with China in the past two years, particularly during the visit of Premier Zhu Rongji in April 1999, and intensive negotiations are continuing.

E. Bilateral/Regional Trade Expansion Priorities and Trade Practices of Concern

1. Africa

President Clinton's Partnership for Economic Growth and Opportunity in Africa, announced and adopted in 1997, established a vigorous U.S. trade policy approach toward sub-Saharan Africa. The key objectives of the Partnership Initiative include: Support for economic reforms underway in the region; enhanced U.S.-sub-Saharan African trade and investment ties; support for Africa's full integration into the multilateral trading system; and support for sustainable economic development. The Partnership Initiative also aims to strengthen U.S. economic engagement with countries of sub-Saharan Africa.

USTR is also committed to facilitating greater African integration into the global economy by helping African nations and their regional organizations develop greater capacity to expand trade and investment protection. At the recently concluded U.S.-Africa Ministerial in Washington D.C., the USTR underscored the resolve of the United States and Africa to build capacity to promote broader participation by African countries in the multilateral trading system. Specifically, the United States agreed to continue technical assistance workshops in Africa on the WTO. The United States and African participants also agreed on the need for multilateral institutions to more effectively coordinate and cooperate with the WTO on trade and investment issues affecting African countries and to support African Economic Community (AEC) permanent observer status in the WTO, pending the decision of the WTO on modalities for observership. African and U.S. representatives will establish a mechanism for regular consultations on WTO and related matters, in Geneva and Washington, as preparation for the WTO Ministerial advances.

USTR recently hosted roundtables with African Trade Ministers on mechanisms to strengthen U.S.-Africa cooperation in the WTO and in the GSP Program and U.S. market access requirements. In 1997, USTR enhanced the Generalized System of Preferences Program (GSP) by adding over 1,700 new tariff lines for least developed countries, 29 of which are in Africa. True to President Clinton's vision, USTR's unprecedented engagement with African countries has resulted in trade agreements, incentives for reform and regional integration, and initiatives to enhance Africa's participation in the global trading system.

2. Asia—Pacific

The Clinton Administration has developed a wide-ranging program of bilateral, regional and multilateral initiatives to reduce barriers to U.S. exports of goods, services, and investment in the Asia-Pacific region. The major trade policy priorities for this important economic region are:

- To harness the momentum for reform generated by the financial crisis to promote economic recovery and the type of trade policy changes that the United States has consistently advocated: Enhanced market access, transparency, economic deregulation and investment decisions based upon market disciplines. Such trade policies complement firmly the goals of financial market stabilization, as evidenced by the strong emphasis on structural reform in the International Financial Institution (IFI)'s programs. The United States is actively pursuing these objectives both through bilateral and multilateral channels, in particular, the Asia Pacific Economic Cooperation (APEC) forum;
- To realize the commitment of APEC members to long-term trade and investment liberalization through improved assessment and implementation of individual and collective APEC action plans and special initiatives such as EVSL (Early Voluntary Sectoral Liberalization); and
- To secure full implementation of WTO obligations by APEC members. This aspect of USTR's work will assume heightened importance over the coming year given the obligation of developing countries to fully implement the WTO agreements on TRIPS, TRIMs, and Customs Valuation as of January 1, 2000. This requirement should greatly strengthen our efforts to address inadequate protection of intellectual property rights, trade-distorting investment requirements, and inefficient and corrupt customs practices which have been pervasive problems throughout the region.

Priority issues for three of our largest trading partners in the region—China, Japan, and Korea—are outlined in the relevant sections below.

3. Canada

Agriculture: Even though Canada is our largest trading partner and our second largest agricultural market, Canada continues to have restrictive policies limiting market access to key U.S. agricultural products. In 1998, the United States exported over $7 billion while importing $7.7 billion of agricultural products. In December 1998, we took an important step toward reducing these restrictions by concluding an initial bilateral market access package opening opportunities for American grain farmers, cattle ranchers and other agricultural producers. We are closely monitoring implementation of the December agreement and have already witnessed improved access for cattle and rail shipments of wheat. For example, over 51,000 head of cattle moved into Canada in the first three months of 1999, compared to only 1,000 head of cattle in all of 1998. In addition, over 225,000 tons of wheat and barley were transshipped through Canada on the rail system. Nevertheless, Canada still maintains a number of policies that restrict access of U.S. agricultural products, including grain. We pressed the government of Canada in March 1999 concerning unequal access to Canadian grain handling facilities and the Canadian Wheat Board, excessive monitoring by the Canadian Grains Commission on wheat imports, and unequal access to rail cars and rail rates. We are continuing frequent discussions with Canada on these and other related issues to provide U.S. producers improved market access for agricultural products. We hope these issues will be resolved in the near term.

Magazines: USTR continues to seek a negotiated settlement with Canada on its continued discriminatory practices against U.S. magazines. In 1997, the United States successfully challenged Canada's protectionist magazine regime in the World Trade Organization. By the WTO deadline, October 1998, Canada terminated its longstanding ban on split-run imports, eliminated the 1995 special excise tax on split-runs, and modified its discriminatory postal rates and postal subsidies for magazines. However, Canada introduced Bill C–55, which simply accomplishes the same result as the import ban and excise tax—keeping U.S. and other foreign-produced split run magazines from competing in the Canadian market. If negotiators are unsuccessful in resolving this dispute and Bill C–55 is enacted, the United States will take action of an equivalent commercial effect to protect its interests.

4. China

China remains a major focus of our bilateral trade initiatives. We are actively monitoring China's implementation of our trade agreements on intellectual property rights, textiles, and market access. Obtaining strengthened protection and enforcement of trademarks, copyrights and other intellectual property rights (IPRs), enhanced market access and national treatment for products that depend on intellectual property, such as pharmaceuticals and motion pictures, are key objectives. In addition, we are addressing issues relating to market access and investment in the telecommunications and direct marketing sectors. We will follow up on recent progress on resolving sanitary and phytosanitary (SPS) issues with China to ensure that China's government fully implements our market opening agreements, which will allow U.S. exports of meat, citrus fruit, and Pacific Northwest wheat.

While we are working bilaterally to open up particular sectors of China's market, we are also working in the multilateral context to achieve broad-ranging reform of China's trade regime through negotiations on China's accession to the WTO. Recently, we have made significant progress on the market access aspects of these negotiations, including on agriculture, services, and industrial goods. Reaching agreement on these issues as well as on application of WTO rules to China will mark an important step forward in China's overall accession process.

5. Europe

With the U.S.–EU trade and investment relationship being the largest and most complex in the world, the United States is very committed to strengthening trade relations with the EU. USTR will address problems in our trade relations both bilaterally and through the new multilateral negotiating round President Clinton has proposed. The United States hopes to make progress through the Transatlantic Economic Partnership (TEP) initiative begun last year. The TEP Action Plan calls for bilateral U.S.–EU consultations and/or negotiations in several specific issue areas: technical trade barriers, agriculture (including biotechnology and food safety), intellectual property, government procurement, services, electronic commerce, environment, labor and advancing shared values such

as transparency, environmental protection, and participation for civil society. The initiative also encompasses enhanced U.S.–EU cooperation on multilateral trade issues. USTR also is working to ensure the protection of U.S. interests as the EU expands to include Central and Eastern European nations.

Nevertheless, the United States has a number of serious concerns regarding certain EU activities related to trade. Our decision to request WTO consultations with the EU on its action affecting U.S. flight management systems (the ''avionics case'') underscores U.S. determination to challenge the EU's use of those measures which advance, in a manner inconsistent with trade rules, EU commercial interests at the expense of those of its trading partners. The United States also has serious concern with the continued lack of a transparent and timely EU approval process for foodstuffs containing genetically modified organisms (GMOs). The United States hopes to work in coming weeks and months with the European Commission and EU Member States to address this problem, but will take action if the uncertainty and arbitrariness reflected in recent EU actions in this area continue to undermine U.S. exports.

The United States also remains extremely concerned about the EU's failure to implement WTO dispute settlement rulings regarding its discriminatory bananas and beef hormones regimes. EU inaction undermines the credibility of the WTO dispute settlement mechanism and sends a disturbing message about the EU's willingness to abide by the commitments it has undertaken. In light of the five rulings in the past six years against the EU's banana import policy, most recently on April 6, the United States expects the EU to implement a WTO-consistent banana program as soon as possible. The United States also expects the EU to lift its WTO-inconsistent ban on meat produced with growth hormones by the May 13 deadline granted to the EU to comply with the WTO panel findings against its hormones policy. The United States has engaged in discussions with the European Commission regarding implementation of the EU's WTO obligations in both instances.

6. Japan

The United States attaches utmost importance to opening Japan's markets to U.S. goods and services. To this end, the Clinton Administration has consistently emphasized the need for major structural reform and deregulation to open Japan's economy to competition; monitoring and enforcing existing trade agreements covering key sectors; the negotiation of new trade agreements; and addressing concerns through regional and multilateral fora. The Administration remains determined to press Japan to take the necessary steps to dismantle the numerous trade and regulatory barriers that have sheltered the Japanese economy from foreign competition for far too long.

Insurance: The United States and Japan concluded bilateral insurance agreements in 1994 and 1996 designed to open to competition the world's second largest insurance market, with annual premium revenues of $329 billion in JFY 1997. In December 1997, Japan agreed to bind certain key commitments from these agreements under the WTO Financial Services Agreement.

The bilateral agreements have had some positive impact. For example, in September 1997 the Ministry of Finance granted the first ever license for direct marketing of risk-differentiated automobile insurance to a U.S. firm. Nevertheless, the Administration is seriously concerned that Japan has not fully implemented all of the specific deregulation actions called for under our bilateral insurance agreements, including reform of its rating organizations and timely approval of product applications. In addition, the United States is extremely concerned with the diminution of the ''third sector'' safeguards caused by increased activity on the part of Japanese insurance firms and subsidiaries in this market segment critical to U.S. insurers. Since all of the primary sector deregulation criteria had not yet been fulfilled, USTR announced on July 1, 1998, that the United States does not support the initiation of the two-and-one-half year clock regarding termination of the third sector safeguards. The Administration is prepared to utilize all of the tools at our disposal to ensure the full benefits to U.S. industry from our bilateral Insurance Agreement.

The U.S. underscored its concerns regarding both primary and third sector issues at consultations with Japan under the bilateral agreements held on April 16 in Washington. These consultations also included a constructive regulator-to-regulator exchange between representatives of the National Association of Insurance Commissioners and select state insurance commissioners, and Japan's Financial Supervisory Agency. It is essential that both governments expeditiously resolve outstanding issues. The U.S. has proposed that the next insurance talks take place in Tokyo this summer.

Autos and Auto Parts: The United States and Japan concluded an agreement in 1995 to eliminate market access barriers and significantly expand sales opportunities in the automotive sector. Although initial results in many areas were satisfactory, recent progress toward achieving the Agreement's key objectives has been disappointing. Sales in Japan of autos produced by the Big Three in North America declined 34.5 percent in 1998, after declining 20 percent in 1997. Exports of U.S.-made auto parts to Japan fell 7.5 percent in 1998, the first drop since 1991, and the continued fall off in new orders of U.S. auto parts by Japanese manufacturers suggest that this decline is likely to continue. These trends are the result of a variety of factors, including Japan's recession, which has inhibited consumer spending and business investment and weakened the yen, and continuing market access and regulatory issues.

To address these concerns, the U.S. Government presented Japan at the annual review of the Automotive Agreement in October 1998 with 11 proposals, including measures to strengthen and improve access to dealerships, the main distribution channel to Japan's automotive market. The U.S. Government also urged Japan to eliminate unnecessary regulations in the auto parts aftermarket that limit the ability of independent garages to compete for high-profit vehicle inspection and repair business. While Japan has agreed to implement some of these proposals, the U.S. Government will continue to urge Japan at all levels to take concrete steps to achieve additional progress under the Agreement. In addition, the United States will continue to monitor developments regarding Japan's new fuel economy regulations to ensure that this rulemaking process is fully transparent and that foreign vehicle manufacturers receive treatment no less favorable than that offered to domestic manufacturers, recognizing the important environmental concerns that underlie these regulations.

Flat Glass: The 1995 U.S.-Japan Flat Glass Agreement has helped American firms to a limited extent, but the basic problem remains the same: U.S. glass manufacturers still have a minuscule share of the Japanese flat glass market, despite the fact that Japanese companies and distributors readily acknowledge the competitiveness of U.S. glass. While Japan committed in the agreement to take measures to facilitate access by foreign companies to the Japanese glass

distribution system, major Japanese distributors still do not carry foreign glass in meaningful quantities. The three dominant Japanese producers continue to exert tight control of the domestic glass distribution system in many ways, including majority ownership of glass distributors, equity and financing ties, employee exchanges, and purchasing quotas. Indeed, there is evidence that their control is increasing, as they use Japan's tight credit market to impose closer financial ties on the most important glass distributors.

Japan recently agreed with the United States to examine these issues in surveys of the sector by the Japan Fair Trade Commission (JFTC) and the Ministry of International Trade and Industry. The former will be particularly important in this regard, and it is therefore imperative that the JFTC scrutinize the core problems in a thorough and credible way. Japan has also agreed to U.S. proposals to hold government-industry consultations on access to and the state of Japan's flat glass market this Spring and to allow U.S. Government representatives to attend the Japanese Government's periodic meetings with flat glass distributors to remind them of the objectives and provisions of the agreement. This progress notwithstanding, the principal impediments to genuine market access in the flat glass sector remain. The United States will continue to urge Japan to take actions to remove these barriers.

7. Korea

Korea is one of the United States' major trading partners but has been described as one of the toughest markets in the world for doing business. In response to its financial crisis, the Kim Dae Jung administration has implemented structural reforms aimed at putting the Korean economy on a more open, market-oriented basis. Resistance to key trade reforms remains, however, and many issues have arisen on Korea's compliance with its international obligations.

The Administration is focused on eliminating Korean barriers to entry and distribution of U.S. products using U.S. trade law, WTO dispute settlement procedures, negotiation and enforcement of bilateral trade agreements, and close coordination with other countries. In addition, the Administration will, through an interagency process, closely monitor Korea's implementation of its trade-related stabilization commitments.

Over the past year, the Administration has made solid progress toward opening the Korean market to U.S. goods. In October 1998, we successfully concluded a Memorandum of Understanding (MOU) with the Government of the Republic of Korea to improve market access for foreign motor vehicles. Under this MOU, Korea agreed to (1) bind in the WTO its 80 percent applied tariff rate at 8 percent; (2) lower some of its motor-vehicle-related taxes and to eliminate others; (3) adopt a self-certification system by 2002; (4) streamline its standards and certification procedures; (5) establish a new financing mechanism to make it easier to purchase motor vehicles in Korea; and (6) continue to actively and expeditiously address instances of anti-import activity and to promote actively a better understanding of free trade and open competition. This MOU was negotiated after Korea's motor vehicle trade barriers were named as a ''priority foreign country practice'' in the 1997 Super 301 report and USTR initiated a section 301 investigation of such barriers. On October 20, 1998, with the conclusion of the MOU, the USTR decided to terminate this investigation and to monitor Korea's implementation of the measures in the MOU to eliminate those barriers. The first formal review of Korea's implementation of the 1998 MOU was held on April 29 and 30, 1999. The Administration will continue to work closely with the Korean Government to ensure that the provisions in the 1998 MOU are fully and faithfully implemented in a manner that substantially increases market access for foreign motor vehicles in Korea and establishes conditions so that the Korean motor vehicle sector operates according to market principles.

In addition, the Deputy U.S. Trade Representative concluded an exchange of letters in August 1998 on the operation and sale of Hanbo Steel, and the U.S. Government initiated comprehensive discussions with Korea on broader steel issues of concern to U.S. industry. In April 1999, the Deputy U.S. Trade Representative concluded another letter exchange with the Korean Government to address issues of concern and interest to U.S. industry relating to POSCO, Hanbo, and competition in the Korean steel sector generally.

In July 1998, a WTO dispute settlement panel ruled in favor of the United States and the European Communities (EC) by finding Korea's taxes on alcoholic beverages to be discriminatory. In January 1999, the WTO Appellate Body upheld this panel decision, and the panel and Appellate Body reports were adopted on February 17, 1999. The United States and the EC have requested arbitration to determine the length of the period within which Korea will come into compliance with the reports.

Pharmaceuticals: One of the top trade expansion priorities on the U.S.-Korea trade agenda is Korea's treatment of foreign, research-based pharmaceuticals. Korea does not now provide imported drugs with national treatment with respect to listing and pricing on the Korean national health insurance reimbursement schedule, and the current reimbursement system discourages hospitals and other large end-users from buying imported drugs. Dispensers of imported products also must comply with additional administrative procedures for reimbursement. U.S. pharmaceutical producers face other market access barriers in Korea including non-science-based requirements for clinical testing. In addition, the United States has raised concerns about Korea's regime for protecting test data against unfair commercial use. Finally, lack of coordination between Korean health authorities and Korean IPR authorities allows manufacturers of patent infringing products to gain approval for the launch of their products into the Korean market to the commercial detriment of the holders of the patents.

In response to high-level bilateral consultations and a letter from the Deputy U.S. Trade Representative, the Korean Government has indicated that it is taking steps to address some of the U.S. Government's and industry's concerns about treatment of foreign pharmaceuticals. The Administration will continue its active efforts to further advance progress on our pharmaceuticals trade issues until U.S. concerns are fully and satisfactorily addressed. Specifically, the U.S. Government will engage the Korean Government on U.S.-Korea pharmaceuticals-related trade issues and a Bilateral Investment Treaty (BIT), in an out-of-cycle Special 301 review on TRIPS consistency, and in other fora.

8. Mexico

Since 1994, trade with Mexico has largely been governed by the North American Free Trade Agreement (NAFTA). Mexico is also a WTO Member. As a result, U.S. trade and investment relations with Mexico are subject to a set of comprehensive disciplines setting high standards of openness and providing for effective resolution of disputes covered by these agreements. By any measure, NAFTA has contributed to the increased trade between the United States and Mexico. During NAFTA's first five years, U.S.

merchandise exports to Mexico increased by 90 percent, with imports from Mexico increasing by 137 percent. As is to be expected from such a large trading relationship, the United States does continue to have concerns about Mexico's trade practices in some areas. The most important of these concern Mexico's enforcement of its intellectual property laws, telecommunications policy, and market access for high fructose corn syrup.

Mexico has committed to implement and enforce advanced levels of intellectual property protection and has just enacted new legislation to this effect. However, as noted in USTR's Special 301 Report issued today, piracy and counterfeiting remain major problems, with current enforcement action inadequate to deter piracy. Mexico has been added to the Special 301 Watch List.

Regarding telecommunications, the United States is concerned that ongoing regulatory processes are non-transparent and potentially ineffective. USTR's Section 1377 Report, released on March 30, expressed doubts about Mexico's implementation of its commitments under the WTO agreement with respect to international services and interconnection rates. The Mexican government has said it will review its international service and interconnection/universal service regulations in 1999. USTR will conduct an out-of-cycle examination by July 30 regarding the progress of Mexico's ongoing regulatory process, and expects that Mexico will respond favorably to the requests from all the new entrants to permit International Simple Resale (ISR) immediately. At that time USTR will take appropriate action including, if warranted, the initiation of WTO dispute settlement proceedings, to assure that new competitors in the market are treated fairly.

The United States continues to raise its concerns regarding the Mexican Government's application of antidumping measures on U.S. exports of high fructose corn syrup (HFCS). A dispute settlement panel was established by the World Trade Organization in November 1998 and hearings were held in April 1999. A decision is expected late this year. U.S. exporters are also challenging Mexico's measure under the Chapter 19 provisions of the NAFTA and last year filed a Section 301 petition with USTR, alleging that the policies and practices of the Government of Mexico are unreasonable and deny fair and equitable market opportunities for U.S. exporters. USTR accepted the petition for review on May 15, 1998.

9. Middle East

Building upon our Free Trade Agreement with Israel, the United States has inaugurated a program that aims to bolster the peace process, while advancing American interests. Starting with a framework of bilateral trade and investment consultations in the region and a newly inaugurated industrial zones program, the United Sates will help the Middle Eastern countries work toward a shared goal of increased intra-regional trade. Most recently, the USTR expanded the first Jordan-Israel Qualifying Industrial Zone, designated another, and completed a Trade and Investment Framework Agreement with Jordan.

10. Western Hemisphere

The Miami and Santiago Summits of the Americas called on us to complete work on a Free Trade Area of the Americas no later than the year 2005. This year, also in accordance with Summit directions, the United States intends to achieve concrete progress toward the FTAA in the work of our nine Negotiating Groups (market access, agriculture, services, investment, government procurement, intellectual property, anti-dumping and countervailing duties, competition policy, and dispute settlement) and through business facilitation measures. In addition, the FTAA has initiated a private sector-public sector experts group on electronic commerce to advise the ministers on how electronic commerce can benefit the countries of this hemisphere, especially in the context of the FTAA negotiations. The ministers also have established a government committee on the participation of civil society, which has solicited the views of the different sectors of society concerning the FTAA and will analyze them for the consideration by the ministers at the next FTAA ministerial in Toronto in November 1999.

At the same time, the Clinton Administration will seek approval from Congress for an expanded and improved Caribbean Basin Initiative with duty-free treatment for products currently excluded from the program. The Administration seeks to use the program to promote the adoption by beneficiary countries of sound trade and investment policy reforms that will prepare them for the obligations and responsibilities of the FTAA.

Demetrios J. Marantis,

Assistant General Counsel, Section 301 Committee.

[FR Doc. 99–11413 Filed 5–5–99; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Amtrak Reform Council; Notice of Seminar

AGENCY: Amtrak Reform Council.

ACTION: Notice seminar.

SUMMARY: As provided in Section 203 of the Amtrak Reform and Accountability Act of 1997, the Amtrak Reform Council (ARC) gives notice of a seminar on Amtrak. The seminar will deal with how and why Amtrak was established, Amtrak's current status and future plans. For comparative purposes, the program will also include international performance statistics and examples of how other countries operate and finance their intercity passenger trains. Amtrak and the U.S. Department of Transportation's Bureau of Transportation Statistics will open the seminar with a statistical profile of passenger travel in the U.S. In addition, the Council has invited speakers from the U.S. railroad industry, rail labor organizations, the World Bank, the consulting industry, and the European Bank for Reconstruction and Development.

DATES: The seminar is scheduled from 8:30 a.m. to 5:30 p.m. on Tuesday, May 18, 1999.

ADDRESSES: The seminar will be held at the Crystal Gateway Marriott in Crystal City, 1999 Jefferson Davis Highway, Alexandria, VA (703–413–5500). The seminar is open to the public on a first-come, first-serve basis. Persons in need of special arrangements should contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM–ARC, 400 Seventh Street, S.W., Washington, D.C. 20590, or by telephone at (202) 366–0591; FAX: 202–493–2061.

SUPPLEMENTARY INFORMATION: The ARC was created by the Amtrak Reform and Accountability Act of 1997 (ARAA), as an independent commission, to evaluate Amtrak's performance and to make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the ARAA requires: that the ARC monitor cost savings resulting from work rules established under new agreements between Amtrak and its labor unions; that the ARC provide an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that after two years the ARC has the authority to determine whether Amtrak can meet certain financial goals specified under

the ARAA and, if not, to notify the President and the Congress.

The ARAA provides that the ARC consist of eleven members, including the Secretary of Transportation and ten others nominated by the President or Congressional leaders. Each member is to serve a five year term.

Issued in Washington, D.C. April 29, 1999.

Thomas A. Till,

Executive Director.

[FR Doc. 99–11331 Filed 5–5–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on 7 currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before July 6, 1999.

ADDRESSES: Comments on any of these collections may be mailed or delivered to the FAA at the following address: Ms. Judith Street, Room 612, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: The FAA solicits comments on any of the current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection.

Following are short synopses of the 7 currently approved public information collection activities, which will be submitted to OMB for review and renewal:

1. 2120–0008, Certification and Operations: Air Carriers and Operations of Large Aircraft—FAR 121. The respondents are an estimated 140 air carriers and commercial operators certificated under FAR 121. The estimated total annual burden is 850,000 hours annually. Abstract: Each operation which seeks to obtain, or is in possession of an air carrier operating certificate must comply with the requirements of FAR Part 121 in order to maintain data which is used to determine if the air carrier is operating in accordance with minimum safety standards.

2. 2120–505, Indirect Air Carrier Security, 14 CFR Part 109. The respondents are an estimated 2500 indirect air carriers with security programs. The estimated total annual burden is 650 hours. Abstract: part 109 sets forth procedures to be used by indirect air carriers in carrying out their responsibilities involving the protection of persons and property against acts of criminal violence, aircraft piracy, and terrorist activities in the forwarding of package cargo by passenger aircraft.

3. 2120–0536, Security Programs for Foreign Air Carriers. The respondents are an estimated 170 foreign air carriers/governments. The estimated total annual burden is 28,000 hours. Abstract: Each foreign air carrier landing or taking off in the United States is to submit a security program for the Administrator's acceptance to ensure adequate security measures are being implemented by those foreign air carriers.

4. 2120–0587, Aviator Safety Studies. The respondents are an estimated 4000 certified pilots. The burden is an estimated total of 8000 hours. Abstract: In order to conduct effective research on the contribution of pilots to aircraft accidents, data are required on the normative distribution of various pilot attributes and their association with accident involvement.

5. 2120–0597, Application for Employment with the Federal Aviation Administration. The respondents are an estimated 75,000 people who may apply for employment with the Federal Aviation Administration. The estimated burden hours is 75,000 hours annually. Abstract: Under the provisions of Pub. L. 104–50, the FAA has been given the authority to develop and implement its own personnel system. This application will be used in our efforts to automate and centralize the application, evaluation and referral of applicants for employment.

6. 2120–0600, Training and Qualification Requirements for Check Airmen and Flight Instructors. The respondents are an estimated 3000 experienced pilots who would otherwise qualify as flight instructors or check airmen, but who are not medically eligible to hold the requisite medical certificate to perform flight instructor or check airmen functions in a simulator. The estimated annual burden is 15 hours. Abstract: This rule established separate requirements for check airmen who check only in flight simulators and flight instructors who instruct only in flight simulators. This information will be used by the FAA to determine and assure check airmen and instructors maintain the high qualification standards required to perform their safety functions.

7. 2120–0601, Financial Responsibility for Licensed Launch Activities. Respondents are an estimated 7 licensees authorized to conduct licensed launch activities. The estimated annual burden is 1800 hours. Abstract: The required information will be used to determine if licensees have complied with financial responsibility requirements, including maximum probable loss determination, as set forth in regulations and in license orders issued by the Office of the Associate Administrator for Commercial Space Transportation.

Issued in Washington, DC, on May 3, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–11395 Filed 5–5–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–01–C–00–ACY) To Impose Only and Impose and Use a Passenger Facility Charge (PFC) at Atlantic City International Airport, Atlantic City, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose only and impose and use a PFC at Atlantic City International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 7, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Dan Vornea, Project Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, N.Y. 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas Rafter, Airport Director, Atlantic City International Airport at the following address: South Jersey Transportation Authority, Civil Terminal, #106, Atlantic City International Airport, Pleasantville, N.J. 08232.

Air carriers and may submit copies of written comments previously provided to Atlantic City International Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Dan Vornea, Project Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, N.Y. 11530, (516) 227–3812. The application may be reviewed in person at this same location

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose only and to impose and use a PFC at Atlantic City International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Parts 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 22, 1999, the FAA determined that the application to impose only and to impose and use a PFC submitted by the South New Jersey Transportation Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 28, 1999.

The following is a brief overview of the application.

Application number: 99–01–C–00–ACY
Level of the proposed PFC: $3.00
Proposed charge effective date: October 1, 1999
Proposed charge expiration date: March 18, 2004
Total estimated PFC revenue: $7,224,348

Brief description of proposed projects:

—Master Plan Update/EA/Part 150 Noise Study
—Secure Area Systems
—Terminal Expansion—Phases I–VI
—Improvements Airport Access Road Phases I&II
—ARFF Vehicle
—Aircraft Fueling Access Road
—Master Plan—Environmental Impact Statement
—Purchase Snow Removal Equipment
—Aircraft De-Icing Facilities-Design
—Improvements to Airport Security Systems
—Rehabilitate Runway 13–31—Phases I&II
—Terminal Exit Road
—Baggage Conveyor
—ASR–9 Relocation
—Terminal Apron Expansion
—Taxiway H Relocation
—Snow Removal Equipment Building

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: American Air Services, Inc., Buxmont Aviation Service, Inc., Corporate Jets, Inc., Extraordinaire, Inc., Gibson Aviation Inc. (Maryland), Miller Aviation, Inc. (New York), PHH Corporation, Paughannock Aviation Corporation, Sun Air Corporation, Marc Fruchter Aviation Inc. and Modesto Executive Air Charter, Inc., filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the New York Airports District Office located at: 600 Old Country Road, Suite 446, Garden City, N.Y. 11530.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the South New Jersey Transportation Authority, Atlantic City International Airport.

Issued in Garden City, New York on April 22, 1999.

Dan Vornea,

Project Manager, NYADO, Eastern Region.

[FR Doc. 99–11392 Filed 5–5–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 99–03–C–00–BOI To Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Boise Air Terminal Airport, Submitted by the City of Boise, Idaho

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Boise Air Terminal Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 7, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW Suite 250; Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to John Anderson, A.A.E., Director, at the following address: 3201 Airport Way, Boise, Idaho, 83705.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Boise Air Terminal Airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Vargas, (425) 227–2660; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, suite 250; Renton, WA 98055–4056. The application maybe reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comments on the applicable 99–03–C–00–BOI to impose and use PFC revenue at Boise Air Terminal Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 29, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Boise, Boise Air Terminal Airport, Boise, Idaho, was substantially complete within the requirement of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 5, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: October 1, 2000
Proposed charge expiration date: August 1, 2016
Total requested for use approval: $77,135,059
Brief description of proposed project: Terminal Area Renovation and Expansion.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: ''Part 135 Air Taxi/Commercial operators who conduct operations in air commerce carrying persons for compensation or hire, except Air Taxi/Commercial operators public or private charters with a seating of 10 or more.''

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration,

Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW, Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Boise Air Terminal Airport.

Issued in Renton, Washington on April 29, 1999.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 99–11394 Filed 5–5–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on an Application to Impose a Passenger Facility Charge (PFC) at John F. Kennedy International Airport (JFK), LaGuardia Airport (LGA), and Newark International Airport (EWR), and To Use the Revenue From the PFC at JFK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Amendment to the notice requesting comments and announcing the FAA's intent to rule on a PFC application.

SUMMARY: This amendment is in response to a written request from Mr. Robert E. Cohn, Counsel for the Air Transport Association of America (ATA) to the FAA, dated April 15, 1999, requesting additional time to provide comments on the FAA's notice of intent to rule on a PFC application requesting authority to impose a PFC at JFK, LGA, and EWR and use that PFC revenue at JFK for a light rail system.

Specifically, this amendment revises the date that comments must be received by the FAA regarding the FAA's intent to rule on a PFC application. In addition, this amendment announces that meeting notes listed in the Certified Index to Record and requested in the ATA's April 15 letter to the FAA will be made a part of the **SUPLEMENTARY INFORMATION** available for public review in addition to the material previously made available.

In 64 FR 18065 (Tuesday, April 13, 1999), FR Doc. 99–9133, page 18065, on the third column under **DATES**, replace sentence ''Comments must be received on or before May 13, 1999'' with ''Comments must be received on or before June 14, 1999''.

All supplementary information is available for review at the following locations:

New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530.

or

FAA Headquarters, Passenger Facility Charge Branch Office, 800 Independence Avenue, SW, Room 619, Washington, DC 20591, (call (202) 267–3845 to arrange for access).

or

Mr. Anthony G. Cracchiolo, Director, Priority Capital Projects, Port Authority of New York and New Jersey, One World Trade Center, 63 South, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Felix, Planning and Development Branch (AEA–610), Fitzgerald Federal Building, JFK International Airport, Jamaica, NY 11430, (718) 553–3335. In addition to the above locations, the supplemental information may be reviewed in person at this same location.

Issued in Washington, DC, on May 3, 1999.

Catherine M. Lang,

Deputy Director, Office of Airport Planning and Programming.

[FR Doc. 99–11393 Filed 5–5–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 99–43]

Cancellations of Customs Brokers' Licenses

AGENCY: Customs Service, Department of the Treasury.

ACTION: Brokers' licenses cancellations.

I, the Commissioner of Customs, pursuant to section 641(f), Tariff Act of 1930, as amended (19 U.S.C. 1641(f)) and § 111.51(a) of the Customs Regulations (19 CFR 111.51(a)), hereby cancel the following Customs brokers' licenses without prejudice.

	Individual	License No.
San Francisco	C.G. Staff Companies	12817
San Francisco	Armen Cargo Services Inc	10909
New York	Mitrans Corporation	12707
Philadelphia	Sterling International Inc	12814

Dated: April 28, 1999.

Raymond W. Kelly,

Commissioner.

[FR Doc. 99–11415 Filed 5–5–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting with current and prospective tax software developers.

SUMMARY: This announcement serves as notice that the Internal Revenue Service will hold a meeting of current and prospective tax software developers to share ideas and to hold dialogue on business electronic filing issues. Updates on the IRS initiatives, Electronic Payment Options and Business Electronic Filing Services (Forms 1065, Forms 1041, Forms 1099, Excise Financial Information Retrieval System (ExFIRS), Forms 941 Family, Electronic Federal Tax Payment System (EFTPS) and IRP) will be addressed at the conference. The meeting will be held at the New Carrollton Federal Building, 5000 Ellin Road, Lanham, MD 20706, Room B1–303 (Training Center). NOTE: During the IRS E–File Software Developers conference held on March 22–23, 1999, we announced there would be a Business Software Developers conference in June 1999. Due to space limitations, we have rescheduled the conference to July 7–8, 1999. To accommodate the projected participation, we are requesting that participation be limited to one representative.

SUPPLEMENTARY INFORMATION: To register for this meeting, please call Venus Burton at 202–283–0867 (not a toll-free number). A registration packet will be mailed or emailed which must be returned by June 14, 1999. You may also access The Digital Daily (IRS website) at http://www.irs.ustreas.gov, under ''What's Hot'', to obtain registration

information. If you have any questions or issues which you would like to have addressed during the meeting, you may submit them beforehand by e-mailing to *Wanda.Wallace@m1.irs.gov* or *Beatrice.Howell@m1.irs.gov*.

DATES: The conference will be held on Wednesday, July 7, 1999 from 8:30a.m.–4:30p.m. and Thursday, July 8, 1999 from 8:30a.m.–1p.m.

ADDRESSES: Questions or concerns should be directed to Wanda Wallace or Beatrice Howell at IRS, Electronic Tax Administration, OP:ETA:O:P, Room C4261/C4263, 5000 Ellin Road, Lanham, MD 20706.

FOR FURTHER INFORMATION CONTACT: Questions or concerns will also be taken over the telephone. Call Wanda Wallace at 202–283–0264 or Beatrice Howell at 202–283–0551.

Dated: April 21, 1999.

Approved:

Carol J. Stender-Larkin,

Acting National Director, Electronic Program Operations Office, Electronic Tax Administration.

Registration Form

IRS Business Software Developers Conference, July, 7 & 8, 1999

Name/Title _____

_____

Company Name _____

_____

Address _____

_____

_____

Phone Number _____

Fax Number _____

E-mail Address _____

If driving the following information is needed to authorize parking:

Vehicle Identification Information:

Type of Vehicle: _____

Color: _____

Tags: _____

Rental Car: __Yes __No

''Do you have any questions/topics which you would like to have addressed at the conference?''

_____

_____

Please return your completed registration form(s) no later than June 14, 1999 to: Internal Revenue Service, 5000 Ellin Road, Lanham, MD 20706, ATTN: Venus Burton C4–240, Phone Number: 202–283–0867, e-mail: *Venus.Burton@m1.irs.gov*

Travel Information: The New Carrollton Federal Building (NCFB) is located midway between the Ronald Reagan National Airport (located in Alexandria, VA) and the Baltimore-Washington International (BWI) Airport. The BWI Airport is the closest and most convenient to the NCFB. It is approximately a 20–25 minute car/taxi ride with limited traffic. Rental cars are available at the airport. Also, a Super Shuttle service is available from BWI to local hotels. The fare is $19 for the first person and $5 for each additional person with the same destination. If you want to take the Super Shuttle, go to the service desk located between baggage claim areas 3 and 4 and let the representative know your destination. Super Shuttle service is available 24 hours a day. The service is provided on a demand basis which may involve a wait of up to 30 minutes. The Super Shuttle will also pick you up from your hotel or the New Carrollton Federal Building and take you to BWI. Reservations are needed for this service and may be obtained by calling 800–258–3826.

Ronald Reagan National Airport is approximately a 30–40 minute car/taxi ride to NCFB during non-peak hours of traffic. Morning and afternoon arrivals and departures take approximately one hour. Rental cars are available at the airport. Additionally, the Metro (subway) System may be used from the airport to the New Carrollton location. This process would require the changing of trains during the ride and would take approximately 45 minutes.

AMTRAK: The train stops at the New Carrollton station. Taxi's are available at the train station to take you to your hotel.

Directions via: The NCFB is easily accessible by major highways and Highways mass transit.

From Capital Beltway (I–495): Take Exit 19B (Rt. 50 West—Washington). Take Exit 5 (after the Metro Station Exit). Turn right onto Route 410. Turn right at the first light (Ellin Road). Turn left at the first traffic light onto Harkins Road.

or

Take Exit 20B onto Route 450 West. Get in left lane. Turn left at 85th Avenue (it will become Ellin Road). Turn right into Harkins Road.

From DC: Follow New York Avenue to Route 50 East, Exit 5. At Exit 5, move left once the ramp splits and turn left onto Route 410. Go to the second traffic light and turn right onto Ellin Road. Follow Ellin Road and turn left at the first traffic light onto Harkins Road.

Parking is available in the NCFB tiered parking garage if information is provided in advance. Visitors should enter at Gate C.

Mass Transit

METRO: The NCFB is adjacent to the New Carrollton Metro (Orange Line) stop. After exiting at the turnstile, bear right and then turn left (the entrance to the AMTRAK station is just in front of you and a sign points left to the New Carrollton, Route 450, side of the station). At street level, bear left and take the pedestrian walkway leading directly from the Metro Station to the front door of NCFB. Call (202) 637–7000 for schedules and additional information.

MARC: The NCFB is adjacent to the New Carrollton MARC Train Station. Service is between Baltimore and Washington. Call 1–800–325–RAIL for schedules and additional information.

Hotel Accommodations in New Carrollton area:

The following is a list of local hotels in close proximity to the New Carrollton Federal Building. For Federal employees, the per diem rate for New Carrollton is the same as the District of Columbia—$124 for lodging and $46 for M & IE.

Courtyard by Marriott New Carrollton, 8330 Corporate Drive, Landover, MD 20785, 800–321–2211 or 301–577–3373, Complimentary shuttle service is provided to Internal Revenue Service, New Carrollton Federal Building

Ramada Conference and Exhibition Center, 8500 Annapolis Road, New Carrollton, MD 20784, (800)–436–0614 or 301–459–6700, Complimentary shuttle service is provided to Internal Revenue Service, New Carrollton Federal Building

Club Hotel, Doubletree, Largo, 301–773–0700

Best Western Hotel, Capital Beltway, 301–459–1000

Days Inn, Lanham, 301–459–6600

Annapolis Residence Inn by Marriott, Annapolis, 410–573–0300

Travel from: Anyone who chooses to stay in hotels in the downtown Hotels; D.C. area should allow approximately 30–40 minutes to travel via Metro to the New Carrollton station each day.

Restaurant Availability: The New Carrollton area does not offer many choices in eating establishments. However, within a 5–20 mile radius there are many very good restaurants. Annapolis, MD is only a 25 minute drive. Additionally, the METRO is available to Washington, DC or Virginia. A list of local eateries in the New Carrollton area is available at the receptionist's desk in the NCFB Training Center.

NCFB TRAINING CENTER INFO: The conference will be held in room B1–303. Messages may be taken for you during conference hours. The message center telephone number is 202–283–6380. You can retrieve your messages from the message board in the telephone center (Room B1–105). Emergency messages will be delivered directly to the classroom. Calls should be limited to five minutes. There are also pay telephones available for your use at the cafeteria entrance.

Security Instructions: Visitors must show proper identification and be processed through the x-ray machine and metal detector before access will be allowed. Visitors should identify themselves to the guard as being on an access list for the IRS Business Software Developers Conference. Visitors will receive a temporary visitors pass which must be worn at all times when the building. A new badge will be issued each day of the conference.

Attire: Casual business attire.

[FR Doc. 99–10933 Filed 5–05–99; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register

Vol. 64, No. 87

Thursday, May 6, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Vaccine Against Gram Negative Bacteria

Correction

In notice document 99–10858, appearing on page 23284, in the issue of Friday, April 30, 1999, make the following correction:

On page 23284, in the second column, in the **AGENCY:** section, in the second line, ''Material'' should read ''Materiel''.

[FR Doc. C9–10858 Filed 5–5–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army Corps of Engineers

Draft Environmental Impact Statement for Proposed Open-Water Placement of Dredged Material at Site 104 Queen Anne's County, Maryland

Correction

In notice document 99–10859, appearing on page 23285, in the issue of Friday, April 30, 1999, make the following correction:

On page 23285, in the second column, in the **SUPPLEMENTARY INFORMATION:** section, in the first paragraph, in the 11th line, ''part'' should read ''port''.

[FR Doc. C9–10859 Filed 5–5–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF EDUCATION

[DFCA Nos.: 84.133A and 84.133B]

National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under the Disability and Rehabilitation Research Project and Centers Program for Fiscal Year (FY) 1999

Correction

In notice document 99–9618, beginning on page 18995, in the issue of Friday, April 16, 1999, make the following correction:

On page 18997, the table is corrected to read as set forth below:

APPLICATION NOTICE FOR FISCAL YEAR 1999 REHABILITATION RESEARCH AND TRAINING CENTER, CFDA NO. 84.133B–9

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
84.133B–9—Health and Wellness for Persons with Long-term Disabilities	June 3, 1999	1	$700,000	60

***Note:** The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

[FR Doc. C9–9618 Filed 5–5–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 29547]

207-Minute Extended Range Operations With Two–Engine Aircraft (ETOPS) Operation Approval Criteria

Correction

In notice document 99–10556, beginning on page 22667, in the issue of Tuesday, April 27, 1999, in the first column, in the **ADDRESSES:** section, in the 11th line''[20547]'' should read ''[29547]''.

[FR Doc. C9–10556 Filed 5–5–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Thursday
May 6, 1999

Part II

Department of the Treasury

31 CFR Part 1

Departmental Offices; Disclosure of Records: Freedom of Information Act; Proposed Rule

DEPARTMENT OF THE TREASURY

31 CFR Part 1

Departmental Offices; Disclosure of Records: Freedom of Information Act

AGENCY: Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury is revising and updating its regulations on the disclosure of records under the Freedom of Information Act (FOIA). These regulations incorporate requirements of the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104–231) with respect to records maintained in electronic formats, the timing of agency responses to FOIA requests, and other procedural matters.

DATES: Comments must be received no later than July 6, 1999.

ADDRESSES: Comments may be submitted to: Alana Johnson, Departmental Disclosure Officer, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Alana Johnson, Departmental Disclosure Officer, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Telephone: (202) 622–0930.

SUPPLEMENTARY INFORMATION: This part includes provisions for processing requests for records maintained in electronic format, and for making certain records and information available by computer telecommunications (Internet). It also includes provisions pertaining to requests for expedited processing; unusual circumstances; and multitrack processing. Numerous editorial changes have been made to provide clarity, eliminate redundancy, and reflect organizational and procedural changes to the FOIA request process at the Department of the Treasury.

The former United States Savings Bond Division is now part of the Bureau of the Public Debt. Therefore, Appendix K of Subpart A has been deleted.

The Department has determined that this document is not a significant regulatory action for purposes of E.O. 12866. Because this document incorporates new statutory requirements and clarifies the current regulations, it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. For this reason, an initial regulatory flexibility analysis under the Regulatory Flexibility Act, 5 U.S.C. 601–612, is not required.

The Paperwork Reduction Act does not apply because the rule does not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Dated April 27, 1999.

Nancy Killefer,

Assistant Secretary of the Treasury (Management) and Chief Financial Officer.

List of Subjects in 31 CFR Part 1

Freedom of information.

For the reasons set forth above, Part 1 of Title 31 of the Code of Federal Regulations is amended as follows:

PART 1—DISCLOSURE OF RECORDS

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended.

2. Part 1, Subpart A, is revised to read as follows:

Subpart A—Freedom of Information Act

Sec.
1.1 General.
1.2 Information made available.
1.3 Publication in the **Federal Register**.
1.4 Public inspection and copying.
1.5 Specific requests for other records.
1.6 Business information.
1.7 Fees for services.

Appendices To Subpart A

Appendix A—Departmental Offices
Appendix B—Internal Revenue Service
Appendix C—United States Customs Service
Appendix D—United States Secret Service
Appendix E—Bureau of Alcohol, Tobacco and Firearms
Appendix F—Bureau of Engraving and Printing
Appendix G—Financial Management Service
Appendix H—United States Mint
Appendix I—Bureau of the Public Debt
Appendix J—Office of the Comptroller of the Currency
Appendix K—Federal Law Enforcement Training Center
Appendix L—Office of Thrift Supervision

Subpart A—Freedom of Information Act

§ 1.1 General.

(a) *Purpose and scope.* This subpart contains the regulations of the Department of the Treasury implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended by the Electronic Freedom of Information Act Amendments of 1996. The regulations set forth procedures for requesting access to records maintained by the Department of the Treasury. These regulations apply to all bureaus of the Department of the Treasury. Any reference in this subpart to the Department or its officials, employees, or records shall be deemed to refer also to the bureaus or their officials, employees, or records. Persons interested in the records of a particular bureau should also consult the appendix to this subpart that pertains to that bureau. The head of each bureau is hereby authorized to substitute the officials designated and change the addresses specified in the appendix to this subpart applicable to the bureau. The bureaus of the Department of the Treasury for the purposes of this subpart are:

(1) The Departmental Offices, which include the offices of:

(i) The Secretary of the Treasury, including immediate staff;

(ii) The Deputy Secretary of the Treasury, including immediate staff;

(iii) The Chief of Staff, including immediate staff;

(iv) The Executive Secretary and all offices reporting to such official, including immediate staff;

(v) The Under Secretary of the Treasury for International Affairs and all offices reporting to such official, including immediate staff;

(vi) The Under Secretary of the Treasury for Domestic Finance and all offices reporting to such official, including immediate staff;

(vii) The Under Secretary for Enforcement and all offices reporting to such official, including immediate staff;

(viii) The Assistant Secretary of the Treasury for Financial Institutions and all offices reporting to such official, including immediate staff;

(ix) The Assistant Secretary of the Treasury for Economic Policy and all offices reporting to such official, including immediate staff;

(x) The Fiscal Assistant Secretary and all offices reporting to such official, including immediate staff;

(xi) The General Counsel and all offices reporting to such official, including immediate staff; except legal counsel to the components listed in paragraphs (a)(1)(xvii) and (a)(2) through (12) of this section;

(xii) The Inspector General and all offices reporting to such official, including immediate staff;

(xiii) The Assistant Secretary of the Treasury for International Affairs and all offices reporting to such official, including immediate staff;

(xiv) The Assistant Secretary of the Treasury for Legislative Affairs and Public Liaison and all offices reporting to such official, including immediate staff;

(xv) The Assistant Secretary of the Treasury for Management and Chief Financial Officer and all offices

reporting to such official, including immediate staff;

(xvi) The Assistant Secretary of the Treasury for Public Affairs and all offices reporting to such official, including immediate staff;

(xvii) The Assistant Secretary of the Treasury for Tax Policy and all offices reporting to such official, including immediate staff;

(xviii) The Treasurer of the United States, including immediate staff;

(xix) The Treasury Inspector General for Tax Administration and all offices reporting to such official, including immediate staff.

(2) The Bureau of Alcohol, Tobacco and Firearms.

(3) The Office of the Comptroller of the Currency.

(4) The United States Customs Service.

(5) The Bureau of Engraving and Printing.

(6) The Federal Law Enforcement Training Center.

(7) The Financial Management Service.

(8) The Internal Revenue Service.

(9) The United States Mint.

(10) The Bureau of the Public Debt.

(11) The United States Secret Service.

(12) The Office of Thrift Supervision.

For purposes of this subpart, the office of the legal counsel for the components listed in paragraphs (a)(2) through (12) of this section are to be considered a part of their respective bureaus. Any office which is now in existence or may hereafter be established, which is not specifically listed or known to be a component of any of those listed above, shall be deemed a part of the Departmental Offices for the purpose of making requests for records under these regulations.

(b) *Definitions.* As used in this subpart, the following terms shall have the following meanings:

(1) *Agency* has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(f).

(2) *Appeal* means a request for a review of an agency's determination with regard to a fee waiver, category of requester, expedited processing, or denial in whole or in part of a request for access to a record or records.

(3) *Bureau* means an entity of the Department of the Treasury that is authorized to act independently in disclosure matters.

(4) *Business information* means trade secrets or other commercial or financial information.

(5) *Business submitter* means any entity which provides business information to the Department of the Treasury or its bureaus and which has a proprietary interest in the information.

(6) *Computer software* means tools by which records are created, stored, and retrieved. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium, are not agency records. However, when data are embedded within the software and cannot be extracted without the software, the software may have to be treated as an agency record. Proprietary (or copyrighted) software is not an agency record.

(7) *Confidential commercial information* means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(8) *Duplication* refers to the process of making a copy of a record in order to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(9) *Electronic records* means those records and information which are created, stored, and retrievable by electronic means. This ordinarily does not include computer software, which is a tool by which to create, store, or retrieve electronic records.

(10) *Request* means any request for records made pursuant to 5 U.S.C. 552(a)(3).

(11) *Requester* means any person who makes a request for access to records.

(12) *Responsible official* means a disclosure officer or the head of the organizational unit having immediate custody of the records requested, or an official designated by the head of the organizational unit.

(13) *Review,* for fee purposes, refers to the process of examining records located in response to a commercial use request to determine whether any portion of any record located is permitted to be withheld. It also includes processing any records for disclosure; e.g., doing all that is necessary to excise them and otherwise prepare them for release.

(14) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within records. Searches may be done manually or by automated means.

§ 1.2 Information made available.

(a) *General.* The FOIA (5 U.S.C. 552) provides for access to information and records developed or maintained by Federal agencies. The provisions of section 552 are intended to assure the right of the public to information. Generally, this section divides agency information into three major categories and provides methods by which each category of information is to be made available to the public. The three major categories of information are as follows:

(1) Information required to be published in the **Federal Register** (see § 1.3);

(2) Information required to be made available for public inspection and copying or, in the alternative, to be published and offered for sale (see § 1.4); and

(3) Information required to be made available to any member of the public upon specific request (see § 1.5).

(b) Subject only to the exemptions and exclusions set forth in 5 U.S.C. 552(b) and (c), any person shall be afforded access to information or records in the possession of any bureau of the Department of the Treasury, subject to the regulations in this subpart and any regulations of a bureau implementing or supplementing them.

(c) *Exemptions.* (1) The disclosure requirements of 5 U.S.C. 552(a) do not apply to certain matters which are exempt under 5 U.S.C. 552(b); nor do the disclosure requirements apply to certain matters which are excluded under 5 U.S.C. 552(c).

(2) Even though an exemption described in 5 U.S.C. 552(b) may be applicable to the information or records requested, a Treasury bureau may, if not precluded by law, elect under the circumstances of that request not to apply the exemption. The fact that the exemption is not applied by a bureau in response to a particular request shall have no precedential significance in processing other requests, but is merely an indication that, in the processing of the particular request, the bureau finds no necessity for applying the exemption.

§ 1.3 Publication in the Federal Register.

(a) *Requirement.* Subject to the application of the exemptions and exclusions in 5 U.S.C. 552(b) and (c) and subject to the limitations provided in 5 U.S.C. 552(a)(1), each Treasury bureau shall, in conformance with 5 U.S.C. 552(a)(1), separately state, publish and maintain current in the **Federal Register** for the guidance of the public the following information with respect to that bureau:

(1) Descriptions of its central and field organization and the established places at which, the persons from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(2) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the bureau; and

(5) Each amendment, revision, or repeal of matters referred to in paragraphs (a)(1) through (4) of this section.

(b) *The United States Government Manual.* The functions of each bureau are summarized in the description of the Department and its bureaus in the United States Government Manual, which is issued annually by the Office of the **Federal Register**.

§ 1.4 Public inspection and copying.

(a) *In general.* Subject to the application of the exemptions and exclusions described in 5 U.S.C. 552(b) and (c), each Treasury bureau shall, in conformance with 5 U.S.C. 552(a)(2), make available for public inspection and copying, or, in the alternative, promptly publish and offer for sale the following information with respect to the bureau:

(1) Final opinions, including concurring and dissenting opinions, and orders, made in the adjudication of cases;

(2) Those statements of policy and interpretations which have been adopted by the bureau but are not published in the **Federal Register**;

(3) Its administrative staff manuals and instructions to staff that affect a member of the public;

(4) Copies of all records, regardless of form or format, which have been released to any person under 5 U.S.C. 552(a)(3), and which the bureau determines have become or are likely to become the subject of subsequent requests for substantially the same records because they are clearly of interest to the public at large. The determination that records have become or may become the subject of subsequent requests shall be made by the Responsible Official (as defined at § 1.1(b)(12)).

(5) A general index of the records referred to in paragraph (a)(4) of this section.

(b) *Information made available by computer telecommunications.* For records required to be made available for public inspection and copying pursuant to 5 U.S.C. 552(a)(2) (paragraphs (a)(1) through (4) of this section) which are created on or after November 1, 1996, no later than one year after such records are created each bureau shall make such records available on the Internet.

(c) *Deletion of identifying details.* To prevent a clearly unwarranted invasion of personal privacy, or pursuant to an exemption in 5 U.S.C. 552(b), a Treasury bureau may delete information contained in any matter described in paragraphs (a)(1) through (4) of this section before making such matters available for inspection or publishing it. The justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in 5 U.S.C. 552(b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made.

(d) *Public reading rooms.* Each bureau of the Department of the Treasury shall make available for public inspection and copying, in a reading room or otherwise, the material described in paragraphs (a)(1) through (5) of this section. Fees for duplication shall be charged in accordance with § 1.7. See the appendices to this subpart for the location of established bureau reading rooms.

(e) *Indexes.* (1) Each bureau of the Department of the Treasury shall maintain and make available for public inspection and copying current indexes identifying any material described in paragraphs (a)(1) through (3) of this section. In addition, each bureau shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplement unless the head of each bureau (or a delegate) determines by order published in the **Federal Register** that the publication would be unnecessary and impractical, in which case the bureau shall nonetheless provide copies of the index on request at a cost not to exceed the direct cost of duplication.

(2) Each bureau shall make the index referred to in paragraph (a)(5) of this section available on the Internet by December 31, 1999.

§ 1.5 Specific requests for other records.

(a) *In general.* (1) Except for records made available under 5 U.S.C. 552(a)(1) and (a)(2), but subject to the application of the exemptions and exclusions described in 5 U.S.C. 552(b) and (c), each bureau of the Department of the Treasury shall promptly make the requested records available to any person in conformance with 5 U.S.C. 552(a)(3). The request must conform in every respect with the rules and procedures of this subpart and the applicable bureau's appendix to this subpart. Any request or appeal from the initial denial of a request that does not comply with the requirements in this subpart will not be considered subject to the time constraints of paragraphs (h), (i), and (j) of this section, unless and until the request is amended to comply. Bureaus shall promptly advise the requester in what respect the request or appeal is deficient so that it may be amended and resubmitted for consideration in accordance with this subpart. If a requester does not respond within 30 days to a communication from a bureau to amend the request in order for it to be in conformance with this subpart, the request file will be considered closed. When the request conforms with the requirements of this subpart, bureaus shall make every reasonable effort to comply with the request within the time constraints. If the description of the record requested is of a type that is not maintained by the bureau, the requester shall be so advised and the request shall be returned to the requester.

(2) This subpart applies only to existing records in the possession or control of the bureau at the time of the request. Records considered to be responsive to the request are those in existence on or before the date of receipt of the request by the appropriate bureau official. Requests for the continuing production of records created after the date of the appropriate bureau official's receipt of the request shall not be honored. Bureaus shall provide the responsive record or records in the form or format requested if the record or records are readily reproducible by the bureau in that form or format. Bureaus shall make reasonable efforts to maintain their records in forms or formats that are reproducible for the purpose of disclosure. For purposes of this section, ''readily reproducible'' means, with respect to electronic format, a record or records that can be downloaded or transferred intact to a floppy disk, computer disk (CD), tape, or other electronic medium using equipment currently in use by the office

or offices processing the request. Even though some records may initially be readily reproducible, the need to segregate exempt from nonexempt records may cause the releasable material to not be readily reproducible.

(3) Requests for information classified pursuant to Executive Order 12958, ''Classified National Security Information,'' require the responsible bureau to review the information to determine whether it continues to warrant classification. Information which no longer warrants classification under the Executive Order's criteria shall be declassified and made available to the requester, unless the information is otherwise exempt from disclosure.

(b) *Form of request.* In order to be subject to the provisions of this section, the following must be satisfied.

(1) The request for records shall be made in writing, signed by the person making the request, and state that it is made pursuant to the Freedom of Information Act, 5 U.S.C. 552, or this subpart.

(2) The request shall indicate whether the requester is a commercial user, an educational institution, non-commercial scientific institution, representative of the news media, or ''other'' requester, subject to the fee provisions described in § 1.7. In order for the Department to determine the proper category for fee purposes as defined in this section, a request for records shall also state how the records released will be used. This information shall not be used to determine the releasibility of any record or records. A determination of the proper category of requester shall be based upon a review of the requester's submission and the bureau's own records. Where a bureau has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, bureaus should seek additional clarification before assigning the request to a specific category. The categories of requesters are defined as follows:

(i) *Commercial.* A commercial use request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation. The bureaus may determine from the use specified in the request that the requester is a commercial user.

(ii) *Educational institution.* This refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. This category does not include requesters wanting records for use in meeting individual academic research or study requirements.

(iii) *Non-commercial scientific institution.* This refers to an institution that is not operated on a ''commercial'' basis as that term is defined in paragraph (b)(2)(i) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(iv) *Representative of the news media.* This refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. In the case of ''freelance'' journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but bureaus may also look to the past publication record of a requester in making this determination.

(v) *''Other'' requester.* This refers to a requester who does not fall within any of the previously described categories.

(3) The request must be properly addressed to the bureau that maintains the record. The functions of each bureau are summarized in *The United States Government Manual* which is issued annually and is available from the Superintendent of Documents. Both the envelope and the request itself should be clearly marked ''Freedom of Information Act Request.'' See the appendices to this subpart for the office or officer to which requests shall be addressed for each bureau. A requester in need of guidance in defining a request or determining the proper bureau to which a request should be sent may contact Disclosure Services at 202/622–0930, or by writing to Disclosure Services, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Requesters may access the ''FOIA Home Page'' at the Department of the Treasury World Wide Web site at: http://www.ustreas.gov.

(4) The request must reasonably describe the records in accordance with paragraph (d) of this section.

(5) The request must set forth the address where the person making the request wants to be notified about whether or not the request will be granted.

(6) The request must state whether the requester wishes to inspect the records or desires to have a copy made and furnished without first inspecting them.

(7) The request must state the firm agreement of the requester to pay the fees for search, duplication, and review as may ultimately be determined in accordance with § 1.7. The agreement may state the upper limit (but not less than $25) that the requester is willing to pay for processing the request. A request that fees be waived or reduced may accompany the agreement to pay fees and shall be considered to the extent that such request is made in accordance with § 1.7(d) and provides supporting information to be measured against the fee waiver standard set forth in § 1.7(d)(1). The requester shall be notified in writing of the decision to grant or deny the fee waiver. A requester shall be asked to provide an agreement to pay fees when the request for a fee waiver or reduction is denied and the initial request for records does not include such agreement. If a requester has an outstanding balance of search, review, or duplication fees due for FOIA request processing, the requirements of this paragraph are not met until the requester has remitted the outstanding balance due.

(c) *Requests for records not in control of bureau; referrals; consultations.* (1) When a requested record is in the possession or under the control of a bureau of the Department other than the office to which the request is addressed, the request for the record shall be transferred to the appropriate bureau and the requester notified. This referral shall not be considered a denial of access within the meaning of these regulations. The bureau of the Department to which this referral is made shall treat this request as a new request addressed to it and the time limits for response set forth by paragraph (h)(1) of this section shall begin when the referral is received by the designated office or officer of the bureau.

(2) When a requested record has been created by an agency or Treasury bureau other than the Treasury bureau

possessing the record, the bureau having custody of the record shall refer the record to the originating agency or Treasury bureau for a direct response to the requester. The requester shall be informed of the referral unless otherwise instructed by the originating agency. This is not a denial of a FOIA request; thus no appeal rights accrue to the requester.

(3) When a FOIA request is received for a record created by a Treasury bureau that includes information originated by another bureau of the Department of the Treasury or another agency, the record shall be referred to the originating agency or bureau for review and recommendation on disclosure. The agency or bureau shall respond to the referring office. The Treasury bureau shall not release any such records without prior consultation with the originating bureau or agency.

(4) In certain instances and at the discretion of the Departmental Offices, requests having impact on two or more bureaus of the Department may be coordinated by the Departmental Offices.

(d) *Reasonable description of records.* The request for records must describe the records in reasonably sufficient detail to enable employees who are familiar with the subject area of the request to locate the records without placing an unreasonable burden upon the Department. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipients, and subject matter of the record. If the Department determines that the request does not reasonably describe the records sought, the requester shall be given an opportunity to provide additional information. Such opportunity may, when necessary, involve a discussion with knowledgeable Department of the Treasury personnel. The reasonable description requirement shall not be used by officers or employees of the Department of the Treasury to improperly withhold records from the public.

(e) *Requests for expedited processing.* (1) When a request for records includes a request for expedited processing, both the envelope and the request itself must be clearly marked, ''Expedited Processing Requested.''

(2) Records will be processed as soon as practicable when a requester asks for expedited processing in writing and is granted such expedited treatment by the Department. The requester must demonstrate a compelling need for expedited processing of the requested records. A compelling need is defined as follows:

(i) Failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The requester shall fully explain the circumstances warranting such an expected threat so that the Department may make a reasoned determination that a delay in obtaining the requested records could pose such a threat; or

(ii) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity. A person ''primarily engaged in disseminating information'' does not include individuals who are engaged only incidentally in the dissemination of information. The standard of ''urgency to inform'' requires that the records requested pertain to a matter of current exigency to the American public and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the American general public. The requester must adequately explain the matter or activity and why the records sought are necessary to be provided on an expedited basis.

(3) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by the requester to be true and correct to the best of his or her knowledge and belief. The statement must be in the form prescribed by 28 U.S.C. 1746, ''I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on [date].''

(4) Upon receipt by the appropriate bureau official, a request for expedited processing shall be considered and a determination as to whether to grant or deny the request for expedited processing shall be made, and the requester notified, within 10 calendar days of the date of the request. However, in no event shall the bureau have fewer than five days (excluding Saturdays, Sundays, and legal public holidays) from the date of receipt of the request for such processing. The determination to grant or deny a request for expedited processing may be made solely on the information contained in the initial letter requesting expedited treatment.

(5) Appeals of initial determinations to deny expedited processing must be made within 10 calendar days of the date of the initial letter of determination denying expedited processing. Both the envelope and the appeal itself shall be clearly marked, ''Appeal for Expedited Processing.''

(6) An appeal determination regarding expedited processing shall be made, and the requester notified, within 10 days (excluding Saturdays, Sundays, and legal public holidays) from the date of receipt of the appeal.

(f) *Date of receipt of request.* A request for records shall be considered to have been received on the date on which a complete request containing the information required by paragraph (b) of this section has been received. A determination that a request is deficient in any respect is not a denial of access, and such determinations are not subject to administrative appeal. Requests shall be stamped with the date of receipt by the office prescribed in the appropriate appendix. As soon as the date of receipt has been established, the requester shall be so informed and shall also be advised when to expect a response. The acknowledgement of receipt requirement shall not apply if a disclosure determination will be issued prior to the end of the 20-day time limit.

(g) *Search for record requested.* Department of the Treasury employees shall search to identify and locate requested records, including records stored at Federal Records Centers. Searches for records maintained in electronic form or format may require the application of codes, queries, or other minor forms of programming to retrieve the requested records. Wherever reasonable, searches shall be done by electronic means. However, searches of electronic records are not required when such searches would significantly interfere with the operation of a Treasury automated information system or would require unreasonable effort to conduct. The Department of the Treasury is not required under 5 U.S.C. 552 to tabulate or compile information for the purpose of creating a record or records that do not exist.

(h) *Initial determination.* (1) *In general.* The officers designated in the appendices to this part shall make initial determinations either to grant or to deny in whole or in part requests for records. Such officers shall respond in the approximate order of receipt of the requests, to the extent consistent with sound administrative practice. These determinations shall be made and the requester notified within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the date of receipt of the request, as determined in accordance with paragraph (f) of this section, unless the designated officer invokes an extension pursuant to paragraph (j)(1) of this section or the

requester otherwise agrees to an extension of the 20-day time limitation.

(2) *Granting of request.* If the request is granted in full or in part, and if the requester wants a copy of the records, a copy of the records shall be mailed to the requester, together with a statement of the applicable fees, either at the time of the determination or shortly thereafter.

(3) *Inspection of records.* In the case of a request for inspection, the requester shall be notified in writing of the determination, when and where the requested records may be inspected, and of the fees incurred in complying with the request. The records shall then promptly be made available for inspection at the time and place stated, in a manner that will not interfere with Department of the Treasury operations and will not exclude other persons from making inspections. The requester shall not be permitted to remove the records from the room where inspection is made. If, after making inspection, the requester desires copies of all or a portion of the requested records, copies shall be furnished upon payment of the established fees prescribed by § 1.7. Fees may be charged for search and review time as stated in § 1.7.

(4) *Denial of request.* If it is determined that the request for records should be denied in whole or in part, the requester shall be notified by mail. The letter of notification shall:

(i) State the exemptions relied on in not granting the request;

(ii) If technically feasible, indicate the amount of information deleted at the place in the record where such deletion is made (unless providing such indication would harm an interest protected by the exemption relied upon to deny such material);

(iii) Set forth the name and title or position of the responsible official;

(iv) Advise the requester of the right to administrative appeal in accordance with paragraph (i) of this section; and

(v) Specify the official or office to which such appeal shall be submitted.

(5) *No records found.* If it is determined, after a thorough search for records by the responsible official or his delegate, that no records have been found to exist, the responsible official will so notify the requester in writing. The letter of notification will advise the requester of the right to administratively appeal the Department's determination that no records exist (i.e., to challenge the adequacy of the Department's search for responsive records) in accordance with paragraph (i) of this section. The response shall specify the official or office to which the appeal shall be submitted for review.

(i) *Administrative appeal.* (1)(i) A requester may appeal a Department of the Treasury initial determination when:

(A) Access to records has been denied in whole or in part;

(B) There has been an adverse determination of the requester's category as provided in § 1.7(d)(4);

(C) A request for fee waiver or reduction has been denied;

(D) It has been determined that no responsive records exist; or

(E) A request for expedited processing has been denied.

(ii) An appeal, other than an appeal for expedited processing, must be submitted within 35 days of the date of the initial determination or the date of the letter transmitting the last records released, whichever is later, except in the case of a denial for expedited processing. An appeal of a denial for expedited processing must be made within 10 days of the date of the initial determination to deny expedited processing (see § 1.5(e)(5)). All appeals must be submitted to the official specified in the appropriate appendix to this subpart whose title and address should also have been included in the initial determination. An appeal that is improperly addressed shall be considered not to have been received by the Department until the office specified in the appropriate appendix receives the appeal.

(2) The appeal shall—

(i) Be made in writing and signed by the requester or his or her representative;

(ii) Be addressed to and mailed or hand delivered within 35 days (or within 10 days when expedited processing has been denied) of the date of the initial determination, or the date of the letter transmitting the last records released, whichever is later, to the office or officer specified in the appropriate appendix to this subpart and also in the initial determination. (See the appendices to this subpart for the address to which appeals made by mail should be addressed);

(iii) Set forth the address where the requester desires to be notified of the determination on appeal;

(iv) Specify the date of the initial request and date of the letter of initial determination, and, where possible, enclose a copy of the initial request and the initial determination being appealed.

(3)(i) Appeals shall be stamped with the date of their receipt by the office to which addressed, and shall be processed in the approximate order of their receipt. The receipt of the appeal shall be acknowledged by the office or officer specified in the appropriate appendix to this subpart and the requester advised of the date the appeal was received and the expected date of response. The decision to affirm the initial determination (in whole or in part) or to grant the request for records shall be made and notification of the determination mailed within 20 days (exclusive of Saturdays, Sundays, and legal public holidays) after the date of receipt of the appeal, unless extended pursuant to paragraph (j)(1) of this section. If it is decided that the initial determination is to be upheld (in whole or in part) the requester shall be—

(A) Notified in writing of the denial;

(B) Notified of the reasons for the denial, including the FOIA exemptions relied upon;

(C) Notified of the name and title or position of the official responsible for the determination on appeal; and

(D) Provided with a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has a principal place of business, the judicial district in which the requested records are located, or the District of Columbia in accordance with 5 U.S.C. 552(a)(4)(B).

(ii) If the initial determination is reversed on appeal, the requester shall be so notified and the request shall be processed promptly in accordance with the decision on appeal.

(4) If a determination cannot be made within the 20-day period (or within a period of extension pursuant to paragraph (j)(1) of this section), the requester may be invited to agree to a voluntary extension of the 20-day appeal period. This voluntary extension shall not constitute a waiver of the right of the requester ultimately to commence an action in a United States district court.

(j) *Time extensions; unusual circumstances.* (1) In unusual circumstances, the time limitations specified in paragraphs (h) and (i) of this section may be extended by written notice from the official charged with the duty of making the determination to the person making the request or appeal setting forth the reasons for this extension and the date on which the determination is expected to be sent. As used in this paragraph, ''unusual circumstances'' means, but only to the extent reasonably necessary to the proper processing of the particular requests:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more bureaus or components of bureaus of the Department of the Treasury having substantial subject matter interest therein.

(2) Any extension or extensions of time shall not cumulatively total more than 10 days (exclusive of Saturdays, Sundays, and legal public holidays). However, if additional time is needed to process the request, the bureau shall notify the requester and provide the requester an opportunity to limit the scope of the request or arrange for an alternative time frame for processing the request or a modified request. The requester shall retain the right to define the desired scope of the request, as long as it meets the requirements contained in this subpart.

(3) Bureaus may establish multitrack processing of requests based on the amount of work or time, or both, involved in processing requests.

(4) If more than one request is received from the same requester, or from a group of requesters acting in concert, and the Department believes that such requests constitute a single request which would otherwise satisfy the unusual circumstances specified in paragraph (j)(1) of this section, and the requests involve clearly related matters, the Department may aggregate these requests for processing purposes.

(k) *Failure to comply.* If a bureau of the Department of the Treasury fails to comply with the time limits specified in paragraph (h) or (i), or the time extensions of paragraph (j) of this section, any person making a request for records in accordance with § 1.5 shall be considered to have exhausted administrative remedies with respect to the request. Accordingly, the person making the request may initiate suit as set forth in paragraph (l) of this section.

(l) *Judicial review.* If an adverse determination is made upon appeal pursuant to paragraph (i) of this section, or if no determination is made within the time limits specified in paragraphs (h) and (i) of this section, together with any extension pursuant to paragraph (j)(1) of this section or within the time otherwise agreed to by the requester, the requester may commence an action in a United States district court in the district in which he resides, in which his principal place of business is located, in which the records are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a)(4).

(m) *Preservation of records.* Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

(n) *Processing requests that are not properly addressed.* A request that is not properly addressed as specified in the appropriate appendix to this subpart shall be forwarded to the appropriate bureau or bureaus for processing. If the recipient of the request does not know the appropriate bureau to forward it to, the request shall be forwarded to the Departmental Disclosure Officer (Disclosure Services, DO), who will determine the appropriate bureau. A request not addressed to the appropriate bureau will be considered to have been received for purposes of paragraph (f) of this section when the request has been received by the appropriate bureau office as designated in the appropriate appendix to this subpart. An improperly addressed request, when received by the appropriate bureau office, shall be acknowledged by that bureau.

§ 1.6 Business information.

(a) *In general.* Business information provided to the Department of the Treasury by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section.

(b) *Notice to business submitters.* A bureau shall provide a business submitter with prompt written notice of receipt of a request encompassing its business information whenever required in accordance with paragraph (c) of this section, and except as is provided in paragraph (g) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the business information.

(c) *When notice is required.* The bureau shall provide a business submitter with notice of receipt of a request whenever:

(1) The business submitter has in good faith designated the information as commercially or financially sensitive information, or

(2) The bureau has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(3) Notice of a request for business information falling within paragraph (c)(1) or (2) of this section shall be required for a period of not more than ten years after the date of submission unless the business submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(4) The submitter's claim of confidentiality should be supported by a statement by an authorized representative of the company providing specific justification that the information in question is in fact confidential commercial or financial information and has not been disclosed to the public.

(d) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (b) of this section, a bureau shall afford a business submitter ten days from the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays) to provide the bureau with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, shall demonstrate why the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(2) When notice is given to a submitter under this section, the requester shall be advised that such notice has been given to the submitter. The requester shall be further advised that a delay in responding to the request may be considered a denial of access to records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. However, the requester will be invited to agree to a voluntary extension of time so that the bureau may review the business submitter's objection to disclose.

(e) *Notice of intent to disclose.* A bureau shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever a bureau decides to disclose business information over the objection of a business submitter, the bureau shall forward to the business submitter a written notice which shall include:

(1) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date which is not less than ten days (exclusive of Saturdays, Sundays, and legal public holidays) after the notice of the final

decision to release the requested information has been mailed to the submitter. Except as otherwise prohibited by law, a copy of the disclosure notice shall be forwarded to the requester at the same time.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (c) of this section, the bureau shall promptly notify the business submitter.

(g) *Exception to notice requirement.* The notice requirements of this section shall not apply if:

(1) The bureau determines that the information shall not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

§ 1.7 Fees for services.

(a) *In general.* This fee schedule is applicable uniformly throughout the Department of the Treasury and pertains to requests processed under the Freedom of Information Act. Specific levels of fees are prescribed for each of the following categories of requesters. Requesters are asked to identify the applicable fee category they belong to in their initial request in accordance with § 1.5(b).

(1) *Commercial use requesters.* These requesters are assessed charges which recover the full direct costs of searching for, reviewing, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of duplication of documents. Moreover, when a request is received for disclosure that is primarily in the commercial interest of the requester, the Department is not required to consider a request for a waiver or reduction of fees based upon the assertion that disclosure would be in the public interest. The Department may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records, or no records are located.

(2) *Educational and non-commercial scientific institution requesters.* Records shall be provided to requesters in these categories for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible, requesters must show that the request is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. These categories do not include requesters who want records for use in meeting individual academic research or study requirements.

(3) *Requesters who are representatives of the news media.* Records shall be provided to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages.

(4) *All other requesters.* Requesters who do not fit any of the categories described above shall be charged fees that will recover the full direct cost of searching for and duplicating records that are responsive to the request, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. The Department may recover the cost of searching for records even if there is ultimately no disclosure of records, or no records are located. Requests from persons for records about themselves filed in the Department's systems of records shall continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for duplication, after the first 100 pages are furnished free of charge.

(b) *Fee waiver determination.* Where the initial request includes a request for reduction or waiver of fees, the responsible official shall determine whether to grant the request for reduction or waiver before processing the request and notify the requester of this decision. If the decision does not waive all fees, the responsible official shall advise the requester of the fact that fees shall be assessed and, if applicable, payment must be made in advance pursuant to § 1.7(e)(2).

(c) *When fees are not charged.* (1) No fee shall be charged for monitoring a requester's inspection of records.

(2) Fees shall be charged in accordance with the schedule contained in paragraph (g) of this section for services rendered in responding to requests for records, unless any one of the following applies:

(i) Services were performed without charge;

(ii) The cost of collecting a fee would be equal to or greater than the fee itself; or,

(iii) The fees were waived or reduced in accordance with paragraph (d) of this section.

(d) *Waiver or reduction of fees.* (1) Fees may be waived or reduced on a case-by-case basis in accordance with this paragraph by the official who determines the availability of the records, provided such waiver or reduction has been requested in writing. Fees shall be waived or reduced by this official when it is determined, based upon the submission of the requester, that a waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Fee waiver/reduction requests shall be evaluated against the fee waiver policy guidance issued by the Department of Justice on April 2, 1987.

(2) Normally no charge shall be made for providing records to state or foreign governments, international governmental organizations, or local government agencies or offices.

(3) Appeals from denials of requests for waiver or reduction of fees shall be decided in accordance with the criteria set forth in paragraph (d)(1) of this section by the official authorized to decide appeals from denials of access to records. Appeals shall be addressed in writing to the office or officer specified in the appropriate appendix to this subpart within 35 days of the denial of the initial request for waiver or reduction and shall be decided within 20 days (excluding Saturdays, Sundays, and legal public holidays).

(4) Appeals from an adverse determination of the requester's category as described in § 1.5(b)(2) and provided in § 1.5(i)(1) shall be decided by the official authorized to decide appeals from denials of access to records and shall be based upon a review of the requester's submission and the bureau's own records. Appeals shall be addressed in writing to the office or officer specified in the appropriate appendix to this subpart within 35 days of the date of the bureau's determination of the requester's category and shall be decided within 20 days (excluding Saturdays, Sundays, and legal public holidays).

(e) *Advance notice of fees.* (1) When the fees for processing the request are estimated to exceed the limit set by the requester, and that amount is less than $250, the requester shall be notified of the estimated costs. The requester must provide an agreement to pay the estimated costs; however, the requester shall also be given an opportunity to reformulate the request in an attempt to reduce fees.

(2) If the requester has failed to state a limit and the costs are estimated to exceed $250.00, the requester shall be notified of the estimated costs and must pre-pay such amount prior to the processing of the request, or provide satisfactory assurance of full payment if the requester has a history of prompt

payment of FOIA fees. The requester shall also be given an opportunity to reformulate the request in such a way as to constitute a request for responsive records at a reduced fee.

(3) When the Department or a bureau of the Department acts under paragraph (e) (1) or (2) of this section, the administrative time limits of 20 days (excluding Saturdays, Sundays, and legal public holidays) from receipt of initial requests or appeals, plus extensions of these time limits, shall begin only after fees have been paid, a written agreement to pay fees has been provided, or a request has been reformulated.

(f) *Form of payment.* (1) Payment may be made by check or money order payable to the Treasury of the United States or the relevant bureau of the Department of the Treasury.

(2) The Department of the Treasury reserves the right to request prepayment after a request is processed and before documents are released.

(3) When costs are estimated or determined to exceed $250, the Department shall either obtain satisfactory assurance of full payment of the estimated cost where the requester has a history of prompt payment of FOIA fees or require a requester to make an advance payment of the entire estimated or determined fee before continuing to process the request.

(4) If a requester has previously failed to pay a fee within 30 days of the date of the billing, the requester shall be required to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Department begins to process a new request or the pending request. Whenever interest is charged, the Department shall begin assessing interest on the 31st day following the day on which billing was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717. In addition, the Department shall take all steps authorized by the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996, including administrative offset pursuant to 31 CFR part 5, disclosure to consumer reporting agencies and use of collection agencies, to effect payment.

(g) *Amounts to be charged for specific services.* The fees for services performed by a bureau of the Department of the Treasury shall be imposed and collected as set forth in this paragraph.

(1) *Duplicating records.* All requesters, except commercial requesters, shall receive the first 100 pages duplicated without charge. Absent a determination to waive fees, a bureau shall charge requesters as follows:

(i) $.20 per page, up to 8½ x 14″, made by photocopy or similar process.

(ii) Photographs, films, and other materials—actual cost of duplication.

(iii) Other types of duplication services not mentioned above—actual cost.

(iv) Material provided to a private contractor for copying shall be charged to the requester at the actual cost charged by the private contractor.

(2) *Search services.* Bureaus shall charge for search services consistent with the following:

(i) *Searches for other than electronic records.* The Department shall charge for search time at the salary rate(s) (basic pay plus 16 percent) of the employee(s) making the search. However, where a single class of personnel is used exclusively (e.g., all administrative/clerical, or all professional/executive), an average rate for the range of grades typically involved may be established. This charge shall include transportation of personnel and records necessary to the search at actual cost. Fees may be charged for search time as prescribed in § 1.7, even if the search does not yield any responsive records, or if records are denied.

(ii) *Searches for electronic records.* The Department shall charge for actual direct cost of the search, including computer search time, runs, and the operator's salary. The fee for computer output shall be actual direct costs. For requesters in the ''all other'' category, when the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search (i.e., the operator), the charge for the computer search will begin.

(3) *Review of records.* The Department shall charge commercial use requesters for review of records at the salary rate(s) (i.e., basic pay plus 16 percent) of the employee(s) making the review. However, when a single class of personnel is used exclusively (e.g., all administrative/clerical, or all professional/executive), an average rate for the range of grades typically involved may be established. Fees may be charged for review time as prescribed in § 1.7, even if records ultimately are not disclosed.

(4) *Inspection of records.* Fees for all services provided shall be charged whether or not copies are made available to the requester for inspection.

(5) *Other services.* Other services and materials requested which are not covered by this part nor required by the FOIA are chargeable at the actual cost to the Department. This includes, but is not limited to:

(i) Certifying that records are true copies;

(ii) Sending records by special methods such as express mail, etc.

(h) *Aggregating requests.* When the Department or a bureau of the Department reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the agency shall aggregate any such requests and charge accordingly.

Appendices to Subpart A

Appendix A—Departmental Offices

1. *In general.* This appendix applies to the Departmental Offices as defined in 31 CFR 1.1(a)(1).

2. *Public reading room.* The public reading room for the Departmental Offices is the Treasury Library. The Library is located in the Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. For building security purposes, visitors are required to make an appointment by calling 202–622–0990.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the Departmental Offices will be made by the head of the organizational unit having immediate custody of the records requested or the delegate of such official. Requests for records should be addressed to: Freedom of Information Request, DO, Assistant Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

4. *Administrative appeal of initial determination to deny records.*

i. Appellate determinations under 31 CFR 1.5(i) with respect to records of the Departmental Offices will be made by the Secretary, Deputy Secretary, Under Secretary, General Counsel, Inspector General, Treasurer of the United States, or Assistant Secretary having jurisdiction over the organizational unit which has immediate custody of the records requested, or the delegate of such officer.

ii. Appellate determinations with respect to requests for expedited processing shall be made by the Deputy Assistant Secretary (Administration).

iii. Appeals should be addressed to: Freedom of Information Appeal, DO, Assistant Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

5. *Delivery of process.* Service of process will be received by the General Counsel of the Department of the Treasury or the delegate of such officer and shall be delivered to the following location:

General Counsel, Department of the Treasury, Room 3000, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Appendix B—Internal Revenue Service

1. *In general.* This appendix applies to the Internal Revenue Service. See also 26 CFR 601.702.

2. *Public reading room.* The public reading rooms for the Internal Revenue Service are maintained at the following location:

National Office

Mailing Address

Freedom of Information Reading Room, P.O. Box 795, Ben Franklin Station, Washington, DC 20044

Walk-in Address

Room 1621, 1111 Constitution Avenue, NW., Washington, D.C.

Northeast Region

Mailing Address

Freedom of Information Reading Room, P.O. Box 5138, E:QMS:D, New York, NY 10163

Walk-in Address

11th Floor, 110 W. 44th Street, New York, NY

Midstates Region

Mailing Address

Freedom of Information Reading Room, Mail Code 7000 DAL, 1100 Commerce Street, Dallas, TX 75242

Walk-in Address

10th Floor, Rm. 10B37, 1100 Commerce Street, Dallas, TX

Southeast Region

Mailing Address

401 W. Peachtree Street, NW, Stop 601D, Room 868, Atlanta, GA 30365

Walk-in Address

Same as mailing address

Western Region

Mailing Address

1301 Clay Street, Stop 800–S, Oakland, CA 94612

Walk-in Address

8th Floor, 1301 Clay Street, Oakland, CA

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the Internal Revenue Service, grant expedited processing, grant a fee waiver, or determine requester category will be made by those officials specified in 26 CFR 601.702.

4. Administrative appeal of initial determination to deny records. Appellate determinations under 31 CFR 1.5(i) with respect to records of the Internal Revenue Service will be made by the Commissioner of Internal Revenue or the delegate of such officer. Appeals made by mail should be addressed to: Freedom of Information Appeal, Commissioner of Internal Revenue Service, c/o Ben Franklin Station, P. O. Box 929, Washington, D.C. 20044.

Appeals may be delivered personally to the Assistant Chief Counsel (Disclosure Litigation) CC:EL:D, Office of the Chief Counsel, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C.

5. *Delivery of process.* Service of process shall be effected consistent with Rule 4 of the Federal Rule of Civil Procedure, and directed to the Commissioner of Internal Revenue at the following address: Commissioner, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224. Attention: CC:EL:D.

Appendix C—United States Customs Service

1. *In general.* This appendix applies to the United States Customs Service.

2. *Public reading room.* The public reading room for the United States Customs Service is maintained at the following location: United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229.

3. *Requests for records.*

a. *Headquarters*—Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records will be made by the appropriate Division Director at Customs Service Headquarters having custody of or functional jurisdiction over the subject matter of the requested records. If the request relates to records maintained in an office which is not within a division, the initial determination shall be made by the individual designated for that purpose by the Assistant Commissioner having responsibility for that office. Requests may be mailed or delivered in person to: Freedom of Information Act, Chief, Disclosure Law Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

b. *Field Offices*—Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records maintained by the Office of Investigations will be made by the Special Agent in Charge in whose office the records are maintained. Initial determinations of records maintained in Customs Ports of Entry as to whether or not to grant requests for records will be made by the Port Director of the Customs Service Port having jurisdiction over the Port of Entry in which the records are maintained. Requests may be mailed or faxed to or delivered personally to the respective Special Agents in Charge or Port Directors of the Customs Service Ports at the following locations:

Offices of Special Agents in Charge (SACS)

Atlanta—SAC

1691 Phoenix Blvd., Suite 250, Atlanta, Georgia 30349, Phone (770) 994–2230, FAX (770) 994–2262

Baltimore—SAC

40 South Gay Street, 3rd Floor, Baltimore, Maryland 21202, Phone (410) 962–2620, FAX (410) 962–3469

Boston—SAC ,

10 Causeway Street, Room 722, Boston, MA 02222–1054, Phone (617) 565–7400, FAX (617) 565–7422

Buffalo—SAC

111 West Huron Street, 416, Burralo, New York 14202, Phone (716) 551–4375, FAX (716) 551–4379

Chicago—SAC

610 South Canal Street, Room 1001, Chicago, Illinois 60607, Phone (312) 353–8450, FAX (312) 353–8455

Denver—SAC

115 Inverness Drive, East, Suite 300, Englewood, CO 80112–5131, Phone (303) 784–6480, FAX (303) 784–6490

Detroit—SAC

McNamara Federal Building, 477 Michigan Avenue, Room 350, Detroit, Michigan 48226–2568, Phone (313) 226–3166, FAX (313) 226–6282

El Paso—SAC

9400 Viscount Blvd., Suite 200, El Paso, Texas 79925, Phone (915) 540–5700, FAX (915) 540–5754

Houston—SAC

4141 N. Sam Houston Pkwy, E., Houston, Texas 77032, Phone (281) 985–0500, FAX (281) 985–0505

Los Angeles—SAC

300 South Ferry St., Room 2037, Terminal Island, CA 90731, Phone (310) 514–6231, FAX (310) 514–6280

Miami—SAC

8075 NW 53rd Street, Scranton Building, Miami, Florida 33166, Phone (305) 597–6030, FAX (305) 597–6227

New Orleans—SAC

423 Canal Street, Room 207, New Orleans, LA 70130, Phone (504) 670–2416, FAX (504) 589–2059

New York—SAC

6 World Trade Center, New York, New York 10048–0945, Phone (212) 466–2900, FAX (212) 466–2903

San Antonio—SAC

10127 Morocco, Suite 180, San Antonio, Texas 78216, Phone (210) 229–4561, FAX (210) 229–4582

San Diego—SAC

185 West ''F'' Street, Suite 600, San Diego, CA 92101, Phone (619) 557–6850, FAX (619) 557–5109

San Francisco—SAC

1700 Montgomery Street, Suite 445, San Francisco, CA 94111, Phone (415) 705–40701, FAX (415) 705–4065

San Juan—SAC

#1, La Puntilla Street, Room 110, San Juan, PR 00901, Phone (787) 729–6975, FAX (787) 729–6646

Seattle—SAC

1000–2nd Avenue, Suite 2300, Seattle, Washington, 98104, Phone (206) 553–7531, FAX (206) 553–0826

Tampa—SAC

2203 North Lois Avenue, Suite 600, Tampa, Florida 33607, Phone (813) 348–1881, FAX (813) 348–1871

Tucson—SAC

555 East River Road, Tucson, Arizona 85704, Phone (520) 670–6026, FAX (520) 670–6233

Customs Service Ports

Anchorage: 605 West Fourth Avenue Anchorage, AK 99501. Phone: (907) 271–2675; FAX: (907) 271–2684.

Minneapolis: 110 South Street Minneapolis, MN 55401. Phone: (612) 348–1690; FAX : (612) 348–1630.

Baltimore: 200 St. Paul Place Baltimore, MD 21202. Phone: (410) 962–2666; FAX: (410) 962–9335.

Mobile: 150 North Royal Street Mobile, AL 36602. Phone: (205) 441–5106; FAX: (205) 441–6061.

Blaine: 9901 Pacific Highway Blaine, WA 98230. Phone: (360) 332–5771; FAX: (360) 332–4701.

New Orleans: 423 Canal Street New Orleans, LA 70130. Phone: (504) 589–6353; FAX: (504) 589–7305.

Boston: 10 Causeway Street Boston, MA 02222–1059. Phone: (617) 565–6147; FAX: (617) 565–6137.

New York: 6 World Trade Center New York, NY 10048. Phone: (212) 466–4444; FAX: (212) 455–2097.

Buffalo: 111 West Huron Street Buffalo, NY 14202–22378. Phone: (716) 551–4373; FAX: (716) 551–5011.

New York—JFK Area: Building # 77 Jamaica, NY 11430. Phone: (718) 553–1542; FAX: (718) 553–0077.

Champlain: 35 West Service Road Rts. 1 & 9 South Champlain, NY 12919. Phone: (518) 298–8347; FAX: (518) 298–8314.

New York—NY/Newark Area: Hemisphere Center, Newark, NJ 07114. Phone: (201) 645–3760; FAX: (201) 645–6634.

Charleston: 200 East Bay Street Charleston, SC 29401. Phone: (803) 727–4296; FAX : (803) 727–4043.

Nogales: 9 North Grand Avenue Nogales, AZ 85621. Phone: (520) 287–1410; FAX: (520) 287–1421.

Charlotte: 1801–K Cross Beam Drive Charlotte, NC 28217. Phone: (704) 329–6101; FAX: (704) 329–6103.

Norfolk: 200 Granby Street Norfolk, VA 23510. Phone: (804) 441–3400; FAX: (804) 441–6630.

Charlotte/Amalie: Main Post OFC—Sugar Estate St. Thomas, VI 00801. Phone: (809) 774–2511; FAX: (809) 776–3489.

Pembina: P.O. Box 610 Pembina, ND 58271. Phone (701) 825–6201; FAX: (701) 825–6473.

Chicago: 610 South Canal Street Chicago, IL 60607. Phone: (312) 353–6100; FAX: (312) 353–2337.

Philadelphia: 2nd & Chestnut Streets Philadelphia, PA 19106. Phone: (215) 597–4605; FAX: (215) 597–2103.

Cleveland: 56 Erieview Plaza Cleveland, OH 44114. Phone: (216) 891–3804; FAX: (216) 891–3836.

Portland, Oregon: 511 NW Broadway Portland, OR 97209. Phone: (503) 326–2865; FAX: (503) 326–3511.

Dallas/Fort Worth: P.O. Box 61905 Dallas/Fort Worth Airport, TX 75261. Phone: (972) 574–2170; FAX: (972) 574-4818.

Providence: 49 Pavilion Avenue Providence, RI 02905. Phone: (401) 941–6326; FAX: (401) 941–6628.

Denver: 4735 Oakland Street Denver, CO 80239. Phone: (303) 361–0715; FAX: (303) 361–0722.

San Diego: 610 West Ash Street San Diego, CA 92188. Phone: (619) 557–6758; FAX: (619) 557–5314.

Detroit: 477 Michigan Avenue Detroit, MI 48226. Phone: (313) 226–3178; FAX: (313) 226–3179.

San Francisco: 555 Battery Avenue San Francisco, CA 94111. Phone: (415) 744–7700; FAX: (415) 744–7710.

Duluth: 515 West 1st Street Duluth, MN 55802–1390. Phone: (218) 720–5201; FAX: (218) 720–5216.

San Juan: #1 La Puntilla San Juan, PR 00901. Phone: (809) 729–6965; FAX: (809) 729–6978.

El Paso: 9400 Viscount Boulevard El Paso, TX 79925. Phone: (915) 540–5800; FAX: (915) 540–3011.

Savannah: 1 East Bay Street Savannah, GA 31401. Phone: (912) 652–4256; FAX: (912) 652–4435.

Great Falls: 300 2nd Avenue South Great Falls, MT 59403. Phone: (406) 453–7631; FAX: (406) 453–7069.

Seattle: 1000 2nd Avenue Seattle, WA 98104–1049. Phone: (206) 553–0770; FAX: (206) 553–2970.

Honolulu: 335 Merchant Street Honolulu, HI 96813. Phone: (808) 522–8060; FAX: (808) 522–8060.

St. Albans: P.O. Box 1490 St. Albans, VT 05478. Phone: (802) 524–7352; FAX: (802) 527–1338.

Houston/Galveston: 1717 East Loop Houston, TX 77029 . Phone: (713) 985–6712; FAX: (713) 985–6705.

St. Louis: 4477 Woodson Road St. Louis, MO 63134–3716. Phone: (314) 428–2662; FAX: (314) 428–2889.

Laredo/Colombia: P.O. Box 3130 Laredo, TX 78044. Phone: (210) 726–2267; FAX: (210) 726–2948.

Tacoma: 2202 Port of Tacoma Road, Tacoma, WA 98421. Phone: (206) 593–6336; FAX: (206) 593–6351.

Los Angeles: 300 South Ferry Street Terminal Island, CA 90731. Phone: (310) 514–6001; FAX: (310) 514–6769.

Tampa: 4430 East Adamo Drive Tampa, FL 33605. Phone: (813) 228–2381; FAX: (813) 225–7309.

Miami Airport: 6601 West 25th Street Miami, FL 33102–5280. Phone: (305) 869–2800; FAX: (305) 869–2822.

Washington DC: P.O. Box 17423 Washington, DC 20041. Phone: (703) 318–5900; FAX: (703) 318–6706.

Milwaukee: P.O. Box 37260 Milwaukee, WI 53237–0260. Phone: (414) 571–2860; FAX: (414) 762–0253.

c. All such requests should be conspicuously labeled on the face of the envelope, ''Freedom of Information Act Request'' or ''FOIA Request''.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) will be made by the Assistant Commissioner of Customs (Office of Regulations and Rulings), and all such appeals should be mailed, faxed (202/482–6943) or personally delivered to the United States Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. If possible, a copy of the initial letter of determination should be attached to the appeal.

5. *Delivery of process.* Service of process will be received by the Chief Counsel, United States Customs Service, 1300 Pennsylvania Avenue, NW., Washington, D.C. 20229.

Appendix D—United States Secret Service

1. *In general.* This appendix applies to the United States Secret Service.

2. *Public reading room.* The United States Secret Service will provide a room on an ad hoc basis when necessary. Contact the Disclosure Officer, Room 720, 1800 G Street, NW, Washington, DC 20223 to make appointments.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the United States Secret Service will be made by the Freedom of Information and Privacy Acts Officer, United States Secret Service. Requests may be mailed or delivered in person to: Freedom of Information Act Request, FOIA and Privacy Acts Officer, U.S. Secret Service, Room 720, 1800 G Street, NW, Washington, D.C. 20223.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the United States Secret Service will be made by the Deputy Director, United States Secret Service. Appeals should be addressed to: Freedom of Information Appeal, Deputy Director, U.S. Secret Service, Room 800, 1800 G Street, NW, Washington, D.C. 20223.

5. *Delivery of process.* Service of process will be received by the United States Secret Service Chief Counsel at the following address: Chief Counsel, U.S. Secret Service, Room 842, 1800 G Street, NW,Washington, D.C. 20223.

Appendix E—Bureau of Alcohol, Tobacco and Firearms

1. *In general.* This appendix applies to the Bureau of Alcohol, Tobacco and Firearms.

2. *Public reading room.* The Bureau of Alcohol, Tobacco and Firearms will make materials available for review on an ad hoc basis when necessary. Contact the Chief, Disclosure Division, Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the Bureau of Alcohol, Tobacco, and Firearms will be made by the Chief, Disclosure Division, Office of Assistant Director (Liaison and Public Information) or the delegate of such officer. Requests may be mailed or delivered in person to: Freedom of Information Act Request, Chief, Disclosure Division, Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the Bureau of Alcohol,

Tobacco and Firearms will be made by the Assistant Director, Liaison and Public Information, Bureau of Alcohol, Tobacco, and Firearms or the delegate of such officer.

Appeals may be mailed or delivered in person to: Freedom of Information Appeal, Assistant Director, Liaison and Public Information, Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

5. *Delivery of process.* Service of process will be received by the Director of the Bureau of Alcohol, Tobacco, and Firearms at the following location: Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, Attention: Chief Counsel.

Appendix F—Bureau of Engraving and Printing

1. *In general.* This appendix applies to the Bureau of Engraving and Printing.

2. *Public reading room.* Contact the Disclosure Officer, 14th and C Streets, SW., Washington, DC 20228, to make an appointment.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the Bureau of Engraving and Printing will be made by the Assistant to the Director. Requests may be mailed or delivered in person to: Freedom of Information Act Request, Disclosure Officer, (Assistant to the Director), Room 112–M, Bureau of Engraving and Printing, Washington, D.C. 20228.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the Bureau of Engraving and Printing will be made by the Director of the Bureau of Engraving and Printing or the delegate of the Director. Appeals may be mailed or delivered in person to: Freedom of Information Appeal, Director, Bureau of Engraving and Printing, 14th and C Streets, S.W., Room 119–M, Washington, D.C. 20228.

5. *Delivery of process.* Service of process will be received by the Chief Counsel or the delegate of such officer at the following location: Chief Counsel, Bureau of Engraving and Printing, 14th and C Streets, SW, Room 104–24 M, Washington, D.C. 20228.

Appendix G—Financial Management Service

1. *In general.* This appendix applies to the Financial Management Service.

2. *Public reading room.* The public reading room for the Financial Management Service is maintained at the following location: Library, Main Treasury Building, 1500 Pennsylvania Avenue NW, Washington, D.C. 20220. For building security purposes, visitors are required to make an appointment by calling 202/622–0990.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) whether to grant requests for records will be made by the Disclosure Officer, Financial Management Service. Requests may be mailed or delivered in person to: Freedom of Information Request, Disclosure Officer, Financial Management Service, 401 14th Street, SW., Washington, D.C. 20227.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) will be made by the Commissioner, Financial Management Service. Appeals may be mailed to: Freedom of Information Appeal (FOIA), Commissioner, Financial Management Service, 401 14th Street, SW., Washington, D.C. 20227.

Appeals may be delivered personally to the Office of the Commissioner, Financial Management Service, 401 14th Street, SW., Washington, D.C.

5. *Delivery of process.* Service of process will be received by the Commissioner, Financial Management Service, and shall be delivered to: Commissioner, Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, D.C. 20227.

Appendix H—United States Mint

1. *In general.* This appendix applies to the United States Mint.

2. *Public reading room.* The U.S. Mint will provide a room on an ad hoc basis when necessary. Contact the Freedom of Information/Privacy Act Officer, United States Mint, Judiciary Square Building, 7th floor, 633 3rd Street, N.W., Washington, D.C. 20220.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the United States Mint will be made by the Freedom of Information/Privacy Act Officer, United States Mint. Requests may be mailed or delivered in person to: Freedom of Information Act Request, Freedom of Information/Privacy Act Officer, United States Mint, Judiciary Square Building, 7th Floor, 633 3rd Street, NW, Washington, D.C. 20220.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the United States Mint will be made by the Director of the Mint. Appeals made by mail should be addressed to: Freedom of Information Appeal, Director, United States Mint, Judiciary Square Building, 7th Floor, 633 3rd Street, NW, Washington, D.C. 20220.

5. *Delivery of process.* Service of process will be received by the Director of the Mint and shall be delivered to: Chief Counsel, United States Mint, Judiciary Square Building, 7th Floor, 633 3rd Street, NW, Washington, D.C. 20220.

Appendix I—Bureau of the Public Debt

1. *In general.* This appendix applies to the Bureau of the Public Debt.

2. *Public reading room.* The public reading room for the Bureau of the Public Debt is maintained at the following location: Library, Main Treasury Building, 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220. For building security purposes, visitors are required to make an appointment by calling 202/622–0990.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records will be made by the Disclosure Officer of the Bureau of the Public Debt. Requests may be sent to: Freedom of Information Act Request, Disclosure Officer, Bureau of the Public Debt, Department of the Treasury, 999 E Street, N.W., Room 553, Washington, D.C. 20239–0001.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the Bureau of the Public Debt will be made by the Commissioner of the Public Debt. Appeals may be sent to: Freedom of Information Appeal, Commissioner of the Public Debt, Department of the Treasury, 999 E Street, NW., Room 553, Washington, D.C. 20239–0001.

5. *Delivery of process.* Service of process will be received by the Chief Counsel, Bureau of the Public Debt, or the delegate of such officer, and shall be delivered to the following location: Chief Counsel's Office, Bureau of the Public Debt, Room 503, 999 E Street, NW., Washington, D.C. 20239–0001, or Bureau of the Public Debt, Hintgen Building, Room 119, Parkersburg, WV 26106–1328.

Appendix J—Office of the Comptroller of the Currency

1. *In general.* This appendix applies to the Office of the Comptroller of the Currency.

2. *Public reading room.* The Office of the Comptroller of the Currency will make materials available through its Public Information Room at 250 E Street, SW., Washington, D.C. 20219.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the Office of the Comptroller of the Currency will be made by the Disclosure Officer or the official so designated. Requests may be mailed or delivered in person to: Freedom of Information Act Request, Disclosure Officer, Communications Division, 3rd Floor, Comptroller of the Currency, 250 E Street, SW., Washington, D.C. 20219.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the Office of the Comptroller of the Currency will be made by the Chief Counsel or delegates of such person. Appeals made by mail should be addressed to: Communications Division, Comptroller of the Currency, 250 E Street, SW., Washington, D.C. 20219.

Appeals may be delivered personally to the Communications Division, Comptroller of the Currency, 250 E Street, SW, Washington, D.C.

5. *Delivery of process.* Service of process will be received by the Director, Litigation Division, Comptroller of the Currency, and shall be delivered to such officer at the following location: Litigation Division, Comptroller of the Currency, 250 E Street, SW., Washington, D.C. 20219.

Appendix K—Federal Law Enforcement Training Center

1. *In general.* This apppendix applies to the Federal Law Enforcement Training Center.

2. *Public reading room.* The public reading room for the Federal Law Enforcement Training Center is maintained at the following location: Library, Building 262, Federal Law Enforcement Training Center, Glynco, GA 31524.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records will be made by the Chief, Management Analysis Division, Federal Law Enforcement Training Center. Requests made by mail should be addressed to: Freedom of Information Act Request, Freedom of Information Act Officer, Federal Law Enforcement Training Center, Department of the Treasury, Building 94, Glynco, GA 31524.

Requests may be delivered personally to the Management Analysis Division, Federal Law Enforcement Training Center, Building 94, Glynco, GA.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the consolidated Federal Law Enforcement Training Center will be made by the Director, Federal Law Enforcement Training Center. Appeals may be mailed to: Freedom of Information Appeal, Federal Law Enforcement Training Center, Department of the Treasury, Building 94, Glynco, GA 31524.

5. *Delivery of process.* Service of process will be received by the Legal Counsel of the Federal Law Enforcement Training Center, or his delegate, and shall be delivered to such officer at the following location: Legal Counsel, Federal Law Enforcement Training Center, Department of the Treasury, Building 94, Glynco, GA 31524.

Appendix L—Office of Thrift Supervision

1. *In general.* This appendix applies to the Office of Thrift Supervision (OTS). OTS regulatory handbooks and other publications are available for sale. Information may be obtained by calling the OTS Order Department at 301/645–6264. OTS regulatory handbooks and other publications may be purchased by forwarding a request, along with a check to: OTS Order Department, P.O. Box 753, Waldorf, MD 20604 or by calling 301/645–6264 to pay by VISA or MASTERCARD.

2. *Public reading room.* The public reading room for the Office of Thrift Supervision is maintained at the following location: 1700 G Street, NW., Washington, DC 20552.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the Office of Thrift Supervision will be made by the Director, OTS Dissemination Branch. Requests for records should be addressed to: Freedom of Information Request, Manager, Dissemination Branch, Records Management & Information Policy Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Requests for records may be delivered in person to: Public Reference Room, Office of Thrift Supervision 1700 G Street, NW., Washington, DC.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the Office of Thrift Supervision will be made by the Director, Records Management & Information Policy, Office of Thrift Supervision, or their designee. Appeals made by mail should be addressed to: Freedom of Information Appeal, Director, Records Management & Information Policy Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Appeals may be delivered in person to: Public Reference Room, Office of Thrift Supervision 1700 G Street, NW., Washington, DC.

5. *Delivery of process.* Service of process will be received by the Corporate Secretary of the Office of Thrift Supervision or their designee and shall be delivered to the following location: Corporate Secretary, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

[FR Doc. 99–11126 Filed 5–5–99; 8:45 am]

BILLING CODE 4810–25–P

federal register

Thursday
May 6, 1999

Part III

Department of Justice

Bureau of Prisons

28 CFR Part 551

Smoking/No Smoking Areas; Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 551

[BOP–1084–P]

RIN 1120–AA79

Smoking/No Smoking Areas

AGENCY: Bureau of Prisons, Justice.

ACTION: Supplemental notice of proposed rule.

SUMMARY: In this document, the Bureau of Prisons is proposing a supplemental notice of proposed rule pertaining to smoking/no smoking areas in Bureau of Prisons facilities. The supplemental notice retains the requirement to have a designated area for smoking as part of an authorized religious activity. The supplemental notice makes clear that the Warden may designate only outdoor smoking areas for general use and that these areas must be clearly identified. The supplemental notice also requires the concurrence of the Regional Director if the Warden chooses not to designate smoking areas for general use. Once this occurs, the Regional Director's concurrence is also required if the Warden later chooses to designate smoking areas for general use at the institution. The notice is intended to promote a clean air environment and to protect the health and safety of staff and inmates.

DATES: Comments due by July 6, 1999.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing a supplemental notice of its proposed rule on smoking (28 CFR part 551, subpart N). The proposed rule previously published on this subject on November 25, 1998 (63 FR 65502) eliminated indoor smoking in all institutions except when smoking is part of an authorized religious activity. The Bureau received comment from nine respondents. As part of the Bureau's response to comment, this supplemental notice of proposed rule making allows the Warden, with the Regional Director's concurrence, to choose not to designate any smoking areas for general use. Once this occurs, the Regional Director's concurrence is required if the Warden later chooses to designate smoking areas for general use at the institution.

The commenters, all current inmates except one, believe that prohibiting smoking within Bureau facilities will have little impact on reducing smoking and improving the air quality. Specifically, four commenters stressed that the current restrictions on smoking are rarely enforced. One commenter alleging that most staff are smokers believes the proposed regulations are not clear whether staff must also adhere to the ban on indoor smoking. This commenter included statements from four individuals concurring with the above-noted conclusions. In response, the Bureau notes that staff are responsible for ensuring that Bureau rules are followed. Maintaining a smoke-free environment necessarily means that staff will be bound by the restrictions. The Bureau is committed to investigate reported violations of the smoking policy whether by staff or inmates. As a further instance of the seriousness of the Bureau's commitment, the Bureau published a proposed amendment to its discipline policy which elevated violations of the smoking policy from a low category prohibited act to a moderate category prohibited act on February 25, 1999 (64 FR 9432).

As a practical alternative, three commenters support non-smoking units instead of a total prohibition against indoor smoking. The Bureau has an obligation to its employees and to the inmates in its custody to provide the safest and healthiest environment possible. That is why the Bureau is proposing that the Warden be permitted, with the Regional Director's concurrence, to choose not to designate smoking areas for general use, or in the alternative, restricting smoking to only visibly designated outdoor locations with the exception that an indoor smoking area may be designated to be used exclusively for authorized religious activities. Dividing the living units between smoking and non smoking will not eliminate the health risks associated with passive inhalation of second-hand smoke. Two commenters suggest that all tobacco products be banned and no tobacco products be sold in federal prisons. The supplemental notice will assist the Bureau in evaluating the merit of these comments. The commissary at smoke-free institutions will not offer tobacco products for purchase.

One commenter suggests installing smoke detectors in all cells. The Bureau is in compliance with fire safety codes on smoke detectors in its housing units. The Bureau does not believe additional smoke detectors are necessary because a total ban on indoor smoking simplifies enforcement.

One commenter expressed concern that tobacco use not be restricted for religious purposes. The supplemental notice includes a revision to clarify that smoking as part of an authorized religious activity is to be allowed.

One commenter addressed the lack of health services support to those wishing to quit smoking. He feels health services should offer nicotine patches and nicorette gum. The Bureau understands that quitting smoking, under the best of circumstances, is a difficult task. That is why the Bureau will offer smoking cessations programs and nicotine patches will be available at inmate expense. These programs are available through normal health care programs offered to inmates.

Four commenters are against eliminating the Warden's authority to designate indoor smoking areas that provide smokers protection from adverse weather. They also expressed concern that the proposed rule does not provide for erection of a protective environment from adverse weather. The Bureau's primary goal is to protect inmates and staff from the hazards of tobacco smoke. The proposed regulations do not preclude the Warden from making some provision to accommodate outdoor smokers in adverse weather conditions.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national

government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic, Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First St., Washington, DC 20534; telephone (202) 514–6655.

List of Subjects in 28 CFR Part 551

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 551 in subchapter C of 28 CFR, chapter V is proposed to be amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 551—MISCELLANEOUS

1. The authority citation for 28 CFR part 551 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 1512, 3621, 3622, 3624, 4001, 4005, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; Pub. L. 99–500 (sec. 209); 28 CFR 0.95–0.99; Attorney General's May 1, 1995 Guidelines for Victim and Witness Assistance.

2. Subpart N is revised to read as follows:

Subpart N—Smoking/No Smoking Areas

Sec.
551.160 Purpose and scope.
551.161 Definitions.
551.162 Designated smoking areas.

Subpart N—Smoking/No Smoking Areas

§ 551.160 Purpose and scope.

To promote a clean air environment and to protect the health and safety of staff and inmates, the Bureau of Prisons prohibits smoking in its institutions unless the Warden authorizes smoking in a designated smoking area.

§ 551.161 Definitions.

For purpose of this subpart, *smoking* is defined as carrying or inhaling a lighted cigar, cigarette, pipe, or other lighted tobacco products.

§ 551.162 Designated smoking areas.

(a) The Warden must designate a smoking area for use in instances where smoking is to be part of an authorized religious activity.

(b)(1) The Warden may designate only outdoor smoking areas for general use (that is, for smoking which is not part of an authorized religious activity). These smoking areas must be clearly identified.

(2) The Warden, with the Regional Director's concurrence, may choose not to designate smoking areas for general use. Once this occurs, the Regional Director's concurrence is required if the Warden later chooses to designate smoking areas for general use at the institution.

[FR Doc. 99–11332 Filed 5–5–99; 8:45 am]

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federal register

Thursday
May 6, 1999

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 16, 48, and 52

Federal Acquisition Regulation; Review of Award Fee Determinations (Burnside-Ott); Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 16, 48, and 52

[FAR Case 98–017]

RIN 9000–AI35

Federal Acquisition Regulation; Review of Award Fee Determinations (Burnside-Ott)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR). The amendment implements rulings of the United States Court of Appeals and the United States Court of Federal Claims. The rulings are that the Contract Disputes Act applies to all disputes arising under Government contracts unless a more specific statute provides for other remedies arising from a contract dispute.

DATES: Comments should be submitted on or before July 6, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration FAR Secretariat (MVR), Attn: Laurie Duarte 1800 F Street, NW, Room 4035, Washington, DC 20405. E-mail comments submitted over Internet should be addressed to: farcase.98–017@gsa.gov. Please cite FAR case 98–017 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph DeStefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 98–017.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the FAR to implement the rulings of the United States Court of Appeals in *Burnside-Ott Aviation Training Center* v. *Dalton, Secretary of the Navy,* 107 F.3d 854 (Fed. Cir. 1997) and of the United States Court of Federal Claims in *Rig Masters, Inc.* v. *The United States,* 1998 WL 835097 (Fed. Cl.). The rulings are that the Contract Disputes Act applies to all disputes arising under Government contracts unless a more specific statute provides for remedies arising from a contract dispute. FAR 16.405–2(a) is amended by deleting the statement that award-fee determinations are not subject to the disputes clause of the contract and inserting a statement that the determination and the methodology for determining the award fee are unilateral decisions made solely at the discretion of the Government. FAR 16.406 is amended to conform with the newly revised 16.405–2(a). FAR part 48 is amended to remove references to the Contract Disputes Act and state that certain unilateral decisions are made solely at the discretion of the Government. The clauses at 52.248–1 and 52.248–3 are amended to conform with the newly revised part 48. The clauses at 52.219–10, 52.219–26 and 52.226–1 are amended to remove exemptions to the Contract Disputes Act.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* because the rule implements court rulings relating to a statute that has been in effect since 1979. The proposed rule retains the government's unilateral decision authority in these matters. Therefore, we do not believe that the proposed rule will have an impact on small entities. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subparts also will be considered in accordance with 5 U.S.C. 601, *et seq.* (FAR Case 98–017), in correspondence

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 16, 48, and 52

Government procurement.

Dated: April 30, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR parts 16, 48, and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 16, 48, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 16—TYPES OF CONTRACTS

2. Section 16.405–2 is amended by revising the last sentence of paragraph (a) to read as follows:

16.405–2 Cost-plus-award-fee contracts.

(a) * * * This determination and the methodology for determining the award fee are unilateral decisions made solely at the discretion of the Government.

* * * * *

3. Section 16.406 is amended by revising paragraph (e)(3) to read as follows:

16.406 Contract clauses.

* * * * *

(e) * * *

(3) Expressly provides that the award amount and the award-fee determination methodology are unilateral decisions made solely at the discretion of the Government.

PART 48—VALUE ENGINEERING

4. Section 48.103 is amended by revising the introductory text of paragraph (c) to read as follows:

48.103 Processing value engineering change proposals.

* * * * *

(c) The following Government decisions are unilateral decisions made solely at the discretion of the Government:

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTACT CLAUSES

5. Section 52.219–10 is amended by revising the date of the clause and the last sentence of paragraph (b) to read as follows:

52.219–10 Incentive Subcontracting Program.

* * * * *

Incentive Subcontracting Program (Date)

* * * * *

(b) * * * Determinations under this paragraph are unilateral decisions made solely at the discretion of the Government.

* * * * *

6. Section 52.219–26 is amended by revising the date of the clause and the

last sentence of paragraph (b) to read as follows:

52.219–26 Small Disadvantaged Business Participation Program—Incentive Subcontracting.

* * * * *

Small Disadvantaged Business Participation Program—Incentive Subcontracting (Date)

* * * * *

(b) * * * Determinations under this paragraph are unilateral decisions made solely at the discretion of the Government.

* * * * *

7. Section 52.226–1 is amended by revising the date of the clause and removing the last sentence in paragraph (d).

52.226–1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.

* * * * *

Utilization of Indian Organizations and Indian-Owned Economic Enterprises (Date)

* * * * *

8. Section 52.248–1 is amended by revising the date of the clause; by revising the last sentences in paragraphs (e)(3) and (j), by revising the date of Alternate II and inserting a sentence at the end of paragraph (a) to read as follows:

52.248–1 Value Engineering.

* * * * *

Value Engineering (Date)

* * * * *

(e) * * *

(3) * * * The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

* * * * *

(j) * * * The Contracting Officer shall be the sole determiner of the amount of collateral savings.

* * * * *

Alternate II (Date) * * *

(a) * * * The decision on which rate applies is a unilateral decision made solely at the discretion of the Government.

* * * * *

9. Section 52.248–3 is amended by revising the date of the clause and the last sentences in paragraphs (e)(3) and (g) to read as follows:

52.248–3 Value Engineering—Construction.

* * * * *

Value Engineering—Construction (Date)

* * * * *

(e) * * *

(3) * * * The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

* * * * *

(g) * * * The Contracting Officer shall be the sole determiner of the amount of collateral savings.

* * * * *

[FR Doc. 99–11324 Filed 5–5–99; 8:45 am]

BILLING CODE 6820–EP–P

federal register

Thursday
May 6, 1999

Part V

Department of Agriculture

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1940 and 1944

Processing Requests for Farm Labor Housing (LH) Loans and Grants; Final Rule

Notice of Funds Availability (NOFA) for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-farm Housing; Notice

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1940 and 1944

RIN 0575–AC19

Processing Requests for Farm Labor Housing (LH) Loans and Grants

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS), formerly Rural Housing and Community Development Service (RHCDS), a successor Agency to the Farmers Home Administration (FmHA), amends its regulations for the Farm Labor Housing (LH) program. This action is taken to implement an annual competitive funding cycle for off-farm proposals that will be announced elsewhere in this **Federal Register**. The intended outcome is to improve the effectiveness and efficiency of the application process and enable the Agency to process applications in a more efficient and timely manner. This rule also implements the provision of Public Law 105–276, enacted October 21, 1998, that permits as an eligible LH borrower entity a limited partnership with a nonprofit general partner.

EFFECTIVE DATE: June 7, 1999.

FOR FURTHER INFORMATION CONTACT: Linda Armour, Senior Loan Specialist, Multi-Family Housing Processing Division, Rural Housing Service, U.S. Department of Agriculture, Room 5349—South Building, Stop 0781, 1400 Independence Avenue, SW, Washington, DC 20250–0781, telephone (202) 720–1604 (voice) or (800) 877–8339 (TDD-Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Classification

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

Paperwork Reduction Act

The information collection requirements contained in this regulation have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575-0045, in accordance with the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected section of the regulation. This rule does not impose any additional burden on the public.

The new competitive application process should increase the number of applications each year, and only those applicants selected for further processing for funding within the fiscal year will need to submit a full application. The net effect is no new information collection requirements from those approved by OMB.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) except as specifically provided, no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

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

National Performance Review

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

Programs Affected

The affected program is listed in the Catalog of Federal Domestic Assistance under Number 10.405, Farm Labor Housing Loans and Grants.

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice to 7 CFR part 3015, subpart V, this program is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. RHS has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940–J.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' It is the determination of RHS that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Background

The farm labor housing program has two authorities in Title V of the Housing Act of 1949: section 514 (42 U.S.C. 1484) for loans and section 516 (42 U.S.C. 1486) for grants. As provided by the authorizing statute, section 514 loans are subsidized to borrowers to a one percent interest rate. The program also has tenant subsidies (rental assistance, or RA) available through section 521 (42 U.S.C. 1490a). Both ''on-farm'' and ''off-farm'' housing are financed by the LH program. Occupancy in both is restricted to United States citizens or aliens legally admitted for permanent residence.

On-farm housing is financed with section 514 loans to a farmer or farm entity. Housing built is typically a single family dwelling unit, and occupancy is restricted to farmworkers or a farmworker family with at least one member of the household employed by the farm. No tenant subsidies are available.

Off-farm housing proposals, which may be financed with both section 514 loans and section 516 grants, are typically designed like conventional apartment complexes; however, occupancy is restricted to farmworker households. Rental assistance is typically available to occupants to assure unit affordability.

On October 29, 1998, the Agency published a proposed rule in the **Federal Register** (63 FR 57932) to change to an annual competitive funding cycle from the current system of accepting and processing off-farm labor housing proposals on a first-come, first-served basis. These regulation changes do not affect on-farm housing loan requests, which will continue to be accepted and processed on a first-come, first-served basis.

Discussion of Comments

Fifteen commentors responded during the comment period, three of whom submitted duplicate letters. An additional comment was received after the comment period had closed, expressing support of another commentor's letter, making a total of sixteen responses. Commentors included State agencies, farm labor housing technical assistance providers, nonprofit groups, developers, and RHS field staff. The Agency wishes to thank all respondents for their thorough and constructive comments and suggestions. We have carefully considered all comments in developing this final rule.

The comments we received are summarized and discussed below by topic.

Annual Competitive Funding Cycle

The majority of commentors agreed with the Agency's proposal to adopt an annual competitive funding cycle, with only two commentors opposing this alternative to the current first-come, first-served application process. The Agency is implementing the annual competitive funding cycle as proposed.

Two commentors, while agreeing with the annual competitive process, felt that the proposed 60-to 90-day application period was too short, and offered suggestions for ways to give applicants more time to complete and submit their loan requests. The first commentor suggested that the Agency issue the notice of funding earlier in the year, based on preliminary appropriations estimates, before funds actually become available. The notice would specify that funds were subject to the amount of the final appropriations. The second commentor suggested that the Agency accept applications and issue letters of commitment in FY 1999 for FY 2000 funds; FY 1999 funds could then be used to fund applications on hand for which the Agency has already issued an AD–622, ''Notice of Preapplication Review Action'', inviting a formal application. A third commentor on this issue offered an opposing opinion, stating that the Agency should not announce the availability of funds prior to the appropriation of funds because funding levels can vary from year to year.

The Agency feels that the funding announcement can be made as soon as there is reasonable assurance of funding levels. The funding notice will be published in the **Federal Register** as quickly as possible thereafter to allow the maximum application period.

Several commentors stated that a minimum of 90 days should be allowed for the application cycle to allow smaller or inexperienced applicants time to complete their applications. We agree that a 90-day Notice of Funds Availability (NOFA) is preferable and will make every effort to accommodate this recommendation by publishing NOFA as soon as funding levels are known. The Agency will also attempt to ensure, through outreach efforts, that potential applicants are aware of the program's annual funding cycle so that preliminary groundwork can be done prior to the Agency's funding announcement.

Three-Stage Application Process

The Agency proposed adopting a three-stage application process with a preliminary proposal stage. The majority of commentors were opposed to this and recommended retaining the current two-stage process. They noted that the preliminary stage was nearly as extensive as the Agency's current first stage (preapplication) requirements and unnecessarily complicated the process. Two commentors also noted that, if the applicant is applying for other funds to leverage with RHS funds, the information required in the Agency's current preapplication stage is generally required by the other lenders. Based on these comments, the Agency has decided to retain the current two-stage application process.

Description of Proposed Financing

Three respondents commented on the provisions of § 1944.170(a)(2)(ii), ''Description of proposed financing.'' One questioned whether the requirement that leveraged funds not exceed the cost of 100 percent LH loan financing was realistic. Based on our experience with the section 515 Rural Rental Housing program, we have found this to be a realistic requirement, with many applicants obtaining grants, deferred loans, or 1 percent loans. We have modified this provision, however, to indicate that this condition applies only if RHS Rental Assistance is being provided. Regarding the provisions for donated land, one commentor felt that the requirement that site costs cannot exceed the cost of purchasing and developing an alternative site was too inflexible, citing instances where no other site is available or the site is mandated by local conditions. The Agency agrees there may be exceptional cases; however, these will be handled on a case-by-case exception basis. A third commentor objected to the requirement that the funding dates of leveraged funds permit funding within the current funding cycle, noting that this was not appropriate for on-going operating subsidies. The same commentor also noted that, for many leveraged sources, the funds may be committed but not actually received in the funding cycle. The Agency feels there is merit to these criticisms and has modified the language for this requirement accordingly.

Environmental Review

Two commentors recommended that the Agency require Form RD 1940–20, ''Request for Environmental Information,'' at the initial application stage and consider requiring a Phase I Environmental Review at this stage. The Agency agrees that the environmental process should begin with the initial loan request. Form RD 1940–20 is required with the preapplication submission, and Agency staff will be required to conduct a site visit to establish preliminary site eligibility and to identify potential environmental concerns. In coordination with the environmental site review, Agency staff will be required to conduct a civil rights impact analysis in accordance with RD Instruction 2006-P.

Appraisal Requirements

One commentor noted that § 1944.169(a)(1) requires appraisals to be performed by RHS employees and questioned whether this precluded contract appraisals. We agree that the

Agency may wish to use contract appraisers in some instances and have changed the wording in this section to remove the reference to RHS employees.

Loan Selection Criteria

The Agency proposed awarding points in nine different loan selection categories: (1) the presence and extent of leveraged assistance; (2) units to be built in communities with a high need for farmworker housing; (3) proposals in support of an Agency initiative announced in Notice of Funds Availability (NOFA); (4) proposals with support services; (5) proposals with a minimum ten percent private agriculture producer leveraged funds; (6) projects whose occupants will derive the highest percentage of income from on-farm agriculture work; (7) proposals in market areas not previously served by LH projects; (8) seasonal, temporary, or migrant housing; and (9) for FY 1999 and FY 2000, proposals that were issued an AD–622, ''Notice of Preapplication Review Action,'' inviting a formal application, or had been reviewed and authorized by the National Office prior to October 29, 1998 (the date the proposed rule was published in the **Federal Register**). The comments on each category are discussed below:

The presence and extent of leveraged assistance, and proposals with a minimum ten percent private agriculture producer leveraged funds. The majority of commentors felt that the two criteria dealing with leveraged assistance should be combined into one, both to simplify the process and to preclude giving too much weight to leveraged assistance. In addition, commentors felt that the Agency should establish point ranges for percentages of leveraging, rather than the proposed method of comparing applications to each other. The Agency agrees with both of these suggestions and has adopted them in this rule.

High-need areas for farmworker housing. Seven commentors objected to the proposed loan score factor for projects that would be located in high need areas for farmworker housing as identified in the state Consolidated Plan or state needs assessment. It was noted that many states do not identify farmworker housing needs at all, or do not give these needs any special priority. Several commentors noted that the Agency should rely on the market analysis to determine need and demand. Because of the strong opposition by commentors, and in the absence of uniformly available data or state plans, the Agency is not adopting this factor.

Agency initiative. Five comments were received on the proposal to award zero to twenty points for an optional Agency initiative announced in NOFA. One commentor suggested that the Agency announce any initiative well in advance of NOFA and keep the same initiative for more than one year. Three commentors noted that, since applicants would not be able to plan ahead for the initiative, twenty points gave it too much weight. Another commentor objected to the range of scores, feeling that the proposal would either comply with the initiative or not. The Agency appreciates these comments and concerns and will take them into consideration in developing any Agency initiatives. In addition, we have modified the point score for this factor so that ten points will be awarded to proposals that support the Agency initiative and zero points for those that do not.

Supportive services. Commentors expressed a variety of opinions on the proposal to award five points for one supportive service and ten points for two or more. One commentor supported this factor as proposed, while two others felt the Agency needed to better define supportive services and should differentiate between simple and more complex services. One suggested using a range of points for each service based on the financial investment or value. One commentor noted that a services package should be required of all multi-family housing and updated every few years. Another commented that services should not be required on-site if they are available in close proximity to the housing and the service providers have committed that the services are available, accessible, and affordable to farmworkers and their families. Still another commentor suggested a change in regulations to make the provision of services an eligible operating expense. Although the suggestions varied, all commentors agreed that a supportive services package is critical to the successful operation of multi-family housing. Based on this and the lack of consensus on a fair way to distinguish between services in awarding points, the Agency has decided not to use this as a loan scoring factor but, instead, will require a supportive services plan as part of the application. Services may be provided on-site or through cooperative agreements with service providers in the community. At the initial application stage, letters of intent from service providers will be acceptable documentation.

Highest percentage of income from on-farm agricultural work. Five respondents commented on this factor. All five objected to its inclusion in the loan selection criteria, pointing out the difficulty in projecting future occupancy and the lack of reliable data. One of the commentors further noted that this factor is more appropriate as a preliminary eligibility assessment. The Agency feels these are valid criticisms and, therefore, has not adopted this factor in the final rule.

Market areas not previously served by LH projects. We received two comments on this loan scoring factor. Both recommended that the Agency modify this category to reflect the degree of need for farmworker housing in the market area based on the number of farmworker households and available housing units. We considered this suggestion but decided against adopting it because of the difficulty in obtaining accurate data on farmworker housing needs. We agree, however, that housing should go to areas of greatest need based on the market analysis, which may or may not have existing LH units. Therefore, we have not adopted this factor in the final rule.

Seasonal, temporary, or migrant housing. The proposed rule provided that five points would be awarded for proposals with up to 50 percent of its units serving seasonal, temporary, or migrant farmworkers, and ten points for 51 percent or more. Three commentors felt that more weight should be given to this factor, with one noting that this factor should be on a par with leveraged assistance to help accomplish a balanced program. Two of these commentors suggested a point range of zero to twenty points, based on the percentage of units serving seasonal, temporary, or migrant farmworkers. As mentioned above (under the heading ''The presence and extent of leveraged assistance and proposals with a minimum 10 percent private agriculture producer leveraged funds''), the two proposed leveraging factors have been combined into one, reducing the maximum points for leveraging from forty to twenty. Few applications will receive the maximum twenty points, so we do not believe leveraging will arbitrarily outweigh other factors. With limited program funds, we have attempted to balance the need for leveraging with other Agency objectives. Therefore, we have retained the points for seasonal, temporary, or migrant housing as proposed.

Loan requests that have been issued an AD–622. The proposed rule provided that, for Fiscal Years 1999 and 2000, ten points would be awarded to applications or loan requests that had been issued an AD–622, ''Notice of Preapplication Review Action,'' inviting a formal application, or had been authorized by the National Office prior

to October 29, 1998 (the date the proposed rule was published). Five respondents commented on this issue. Two agreed with this provision, with one stressing support for the two-year limitation. One commentor disagreed with this provision, stating that each proposal should compete on its own merits. Another commentor felt that proposals with an AD–622 should not have to compete with other proposals, since they were developed under the previous regulations. The fifth commentor suggested funding only those proposals with AD–622s in fiscal year 1999 and implementing the new process in fiscal year 2000.

Commentors were divided on this issue and, after considering the comments and arguments on both sides, the Agency has decided to implement this measure as proposed, i.e., to give preference to loan requests that were issued an AD–622 or authorized by the National Office by awarding points for two funding cycles. However, to address the concerns of commentors who felt AD–622s should be given more consideration, we have increased the number of points from ten to fifteen.

Other Suggested Loan Selection Criteria

Several commentors suggested other loan selection criteria for the Agency's consideration. Two commentors suggested project readiness and development team experience; others suggested cost effectiveness and construction quality. The Agency considered these and similar criteria in drafting the proposed rule; however, we found it impossible to develop standards for factors that require subjective judgments, such as an assessment of quality or experience. In addition, we were concerned that the readiness to proceed factor could result in delays or obstacles by communities that oppose the development of farm labor housing. Therefore, we have not adopted these suggestions.

Point-score Ties

The proposed rule provided that, in case of point-score ties for requests from the same State, the proposal with the most supportive services would be given priority, with further same-State ties determined by lottery. One commentor objected to these tie breakers, proposing instead that, with limited funds and the emphasis on leveraging, primary priority be given to requests that are the most cost effective and have the most leveraged assistance, with secondary priority to requests with the greatest market need for LH units. The same commentor felt the regulation should also address point-score ties between requests from different States. With regard to the ''most supportive services'', we are not adopting this loan scoring factor in the final rule, so it is no longer appropriate as a tie breaker (see discussion above under ''Loan Selection Criteria''). With regard to the suggested tie breakers, we believe it would be difficult to obtain reliable and objective data to establish ''most cost effective'' and ''greatest market need''. We agree, however, that there is merit to using the actual percentage of leveraged assistance as a tie-breaker. In addition, the Agency believes there is merit to giving a preference to applications to develop units in states that have no existing RHS-financed off-farm LH units. Therefore, the actual percentage of leveraged assistance will be used as a tie-breaker for point-score ties within the State; in the case of point-score ties in the National ranking, preference will be given to applications in States that have no existing RHS-financed off-farm LH units. In the event of further point-score ties at the National level, preference will be given to States that have not been selected in the current cycle.

Geographic Diversity

The proposed rule provided that the Agency could select a lower scoring loan request over one with a higher score in order to achieve geographic diversity. Five commentors strongly objected to this provision, stating that it undermined the objectivity of the point system. We agree that the selection process should be fair and objective and, therefore, we have not adopted this provision in the final rule.

Statutory Amendments

Public Law 105–276, enacted October 21, 1998, included two amendments to the Farm Labor Housing (LH) program. The first extends eligibility for low-income housing tax credit financing to the LH program by adding as eligible borrowers for section 514 loans ''any nonprofit limited partnership in which the general partner is a nonprofit entity''. This wording is interpreted by the Agency to mean ''any limited partnership in which the general partner is a nonprofit entity.'' We have included this provision in the final rule and will interpret ''nonprofit limited partnership'' to mean ''any limited partnership in which the general partner is a nonprofit entity.'' This will be consistent with the wording found in section 515(w) (42 U.S.C. 1485(w)). The second LH legislative amendment provides that rental assistance payments may be used for project operating costs in housing for migrant farmworkers financed under section 514 or section 516. This provision is not included in this rule because of the need to make changes to the Agency's project management regulations and automated systems but will be included in the Agency's reinvented regulation, which is scheduled to be published as a proposed rule in fall of 1999.

Implementation Proposal

Under the annual competitive system that is being implemented with this rule, the amount of available funds and application deadlines will be announced each funding cycle in the **Federal Register** through a NOFA. Loan requests received by the application deadline will be reviewed and selected based on objective criteria in accordance with the revised regulations. Loan requests not selected for funding will be returned to the applicant.

Applications on hand are subject to the new competitive process. In fiscal years 1999 and 2000, points will be awarded to applications on hand that were issued an AD–622 inviting a formal application or that had been reviewed and authorized by the National Office as of October 29, 1998 (the publication date of the proposed rule). A new proposal that ranks higher under the selection criteria than an existing application will take priority over the existing one.

Agency staff were directed by the proposed rule to return proposals on hand that had not been issued an AD–622 or reviewed and authorized by the National Office as of October 29, 1998 (the publication date of the proposed rule). Loan requests thus returned may, of course, be submitted for consideration during the application period announced in NOFA.

List of Subjects

7 CFR Part 1940

Administrative practice and procedure, Agriculture, Grant programs—housing and community development, Loan programs—agriculture, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1944

Grant programs—housing and community development, Loan programs—housing and community development, Migrant labor, Nonprofit organizations, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended to read as follows:

PART 1940—GENERAL

1. The authority citation for part 1940 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

2. Revise section 1940.579 to read as follows:

§ 1940.579 Multiple Family Housing appropriations not allocated by State.

Funds are not allocated to States. The following program funds are kept in a National Office reserve and are available as determined administratively:

(a) Section 514 Farm Labor Housing Loans.

(b) Section 516 Farm Labor Housing Grants.

PART 1944—HOUSING

3. The authority citation for part 1944 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

4. Amend section 1944.153 in the definition of ''Domestic farm laborer'' by revising the words ''FmHA or its successor agency under Public Law 103–354'' to read ''Rural Housing Service''; in the definition of ''Farm owner'' by revising the words ''subpart A of part 1944 of this chapter'' to read ''this section''; in the definition of ''Self-employed'' by revising the words ''FmHA or its successor agency under Public Law 103–354'' to read ''Rural Housing Service'' and the words ''District or State Director'' to read ''Loan Official or State Director''; and by adding in alphabetical order definitions to read as follows:

§ 1944.153 Definitions.

Agency. The Rural Housing Service, an agency of the U.S. Department of Agriculture which administers section 514 loans and section 516 grants.

* * * * *

Farm. A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

* * * * *

HUD. The U.S. Department of Housing and Urban Development.

* * * * *

LH. Farm Labor Housing.

* * * * *

MFH. Multi-Family Housing.

* * * * *

NOFA. Notice of Funds Availability.

* * * * *

Off-Farm Labor Housing. Housing for farm laborers regardless of the farm where they work.

On-Farm Labor Housing. Housing for farm laborers specific to the farm where they work.

* * * * *

RHS. Rural Housing Service.

* * * * *

5. Amend section 1944.157 to revise paragraphs (a)(1) and (a)(3) to read as follows:

§ 1944.157 Eligibility requirements.

(a) * * *

(1) Be a farmowner, family farm partnership, family farm corporation, or an association of farmers whose farming operations demonstrate a need for farm labor housing, or an organization, as these terms are defined in § 1944.153, which will own the housing and operate it on a nonprofit basis; or a nonprofit limited partnership in which the general partner is a nonprofit entity.

* * * * *

(3) Provide from its own resources the borrower contribution required by § 1944.160 and have sufficient initial operating capital to pay costs such as property and liability insurance premiums, fidelity bond premiums if required, utility hookup deposits, maintenance equipment, movable furnishings and equipment, printing lease forms, and other initial expenses. LH loans made to nonprofit organizations and to State or local public agencies or political subdivisions thereof may include up to 2 percent of the development cost for initial operating expenses.

* * * * *

6. Add section 1944.160 to read as follows:

§ 1944.160 Off-farm loan limits.

(a) For all applicants, including its members, who will be receiving any benefits from Low-Income Housing Tax Credits (LIHTC), the amount of the RHS loan will be limited to no more than 95 percent of the total development cost or 95 percent of the security value, whichever is less.

(b) For all applicants, including its members, not receiving any benefits from LIHTC, who are nonprofit entities or State or local public agencies, the amount of the RHS loan will be limited to the total development cost or the security value, whichever is less, plus the 2 percent initial operating capital.

(c) For all other applicants, including its members, not receiving any benefits from LIHTC, the amount of the RHS loan will be limited to no more than 97 percent of the development cost or the security value, whichever is less.

7. Amend section 1944.164 in the introductory text of paragraph (d) in the first sentence to revise the words ''District Director'' to read ''Loan Official'' and the words ''FmHA or its successor agency under Public Law 103–354'' to read ''RHS''; in paragraph (d)(1)(i) by revising the words ''FmHA or its successor agency under Public Law 103–354'' to read ''RHS''; and to revise paragraph (b) to read as follows:

§ 1944.164 Limitations and conditions.

* * * * *

(b) *Maximum amount of grant*. The amount of any grant may not exceed the lesser of:

(1) Ninety percent of the total development cost; or

(2) That portion of the total cash development cost which exceeds the sum of any amount the applicant can provide from its own resources plus the amount of a loan which the applicant will be able to repay, with interest, from income from rentals which low-income farmworker families can be reasonably expected to be able to pay. The availability of rental assistance and HUD section 8 subsidies will be considered in determining the rentals that farmworkers will pay.

* * * * *

8. Amend section 1944.169 to revise paragraph (a)(1) to read as follows:

§ 1944.169 Technical, legal, and other services.

(a) * * *

(1) An appraisal is required when real estate is taken as security. The appraisal must be made in accordance with the Uniform Standards of Professional Appraisal Practices (available in any Rural Development office).

* * * * *

9. Amend section 1944.170 to redesignate paragraph (c) as paragraph (f); in newly redesignated paragraph (f)(5)(i) to revise the reference ''§ 1944.164(b)(2)'' to read ''§ 1944.164(b)'', in newly redesignated paragraph (f)(5)(ii)(B) to revise the words ''an LH loan'' to read ''a LH loan''; in newly redesignated paragraph

(f)(5)(ii)(C) to revise the reference ''paragraph (c)(5)(ii)(A)'' to read ''paragraph (f)(5)(ii)(A)''; to remove newly redesignated paragraph (f)(7); to revise the section heading, the introductory text, and paragraphs (a) and (b); and to add new paragraphs (c) through (e) to read as follows:

§ 1944.170 Preapplication requirements and processing.

A two-stage application process is used. In stage one, applicants submit a preapplication, which is used to determine preliminary eligibility and feasibility. Preapplications selected for further processing will be invited to submit an application. The preapplication consists of SF–424.2, ''Application for Federal Assistance (For Construction)'' and the information listed in exhibit A–1 or A–2 of this subpart, as applicable. Preapplications for off-farm new construction loans and grants will be accepted and processed in accordance with this section when NOFA is announced in the **Federal Register**. Applicants are advised to read the notice carefully for any restrictions on loan or grant amounts. Preapplications for repair and rehabilitation of existing off-farm LH units and new units of on-farm housing may be submitted any time during the year and will be processed on a first-come, first-served basis in accordance with subpart L of part 1940 of this chapter.

(a) *Preapplications for new units in off-farm facilities.* (1) The Agency will publish NOFA annually in the **Federal Register** with deadlines for submitting preapplications. The notice will include the amount of funds available, any limit on the amount of individual loan and grant requests, any limit on the amount of funds that any one State may receive, and the loan scoring criteria.

(2) The preapplication must be submitted in accordance with NOFA and consists of SF–424.2, ''Application for Federal Assistance (For Construction)'', and the information required by exhibit A–1 of this subpart. The preapplication will be used by the Agency to determine preliminary eligibility and to score and rank proposals.

(b) *Preliminary eligibility assessment of preapplications received in response to NOFA.* The Agency will make a preliminary eligibility assessment using the following criteria:

(1) The preapplication was received by the submission deadline specified in NOFA;

(2) The preapplication is complete as specified in NOFA;

(3) The applicant is an eligible entity and is not currently debarred, suspended, or delinquent on any Federal debt; and

(4) The proposal is for authorized purposes.

(c) *Scoring and ranking off-farm preapplications.* The Agency will score and rank off-farm preapplications for new units that meet the criteria of paragraph (b) of this section.

(1) The following criteria will be used to score project proposals:

(i) The presence and extent of leveraged assistance, including donated land, for the units that will serve program-eligible tenants, calculated as a percentage of the RHS total development cost (TDC). RHS TDC excludes non-RHS eligible costs such as a developer's fee. Leveraged assistance includes, but is not limited to, funds for hard construction costs, Section 8 or other non-RHS tenant subsidies, and state or federal funds. A minimum of ten percent leveraged assistance is required to earn points. (0 to 20 points)

(A) To count as leveraged funds for purpose of the selection criteria:

(*1*) A commitment of funds must be received within a timeframe that permits processing of the loan request within the current funding cycle (the latest commitment date for leveraged funds will be announced in NOFA); and

(*2*) If RHS RA is being provided, the interest cost to the project using leveraged loan funds may not exceed the cost of 100 percent LH loan financing.

(B) For donated land to be scored as leveraged assistance, all of the following conditions must be met.

(*1*) Based on a preliminary review, the land is suitable and meets Agency requirements. Final site acceptance is subject to a completed environmental review.

(*2*) Site development costs do not exceed what they would be to purchase and develop an alternative site.

(*3*) The overall cost of the project is reduced by the donation of the land.

(C) Points for leveraged assistance will be awarded in accordance with the following table. Percentages will be rounded to the nearest whole number, rounding up at .50 and above and down at .49 and below. For example, 25.50 becomes 26; 25.49 becomes 25. If the total percentage of leveraged assistance is less than ten percent, and it includes donated land, two points will be awarded for the donated land.

Percentage	Points
75 or more	20
60–74	18
50–59	16
40–49	12
30–39	10
20–29	8
10–19	5
0–9	0
Donated land in proposals with less than ten percent total leveraged assistance	2

(ii) The loan request is in support of an Agency initiative announced in NOFA. (10 points)

(iii) Seasonal, temporary, or migrant housing. (5 points for up to and including 50 percent of the units; 10 points for 51 percent or more)

(iv) For Fiscal Year 1999 and Fiscal Year 2000 funding cycles, outstanding applications or requests that were issued an AD–622, ''Notice of Preapplication Review Action,'' inviting a formal application, or had been reviewed and authorized by the National Office prior to October 29, 1998. (15 points)

(2) The Agency will rank preapplications by point score. For point-score ties within the State, rank order will be determined by giving first preference to the application with the greatest actual percentage of leveraged assistance. In case of further same-State ties, rank order will be determined by lottery.

(d) *Selection of preapplications for further processing.* (1) States will make a preliminary eligibility and feasibility assessment, score and rank the preapplications, and provide this information to the National Office with their review comments.

(2) The National Office will rank the preapplications nationwide. In case of point-score ties in the National ranking, first preference will be given to a preapplication to develop units in a state that does not have existing RHS-financed off-farm LH units; second preference to a preapplication from a State that has not yet been selected in the current funding cycle. In the event there are multiple preapplications in either category, one preapplication from each State (the highest State-ranked) will compete by computer-based random lottery. If necessary, the process will be completed until all same-pointed preapplications are selected or funds are exhausted.

(3) The Agency will not select a preapplication for a new LH loan in an area with competing or problem projects when:

(i) The Agency has selected another LH proposal in the same market area for further processing;

(ii) A previously authorized or approved Agency, HUD, or similar assisted MFH project in the same market area serving farmworkers has not been completed or reached its projected occupancy level; or

(iii) An existing Agency, HUD, or similar assisted MFH project in the same market area serving farmworkers is experiencing high vacancy levels, unless such vacancy is planned as part of the occupancy cycle of a seasonally-operated migrant farmworker facility.

(4) If any selected preapplications cannot meet the processing deadlines established by the Agency to enable processing and fund obligation within the current funding cycle, or if requested leveraged funds are not committed within the timeframe established in NOFA, the Agency will select the next ranked preapplication for processing.

(e) *Notification to applicants.* States will notify all applicants of the results of the selection process.

(1) Applicants selected for further processing will be notified and processed in accordance with this section and § 1944.171.

(2) Project proposals not selected for further processing, including incomplete proposals or those that failed to meet NOFA requirements, or those that could not be reached because of insufficient funds, will be returned to the applicant with the reason they were not selected.

* * * * *

10. Exhibit A to subpart D is amended by revising the first paragraph to read as follows:

Exhibit A to Subpart D—Labor Housing Loan and Grant Application Handbook

Introduction

The section 514 Labor Housing loan and section 516 Labor Housing grant programs are administered by the Rural Development's Rural Housing Service (RHS), herein referred to as the Agency. Interested parties are advised to contact any Rural Development office processing Labor Housing (LH) loans and grants to obtain information on program and application requirements prior to developing an application. Notice of Funds Availability (NOFA) for off-farm facilities will be announced annually in the Federal Register, along with application requirements and the deadline for applying. Requests received during the application period will be selected competitively, based on the objective selection criteria in the regulation and announced in the NOFA. Applications for on-farm facilities are accepted any time during the year and are funded on a first-come, first-served basis, based on the availability of funds.

* * * * *

11. Exhibit A–1 to subpart D is amended by revising paragraphs I.A.1 and I.A.3, the introductory text of paragraph I.B., paragraph I.B.3, the text of paragraph I.B.6 preceding the note, paragraph I.C., and paragraph I.E. to read as follows:

Exhibit A–1 to Subpart D—Information To Be Submitted by Organizations and Associations of Farmers for Labor Housing Loan or Grant

I. Information to be submitted with SF 424.2 (for preapplication submission).

A. * * *

1. Financial Statement—A current, dated, and signed financial statement showing assets and liabilities with information on the repayment schedule and status of all debts. If the applicant is an association of farmers, a current financial statement will also be required from each member who holds an interest in the association in excess of 10 percent. If the applicant is a limited partnership, financial statements are required from each general partner who holds an interest in the organization, and from each limited partner who will have 10 percent or more ownership. The financial statement must reflect sufficient financial capacity to meet the initial operating capital requirements. Loan or grant funds may be used to provide the required initial operating capital for nonprofit entities and State or local public agencies. If the applicant is a limited partnership, the financial statement must also demonstrate sufficient capacity to meet the applicant's equity contribution.

* * * * *

3. If a Labor Housing (LH) grant is requested, the applicant should provide a statement on their projected use of Rental Assistance (RA) and their need for a LH grant. This statement should include preliminary estimates of the rents required with and without a grant and the relative need for a grant if RA is provided to supplement market rents for eligible farmworkers. [LH grants and RA are not available to associations of farmers; LH grants are not available to limited partnerships.]

* * * * *

B. * * *

A preliminary survey should be conducted to identify the supply and demand for LH in the market area. The market area must be clearly identified and may include only the area from which tenants can reasonably be drawn for the proposed project. The applicant must provide documentation to justify need within the intended market area. The market survey should address or include the following items:

* * * * *

3. General information concerning the type of labor intensive crops grown in the area and prospects for continued demand for farm laborers (i.e., prospects for mechanization, etc.). Information may be available from the local U.S. Department of Agriculture (USDA) Cooperative, State, Research, Education and Extension Service office or from the Farm Service Agency.

* * * * *

6. A description of the units proposed, including number, type, size, rental rates, amenities such as carpets and drapes, related facilities such as a laundry room or community room and other facilities providing supportive services in connection with the housing and the needs of the prospective tenants such as a health clinic or day care facility; estimated development timeline; estimated total development cost and applicant contribution. If the application includes leveraged funds, include documentation of the dollar amount, source, and commitment status.

* * * * *

C. Environmental Information

The applicant will complete Form RD 1940–20, ''Request for Environmental Information,'' along with a description of anticipated environmental issues or concerns.

* * * * *

E. Additional Information

1. Evidence of site control such as an option or sales contract; a map and description of the proposed site, including the availability of water, sewer, and utilities, and proximity to community facilities and services such as shopping, schools, transportation, doctors, dentists, and hospitals.

2. Preliminary plans and specifications, including plot plans, building layouts, and type of construction and materials.

3. A supportive services plan describing services that will be provided on-site or made available to tenants through cooperative agreements with service providers in the community, such as a health clinic or day care facility. Off-site services must be accessible and affordable to farmworkers and their families. Letters of intent from service providers are acceptable documentation at the preapplication stage.

* * * * *

Dated: April 29, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 99–11256 Filed 5–5–99; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-farm Housing

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This NOFA announces the timeframe to submit applications for section 514 Farm Labor Housing loan funds and section 516 Farm Labor Housing grant funds for new construction of off-farm units for farmworker households. Applications may also include requests for section 521 rental assistance (RA). This document describes the method used to distribute funds, the application process, and submission requirements.

DATES: The closing deadline for receipt of all applications in response to this NOFA is 5:00 p.m., local time for each Rural Development State office on July 15, 1999. The application closing deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications will not be accepted.

ADDRESSES: Applicants wishing to apply for assistance must contact the Rural Development State office serving the place in which they desire to submit an application for off-farm labor housing to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3455, TDD (334) 279–3495, James B. Harris

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 745–2176, TDD (907) 745–6494, Ron Abbott

Arizona State Office, Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8755, TDD (602) 280–8701, Steve Langstaff

Arkansas State Office, 700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3279, Cathy Jones

California State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5800, Robert P. Anderson

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (303) 236–2801 (ext. 122), TDD (303) 236–1590, ''Sam'' Mitchell

Connecticut—Served by Massachusetts State Office

Delaware/Maryland State Office, 5201 South Dupont Highway, PO Box 400, Camden, DE 19934–9998, (302) 697–4314, TDD (302) 697–4303, W. Arthur Greenwood

Florida & Virgin Islands State Office, 4440 N.W. 25th Place, PO Box 147010, Gainesville, FL 32614–7010, (352) 338–3465, TDD (352) 338–3499, Joseph P. Fritz

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, TDD (706) 546–2034, Wayne Rogers

Guam—Served by Hawaii State Office

Hawaii, Guam, and Western Pacific Territories State Office, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–3000, TDD (808) 933–6902, Abraham Kubo

Idaho State Office, Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5627, TDD (208) 378–5644, Roni Atkins

Illinois State Office, Illini Plaza, Suite 103, 1817 South Neil Street, Champaign, IL 61820, (217) 398–5412 (ext. 256), TDD (217) 398–5396, Barry L. Ramsey

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3117, TDD (317) 290–3343, John Young

Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4493, TDD (515) 284–4858, Bruce McGuire

Kansas State Office, 1200 SW Executive Drive, PO Box 4653, Topeka, KS 66604, (785) 271–2721, TDD (785) 271–2767, Gary Shumaker

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (606) 224–7325, TDD (606) 224–7422, Paul Higgins

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson

Maine State Office, 444 Stillwater Ave., Suite 2, PO Box 405, Bangor, ME 04402–0405, (207) 990–9115, TDD (207) 942–7331, Dale D. Holmes

Maryland—Served by Delaware State Office

Massachusetts, Connecticut, and Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4333, Donald Colburn

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 337–6635 (ext. 1609), TDD (517) 337–6795, Philip Wolak

Minnesota State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7823, TDD (651) 602–3799, Mary Ann Erickson

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, Danny Ivy

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0990, TDD (573) 876–9480, Gary Frisch

Montana State Office, Unit 1, Suite B, 900 Technology Blvd., Bozeman, MT 59715, (406) 585–2515, TDD (406) 586–0819, MaryLou Falconer

Nebraska State Office, Federal Building, room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5567, TDD (402) 437–5093, Byron Fischer

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (702) 887–1222, TDD (702) 885–0633 (ext. 13), William L. Brewer

New Hampshire—Served by Vermont State Office

New Jersey State Office, Tarnsfield Plaza, Suite 22, 790 Woodland Road, Mt. Holly, NJ 08060, (609) 265–3630, George Hyatt, Jr.

New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761–4944, TDD (505) 761–4938, Carmen N. Lopez

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202, (315) 477–6419, TDD (315) 477–6447, George N. Von Pless

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2062, TDD (919) 873–2003, Eileen Nowlin

North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 250–4771, TDD (701) 250–4794, Kathy Lake

Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 469–5165, TDD (614) 469–5757, Gerald Arnott

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, TDD (405) 742–1007, Patsy Graumann

Oregon State Office, 101 SW Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3350, TDD (503) 414–3387, Jillene Davis

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2187, TDD (717) 237–2187, Gary Rothrock

Puerto Rico State Office, New San Juan Office Bldg., Room 501, 159 Carlos E. Chardon Street, Hato Rey, PR 00918–5481, (787) 766–5095, Ext. 254, TDD 1–800–274–1572, Lourdes Colon

Rhode Island—Served by Massachusetts State Office

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5690, TDD (803) 765–5697, Larry D. Floyd

South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Dwight Wullweber

Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, (615) 783–1375, G. Benson Lasater

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9760, TDD (254) 742–9712, Eugene G. Pavlat

Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4323, TDD (801) 524–3309, Robert L. Milianta

Vermont and New Hampshire State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6020, TDD (802) 223–6365, Russell Higgins

Virgin Islands—Served by Florida State Office

Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1582, TDD (804) 287–1753, Carlton Jarratt

Washington State Office, 1835 Black Lake Blvd. SW., Suite B, Olympia, WA 98512–5715, (360) 704–7707, TDD (360) 704–7760, Deborah Davis

Western Pacific Territories—Served by Hawaii State Office

West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 291–4793, TDD (304) 284–5941, Sue Snodgrass

Wisconsin State Office, 4949 Kirschiling Court, Stevens Point, WI 54481, (715) 345–7620, TDD (715) 345–7614, Sherry Engel

Wyoming State Office, 100 East B, Federal Building, Room 1005, PO Box 820, Casper, WY 82602, (307) 261–6315, TDD (307) 261–6333, Charles E. Huff

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Linda Armour, Mary Fox, or Tracee Lilly, Senior Loan Officers, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW, Washington, DC, 20250, telephone (202) 720–1604 (voice) (this is not a toll free number) or (800) 877–8339 (TDD-Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Programs Affected

The Farm Labor Housing Program is listed in the Catalog of Federal Domestic Assistance under Number 10.405, Farm Labor Housing Loans and Grants. Rental Assistance is listed in the Catalog under Number 10.427, Rural Rental Assistance Payments.

NOFA Application and Processing Deadlines

The NOFA application period closes July 15, 1999. Because of the relatively short timeframe for processing selected loan requests to permit obligation of funds by September 30, 1999, we have established the following processing deadlines:

July 15, 1999: NOFA application period closes.

July 16–20, 1999: State Offices review applications for completeness; score and rank; and provide list of all applications received to National Office.

July 21–30, 1999: State Offices complete preliminary eligibility and feasibility review and perform site visit; begin environmental review.

August 2, 1999: Based on the preliminary eligibility and feasibility review, State Offices provide final list of scored and ranked preapplications to the National Office with review comments.

August 2–6, 1999: National Office ranks preapplications nation-wide. As soon as possible thereafter, National Office notifies States of requests selected for further processing.

August, 1999: Upon National Office notification, States immediately notify selected applicants to submit a formal application within 30 days. Applicants should submit organizational documents immediately to allow time for review by Office of General Counsel (OGC).

August-September, 1999: States complete the environmental review and appraisal. Satisfactory completion of the environmental review must occur prior to issuance of the letter of conditions.

September 15, 1999: Deadline for receipt of formal application. Deadline for commitment of leveraged funds.

September 24, 1999: Deadline for issuing letter of conditions and acceptance by borrower.

September 27, 1999: Deadline for loan or grant approval and obligation of funds.

Discussion of Notice

I. Authority and Distribution Methodology

A. Authority

The farm labor housing program is under the Housing Act of 1949: section 514 (42 U.S.C. 1484) for loans and section 516 (42 U.S.C. 1486) for grants. Tenant subsidies (rental assistance, or RA) are available through section 521 (42 U.S.C. 1490a). Sections 514 and 516 provide RHS the authority to make loans and grants for financing off-farm housing to broad-based nonprofit organizations, nonprofit organizations of farmworkers, federally recognized Indian tribes, agencies or political subdivisions of State or local government, and public agencies (such as local housing authorities). In addition, RHS is authorized under section 514 to make loans to finance off-farm housing to limited partnerships in which the general partner is a nonprofit entity.

B. Distribution Methodology

The amounts available for fiscal year (FY) 1999 for off-farm new construction are:

Section 514 loans.....$ 15,500,000
Section 516 grants.....$ 9,737,493

Section 514 new construction loan funds and section 516 new construction grant funds will be distributed to States based on a national competition, as follows:

1. States will accept, review, score, and rank requests in accordance with 7 CFR part 1944, subpart D. The scoring criteria includes an optional Agency initiative, which will not be used this fiscal year.

2. The National office will rank all requests nationwide and distribute funds to States in rank order, within funding and RA limits. If insufficient funds or RA remain for the next ranked proposal, the Agency will select the next ranked proposal that falls within the remaining levels.

II. Funding Limits

A. Individual requests may not exceed $2.5 million (total loan and grant).

B. No State may receive more than 30 percent of the total available funds.

C. New construction RA will be held in the National Office for use with section 514 loans and section 516 grants.

III. Application Process

The Rural Housing Service has published elsewhere in this **Federal Register** a final rule entitled ''Processing Requests for Farm Labor Housing (LH) Loans and Grants''. Loan requests filed in response to this NOFA are subject to the regulatory provisions with respect to this final rule. All applications for sections 514 and 516 new construction funds must be filed with the appropriate Rural Development State office and must meet the requirements of 7 CFR part 1944, subpart D, and section IV of this NOFA. Incomplete applications will not be reviewed and will be returned to the applicant. No application will be accepted after 5:00 p.m., local time, on the application deadline previously mentioned unless that date and time is extended by another Notice published in the **Federal Register**.

IV. Application Submission Requirements

A. Each application shall include all of the information, materials, forms and exhibits required by 7 CFR part 1944, subpart D, as well as comply with the provisions of this NOFA. Applicants are encouraged, but not required, to include a checklist and to have their applications indexed and tabbed to facilitate the review process. The Rural Development State office will base its determination of completeness of the application and the eligibility of each

applicant on the information provided in the application.

B. Applicants are advised to contact the Rural Development State office serving the place in which they desire to submit an application for application information.

Dated: April 29, 1999.

Eileen M. Fitzgerald,

Acting Administrator, Rural Housing Service.

[FR Doc. 99–11257 Filed 5–5–99; 8:45 am]

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federal register

Thursday
May 6, 1999

Part VI

Securities and Exchange Commission

17 CFR Part 270

Custody of Investment Company Assets Outside the United States; Extension of Compliance Date; Proposed and Final Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release Nos. IC–23814, IS–1193; File No. S7–23–95]

RIN 3235–AE98

Custody of Investment Company Assets Outside the United States; Extension of Compliance Date

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance date.

SUMMARY: The Commission is extending the compliance date for certain amendments to the rule under the Investment Company Act that governs the custody of investment company assets outside the United States. In a companion release, the Commission is proposing amendments to that rule, and is proposing a new rule under the Act. The proposed amendments and new rule would establish new standards governing the maintenance of an investment company's assets with a foreign securities depository.

DATES: The *effective* date of the rule amendments published on May 16, 1997 (62 FR 26923) remains June 16, 1997. Effective May 1, 1999, the *compliance* date for those rule amendments, except for the amended definition of an ''eligible foreign custodian,'' is extended from May 1, 1999 until May 1, 2000, or until a date to be announced by the Commission when it takes further action on the amendments proposed in the companion release. The compliance date for the amended definition of an ''eligible foreign custodian'' was June 16, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas M.J. Kerwin, Senior Counsel, or C. Hunter Jones, Assistant Director, Office of Regulatory Policy, at (202) 942–0690, in the Division of Investment Management, Securities and Exchange Commission, 450 5th Street NW, Washington DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission is extending the compliance date for certain amendments to rule 17f–5 (17 CFR 270.17f–5) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Investment Company Act''). In a companion release, the Commission is proposing amendments to rule 17f–5, a new rule 17f–7, and conforming amendments to rule 7d–1 (17 CFR 270.7d–1) and rule 17f–4 (17 CFR 270.17f–4) under the Investment Company Act. *See* Investment Company Act Release No. 23815 (Apr. 29, 1999).

Dated: April 29, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11356 Filed 5–5–99; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release Nos. IC–23815, IS–1194; File No. S7–15–99]

RIN 3235–AH55

Custody of Investment Company Assets Outside the United States

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing rule amendments and a new rule under the Investment Company Act to address the custody of investment company assets outside the United States. The amendments and new rule would establish new standards governing the maintenance of an investment company's assets with a foreign securities depository. The proposals are designed to provide a workable framework under which an investment company can protect its assets while maintaining them with a foreign securities depository.

DATES: Comments must be received on or before July 15, 1999.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically to the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–15–99; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW, Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Thomas M.J. Kerwin, Senior Counsel, or C. Hunter Jones, Assistant Director, Office of Regulatory Policy, at (202) 942–0690, in the Division of Investment Management, Securities and Exchange Commission, 450 5th Street NW, Washington DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') today is proposing for public comment amendments to rule 17f–5 (17 CFR 270.17f–5),[1] a new rule 17f–7, and conforming amendments to rule 7d–1 (17 CFR 270.7d–1) and rule 17f–4 (17 CFR 270.17f–4) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Investment Company Act''). In a companion release, the Commission also is extending the *compliance* date for previous amendments to rule 17f–5 (except for the amended definition of an ''eligible foreign custodian'') that were published on May 16, 1997 (62 FR 26923). The compliance date is extended from May 1, 1999 until May 1, 2000, or until a date to be announced by the Commission when it takes further action on the amendments proposed in this Release. *See* Investment Company Act Release No. 23814 (Apr. 29, 1999).

I. Executive Summary

Rule 17f–5 under the Investment Company Act governs the custody of the assets of registered management investment companies (''funds'') with custodians outside the United States. We amended the rule in 1997 to modernize its conditions, but later suspended the compliance date for some of the amendments after learning that they presented problems for the use of foreign securities depositories. Depositories are systems for the central handling of securities in which transactions in securities are processed through adjustment of electronic account records rather than delivery of certificates.

The Commission is proposing amendments to rule 17f–5 and a new rule 17f–7, which together would permit funds to maintain their assets in foreign securities depositories based on conditions that reflect the operations and role of these depositories. The amendments would eliminate for foreign depository arrangements the requirements that certain findings be made by the fund board, its investment adviser, or global custodian, and that certain specified terms appear in depository rules for participants. Instead, the proposed rule would establish basic standards for foreign depositories eligible to be used by funds, and generally require that a fund's contract with its global custodian obligate the custodian to provide the fund or its adviser with an initial risk analysis of the depository, continuously monitor risks associated with use of the depository, and notify the fund or its adviser of material changes in these risks. The global custodian also generally would have to agree to exercise reasonable care with respect to these and other duties.

Unlike rule 17f–5, proposed rule 17f–7 would not contain any provisions regarding the delegation of authority under the rule. Decisions to maintain assets with the depository should be made by the adviser, subject to the oversight of the fund board, based upon information provided by the global custodian. The adviser and board, in making these decisions, would be subject to the standards of care that are generally applicable to fund advisers and directors.

I. Introduction

Rule 17f–5 was initially adopted in 1984,[2] and extensively revised in 1997 (''1997 Amendments'') to reflect significant developments in foreign investment by U.S. funds and the Commission's greater experience with foreign custodial arrangements.[3] The 1997 Amendments expanded the types of foreign banks and securities depositories that may serve as custodians of fund assets by eliminating capital requirements and other restrictions that in some cases had precluded funds from using otherwise suitable custodians.[4] Instead, the 1997 Amendments require that the selection of a foreign custodian be based on whether the fund's assets will be subject to reasonable care if maintained with that custodian, after consideration of all factors relevant to the safekeeping of fund assets.[5]

The 1997 Amendments also eliminated from rule 17f–5 the consideration of ''prevailing country risks,'' *i.e.*, risks associated with investing in a particular country rather than placing assets with a particular custodian, as well as the consideration of other investment risks.[6] We made these changes after concluding that prevailing country risks were akin to investment risks, and that both should be considered by a fund's board or investment adviser when deciding whether the fund should invest in a

[1] Unless otherwise noted, all references to ''rule 17f–5'' or any paragraph of the rule will be to 17 CFR 270.17f–5.

[2] Section 17(f) of the Investment Company Act, which governs fund custody arrangements, does not address the use of a foreign custodian. The Commission adopted rule 17f–5 pursuant to its exemptive authority under section 6(c) of the Act. *See* Exemption for Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 14132 (Sept. 7, 1984) (49 FR 36080 (Sept. 14, 1984)) (the ''1984 Release'').

[3] *See* Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 22658 (May 12, 1997) (62 FR 26923 (May 16, 1997)) (the ''1997 Release'').

[4] 1997 Release, *supra* note 3, at text accompanying nn.71–73 and nn.77–79.

[5] *See* rule 17f–5(c)(1). These provisions replaced earlier standards under which the fund board had determined whether maintaining assets with a custodian would be ''consistent with the best interests'' of the fund. *See* 1997 Release, *supra* note 3, at n.6 and accompanying text.

[6] 1997 Release, *supra* note 3, at text accompanying nn.13–16 and at n.29.

particular country. Finally, the amendments permitted directors to play a more traditional oversight role by allowing them to delegate their duties under the rule to a ''foreign custody manager,'' which could include the fund's investment adviser, officers, or a bank.[7]

The 1997 Amendments altered the conditions under which funds could maintain their assets with foreign securities depositories as well as other types of foreign custodians. Throughout the rulemaking, the Commission made it clear that we considered foreign depositories to be custodians for purposes of the rule.[8] In response to comments on the proposals, the 1997 Amendments looked to depository rules for participants rather than custodial contracts to satisfy certain conditions of the rule.[9] Having addressed what we believed to be commenters' concerns regarding depositories, we established a one-year transition period to allow funds and bank custodians to enter into new custodial agreements, which would include the use of foreign depositories.[10]

By early 1998, it became apparent that the rule would not operate as anticipated. Bank custodians refused to accept delegated responsibility to make findings under the rule regarding funds' use of most foreign securities depositories.[11] Representatives of funds requested that we delay the compliance date for the 1997 Amendments to permit them to prepare a proposal to further amend the rule.[12] They asserted that many funds had been unable to establish foreign custody arrangements under the amendments because of significant unforeseen problems with the evaluation and use of most depositories. In particular, they stated that global bank custodians were unable to commit to making ''subjective'' determinations of whether foreign securities depositories would exercise reasonable care with fund assets.[13]

On May 21, 1998, we suspended the compliance date for most of the 1997 Amendments to allow time for representatives of funds and custodians to submit suggested amendments to rule 17f–5.[14] In June 1998, representatives of funds and representatives of bank custodians submitted a joint proposal to further amend the rule (''ICI/Bank Proposal'').[15] The ICI/Bank Proposal would deem fund assets maintained with a depository to be subject to reasonable care if eight objective criteria were met.[16] Depository rules would not have to contain provisions that rule 17f–5 generally requires to be included in custody contracts, including provisions for indemnification or insurance.[17]

The Commission has reviewed the ICI/Bank Proposal and related submissions, and is persuaded that the 1997 Amendments do not work well when applied to foreign securities depositories. Some contract provisions generally required by the amended rule to protect fund assets may not be feasible when applied to depository rules.[18] We are not persuaded, however, that the ICI/Bank Proposal provides a solution. We are concerned that a rule that relied only on limited objective criteria may not adequately identify the potential risks of depository arrangements in a changing global marketplace. We are particularly reluctant to implement a proposal that might unduly narrow the evaluation of potential risks, and reduce incentives to provide relevant information to funds.[19]

The Commission proposes to take a different approach in a proposed new rule with respect to foreign securities depositories. In doing so, we recognize that the establishment of depositories in countries around the world is generally a favorable development for funds and their shareholders. The use of depositories simplifies the clearance and settlement of securities transactions, and may eliminate some risks of loss, theft, and destruction of securities held in certificate form.[20] Depositories in many countries, however, are relatively new institutions, and their financial strength and operational capabilities vary. Only a limited group of intermediaries, including global custodians and local banks that participate directly in depositories, may have any contractual relationship with a depository or the ties needed to monitor risks associated with the use of the depository.

Our new approach can best be explained by reference to the regulatory discussion that preceded the 1997 Amendments. Those amendments distinguished between the ''custody risks'' of maintaining assets overseas, which must be addressed by a fund's foreign custody manager, and ''prevailing country risks,'' which no longer had to be considered under the rule because we believed they were more appropriately considered by a

[7] *See* rule 17f–5(b); 1997 Release, *supra* note 3, at text accompanying n.21.

[8] Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 21259 at n.71 and accompanying text (July 27, 1995) (60 FR 39592 (Aug. 2, 1995)); 1997 Release, *supra* note 3, at n.29 and accompanying text.

[9] 1997 Release, *supra* note 3, at nn.65–66 and accompanying text. In response to comments, we also did not adopt proposed amendments that would have treated the selection of some types of depositories differently from the selection of other types of foreign custodians. *Id.* at n.29.

[10] *Id.* at text following n.86.

[11] *See* Letter to Douglas J. Scheidt, Chief Counsel, Division of Investment Management, from Dorothy M. Donohue, Associate Counsel, Investment Company Institute (Nov. 24, 1997) (placed in File No. S7–15–99).

[12] *See* Letter to Barry P. Barbash, Director, Division of Investment Management, from Dorothy M. Donohue, Associate Counsel, Investment Company Institute (Mar. 24, 1998) (placed in File No. S7–15–99) (the ''March 1998 Letter'').

[13] *Id.* In general, representatives of funds and bank custodians have asserted that depositories provide a necessary service for which no feasible alternative may exist, that depository standards vary from one country to another, that information about quasi-sovereign depositories may be more difficult to obtain than information about other foreign custodians, and that inflexible depository rules may not accommodate the contract terms or equivalent protections required by the 1997 Amendments. *See id.*; Letter to Barry P. Barbash, Director, Division of Investment Management, from Amy B.R. Lancellotta, Senior Counsel, Investment Company Institute and Daniel L. Goelzer, Baker & McKenzie (June 30, 1998) (placed in File No. S7–15–99) (the ''June 1998 Letter'').

[14] *See* Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 23201 (May 21, 1998) (63 FR 29345 (May 29, 1998)). The compliance date for the amended definition of ''eligible foreign custodian'' remained June 16, 1998.

[15] *See* June 1998 Letter, *supra* note 13.

[16] The criteria would require that no foreign regulators have issued public statements indicating that the depository has not complied with financial strength or internal controls requirements (unless the problem has been cured); that the depository maintain certain safeguards such as segregating depository assets from participant assets, identifying assets in depository records, providing account reports to participants, and undergoing periodic review by auditors or regulators; and that the fund's custodian agree to comply with the depository's requirements. June 1998 Letter, *supra* note 13.

Representatives of funds and bank custodians submitted a revised proposal on February 26, 1999. *See* Letter to Paul F. Roye, Director, Division of Investment Management, from Amy B.R. Lancellotta, Senior Counsel, Investment Company Institute and Daniel L. Goelzer, Baker & McKenzie (Feb. 26, 1999) (placed in File No. S7–15–99) (the ''Revised ICI/Bank Proposal''). Under the Revised ICI/Bank Proposal, the foreign custody manager would consider information known to it if the information established certain compliance problems, even if foreign regulators had not yet acted. In addition, the foreign custody manager would have to monitor depository arrangements for any material changes.

[17] *See* rule 17f–5(c)(2)(i) and (ii) (requiring specified terms, or other provisions that provide equivalent protection, to appear in custody contract).

[18] *See* June 1998 Letter, *supra* note 13 (accompanying appendix suggests that contractual provisions for indemnification or insurance, no liens, free transferability of assets, and auditor access might be unworkable for depository custody). It is unclear whether other provisions might provide equivalent protection. *See* rule 17f–5(c)(2)(ii).

[19] We are also concerned that the terms of such a rule could be used to delimit responsibility under custodial contracts.

[20] *See* Uniform Commercial Code, Revised Article 8, Prefatory Note at I.C.; Randall D. Guynn, Modernizing Securities Ownership, Transfer and Pledging Laws 21 (Capital Markets Forum, International Bar Association 1996).

fund's adviser or board of directors as part of the decision to invest in the country.[21] A securities depository keeps asset ownership records that might be tampered with or destroyed, and the use of a depository thus exposes a fund to custody risks.[22] Yet a securities depository also may be an instrumentality of a foreign government or market and may operate under an exclusive license, making its use practically (and perhaps legally) necessary for a fund that wishes to invest in a particular foreign market. As a result, a custody decision not to use a foreign depository because of custody risks may effectively compel an investment decision not to invest in the country.

While global custodians ''are in the best position to obtain information concerning depositories and to evaluate whether that information suggests that a change in custody conditions has occurred at the depository,''[23] the decision to maintain assets with the depository remains closely linked to the decision to invest or continue to invest in the country. Investment decisions are more appropriately the province of the fund's investment adviser or board of directors. Nevertheless, the adviser and the board are in a position to make these decisions only if fully informed of the custody risks by the fund's global custodian. Based on these conclusions, we are amending rule 17f–5 and proposing a new rule designed to create a partnership between a fund adviser and a global custodian in which each performs responsibilities appropriate to its expertise for the purpose of protecting fund assets placed with the foreign depository.

II. Discussion

A. Foreign Bank Custodians: Rule 17f–5

Under our proposal, a fund's use of a foreign bank custodian would continue to be governed by rule 17f–5, as amended in 1997.

We propose to further amend this rule to exclude foreign securities depositories from its coverage,[24] and to make other minor clarifying changes.[25] Compliance with the 1997 Amendments to rule 17f–5 (except for the amended definition of Eligible Foreign Custodian) will continue to be suspended until we complete consideration of new rule 17f–7.[26] We request comment on whether any further amendments to rule 17f–5 are necessary.

When a depository custody arrangement involves a foreign bank subcustodian that participates in the depository, rule 17f–5 would continue to apply to the global custodian's use of the foreign bank subcustodian, while proposed rule 17f–7 would apply to the foreign bank subcustodian's use of the depository itself.[27] Is the interaction between rule 17f–5 and proposed rule 17f–7 in regulating these respective custody arrangements sufficiently clear? If not, what further clarification is needed?

B. Foreign Securities Depositories: Proposed Rule 17f–7

Proposed rule 17f–7 would govern custody arrangements with foreign securities depositories. Funds usually deal with these depositories through a ''Primary Custodian'' (also often referred to as a ''global custodian''), which the rule would define as a U.S. Bank or Qualified Foreign Bank (under rule 17f–5) that contracts directly with the fund to provide custodial services for foreign assets.[28] As discussed below, the rule would assign particular duties to the Primary Custodian.

1. Eligible Securities Depository

Under the proposed rule, funds or their custodians could maintain their assets with a securities depository only if it is an ''Eligible Securities Depository.'' An Eligible Securities Depository must function as a system for the central handling of securities, and must be regulated by a foreign financial regulatory authority.[29] The Commission also is proposing four additional minimum requirements, which were suggested to us by representatives of funds and bank custodians. To be an Eligible Securities Depository under rule 17f–7, a depository must, among other requirements:

- Hold assets on behalf of the fund under conditions no less favorable than those that apply to other participants;
- Maintain records identifying the assets of each participant and keep its own assets separated from those of the participants;
- Provide periodic reports to participants; and
- Be reviewed periodically by regulatory authorities or independent accountants.[30]

Comment is requested on the proposed criteria. Inclusion of these minimum requirements may have the effect of precluding funds from investing in some developing markets in which depositories might fail to meet the criteria. The existence of the rule provisions also may encourage depositories in these markets to meet these requirements. Comment is requested as to their effect on investment in developing markets. Comment also is requested on whether these minimum standards, together with the other protections described below, are sufficient to protect fund assets. With respect to the periodic review requirement, should the rule require review by regulators or auditors to focus on the depository's custodial activities, or to include verifications of assets held? The ICI/Bank Proposal included three other minimum requirements that are not included in proposed rule 17f-7.[31] Should the rule include them? Are

[21] 1997 Release, *supra* note 3, at text accompanying nn.13–16 and at n.29.

[22] Thus, securities depositories were included in the ''selection process'' of rule 17–5, as amended in 1997. *See* Letter to Dorothy M. Donohue, Associate Counsel, Investment Company Institute and Daniel L. Goelzer, Baker & McKenzie, from Robert E. Plaze, Associate Director, Division of Investment Management (Feb. 19, 1998) (placed in File No. S7–15–99).

[23] *See* Revised ICI/Bank Proposal, *supra* note 16, Attachment 3 at 3.

[24] A proposed note to rule 17f–5 would clarify that custody arrangements involving securities depositories would be governed by rule 17f–7 and by relevant provisions of rule 17f–5, which would remain applicable to foreign bank subcustodians participating in these arrangements. Rule 17f–7 would include a similar note.

[25] The amendments would use the term ''foreign assets'' in place of ''fund assets'' for convenience, and to clarify that assets maintained with a foreign custodian may not be the exclusive property of the fund. *See* Uniform Commercial Code, Revised Article 8, section 8–503(b) and comment 1 (entitlement holder's property interest in securities held by its securities intermediary is a pro rata interest shared with other customers of the intermediary).

The amendments also would refer to ''maintaining assets with'' an eligible foreign custodian rather than ''selecting'' a custodian, and would use the term ''eligible foreign custodian'' throughout the rule. In addition, the amendments would note that the fund's foreign custody manager, as well as the fund itself, may place and maintain fund assets with an eligible foreign custodian. *See* proposed rule 17f–5.

[26] *See* ''Supplementary Information'' section *supra*; Custody of Investment Company Assets Outside the United States; Extension of Compliance Date, Investment Company Act Release No. 23814 (Apr. 29, 1999); Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 23670 (Jan. 28, 1999) (64 FR 5156 (Feb. 3, 1999)); *see also supra* note 14.

[27] *See supra* note 24.

[28] Proposed rule 17f–7(b)(2).

[29] Proposed rule 17f–7(b)(1)(i) and (ii). The definition of an Eligible Securities Depository would combine elements of two related definitions in current rule 17f–5. *See* current rule 17f–5(a)(1)(ii) and (iii) (definitions of certain Eligible Foreign Custodians that are securities depositories or clearing agencies) and (a)(6) (definition of Securities Depository).

[30] Proposed rule 17f–7(b)(1)(iii) to (vi). The proposed requirements address five of the requirements suggested in the ICI/Bank Proposal. *See supra* note 16.

[31] The ICI/Bank Proposal also required that (i) no foreign regulators have issued public statements

Continued

there other minimum requirements that funds or their custodians typically insist on before placing assets with a depository? Instead of the proposed approach, should the definition state generally that a depository should meet minimum reasonable commercial standards, and then specify some but not all applicable requirements?

In some foreign securities markets, transfer agents or similar entities may perform custodial functions analogous to those of a depository. For example, an Australian central electronic subregistry may effectively function as a central transfer agent that performs custody functions in a manner similar to a depository.[32] In Russia and other countries such as the Ukraine, registrars for each issuer may perform analogous custody functions.[33] The proposed amendments would define an Eligible Securities Depository to include a transfer agent that, among other things, transfers and holds uncertificated securities on the books of an issuer for market participants.[34] The transfer agent would have to be regulated by a foreign financial regulatory authority, and meet other minimum standards for securities depositories as discussed above.

The Commission requests comment on the proposed expansion of the definition of an Eligible Securities Depository. Is it appropriate to treat transfer agents as Eligible Securities Depositories in these circumstances? Should other requirements be added if a transfer agent is to be treated as a depository? To avoid confusion about whether a transfer agent performs all of the functions of a depository, should the rule define a broader type of entity, such as an ''eligible securities holding facility,'' and permit funds to maintain foreign assets with either a depository or a transfer agent that qualifies as this type of facility? In the alternative, should the rule omit any provision for the use of foreign transfer agents, and require funds and custodians to seek approval for their use on a case-by-case basis?

2. Risk-Limiting Conditions

Proposed rule 17f–7 would provide two alternative approaches to managing the custody risks that funds may face when they maintain assets with an Eligible Securities Depository.

a. Indemnification or Insurance

Under the first alternative, a fund could obtain indemnification or insurance that adequately protects it against *all custody risks* of using the depository.[35] A fund would be ''adequately protected'' under this provision by an agreement with or policy issued by a reliable party to compensate the fund for any custody losses arising from use of the depository.[36] A fund could rely on this alternative with respect to all of its assets maintained in foreign securities depositories or with respect to assets held by a particular depository.[37]

This alternative would recognize that a fund that is indemnified or insured against all custodial losses of a depository arrangement is not exposed to the risks of using the depository (which are transferred to the indemnifying or insuring party), and therefore the risk analysis, monitoring, and notification requirements discussed below may not be necessary. The Commission requests comment on this approach. Should the rule define the types of custody risks that should be covered? Should the rule specify how the fund would determine that indemnification or insurance is adequate to protect the fund against all losses attributable to custody risks? Are there any reasons why indemnification or insurance could not cover all custody risks? Should the rule permit a determination that more limited coverage may be adequate in some circumstances?

b. Risk Analysis, Monitoring, and Notification

Under the second alternative, the fund's contract with its Primary Custodian must require the custodian to provide the fund or its investment adviser an initial risk analysis of the custody risks of using a depository before the fund places its assets with the depository.[38] The contract also must require the Primary Custodian to continuously monitor these custody risks and promptly notify the fund or its investment adviser of any material change.[39] These provisions are designed to allocate responsibilities for overseeing the safety of fund assets to the parties best suited to the tasks involved.

In earlier commentary on rule 17f–5, representatives of funds argued that because of global custodians' expertise and their contractual relationships with depositories or their participants, custodians were in a better position to make findings regarding the use of depositories.[40] Global custodians disagreed, arguing that the decision to use a depository, because it is often a prerequisite for participation in a particular foreign market, is an

indicating that the depository has not complied with financial strength requirements or (ii) internal controls requirements, unless the problem has been cured, and (iii) that the custodian for the fund has agreed to comply with the depository's requirements.

[32] Thomas Murray Ltd, Central Securities Depositories Guide 1997 at 49. The Australian ''CHESS'' system supplements issuers' own share registers. It records market transactions as transfers of legal ownership on the issuer's records. Although local law may not treat CHESS as a custodian, CHESS may effectively perform custodial functions by holding definitive evidence of the ownership of securities that do not exist in certificate form *Cf.* ASX Settlement and Transfer Corporation Pty Ltd, SEC No-Action Letter (Apr. 19, 1994) (suggesting that CHESS system may not perform custodial functions); rule 17f–4(a) under the Investment Company Act (17 CFR 270.17f–4(a)) (defining a securities depository as a system for the central handling of securities where all securities of any particular class or series of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of the securities).

[33] *See* Thomas Murray Ltd. Worldwide Securities Market Report (19)97, at 247 (1996). In Russia, equity securities are generally uncertificated, and entries on the registrar's books are generally recognized as the only binding evidence of the ownership of securities. The registrar may effectively act as a custodian by holding definitive evidence of the ownership of securities that are uncertificated. *See* Templeton Russia Fund, Inc., SEC No-Action Letter (Apr. 18, 1995) (Suggesting that registrars may be limited participants in the custodial process).

[34] Proposed rule 17f–7(b)(1); *cf.* American Pension Investors Trust, SEC No-Action Letter (Feb. 1, 1991) (custodian for fund of funds could maintain fund's investment in uncertificated shares of underlying funds with the domestic transfer agents of those funds acting as deemed depositories); FundVest, SEC No-Action Letter (Nov. 21, 1984) (similar position).

[35] Proposed rule 17f–7(a)(1). Potential custody risks of using a depository might include, for example, faults in recordkeeping systems or securities handling procedures or systems for distributing losses among participants. *See infra* text accompanying notes 44 to 48 (list of factors that may be relevant to custody risks).

[36] Current rule 17f–5 requires a contract with a foreign custodian to provide for indemnification or insurance (or equivalent protections) that adequately protect the fund against the loss of assets held under the contract. Rule 17f–5(c)(2)(i)(A) and (ii): *see also* 1997 Release, *supra* note 3, at text accompanying n.27 (foreign custody manager itself may have obligation to indemnify the fund in some circumstances). The rule provision has been interpreted to bind the primary custodian globally unless each subcustodian satisfies it individually, and to extend to all foreseeable risks of loss. Investment Company Institute, SEC No-Action Letter, at nn. 1–2 and accompanying text (Nov. 4, 1987). In contrast, the first alternative, discussed in the text above, would require coverage of all custody losses.

[37] Protection available from the depository itself, such as a depository guarantee fund, normally would not protect a beneficial owner such as the fund, and may provide only for sharing or partial reimbursement of losses. A government guarantee of a depository may suffice if the guarantee is complete and extends to beneficial owners as well as depository participants.

[38] Proposed rule 17f–7(a)(2)(i)(A). *Cf.* United Kingdom Securities and Futures Authority, Board Notice 433, New Safekeeping Rules, Custody Rule 4–107(1), Assessment of Custodian (July 21, 1997) (''U.K. Custody Rule 4–107(1)'') (before a custodial firm or an arranger of custodial services holds a safe custody investment with an eligible custodian, it must undertake an appropriate risk assessment of the custodian).

[39] Proposed rule 17f–7(a)(2)(i)(B). *Cf.* U.K. Custody Rule 4–107(1), *supra* note 38 (after firm makes an appropriate risk assessment of the eligible custodian, it must undertake a continuing risk assessment).

[40] *E.g.*, Letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, from Craig S. Tyle, Vice President & Senior Counsel, Investment Company Institute at 1, 3–4 (July 26, 1996) (place in File No. S7–15–99).

investment decision more properly made by the fund or its investment adviser.[41] Each of these views has merit and contributes to our proposed rule.

Proposed rule 17f–7 would assign to the fund's Primary Custodian the responsibility to analyze and monitor the risks of using the depository, under an approach that reflects provisions that many custodial agreements may already contain.[42] The Primary Custodian also would be required to agree to exercise reasonable care and diligence in performing these and other responsibilities, as discussed below, but would not be required to make specific findings under the rule. Its obligations under the required contractual provisions would be generally fulfilled by providing the adviser with an initial analysis and an ongoing assessment of the custody risks associated with the use of the depository. A local subcustodian or other agent could prepare the risk analysis on behalf of the Primary Custodian.[43]

The risk analysis requirements of the proposed rule are written broadly to provide custodians with flexibility to tailor the risk analysis in proportion to the risks involved in the use of each particular depository. We would expect, for example, the Primary Custodian to provide a more detailed analysis of a less established depository than of a depository with an extensive operating history. To facilitate the flexible application of the rule's requirements to different depository arrangements, the proposed rule does not specify particular types of risk that the custodian should analyze, monitor, and report.

As a general matter, we would expect that a custodian's analysis could include a discussion of the depository's expertise and market reputation, quality of services, financial strength,[44] insurance arrangements, extent and quality of regulation or other independent examination,[45] standing in published ratings,[46] internal controls and other procedures for safeguarding investments,[47] and related legal protections. Comment is requested on whether the rule should specifically require the analysis to cover these or other areas.[48]

Proposed rule 17f–7 would not assign a particular role to the investment adviser or fund board, although it assumes that the investment adviser would generally determine whether to place fund assets with a depository under the general oversight of the fund board. The rule is designed to assure that sufficient material information about depositories is provided to the adviser in a timely manner. Decisions regarding whether to place fund assets with a depository would be made by the adviser or board based on standards of care that are generally applicable to fund advisers and directors.[49] These standards generally require the exercise of care, but do not strictly limit the risks that may be acceptable in depository arrangements in appropriate circumstances.[50]

Fund boards do not typically have the expertise to make day-to-day decisions regarding foreign depository arrangements.[51] Therefore, we assume (but the rule does not require) that a fund board would delegate this responsibility to the fund's adviser, subject to the board's general oversight. Fund boards play an important role, however, in deciding whether to invest in or exit the markets of a particular country.[52] When custodial risks are a material factor in a decision to enter or exit a market, we would expect the adviser to inform the board of the risks based on analysis provided by the Primary Custodian.[53] The rule does not require, nor would we expect, fund boards to continue to be provided with the lengthy and detailed briefing books they often receive today.

The Commission requests comment on the proposed provisions relating to risk analysis, monitoring, and notification requirements. Should the rule permit a fund to use a primary custodian that is also a securities depository[54] If it does, should the rule require the primary custodian/depository to prepare the initial analysis of the custody risks of its own custody arrangements (including arrangements with its subcustodians) and to monitor the risks[55] Should the rule require another person to prepare the analysis and monitor the risks? For example, should the rule require the fund's investment adviser to retain an independent custody consultant to analyze and monitor the risks of any depository arrangement in which the fund's primary custodian is itself the depository?

c. Exercise of Care

Proposed rule 17f–7 also would require under the second alternative that the fund's contract with its Primary Custodian provide that the Primary Custodian, and each bank subcustodian

[41] *E.g.,* Letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, from Daniel L. Goelzer, Baker & McKenzie at 3–5 (June 7, 1996) (place in File No. S7–15–99).

[42] *See e.g.,* Amendment No. 2 to Custody Agreements between Templeton Funds and The Chase Manhattan Bank (July 23, 1998), filed with Templeton Funds Inc. Form N–1A, Post-Effective Amendment No. 31 (Oct. 29, 1998) (custodian would monitor compulsory depositories and advise fund of any material negative change in the performance of, or arrangements with, any compulsory depository that would adversely affect the custody of assets); *see also* Revised ICI/Bank Proposal, *supra* note 16 (suggesting that foreign custody manager monitor whether any material change has occurred in fund custody arrangements with depository).

[43] Proposed rule 17f–7(a)(2)(i).

[44] Representatives of funds and bank custodians suggest that capital may not be a reliable gauge of financial strength because depository capital levels vary widely. *See* June 1998 Letter, *supra* note 13 (accompanying appendix). Other measures of depository financial strength that may be more significant include the level of depository settlement guarantee funds, collateral requirements, lines of credit, or insurance, as compared with participants' daily settlement obligations. *See* Gary Stephenson, *Emerging Market Depositories: What to Look For,* at 6 (speech delivered in Bermuda on May 4, 1998) (place in File Not. S7–15–99).

[45] This factor relates to requirements in the definition of an Eligible Securities Depository.

[46] These ratings may include evaluations or survey information published by sources such as *Global Custodian* or Thomas Murray Ltd, or more formal ratings of depositories that may be available.

[47] This factor related to requirements in the definition of an Eligible Securities Depository.

[48] *See generally* U.K. Custody Rule 4–107(1), *supra* note 38 (cites seven analogous factors to be considered in undertaking continuing risk assessments).

[49] *See, e.g.,* Transamerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11 (1979) (section 206 of the Investment Advisers Act (15 U.S.C. 80b–6) imposes fiduciary duties on investment advisers); *Burks* v. *Lasker,* 441 U.S. 471 (1979) (Investment Company Act entrusts independent directors with responsibility to furnish an independent check on management); American Law Institute, Principles of Corporate Governance: Analysis and Recommendations § 4.01 (1994) (discussing duties of directors and officers under state law, including duties of care and inquiry).

[50] *See id.* The primary custodian's analysis and continuous monitoring of risks may help to provide an ''early warning system'' concerning a depository custody arrangement that presents more risks than other arrangements.

[51] *See* SEC, Division of Investment Management, Protecting Investors: A Half Century of Investment Company Regulation 270 n. 78 (1992).

[52] *See* 1997 Release, *supra* note 3, at n. 20 and accompanying text.

[53] The Commission would expect that the primary custodian also would continue to provide other information relating to country risk and other investment risks. *See id.* at nn. 18–20 and accompanying text.

[54] Some foreign depositories may permit funds to use their services directly as clients or participants. *See* Simon Thomas and Simon Murray, Global Securities Services: The Institutional Investors' Guide 55, 90 (1995) (Euroclear has altered its rules to permit fund mangers to participate); *see generally* rule 17f–4(c) under the Investment Company Act (17 CFR 270.17f–4(c)) (permitting a fund to participate directly in a domestic depository, subject to certain conditions); Midwest Securities Trust Company, SEC No-Action Letter (Mar. 14, 1990) (fund that participates directly in a depository may maintain a cash account to facilitate settlement of transactions or to secure obligations to a reserve fund to cover participant defaults).

[55] A foreign depository may itself maintain securities with other depositories. *See* Richard Dale, *Clearing and Settlement Risks in Global Securities Markets: The Case of Euroclear,* Journal of Business Law 434, 445 (Sept. 1998).

in its network involved in a depository arrangement, will agree to exercise reasonable care, prudence, and diligence in performing its duties under the rule and in all other conduct relating to the custodial arrangements, or to adhere to a higher standard of care.[56] The proposed standard of care is the same required of foreign custody managers under rule 17f–5,[57] and similar to standards for U.S. custodians under commercial law.[58]

C. Request for Comment on Other Issues

The Commission requests comment on possible additional changes to rule 17f–5 and proposed rule 17f–7. For example, should the Commission consider adapting the proposed requirements for the use of a depository to apply to the use of a bank subcustodian as well, and eliminate the separate requirements for the use of a bank subcustodian? Because the fund's Primary Custodian would likely act as its foreign custody manager in most cases,[59] should the Commission simply eliminate provisions that require the appointment of a foreign custody manager, and allocate related responsibilities directly to the Primary Custodian? Alternatively, should the Commission not adopt the proposed amendments to rule 17f–5 and proposed rule 17f–7, and instead revise the compliance date for the 1997 Amendments to allow funds to contract with global custodians that accept the responsibilities described in current rule 17f–5? Is there any need to address matters outside the scope of the proposed amendments, such as the handling of cash, or the use of affiliated custodians or subcustodians?

The Commission requests comment on the new rule and rule amendments proposed in this Release, suggestions for additional provisions or changes to existing rules or forms, and comments on other matters that might have an effect on the proposals contained in this Release. The Commission also requests comment whether the proposals, if adopted, would promote efficiency, competition, and capital formation. Comments will be considered by the Commission as it satisfies its responsibilities under section 2(c) of the Investment Company Act.[60] For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[61] the Commission also requests information regarding the potential impact of the proposals on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

III. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits that result from its rules. The proposed amendments to rule 17f–5 and proposed new rule 17f–7 respond to concerns expressed by global custodians and fund managers that rule 17f–5, as amended in 1997, is not workable. The proposals also address fund managers' concerns that, as a result of global custodians' unwillingness to assume delegated responsibilities under rule 17f–5, obligations to evaluate depositories' custodial capabilities may fall to fund boards, which lack the relevant knowledge and expertise to make these evaluations.

Proposed rule 17f–7 should benefit funds and their investors by establishing a workable framework designed to require global custodians, which are in the best position to monitor and evaluate risks of foreign depositories, to assume these responsibilities. The rule also should benefit funds and their shareholders by freeing fund boards of the responsibility to make findings concerning foreign depositories that often remained with them after the 1997 Amendments because of global custodians' refusals to accept delegated responsibility. As a result, fund boards should have more time to address other issues that are important to investors.

The proposed rule and rule amendments may impose costs. Although the proposed rule sets minimum requirements for depositories, its lack of a maximum standard for custody risks could cause losses to investors if a depository fails, despite diligent performance by global custodians and advisers of their responsibilities. Because the rule does not limit maximum custody risks in depository arrangements, additional prospectus disclosure may be required where it may be necessary for investors to evaluate the risks and rewards of investing in the fund.[62] The Commission requests comment on the costs and benefits of current rule 17f–5, including its requirement that a foreign custody manager determine that assets maintained with a depository will be subject to reasonable care, as compared with the costs and benefits of proposed rule 17f–7's provisions that do not set limits on potential depository custody risks.

Global custodians should not incur materially greater costs under proposed rule 17f–7, which generally would require them to perform duties they typically perform already under custodial contracts. The rule may have the effect of requiring global custodians to exercise a greater degree of vigilance in monitoring depositories (or to refrain in the future from reducing their diligence) and in this respect may impose costs. Such costs are necessary, however, for the protection of funds consistent with the purposes of sections 6(c) and 17(f) of the Investment Company Act. We expect that global custodians will pass on any additional costs to mutual funds, but that the costs are unlikely to materially affect overall fund expense ratios.

Fund managers may bear the cost of evaluating the information provided by global custodians and making decisions regarding the continued use of a depository (and in this respect, continued investment in the country). We believe that in the context of foreign depository arrangements, this allocation of costs is appropriate in light of (i) the unwillingness of global custodians to assume responsibilities that may overlap with investment decisions and (ii) the extent to which the decision to use a foreign depository may affect an investment strategy that contemplates investment in a particular foreign market. Advisers to funds could pass on this responsibility to directors, but this result would not be mandated by the proposals, and fund directors would be free to reject this responsibility.

The Commission requests comment on the potential costs and benefits associated with the proposed amendments and proposed rule, and on any suggested alternatives to the proposals.[63] Specific comment is

[56] Proposed rule 17f–7(a)(2)(ii).

[57] Rule 17f–5(b)(3); *see* proposed rule 17f–5(b)(3) (same requirement); Revised ICI/Bank Proposal, *supra* note 16, Attachment 3 at 5 (''(c)onsistent with that (reasonable care) standard, an FCM (foreign custody manager) could not, in our view, place assets with a depository that it knew to be unsafe'').

[58] *See* Uniform Commercial Code, Revised Article 8, sections 8–504 and 8–509 (securities intermediary must perform its duties under Code, including duties to follow procedures in maintaining financial assets and to exercise care in selecting subcustodians, with ''due care in accordance with reasonable commercial standards,'' unless modified by regulatory requirements or contractual provisions that meet ''good faith'' standard).

[59] *See* Revised ICI/Bank Proposal, *supra* note 16, Attachment 3 at 3 (''global custodian banks * * * are most likely to be asked to assume delegated Foreign Custody Manager responsibilities in most cases'').

[60] Section 2(c) of the Investment Company Act (15 U.S.C. 80a–2(c)) requires the Commission, when it engages in rulemaking and is required to consider whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

[61] Pub. L. No. 104–121, Title II, Stat. 857 (1996).

[62] *See* Form N–1A, Item 4(c) (requirement to disclose principal risks of investing in fund).

[63] As noted in Section IV, the Commission's staff estimates a slight reduction in the paperwork

requested on the potential costs or benefits of these proposals for funds and their boards of directors, investment advisers, primary custodians, foreign subcustodians, and depositories. Data is requested concerning these costs and benefits and how they could be quantified and expressed in dollar terms.

IV. Paperwork Reduction Act

Portions of the proposed amendments to rule 17f–5 and proposed new rule 17f–7 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and the Commission is submitting these proposals to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d). The titles of the collections of information are ''Custody of Investment Company Assets Outside the United States'' and ''Custody of Investment Company Assets with a Foreign Securities Depository.'' An agency may not sponsor, conduct, or require responses to an information collection unless it displays a currently valid OMB control number.

A. Proposed Amendments to Rule 17f–5

The proposed amendments to rule 17f–5 would not substantively change the rule's collection of information requirements, which would continue to apply when a fund (*i.e.*, a registered management investment company) maintains its assets with a foreign bank custodian. The amendments would remove custody arrangements with foreign securities depositories from the rule, however, so that the rule's requirements would no longer apply to these custody arrangements. In general, therefore, the proposed amendments would reduce the information collection burdens of rule 17f–5.

The requirements of amended rule 17f–5 that may call for the collection of information would be substantially the same as under the current rule. The fund's board of directors must find that it is reasonable to rely on each delegate it selects to act as the fund's foreign custody manager. The delegate must agree to provide written reports that notify the board when the fund's assets are placed with a foreign custodian and when any material change occurs in the fund's custody arrangements. The delegate must agree to exercise reasonable care, prudence, and diligence, or to adhere to a higher standard of care. When the foreign custody manager selects an eligible foreign custodian, it must determine that the fund's assets will be subject to reasonable care if maintained with that custodian, and that the written contract that governs each custody arrangement will provide reasonable care for fund assets. The contract must contain certain specified provisions or others that provide at least equivalent care. The foreign custody manager must establish a system to monitor the contract and the appropriateness of continuing to maintain assets with the eligible foreign custodian.

The Commission's staff estimates that during the first year after the proposed amendments go into effect, approximately 3,690 fund portfolios [64] would be required to make an average of one response per portfolio under amended rule 17f–5, requiring approximately 2 hours of director time per response, to make the necessary findings concerning foreign custody managers.[65] The total annual burden associated with these requirements of the rule during the first year would be approximately 7,380 hours (3,690 portfolios × 2 hours per portfolio). The staff further estimates that during the first year after the proposed amendments go into effect, approximately 15 global custodians [66] would be required to make an average of 80 responses per custodian concerning the use of foreign custodians other than depositories, requiring approximately 10 hours per response, plus one additional response per custodian that requires approximately 96 hours per response.[67] The total annual burden associated with these requirements of the rule during the first year would be approximately 13,440 hours (15 global custodians × 896 hours per global custodian). Therefore, the total burden of all collection of information requirements of rule 17f–5 during the first year after its amendment is estimated to be approximately 20,820 hours (7,380 + 13,440).[68]

The staff estimates that the proposed amendments' removal of custody arrangements involving securities depositories from rule 17f–5 would eliminate as much as 28,600 additional burden hours currently imposed by the rule's collection of information requirements. This estimate assumes that without the amendments, approximately 650 investment advisers [69] would have to make an average of 3 responses per adviser annually, requiring a total of approximately 44 hours for each adviser, to address depository arrangements.[70]

B. Proposed New Rule 17f–7

Proposed new rule 17f–7 would contain some collection of information requirements. Under the proposed rule, an eligible depository would have to meet minimum standards for a depository.

The fund or its investment adviser would generally determine whether the depository complies with those requirements based on information provided by the fund's primary custodian. The depository custody arrangement also would have to meet certain risk limiting requirements. The fund could obtain indemnification or insurance arrangements that adequately protect the fund against custody risks. The fund or its investment adviser generally would determine whether indemnification or insurance provisions are adequate. If the fund does not rely on indemnification or insurance, the fund's contract with its primary custodian would be required to state

burden. The Commission particularly invites comment on the reasonableness to the staff's burden estimates.

[64] This information is based on data reported by funds on Form N–SAR (17 CFR 274.101).

[65] The staff estimates that these 3,690 portfolios are divided among approximately 1,327 registered funds within approximately 650 fund complexes that may share the same investment adviser, board of directors, U.S. bank custodian, or all of these entities. Each board of directors and its delegates for a fund complex could therefore meet rule 17f–5's requirements by simultaneously approving similar arrangements for some 6 portfolios in the same complex. The estimated hour amounts are based on discussions with representatives of funds about the burden of analogous requirements in another custody rule.

[66] This estimate is based on staff review of custody contracts and other research.

[67] These estimates assume that each of 15 custodians services an average of 250 client portfolios within 40 fund complexes, that a single response by each custodian can simultaneously address approximately 6 client portfolios in a fund complex, and that each custodian makes approximately 80 responses annually requiring 10 hours per response to establish bank custody arrangements for approximately 40 fund complexes and report to their fund boards, and one response annually requiring 96 hours per response to establish a system to monitor custody arrangements for these clients.

[68] The number of responses may decline substantially after the first year because some responses made during that year would suffice for some time thereafter.

[69] *See supra* note 65.

[70] These estimates assume that one adviser manages 6 portfolios, and that each adviser would make 3 responses annually requiring a total of 44 hours to approve depository custody arrangements for each fund complex, report to fund boards, and establish a system to monitor depository arrangements for the fund complex. The 44 hours would include 10 hours spent to establish custody arrangements with depositories and make ''reasonable care'' determinations, 24 hours spent to monitor depository arrangements, and 10 hours spent to report to fund boards.

that the custodian will provide to the fund or its investment adviser a custody risk analysis of each depository, monitor risks on a continuous basis, and promptly notify the fund or its adviser of material changes in risks. The primary custodian and other custodians also would be required to agree to exercise reasonable care.

The staff estimates that during the first year after proposed rule 17f–7 goes into effect, approximately 650 investment advisers would make an average of 3 responses per adviser under the proposed rule, requiring a total of approximately 25 hours for each adviser, to address depository compliance with minimum requirements, any indemnification or insurance arrangements, and reviews of risk analyses or notifications.[71] The total annual burden associated with these requirements of the rule during the first year would be approximately 16,250 hours (650 advisers × 25 hours per adviser). The staff further estimates that during the first year after the proposed rule goes into effect, approximately 15 global custodians would make an average of 80 responses per custodian under the rule that would require approximately 10 hours per response.[72] The total annual burden associated with these requirements of the new rule would be approximately 12,000 hours (15 custodians × 800 hours). Therefore, the total annual burden associated with all collection of information requirements of the proposed new rule during the first year after its adoption is estimated to be 28,250 hours (16,250 + 12,000).

As reflected in the following summary of the burden hour requirements of the collection of information requirements in current rule 17f–5, rule 17f–5 as proposed to be amended, and proposed rule 17f–7, the staff estimates that the net effect of the proposed amendments and new rule may be to reduce the total annual paperwork burden by 350 hours:

Rule	Paperwork burden hours
Current rule 17f–5	49,420
Rule 17f–5 as proposed to be amended	20,820
Proposed rule 17f–7	28,250
Net reduction	−350

The Commission requests comment on the reasonableness of these estimates. Commenters who disagree are requested to provide their own estimates with supporting rationales.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the staff's estimate of the burden of the proposed collections of information; (iii) enhance the quality, utility and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed amendments and proposed rule should direct them to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (ii) Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549–0609, with reference to File No. S7–15–99. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication; therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release. Requests for materials submitted to OMB by the Commission with respect to these collections of information should be in writing, refer to File No. S7–15–99, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services.

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603 regarding the proposed amendments to rule 17f–5 and proposed new rule 17f–7, and conforming amendments to rules 7d–1 and 17f–4. The following summarizes the IRFA.

A. Reasons for the Proposed Action

Rule 17f–5 governs the custody of the assets of registered management investment companies (''funds'') with custodians outside the United States. The Commission amended the rule in 1997 to modernize its conditions. In 1998, representatives of funds and bank custodians informed the Commission that some conditions of the rule presented problems regarding the use of foreign securities depositories.

B. Objectives

The Commission is proposing amendments to rule 17f–5 and a new rule 17f–7, which together would permit funds to maintain their assets in foreign securities depositories based on conditions that reflect the operations and role of these depositories. The proposed amendments to rule 17f–5 would remove custody arrangements with foreign securities depositories from the rule, eliminating the applicability to depository arrangements of requirements that certain findings be made by the fund board, its investment adviser, or global custodian, and that certain specified terms or equivalent protections appear in the rules of the depository.

Proposed new rule 17f–7 would establish new provisions for the use of depositories. The proposed rule would require every foreign securities depository that holds fund assets to meet specified minimum standards for depositories. The proposed rule also would require a custody arrangement with a depository to meet either of two alternative sets of risk-limiting conditions. Under one alternative, the fund could obtain adequate indemnification or insurance against the custody risks of depository arrangements. Under the other alternative, the fund's contract with its primary custodian would have to state that the custodian will provide the fund or its adviser an initial analysis of the custody risks of the depository arrangement, continuously monitor those risks, and notify the fund or its adviser of material changes in the risks. The primary custodian and other custodians involved in the depository

[71] These estimates assume that one adviser manages 6 portfolios, and that each adviser would make 3 responses annually requiring a total of 25 hours for each adviser to address depository compliance with minimum requirements, any indemnification or insurance arrangements, and reviews of risk analyses or notifications for the adviser's fund complex. The 25 hours would include 3 hours spent to verify depository compliance with minimum requirements, 2 hours spent to address any indemnification or insurance arrangements, and 20 hours spent to review risk analyses or notification for the fund complex.

[72] These estimates assume that each of 15 custodians services an average of 250 client portfolios within 40 fund complexes, that a single response by each custodian can simultaneously address approximately 6 client portfolios in a fund complex, and that each custodian makes approximately 80 annual responses requiring 10 hours per response to prepare risk anslyses of depository arrangements and monitor risks for approximately 40 fund complexes, and to provide notices of material changes in risks to these clients.

arrangement also would have to agree to exercise reasonable care in performing these duties and in other conduct relating to custody arrangements. The conforming amendments to rules 7d–1 and 17f–4 would clarify current references to rule 17f–5 by adding a reference to rule 17f–7 as well.

C. Legal Basis

The Commission is proposing the amendments to rule 17f–5 and new rule 17f–7 and conforming amendments to rules 7d–1 and 17f–4 pursuant to the authority set forth in sections 6(c), 7(d), 17(f), and 38(a) of the Investment Company Act (15 U.S.C. 80a–6(c), –7(d), –17(f), and –37(a)).

D. Small Entities Subject to the Rules

The proposed amendments and new rule will affect, among other persons, the approximately 15 global custodians that act as foreign custody managers for funds under rule 17f–5 and as primary custodians under proposed rule 17f–7. None of these global custodians would likely qualify as a small entity, because each custodian is a major bank with a global branch network or global ties to other banks. The proposed amendments and new rule also will affect the funds that invest in foreign markets and their investment advisers. Few if any of the affected funds and advisers would be small entities.[73]

On balance, the impact of the proposed amendments and new rule on global custodians, funds, and advisers is not expected to be great, because the burdens of the new rule's requirements would be offset in part by the elimination of burdens under existing rule 17f–5. For this reason, and because few if any of the affected entities would qualify as small entities, the proposed amendments are unlikely to have a significant impact on a substantial number of small entities.

E. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments to rule 17f–5 would retain existing reporting, recordkeeping, and other compliance requirements of the rule without substantive changes, insofar as they apply to custody arrangements with a foreign bank custodian. The amendments would remove a custody arrangement with a foreign depository from the rule, eliminating the necessity for it to comply with these requirements.

Proposed new rule 17f–7 would establish new requirements for arrangements with depositories. As described above, the new rule would require each foreign securities depository that holds fund assets to meet certain specified minimum requirements. Depository arrangements also would have to meet other risk-limiting conditions. A fund could obtain adequate indemnification or insurance against the custody risks of depository arrangements. In the alternative, the fund's contract with its primary custodian would have to state that the custodian will provide an analysis of depository custody risks, continuously monitor the risks, and promptly notify the fund of any material changes in risks. The primary custodian and other custodians also would have to agree to exercise reasonable care in all conduct relating to custody arrangements.

F. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant economic impact on small entities. As discussed above, none of the global custodians affected by the proposed amendments to rule 17f–5 or proposed rule 17f–7, and few if any of the affected funds and advisers, are likely to be considered small entities for purposes of the Regulatory Flexibility Act. As further discussed above, the impact of the amendments is likely to be limited, because burdens under the proposed new rule would be offset in part by reduced burdens under current rule 17f–5. Therefore, the potential impact of the amendments and the proposed new rule on small entities would not be significant.

For these reasons, alternatives to the proposed amendments and proposed new rule are unlikely to minimize any impact that the proposed amendments may have on small entities. Alternatives in this category would include: (1) Establishing different compliance or reporting standards that take into account the resources available to small entities; (2) clarifying, consolidating or simplifying the compliance requirements for small entities; (3) using performance rather than design standards; and (4) exempting small entities from coverage of all or part of the rule.

The Commission encourages the submission of comments on matters discussed in the IRFA. Comment specifically is requested on the number of small entities that would be affected by the proposals and the impact of the proposals on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be placed in the same public comment file as comments on the proposals. A copy of the IRFA may be obtained by contacting Thomas M.J Kerwin, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0506.

VI. Statutory Authority

The Commission is proposing amendments to rule 17f–5 and new rule 17f–7 and conforming amendments to rules 7d–1 and 17f–4 pursuant to authority set forth in sections 6(c), 7(d), 17(f), and 38(a) of the Investment Company Act (15 U.S.C. 80a–6(c), –7(d), –17(f) and –37(a)).

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The general authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39 unless otherwise noted:

* * * * *

2. Section 270.7d–1 is amended by revising the introductory text of paragraph (b)(8)(v) to read as follows:

§ 270.7d–1 Specification of conditions and arrangements for Canadian management investment companies requesting order permitting registration.

* * * * *

(b) * * *

(8) * * *

(v) Except as provided in § 270.17f–5 and § 270.17f–7, applicant will appoint, by contract, a bank, as defined in section 2(a)(5) of the Act (15 U.S.C. 80a–2(a)(5)) and having the qualification described in section 26(a)(1) of the Act (15 U.S.C. 80a–26(a)(1)), to act as trustee of, and maintain in its sole custody in the United States, all of applicant's securities and cash, other than cash

[73] A fund is consisered a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less. 17 CFR 270.0–10. An adviser is considered a small entity if it has assets under management of less than $25 million, has total assets of less than $5 million, and is not in a control relationship with other advisers or persons that are not small entities. 17 CFR 275.0–7. Most funds that invest in foreign securities are part of a fund complex that holds net assets of more than $50 million, and are advised by advisers with assets under management of $25 million or more.

necessary to meet applicant's current administrative expenses. The contract will provide, *inter alia,* that the custodian will:

* * * * *

3. Section 270.17f–4 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 270.17f–4 Deposits of securities in securities depositories.

* * * * *

(b) A registered management investment company (investment company) or any qualified custodian may deposit all or any part of the securities owned by the investment company in a foreign Eligible Securities Depository as defined in § 270.17f–7 in accordance with the provisions of § 270.17f–7 and applicable provisions of § 270.17f–5, or in:

* * * * *

4. Section 270.17f–5 is revised to read as follows:

§ 270.17f–5 Custody of investment company assets outside the United States.

(a) *Definitions.* For purposes of this section:

(1) *Eligible Foreign Custodian* means an entity that is incorporated or organized under the laws of a country other than the United States and that is a Qualified Foreign Bank or a majority-owned direct or indirect subsidiary of a U.S. Bank or bank-holding company.

(2) *Foreign Assets* means any investments (including foreign currencies) for which the primary market is outside the United States, and any cash and cash equivalents that are reasonably necessary to effect the Fund's transactions in those investments.

(3) *Foreign Custody Manager* means a Fund's or a Registered Canadian Fund's board of directors or any person serving as the board's delegate under paragraphs (b) or (d) of this section.

(4) *Fund* means a management investment company registered under the Act (15 U.S.C. 80a) and incorporated or organized under the laws of the United States or of a state.

(5) *Qualified Foreign Bank* means a banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated as such by the country's government or an agency of the country's government.

(6) *Registered Canadian Fund* means a management investment company incorporated or organized under the laws of Canada and registered under the Act pursuant to the conditions of § 270.7d–1.

(7) *U.S. Bank* means an entity that is:

(i) A banking institution organized under the laws of the United States;

(ii) A member bank of the Federal Reserve System;

(iii) Any other banking institution or trust company organized under the laws of any state or of the United States, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by state or federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this section, or

(iv) A receiver, conservator, or other liquidating agent of any institution or firm included in paragraphs (a)(7)(i), (ii), or (iii) of this section.

(b) *Delegation.* A Fund's board of directors may delegate to the Fund's investment adviser or officers or to a U.S. Bank or to a Qualified Foreign Bank the responsibilities set forth in paragraphs (c)(1), (c)(2), or (c)(3) of this section, *provided that:*

(1) The board determines that it is reasonable to rely on the delegate to perform the delegated responsibilities;

(2) The board requires the delegate to provide written reports notifying the board of the placement of Foreign Assets with a particular custodian and of any material change in the Fund's foreign custody arrangements, with the reports to be provided to the board at such times as the board deems reasonable and appropriate based on the circumstances of the Fund's arrangements; and

(3) The delegate agrees to exercise reasonable care, prudence and diligence such as a person having responsibility for the safekeeping of the Fund's Foreign Assets would exercise, or to adhere to a higher standard of care, in performing the delegated responsibilities.

(c) *Maintaining Assets with an Eligible Foreign Custodian.* A Fund or its Foreign Custody Manager may place and maintain the Fund's Foreign Assets in the care of an Eligible Foreign Custodian, *provided that:*

(1) *General Standard.* The Foreign Custody Manager determines that the Foreign Assets will be subject to reasonable care, based on the standards applicable to custodians in the relevant market, if maintained with the Eligible Foreign Custodian, after considering all factors relevant to the safekeeping of the Foreign Assets, including, without limitation:

(i) The Eligible Foreign Custodian's practices, procedures, and internal controls, including, but not limited to, the physical protections available for certificated securities (if applicable), the method of keeping custodial records, and the security and data protection practices;

(ii) Whether the Eligible Foreign Custodian has the requisite financial strength to provide reasonable care for Foreign Assets;

(iii) The Eligible Foreign Custodian's general reputation and standing; and

(iv) Whether the Fund will have jurisdiction over and be able to enforce judgments against the Eligible Foreign Custodian, such as by virtue of the existence of offices in the United States or consent to service of process in the United States.

(2) *Contract.* The arrangement with the Eligible Foreign Custodian is governed by a written contract that the Foreign Custody Manager has determined will provide reasonable care for Foreign Assets based on the standards specified in paragraph (c)(1) of this section.

(i) The contract must provide:

(A) For indemnification or insurance arrangements (or any combination) that will adequately protect the Fund against the risk of loss of Foreign Assets held in accordance with the contract;

(B) That the Foreign Assets will not be subject to any right, charge, security interest, lien or claim of any kind in favor of the Eligible Foreign Custodian or its creditors, except a claim of payment for their safe custody or administration or, in the case of cash deposits, liens or rights in favor of creditors of the custodian arising under bankruptcy, insolvency, or similar laws;

(C) That beneficial ownership of the Foreign Assets will be freely transferable without the payment of money or value other than for safe custody or administration;

(D) That adequate records will be maintained identifying the Foreign Assets as belonging to the Fund or as being held by a third party for the benefit of the Fund;

(E) That the Fund's independent public accountants will be given access to those records or confirmation of the contents of those records; and

(F) That the Fund will receive periodic reports with respect to the safekeeping of the Foreign Assets, including, but not limited to, notification of any transfer to or from the Fund's account or a third party account containing assets held for the benefit of the Fund.

(ii) The contract may contain, in lieu of any or all of the provisions specified

in paragraph (c)(2)(i) of this section, other provisions that the Foreign Custody Manager determines will provide, in their entirety, the same or a greater level of care and protection for the Foreign Assets as the specified provisions, in their entirety.

(3)(i) *Monitoring the Foreign Custody Arrangements.* The Foreign Custody Manager has established a system to monitor the appropriateness of maintaining the Foreign Assets with a particular custodian under paragraph (c)(1) of this section, and to monitor performance of the contract under paragraph (c)(2) of this section.

(ii) If an arrangement with an Eligible Foreign Custodian no longer meets the requirements of this section, the Fund must withdraw the Foreign Assets from the Eligible Foreign Custodian as soon as reasonably practicable.

(d) *Registered Canadian Funds.* Any Registered Canadian Fund may place and maintain its Foreign Assets outside the United States in accordance with the requirements of this section, *provided that:*

(1) The Foreign Assets are placed in the care of an overseas branch of a U.S. Bank that has aggregate capital, surplus, and undivided profits of a specified amount, which must not be less than $500,000; and

(2) The Foreign Custody Manager is the Fund's board of directors, its investment adviser or officers, or a U.S. Bank.

Note to § 270.17f–5: A custody arrangement that involves an Eligible Securities Depository (as defined in § 270.17f–7) would be governed by the provisions of § 270.17f–7 as well as by provisions of § 270.17f–5 that apply to any Eligible Foreign Custodian involved in the depository custody arrangement.

5. Section 270.17f–7 is added to read as follows:

§ 270.17f–7 Custody of investment company assets with a foreign securities depository.

(a) *Custody arrangement with an Eligible Securities Depository.* A Fund, including a Registered Canadian Fund, may place and maintain its Foreign Assets with an Eligible Securities Depository, *provided that:*

(1) *Indemnification or insurance.* The Fund has obtained indemnification or insurance arrangements (or any combination) that will adequately protect the Fund against all losses attributable to the custody risks associated with maintaining assets with the Eligible Securities Depository; or (2)

(2) *Alternative safeguards.* The custody arrangement provides other reasonable safeguards against the custody risks associated with maintaining assets with the Eligible Securities Depository, including:

(i) *Risk analysis and monitoring.* The Fund's contract with its Primary Custodian states that the Primary Custodian (or its agent) will:

(A) Provide the Fund or its investment adviser with an analysis of the custody risks associated with maintaining assets with the Eligible Securities Depository, before the Fund places its assets with the depository; and

(B) Continuously monitor the custody risks associated with maintaining assets with the Eligible Securities Depository and promptly notify the Fund or its investment adviser regarding any material change in these risks.

(ii) *Exercise of care.* The Fund's contract with its Primary Custodian states that the Primary Custodian and each other custodian that acts on behalf of the Fund in maintaining assets with the Eligible Securities Depository will agree to exercise reasonable care, prudence, and diligence in performing the requirements of paragraph (a)(2)(i) of this section and in all other conduct relating to custody arrangements, or to adhere to a higher standard of care.

(3) *Withdrawal of assets from Eligible Securities Depository.* If a custody arrangement with an Eligible Securities Depository no longer meets the requirements of this section, the Fund's Foreign Assets must be withdrawn from the depository as soon as reasonably practicable.

(b) *Definitions.* The terms *Foreign Assets, Fund, Qualified Foreign Bank, Registered Canadian Fund,* and *U.S. Bank* have the same meanings as in § 270.17f–5. In addition:

(1) *Eligible Securities Depository* means a system for the central handling of securities as defined in § 270.17f–4, or a transfer agent that transfers and holds uncertificated securities on the books of an issuer for market participants, that:

(i) Acts as a transnational system for the central handling of securities or equivalent book-entries, or acts as a system for the central handling of securities or equivalent book-entries in the country where it is incorporated or organized;

(ii) Is regulated by a foreign financial regulatory authority as defined under section 2(a)(50) of the Act (15 U.S.C. 80a–2(a)(50));

(iii) Holds assets for the custodian that participates in the system on behalf of the Fund under conditions no less favorable than the conditions that apply to other participants;

(iv) Maintains records that identify the assets of each participant and segregate the system's own assets from the assets of participants;

(v) Provides periodic reports to its participants with respect to its safekeeping of assets, including notices of transfers to or from any participant's account; and (vi) Is subject to periodic review by regulatory authorities or independent accountants.

(2) *Primary Custodian* means a U.S. Bank or Qualified Foreign Bank that contracts directly with a Fund to provide custodial services related to maintaining the Fund's assets outside the United States.

Note to § 270.17f–7: A custody arrangement that involves an Eligible Securities Depository would also be governed by provisions of § 270.17f–5 that apply to any Eligible Foreign Custodian (as defined in § 270.17f–5) involved in the depository custody arrangement.

Dated: April 29, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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- Polymer and resin √1√production facilities (Groups I and IV) and volatile organic compound (VOC) emissions from polyether polyols production; comments due by 5-10-99; published 3-9-99

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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/nara/index.html. Some laws may not yet be available.

H.R. 800/P.L. 106–25

Education Flexibility Partnership Act of 1999 (Apr. 29, 1999; 113 Stat. 41)

Last List April 29, 1999

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