7–29–99
Vol. 64 No. 145
Pages 41003–41264

# federal register

Thursday
July 29, 1999

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# Presidential Documents

**Title 3—**

**The President**

**Proclamation 7212 of July 26, 1999**

## 25th Anniversary of the Legal Services Corporation, 1999

**By the President of the United States of America**

**A Proclamation**

The Bill of Rights guarantees that no American shall be ''deprived of life, liberty, or property, without due process of law.'' This promise lies at the heart of our free society and reflects our reverence for impartial justice and the rule of law. In a few simple words, it cements the fundamental covenant between our government and the people it serves.

Our Nation's founders understood that true justice cannot exist unless it is accessible to all. In this same spirit, Congress established the Legal Services Corporation (LSC) 25 years ago to secure equal access to justice under the law for all Americans by making available high-quality legal assistance in civil matters to citizens who otherwise would be unable to afford it.

Designed as a private, nonprofit, independent entity, the LSC focuses its efforts on funding local legal services programs that are rooted in and accountable to the communities they serve. The dedicated staffs of these programs, and the many private attorneys who donate their time and expertise, strive to protect and defend the interests of their clients and to maintain the highest standards of the legal profession. In recent years, the LSC has provided grants to legal services programs serving every county in our Nation, as well as the U.S. territories. Each year, almost 60 thousand private attorneys participate by performing pro bono legal services, and almost 2 million people benefit from LSC-funded efforts.

The extraordinary success of the LSC highlights the importance of the legal profession's long-standing tradition of community service. It also reminds us of how much our society has been strengthened by the conscience and conviction of lawyers standing up for what is right. As part of my Call to Action to the American Legal Community, I hope to build on this tradition of service by challenging all attorneys across our Nation to donate some of their time and apply their skills to help those among us who cannot afford to pay for the representation they need.

As we mark the 25th Anniversary of the Legal Services Corporation, I salute the dedicated members of the Board of Directors, attorneys, paralegals, support staff, and volunteers associated with the LSC who have worked with talent, generosity, and determination to uphold America's fundamental commitment to justice for all.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim July 25, 1999, as the 25th Anniversary of the Legal Services Corporation. I urge all Americans to join me in recognizing the contributions that the Legal Services Corporation, and the local programs that it supports, have made in fulfilling the promise of equal justice under the law.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of July, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 99–19599
Filed 7–28–99; 8:45 am]
Billing code 3195–01–P

# Presidential Documents

**Proclamation 7213 of July 26, 1999**

## National Korean War Veterans Armistice Day, 1999

**By the President of the United States of America**

**A Proclamation**

In 1950, North Korea invaded its free neighbor to the south, raising the specter of armed communist expansion as a threat to democracies around the world. During the next 3 years of bitter struggle, more than 54,000 Americans gave their lives for the cause of freedom. With the signing of a negotiated armistice in 1953, the Korean War became for a time the ''Forgotten War.'' But each year on National Korean War Veterans Armistice Day, we pledge never to forget the lessons of that savage and costly conflict nor the members of our Armed Forces who risked their lives to defend democracy, human dignity, and the right to self-determination.

The Korean War taught us that we have many allies in our ongoing crusade for human freedom and democratic rule. Under the auspices of the United Nations, 22 countries joined the United States and South Korea in resisting communist aggression by sending troops and providing medical support. Etched in stone on the Korean War Veterans Memorial in our Nation's capital, the names of these countries remind us that free nations everywhere share a profound responsibility to assist those who seek to defend themselves from the aggression of brutal and oppressive regimes. The Korean War also taught us the importance of vigilance in recognizing threats to freedom and the need for vigorous and decisive action in resisting such encroachments. Though the dark shroud of the Cold War has lifted from our world, new regional and ethnic conflicts remain a threat to international peace and human rights. Whether in Iraq, Bosnia, Kosovo, or elsewhere, we will continue to defend the same eternal values for which so many courageous Americans fought in Korea.

The Congress, by Public Law 104–19 (36 U.S.C. 127), has designated July 27, 1999, as ''National Korean War Veterans Armistice Day'' and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim July 27, 1999, as National Korean War Veterans Armistice Day. I call upon all Americans to observe this day with appropriate ceremonies and activities that honor and give thanks to our distinguished Korean War veterans. I also ask Federal departments and agencies and interested groups, organizations, and individuals to fly the flag of the United States at half-staff on July 27, 1999, in memory of the Americans who died as a result of their service in Korea.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of July, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 99–19600
Filed 7–28–99; 8:45 am]
Billing code 3195–01–P

# 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.

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 360

**[Docket No. 98–091–1]**

### Noxious Weeds; Permits and Interstate Movement

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the noxious weed regulations to clearly state that a permit is required for the movement of noxious weeds interstate, as well as into or through the United States. The regulations currently provide for the issuance of permits for movements into or through the United States, but do not explicitly address interstate movements. This action is necessary to help prevent the artificial interstate spread of noxious weeds into noninfested areas of the United States.

**DATES:** This interim rule is effective July 29, 1999. We invite you to comment on this docket. We will consider all comments that we receive by September 27, 1999.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 98–091–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–091–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

**FOR FURTHER INFORMATION CONTACT:** Dr. Randy Westbrooks, Invasive Plant Liaison, Interagency Field Office for Invasive Species, 233 Border Belt Drive, PO Box 279, Whiteville, NC 28472; (910) 648–6762.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations at 7 CFR part 360 (referred to below as the regulations) list Federal noxious weeds and require persons wishing to move a Federal noxious weed into or through the United States to obtain a permit. The regulations were established in 1976 under the authority of the Federal Noxious Weed Act (FNWA) of 1974 (7 U.S.C. 2801 *et seq.*).

Until 1994, the FNWA prohibited the movement of any noxious weed listed in the regulations into or through the United States, or interstate, unless the movement was authorized by a permit and was made in accordance with any conditions in the permit and the regulations. In 1994, Congress amended the FNWA (Pub. L. 103–465, section 431(f)). As amended, the FNWA provides that no person may import or enter any noxious weed listed in the regulations into or through the United States, or move any noxious weed interstate, unless the movement is in accordance with regulations promulgated under the FNWA.

As noted above, the regulations specifically require a permit for the movement of any Federal noxious weed into or through the United States, but do not specifically address interstate movements. In the past, the Animal and Plant Health Inspection Service has not required a permit for interstate movements originating within the United States unless a quarantine, in conjunction with a control and eradication program, was first established in the area of the United States where the noxious weed existed.

Upon review of this policy, especially in circumstances where adequate funds are not available for control and eradication programs, or where such programs do not appear necessary or appropriate (for example, where a Federal noxious weed previously imported under permit is being grown in a controlled area for a specific approved use), we no longer believe that this policy provides adequate protection against the spread of Federal noxious weeds within the United States.

Therefore, we are amending the regulations to specifically require a permit for the interstate movement of Federal noxious weeds. We believe that this action is necessary to prevent the spread of Federal noxious weeds within the United States.

### Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the artificial interstate movement of noxious weeds to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

### Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, set forth below, regarding the impact of this interim rule on small entities. We do not currently have all the data necessary for a comprehensive analysis of the economic effects of this rule on small entities.

Therefore, we are inviting comments concerning potential economic impacts. In particular, we are interested in determining the number and kinds of small entities that may incur benefits or costs from implementation of this interim rule. The discussion below also serves as the cost-benefit analysis required by Executive Order 12866.

In accordance with 7 U.S.C. 2803 and 2809, the Secretary of Agriculture is authorized to promulgate regulations to prevent the dissemination of any noxious weed into the United States, or interstate. Further, under 7 U.S.C. 2803, no person shall import or enter any noxious weed listed in the regulations into or through the United States, or interstate, unless the movement is in accordance with regulations.

This interim rule amends the regulations by specifically requiring a permit for the interstate movement of Federal noxious weeds. In the past, the Animal and Plant Health Inspection Service has not required a permit for interstate movements originating within the United States unless a quarantine, in conjunction with a control and eradication program, was first established in the area of the United States where the noxious weed existed.

Upon review of this policy, especially in circumstances where adequate funds are not available for control and eradication programs, or where such programs do not appear necessary or appropriate (for example, where a Federal noxious weed previously imported under permit is being grown in a controlled area for a specific approved use), we no longer believe that this policy provides adequate protection against the spread of Federal noxious weeds within the United States.

As part of our analysis of the economic effects of this action, we compared the expected benefits of restricting the interstate movement of Federal noxious weeds with the expected costs to the private sector associated with the new restrictions.

**Effects of Noxious Weeds**

Noxious weeds affect both crops and native plant species in the same way—by out-competing for light, water, and soil nutrients. Noxious weeds cause estimated crop losses of $2 to $3 billion annually. These losses are attributed to: (1) Decreased quality of agricultural products due to high levels of competition from noxious weeds; and (2) decreased quantity of agricultural products due to noxious weed infestations.

Further, noxious weeds can negatively affect livestock and dairy producers by making forage unpalatable to livestock, thus decreasing livestock productivity and potentially increasing producers' feed costs. Increased costs to producers are eventually borne by consumers.

Noxious weeds also grow in aquatic habitats and may clog waterways and block irrigation and drainage canals, thus negatively affecting fish and wildlife resources and recreational use of these areas.

Infestations of noxious weeds can have a potentially disastrous impact on biodiversity and natural ecosystems, as evidenced by the case of the Mediterranean clone of *Caulerpa taxifolia*, a listed aquatic Federal noxious weed. The clone was introduced into the Mediterranean in 1984 and has since spread along the French and Italian coasts, covering 10,000 acres of the coastal sea floor, and crowding out many native seaweeds, sea grasses, and invertebrates such as coral, sea fans, and sponges.

In order to combat the negative effects of noxious weeds on crop lands, grazing lands, and waterways, herbicidal and other weed control strategies can be implemented at further costs to producers and government agencies. Such costs would then likely be passed down to consumers, who would pay more for products due to increased producer costs.

This rule could potentially benefit any entities referred to above by curbing the spread of Federal noxious weeds and thereby eliminating potential new costs resulting from infestations.

**Entities Potentially Affected by the Interim Rule**

Any person involved in moving Federal noxious weeds interstate will be affected by this rule because they will now have to obtain a permit prior to the interstate movement. Those likely to be affected are nursery stock catalog firms and individual backyard producers who distribute Federal noxious weeds.

We have found that at least 61 nursery stock catalog companies list some Federal noxious weeds, either in the form of seeds or plants, in their inventory of available products. Available data suggests, however, that sales of Federal noxious weeds (and seeds) make up a small fraction of the total receipts for these businesses. We invite any persons engaged in the sale of Federal noxious weeds, including seeds, to provide us with additional economic data regarding revenue generated by those sales. (The list of Federal noxious weeds is contained in 7 CFR 360.200, and can be found on the APHIS web site at http://www.aphis.usda.gov/ppq/bats/fnwsbycat-e.html. Copies of the list may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.)

Also, there are entities in some States that import noxious weed seeds under permit and grow them under conditions specified in permits granted by APHIS. We are aware that, in isolated cases, entities that import Federal noxious weeds and seeds under permit may also wish to move them interstate. Under this rule, those entities will be required to obtain another permit from APHIS for any movement of noxious weeds that is not authorized in the original permit. Further, APHIS has the authority to deny such a permit if it determines that the movement of such Federal noxious weeds may cause dissemination of the weed into noninfested areas of the United States. This means that, based on the risk of dissemination, APHIS may grant a permit for the movement of a Federal noxious weed into one State, but not into another, or may grant a permit for the movement of one species of Federal noxious weed, but not another.

Also among the entities potentially affected by this rule are individual backyard producers. Some listed Federal noxious weeds are known to be valued among certain groups as vegetable crops and are grown in small garden plots for personal use and sale at informal markets. Since these producers are not registered with APHIS, the total number of such entities is not available. However, since most of these entities probably do not depend upon the production of noxious weeds for their livelihood, this rule should have a very limited economic effect on them. We invite the public to submit any available data on such entities that are affected by this rule.

We are also aware that there are producers of *Ipomoea aquatica* (Chinese water spinach—a listed Federal noxious weed and a food valued by some groups) in some counties in Florida, California, and Hawaii who raise the weed as a cash crop for interstate sale to metropolitan and other markets. The exact number of such farms and their size is not available, but most holdings are said to be as small as an acre or less. Under this rule, persons wishing to move *I. aquatica* interstate will be required to obtain a permit from APHIS. We realize that this may result in a new burden on sellers and purchasers of *I. aquatica*, and we intend to address the situation in an upcoming rulemaking. In the near future, we plan to publish an advance notice of proposed rulemaking (ANPR) in the **Federal Register**, in which we will request the public to

comment on potential changes to our weed classification system. The weed classification system to be considered in the ANPR could eliminate the need for sellers of *I. aquatica* to obtain permits prior to shipping the weed interstate.

**Alternatives Considered**

The only significant alternative to this interim rule that we considered was to make no changes in the regulations, i.e., to not restrict the interstate movement of noxious weeds. We have rejected this alternative because of the potential economic and ecological consequences that we believe could result if listed Federal noxious weeds are disseminated into noninfested areas of the United States.

This interim rule contains new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), which are described below under the heading ''Paperwork Reduction Act.''

**Executive Order 12372**

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

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0054 to the information collection and recordkeeping requirements.

Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 98–091–1. Please send a copy of your comments to: (1) Docket No. 98–091–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this interim rule.

This interim rule amends the noxious weed regulations to clearly state that a permit is required for the movement of noxious weeds interstate, as well as into or through the United States. Prior to the effective date of this rule, the regulations provided for the issuance of permits for movements into or through the United States, but did not explicitly address interstate movements. This action is necessary to help prevent the artificial interstate spread of noxious weeds into noninfested areas of the United States.

Under this interim rule, persons wishing to move listed Federal noxious weeds interstate must first apply for a permit. We are asking OMB to approve this information collection in connection with our efforts to ensure that listed Federal noxious weeds are not disseminated into noninfested areas of the United States.

We are soliciting comments from the public (as well as affected agencies) concerning this information collection activity. We will use these comments to help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average .166 hours per response.

*Respondents:* Researchers, owner/operators of nursery stock firms, and backyard producers who engage in the interstate distribution of plants (for consumption, ornamental use, or other purposes) that are listed Federal noxious weeds.

*Estimated annual number of respondents*: 50.

*Estimated annual number of responses per respondent*: 1.

*Estimated annual number of responses*: 50.

*Estimated total annual burden on respondents*: 8 hours.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

**List of Subjects in 7 CFR Part 360**

Imports, Plants (Agriculture), Quarantine, Transportation, Weeds.

Accordingly, 7 CFR part 360 would be amended as follows:

## PART 360—NOXIOUS WEED REGULATIONS

1. The authority citation for part 360 would continue to read as follows:

**Authority:** 7 U.S.C. 2803 and 2809; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 360.300 is amended as follows:

a. By revising the section heading to read as set forth below.

b. By redesignating paragraphs (a), (b), (c), and (d) as paragraphs (b), (c), (d), and (e), respectively.

c. By adding a new paragraph (a) to read as set forth below.

d. By revising the newly redesignated paragraphs (b) and (e) to read as set forth below.

### § 360.300 General prohibitions and restrictions on the movement of noxious weeds; permits.

(a) No person may move a Federal noxious weed into or through the United States, or interstate, unless:

(1) He or she obtains a permit for such movement in accordance with paragraphs (b) through (e) of this section; and

(2) The movement is consistent with the specific conditions contained in the permit.

(b) The Deputy Administrator will issue a written permit for the movement of a noxious weed into or through the United States, or interstate, if application is made for such movement and if the Deputy Administrator determines that such movement, under conditions specified in the permit, would not involve a danger of dissemination of the noxious weed in the United States, or interstate; otherwise such a permit will not be issued.

* * * * *

(e) The Deputy Administrator may revoke any outstanding permit issued

under this section, and may deny future permit applications, if the Deputy Administrator determines that the issuee has failed to comply with any provision of the Act or this section, including conditions of any permit issued. Upon request, any permit holder will be afforded an opportunity for a hearing with respect to the merits or validity of any such revocation involving his or her permit.

(Approved by the Office of Management and Budget under control number 0579–0054)

Done in Washington, DC, this 23rd day of July 1999.

**Alfonso Torres,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 99–19420 Filed 7–28–99; 8:45 am]

BILLING CODE 3410–34–P

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 920

**[Docket No. FV98–920–4 FR]**

## Kiwifruit Grown in California; Changes in Minimum Size, Pack, Container, and Inspection Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule revises the minimum size, pack, container, and inspection requirements prescribed under the California kiwifruit marketing order. The marketing order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule specifies minimum size requirements for all kiwifruit as a maximum of 55 pieces of fruit in an 8-pound sample regardless of pack style; requires that individual consumer packages placed directly on a pallet be stamped with the applicable inspection lot number; and makes minor changes to clarify pack and container marking requirements for several containers. In addition, this rule continues, for the 1999–2000 season, the suspension of minimum net weight requirements for kiwifruit tray packs scheduled to expire at the end of the 1998–1999 season. Also, continued for the 1999–2000 season is the suspension of the requirement that fruit must be reinspected if it has not been shipped by specified dates. These changes clarify the minimum size, pack, and container requirements, and are expected to reduce handler packing costs, increase producer returns, and enable handlers to compete more effectively in the marketplace.

**EFFECTIVE DATE:** This final rule becomes effective August 1, 1999. The suspension of §§ 920.302(a)(4)(iii), and 920.155 expires on August 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This final rule revises the minimum size, pack, container, and inspection requirements prescribed under the California kiwifruit marketing order. The marketing order regulates the handling of kiwifruit grown in California and is administered locally by the Committee.

This rule specifies the minimum size requirements for all kiwifruit as a maximum of 55 pieces of fruit in an 8-pound sample regardless of pack style; requires that individual consumer packages placed directly on a pallet be stamped with the applicable inspection lot number; and makes minor changes to clarify pack and container marking requirements for several containers.

In addition, this rule continues, for the 1999–2000 season, the suspension of the minimum net weight requirements in § 920.302 (a)(4)(iii) for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays scheduled to expire at the end of the 1998–1999 season. This suspension action was implemented by an interim final rule published last September (63 FR 46861; September 3, 1998). No comments were received pursuant to the request for comments in the interim final rule. A final rule published last August suspended the requirement in § 920.155 that fruit must be reinspected if it has not been shipped by specified dates for the 1998–1999 season (63 FR 41390; August 4, 1998). This rule also continues the suspension of this requirement for the 1999–2000 season. These changes were unanimously recommended by the Committee. Clarification of the minimum size, pack, and container requirements are expected to reduce handler packing costs, increase producer returns, and enable handlers to compete more effectively in the marketplace.

The interim final rule published last September also increased the size variation tolerance, from 10 percent, by count, in any one container, to 25 percent, by count, for Size 42 kiwifruit, and the maximum number of fruit per 8-pound sample for Sizes 42, 39, 36, 33, and 30 of kiwifruit packed in bags,

volume fill, or bulk containers for the 1998–1999 and future seasons. This action does not change these provisions.

In early November 1998, the Department determined that suspending the minimum net weight requirements as specified in § 920.302(a)(4)(iii) without redefining the size designation definition in § 920.302 (b)(2) had inadvertently limited application of the minimum size requirements to volume fill packs.

The Committee met on November 19, 1998, and clarified that its original intent had been to maintain the minimum size requirement on all kiwifruit regardless of pack style. The Committee discussed changing the regulatory language so that minimum size applied to all pack styles for the remainder of the 1998–1999 season, but concluded that it would be unfair to growers and handlers to change this requirement in mid-season. The Committee believed that orderly marketing would continue as harvest was nearly completed at the time of the November 1998 meeting and because a small amount of minimum size kiwifruit had been packed in trays.

The Committee met again on January 13, 1999, to discuss industry issues and to make preliminary recommendations for the 1999–2000 season. The Committee concluded that the recommended changes made for the 1998–1999 season had benefitted the industry. Both small and large handlers were able to reduce packing costs and compete more effectively in the marketplace because of the relaxations made to the requirements.

The Committee made the following preliminary recommendations for the 1999–2000 season: (1) Specify that minimum size requirements apply to all kiwifruit regardless of pack style and define Size 45 in terms of weight and not pack requirements; (2) make minor changes to clarify pack and container marking requirements for several containers; (3) continue the suspension of the requirement that fruit must be reinspected if it has not been shipped by specified dates for the 1999–2000 season; and (4) continue the suspension of the minimum net weight requirements for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays for the 1999–2000 season.

Later in January, the kiwifruit industry held meetings in Northern and Southern California to further study the minimum size issue. Studies showed that while Size 45 fruit filled Size 45 cell cups well during the 1998–1999 season, the fruit packed would not have met the suspended minimum net weight requirement of 6.5 pounds because of the cup size used in the Size 45 tray, and also because the shape and density of fruit varies from year to year. A Size 45 tray of kiwifruit weighing a minimum of 6.5 pounds is equivalent to a maximum of 55 pieces of fruit in an 8-pound sample. Based on these findings, the Committee determined that the minimum net weight requirements for Size 45 should be studied further.

The Committee met on February 25, 1999, and unanimously recommended the following changes and clarifications for the 1999–2000 season: (1) Specify that the minimum size requirements be defined as a maximum of 55 pieces of fruit in an 8-pound sample and that the minimum size requirements should apply to all kiwifruit regardless of pack style; (2) require that individual consumer packages placed directly on a pallet be stamped with the applicable inspection lot number; (3) make minor changes to clarify pack and container marking requirements for several containers; (4) continue the suspension of the minimum net weight requirements for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays for the 1999–2000 season; and (5) continue the suspension of the requirement that fruit must be reinspected if it has not been shipped by specified dates for the 1999–2000 season. The Committee further recommended that all rule and regulation changes begin as soon as possible to enable handlers to make operational decisions in time for the 1999–2000 harvest and shipping season.

**Revisions for the 1999–2000 Season**

*Clarification of the Minimum Size Requirements*

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements. Section 920.52 authorizes the establishment of minimum size, pack, and container requirements. Section 920.302(a)(2) of the order's rules and regulations outlines the minimum size requirements for fresh shipments of California kiwifruit and provides that such kiwifruit shall be at least a minimum Size 45.

Section 920.302(a)(4)(iii) specifies minimum net weight requirements for fruit of various sizes packed in containers with cell compartments, cardboard fillers, or molded trays.

Section 920.302(b)(2) of the order's rules and regulations defines size designation to mean the same as defined in the table in paragraph (a)(4)(iii) of this section.

As previously mentioned, the Committee unanimously recommended suspending the minimum net weight requirements specified in § 920.302(a)(4)(iii) for the 1998–1999 season. This recommendation was implemented through an interim final rule published September 3, 1998 (63 FR 46861).

In early November 1998, the Department determined that suspending § 920.302(a)(4)(iii) without redefining the size designation definition in § 920.302(b)(2) had inadvertently limited application of the minimum size requirements to bulk bins, bags, consumer packs, master containers, and volume fill containers.

The Committee members attended a meeting in November 1998 and again in January 1999 wherein they clarified their initial intent, and set preliminary recommendations for the 1999–2000 season.

The Committee met on February 25, 1999, unanimously recommended that kiwifruit be at least a minimum Size 45, and that Size 45 be defined in terms of weight and not pack requirements. Size 45 was defined as a maximum of 55 pieces of fruit in an 8-pound sample. This recommendation reflected the Committee's original intent to apply uniform minimum size requirements to all kiwifruit regardless of pack style. To further clarify its intent, the Committee recommended adding the size definition to the size requirements in § 920.302(a)(2), deleting the size designation definition in § 920.302(b)(2), and defining Size 45 in terms of weight and not pack.

The Committee considered establishing a count of 58 or 59 pieces of slightly smaller fruit for the Size 45 trays, but concluded that the count should remain a maximum of 55 pieces of fruit per 8-pound sample because the current minimum size continues to prevent shipments of low-quality, undersized fruit, and because repacking problems during the 1998–1999 season resulted from an outdated cup size in the Size 45 tray and not from the current minimum size.

Over the years, the size designation for Size 45 has changed, but the tray inserts for this size fruit have not changed. In 1989, the size designation for Size 45 was changed to 57 pieces of fruit per 8-pound sample and remained there until 1994, when Size 45 became the minimum size and was defined as 55 pieces of fruit per 8-pound sample.

Kiwifruit was not packed in Size 45 trays during the three seasons preceding the 1998–1999 season as it was not

profitable for growers. A small amount of kiwifruit of this size was packed during the 1998–1999 season. The Committee believes the molded trays utilized during the 1998–1999 season were manufactured prior to 1994, that the cell cups of these molded trays were designed to fit smaller fruit, and that the size of the cups contributed to the packing problems associated with Size 45 trays during the 1998–1999 season.

Tray manufacturers attending Committee meetings in January and February 1999 expressed interest in working with the industry in developing molded tray inserts with slightly larger cell cups for Size 45 trays. These slightly larger cell cups allow slightly larger fruit to be packed and thus enable the minimum size requirements to be met.

As a result, the Committee unanimously recommended that the minimum size for all pack styles be established as a maximum of 55 pieces of fruit in an 8-pound sample. These changes will not impact the kiwifruit import regulation implemented under section 8e of the Act, because this recommendation will only clarify that the minimum size requirements apply to all shipments.

The Committee further recommended that all rules and regulation changes begin as soon as possible to enable handlers to make operational decisions in time for the 1999–2000 harvest and shipping season.

*Lot Stamp Requirement*

Section 920.303 of the order's rules and regulations outlines container marking requirements for fresh shipments of California kiwifruit.

Section 920.303(d) requires all exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on a pallet, to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector. Individual consumer packages and containers that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service are not subject to these requirements.

Prior to the 1998–1999 season, handlers did not place individual consumer packages directly on pallets for shipping. Individual consumer packages were placed in master containers and the master containers bore the container marking requirements.

During the 1998–1999 season, new individual consumer packages that interlock and fit on a pallet were utilized. These individual consumer packages are stacked six packages by six packages on a pallet resulting in 36 individual consumer packages per layer. Pallets are normally stacked 8–10 layers high. The Committee determined that this style of container will not meet the current marking requirements of not less than 75 percent of the total containers on a pallet being plainly marked with the lot stamp number. Due to the size and configuration of the interlocking individual consumer packages, approximately 57 percent of the individual consumer packages will be marked if all exposed or outside containers are marked with the lot stamp number.

Therefore, when the Committee met on February 25, 1999, they unanimously recommended adding language to § 920.303(d) to require individual consumer packages placed directly on a pallet to have all exposed containers plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector or that a total of four placards be applied to the pallet of kiwifruit. The Committee believes that relaxing the requirement to have all exposed or outside containers and at least 75 percent of the containers on the pallet marked with the lot stamp number, will allow handlers to ship individual consumer packages without incurring the additional costs of marking containers that are not exposed, and slowing down the packing line to mark the containers.

*Changes To Clarify Pack and Container Marking Requirements*

Section 920.303 of the order's rules and regulations outlines container marking requirements for fresh shipments of California kiwifruit.

Section 920.303(c)(3) establishes how the quantity shall be marked on bulk bins and requires the quantity to be indicated in terms of the size designation and net weight, or in terms of the size designation, net weight, and count.

Section 920.303(c)(5) establishes how the quantity shall be marked on individual consumer packages and requires that the quantity shall be indicated in terms of either net weight or count (or both) for individual consumer packages. It further requires that if count is used, it must be accompanied by the size designation.

At the February 25, 1999, meeting, the Committee recommended the following changes to pack requirements in §§ 920.302(a)(4)(ii) and (iv): (1) Change language in the first table of § 920.302(a)(4)(ii) as follows: Change ''Sizes'' to ''Count,'' change ''30 or larger'' to ''30 or less,'' and change ''39 or smaller'' to ''39 or more'; (2) add language to § 920.302(a)(4)(ii) to exclude individual consumer packages from the list of containers that utilize the size variation tolerance table for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays; (3) change language in the second table of § 920.302(a)(4)(ii) from ''Sizes'' to ''Size Designation'; (4) change language in § 920.302(a)(4)(ii) to add individual consumer packages to the list of containers which specifies size variation tolerances for kiwifruit packed in bags, volume fill, or bulk containers; and (5) change language in § 920.302(a)(4)(iv) by adding ''individual consumer packages'' to the list of containers in the table specifying the numerical size and maximum number of fruit per 8-pound sample; delete the word ''numerical'' when describing size; and delete the words ''Column 1,'' ''Column 2,'' and ''Numerical Count'' from the size designation table in § 920.302(a)(4)(iv) as they are not necessary.

These changes will: (1) Reflect current industry practices; (2) clarify that the size variation tolerances which are applied to fruit packed in volume fill containers are also applied to individual consumer packages; (3) clarify that the size designation chart is utilized to determine the maximum number of fruit per 8-pound sample for individual consumer packages; and (4) delete unnecessary language.

The Committee also recommended the following changes to container requirements in §§ 920.303(c)(3) and (5) as follows: (1) Change language in § 920.303(c)(3) by adding ''individual consumer packages not within a master container'' to the list of containers in the size designation table specifying the size and maximum number of fruit per 8-pound sample; (2) delete the word ''bins'' and replace it with ''containers'; (3) delete the words ''net weight'' as they are not necessary; and (4) change language in § 920.302(a)(5) by adding ''within a master container'' after individual consumer packages.

These changes will ensure that marking requirements are clearly defined for individual consumer packages placed directly on a pallet as well as those packed within a master container.

**Continuation of 1998–1999 Season Suspended Actions for the 1999–2000 Season**

*Continued Suspension of Minimum Net Weight Requirements for Trays*

Section 920.302(a)(4) of the order's rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iii) specifies minimum net weight requirements for fruit of various sizes packed in containers with cell compartments, cardboard fillers, or molded trays.

Prior to the 1989–1990 season, there were no minimum tray weight requirements although 73.5 percent of the crop was packed in trays. During the 1989–1990 season, minimum tray weights were mandated, as there were many new packers involved in the kiwifruit packing process and stricter regulations were viewed as necessary to provide uniform container weights for each size. However, since that season the proportion of the crop packed in trays has steadily declined.

During the 1997–1998 season, only 15.5 percent of the crop was packed into molded trays and less than 1 percent of this fruit was rejected for failure to meet minimum tray weights. As a consequence, the Committee believed that minimum tray weight requirements might no longer be necessary to maintain uniformity in the marketplace.

Prior to the 1998–1999 season handlers were required to meet the minimum net weight requirements as shown in the following chart:

| Count designation of fruit | Minimum net weight of fruit (Pounds) |
|---|---|
| 34 or larger | 7.5 |
| 35 to 37 | 7.25 |
| 38 to 40 | 6.875 |
| 41 to 43 | 6.75 |
| 44 and smaller | 6.5 |

The Committee met on July 8, 1998, and unanimously recommended suspension of the minimum net weight requirements for kiwifruit packed in cell compartments, cardboard fillers, or molded trays for the 1998–1999 season. Section 920.302(a)(4)(iii) was suspended for the 1998–1999 season by an interim final rule published September 3, 1998 (63 FR 14861).

As previously mentioned, both small and large handlers were able to reduce packing costs and to compete more effectively in the market during the 1998–1999 season because of the relaxation in packing requirements. The industry continued to pack well filled trays without having to spend the extra time weighing them. There was no reduction in the uniform appearance of fruit packed into trays.

Therefore, when the Committee met on January 13, 1999, to consider its preliminary recommendations for the season, it concluded that minimum net weight requirements for trays should continue to be suspended for the 1999–2000 season.

The Committee met on February 25, 1999, and unanimously recommended continuing the suspension of § 920.302(a)(4)(iii) for the 1999–2000 season. The 1999–2000 season ends July 31, 2000. The Committee plans to further evaluate the benefits during the 1999–2000 season.

*Continued Suspension of Reinspection Requirement*

Section 920.55 of the order requires that prior to handling any variety of California kiwifruit, such kiwifruit shall be inspected by the Federal or Federal-State Inspection Service (inspection service) and certified as meeting the applicable grade, size, quality, or maturity requirements in effect pursuant to § 920.52 or § 920.53.

Section 920.55(b) provides authority for the establishment, through the order's rules and regulations, of a period prior to shipment during which inspections must be performed.

Prior to its suspension for the 1998–1999 season, § 920.155 of the order's rules and regulations specified that the certification of grade, size, quality, and maturity of kiwifruit pursuant to § 920.52 or § 920.53 during each fiscal year is valid until December 31 of such year or 21 days from the date of inspection, whichever is later. Any inspected kiwifruit to be shipped after the certification period lapses was required to be reinspected and recertified before shipment.

Section 920.155 was suspended for the 1998–1999 season by a final rule published August 1, 1998 (63 FR 41390). The Committee recommended this suspension to lessen the expenses upon the many kiwifruit growers who had either lost money or merely recovered their production costs in recent years. It concluded that the cost of reinspecting kiwifruit was too high to justify requiring it in view of the limited benefit reinspection provides. The Committee also believed it was no longer necessary to have fruit reinspected to provide consumers with a high quality product because storage and handling operations had improved in the industry.

During the 1998–1999 season, handlers voluntarily checked stored fruit prior to shipment to ensure that the condition of the fruit had not deteriorated. This enabled handlers to ship quality kiwifruit during the 1998–1999 season without the necessity for reinspection and recertification and the costs associated with such requirements. The Committee had estimated that handlers would save $50,000 by conducting their own reinspection during the 1998–1999 season.

At the February 25, 1999, meeting, the Committee unanimously recommended suspending § 920.155 for the 1999–2000 season. The Committee still believes that handlers saved $50,000 by conducting their own reinspection during the 1998–1999 season even though the marketed crop was less than projected, more fruit was in-line inspected than projected, and shipments had started later during the 1998–1999 season than anticipated.

Although freezing temperatures and winds during the spring have reduced the size of the 1999–2000 crop, the Committee believes the industry will continue to benefit from conducting its own reinspection.

The Committee plans to evaluate this suspension one more season before making a decision to permanently remove this requirement from the rules and regulations. Thus, the Committee unanimously recommended suspending § 920.155 for the 1999–2000 season. The 1999–2000 season ends July 31, 2000.

**Maintaining Current Regulatory Changes**

*Maintaining the Current Size Variation Tolerance for Size 42 Kiwifruit*

Section 920.302(a)(4) of the order's rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(ii) specifies size variation ranges in terms of fruit diameter for each size of kiwifruit and size variation tolerances.

Section 920.302(a)(4)(ii) was revised by an interim final rule published September 3, 1998 (63 FR 46861) to include a provision to increase the size variation tolerance for Size 42 kiwifruit from 10 percent, by count, to 25 percent, by count.

During the 1998–1999 season a significantly smaller amount of kiwifruit was packed into the 40 series sizes than anticipated. Only 7 percent of the fruit was packed into Size 42 containers, and only 15.3 percent was packed into Size 42 and 45 containers. This is significantly less than the previous two years when 35 percent of the fruit was packed into the 40 series sizes.

In addition, size variation was not a problem for Size 42 fruit during the 1998–1999 season, as the majority of the fruit was round and short and not a mixture of round and flat fruit. A typical crop has a mixture of round and flat fruit. A mixture of round and flat fruit is difficult to pack and slows down the packing line.

The Committee believes that maintaining the increased size variation tolerance for Size 42 kiwifruit for the 1999–2000 season will continue to benefit the industry by easing the packing burden and reducing costs, while maintaining uniform looking boxes of fruit desired by customers.

*Maintaining the Current Maximum Number of Fruit per 8-Pound Sample for Kiwifruit Packed in Bags, Volume Fill, or Bulk Containers*

Section 920.302(a)(4) of the order's rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iv) establishes a maximum number of fruit per 8-pound sample for each numerical count size designation for fruit packed in bags, volume fill, or bulk containers.

Section 920.302(a)(4)(iv) was revised by an interim final rule published September 3, 1998 (63 FR 46861) to include a provision that increased the maximum number of fruit per 8-pound sample for Sizes 42 through 30. Size 42 fruit is smaller than Size 30 fruit. The size designation chart below depicts these changes:

| Size designation | Maximum number of fruit per 8 pound sample |
|---|---|
| 21 | 22 |
| 25 | 27 |
| 27/28 | 30 |
| 30 | 33 |
| 33 | 36 |
| 36 | 42 |
| 39 | 48 |
| 42 | 53 |
| 45 | 55 |

Currently, under the rules and regulations, kiwifruit packed in bags, volume fill, or bulk containers, must not exceed the maximum number of fruit per an 8-pound sample for each size designation.

Under the current regulations, handlers are better able to meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold. California handlers are applying weight standards that are similar to those used by importers, thereby lessening confusion in the marketplace and facilitating the marketing of California kiwifruit.

*Initial Regulatory Flexibility Analysis*

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

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

There are approximately 60 handlers of California kiwifruit subject to regulation under the marketing order and approximately 450 producers in the production area. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. One of the 60 handlers subject to regulation has annual kiwifruit receipts of at least $5,000,000. This figure excludes receipts from any other sources. The remaining 59 handlers have annual receipts less than $5,000,000, excluding receipts from other sources. In addition, 10 of the 450 producers subject to regulation have annual sales of at least $500,000, excluding receipts from any other sources. The remaining 440 producers have annual sales less than $500,000, excluding receipts from any other sources. Therefore, a majority of the kiwifruit handlers and producers may be classified as small entities.

This final rule changes minimum size, pack, container, and inspection requirements prescribed under the California kiwifruit marketing order. The marketing order regulates the handling of kiwifruit grown in California and is administered locally by the Committee.

This rule specifies the minimum size requirements for all kiwifruit as a maximum of 55 pieces of fruit in an 8-pound sample regardless of pack style; requires that individual consumer packages placed directly on a pallet be stamped with the applicable inspection lot number; and makes minor changes to clarify pack and container marking requirements for several containers.

In addition, this rule continues, for the 1999–2000 season, the suspension of the minimum net weight requirements in § 920.302 (a)(4)(iii) for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays scheduled to expire at the end of the 1998–1999 season. This suspension action was implemented by an interim final rule published last September (63 FR 46861; September 3, 1998). A final rule published last August suspended, for the 1998–1999 season, the requirement in § 920.155 that fruit must be reinspected if it has not been shipped by specified dates (63 FR 41390; August 4, 1998). This rule also continues the suspension of this requirement for the 1999–2000 season.

These changes were unanimously recommended by the Committee. Clarification of the minimum size and changes to the pack and container requirements are expected to reduce handler packing costs, increase producer returns, and enable handlers to compete more effectively in the marketplace.

The interim final rule published last September also increased the size variation tolerance for Size 42 kiwifruit and the maximum number of fruit for the 8-pound sample for the 1998–1999 and future seasons. No changes are being made to these provisions by this action.

In early November 1998, the Department determined that suspending the minimum net weight requirements as specified in § 920.302(a)(4)(iii) without redefining the size designation definition in § 920.302(b)(2) had inadvertently limited application of the minimum size requirements to volume fill packs.

The Committee met on November 19, 1998, and clarified that the intent of its July 8, 1998, recommendation had been to maintain the minimum size requirement on all kiwifruit regardless of pack style. The Committee discussed changing the regulatory language so that minimum size applied to all pack styles for the remainder of the 1998–1999 season, but concluded that it would be unfair to growers and handlers to change this requirement in mid-season. The Committee believed that orderly marketing would continue as harvest was nearly completed at the time of the November 1998 meeting and because a small amount of minimum size kiwifruit had been packed in trays.

The Committee met again on January 13, 1999, to discuss industry issues and to make preliminary recommendations for the 1999–2000 season. The

Committee concluded that the recommended changes made for the season had benefitted the industry. Both small and large handlers were able to reduce packing costs and compete more effectively in the marketplace in the 1998–1999 season because of the relaxations made to the requirements.

The Committee made the following preliminary recommendations for the 1999–2000 season: (1) Specify that minimum size requirements apply to all kiwifruit regardless of pack style and define Size 45 in terms of weight and not pack requirements; (2) make minor changes to clarify pack and container marking requirements for several containers; (3) continue the suspension of the requirement that fruit must be reinspected if it has not been shipped by specified dates for the 1999–2000 season; and (4) continue the suspension of the minimum net weight requirements for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays for the 1999–2000 season.

Later in January the kiwifruit industry held meetings in Northern and Southern California to further study the minimum size issue. Studies showed that while Size 45 fruit filled Size 45 cell cups well during the 1998–1999 season, the fruit packed would not have met the suspended minimum net weight requirement of 6.5 pounds because of the cup size used in the Size 45 tray, and also because the shape and density of fruit varies from year to year. A Size 45 tray of kiwifruit weighing a minimum of 6.5 pounds is equivalent to a maximum of 55 pieces of fruit in an 8-pound sample. Based on these findings, the Committee determined that the minimum net weight requirements for Size 45 should be further evaluated.

The Committee met on February 25, 1999, and unanimously recommended the following changes and clarifications for the 1999–2000 season: (1) Specify that the minimum size requirements be defined as a maximum of 55 pieces of fruit in an 8-pound sample and that the minimum size requirements should apply to all kiwifruit regardless of pack style; (2) require that individual consumer packages placed directly on a pallet be stamped with the applicable inspection lot number; (3) make minor changes to clarify pack and container marking requirements for several containers; (4) continue the suspension of the minimum net weight requirements for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays for the 1999–2000 season; and (5) continue the suspension of the requirement that fruit must be reinspected if it has not been shipped by specified dates for the 1999–2000 season. The Committee further recommended that all rule and regulation changes begin as soon as possible to enable handlers to make operational decisions in time for the 1999–2000 harvest and shipping season.

**Revisions for the 1999–2000 Season**

*Clarification of the Minimum Size Requirement*

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements. Section 920.52 authorizes the establishment of minimum size, pack, and container requirements. Section 920.302(a)(2) of the order's rules and regulations outlines the minimum size requirements for fresh shipments of California kiwifruit and provides that such kiwifruit shall be at least a minimum Size 45.

Section 920.302(a)(4)(iii) specifies minimum net weight requirements for fruit of various sizes packed in containers with cell compartments, cardboard fillers, or molded trays.

Section 920.302(b)(2) of the order's rules and regulations defines size designation to mean the same as defined in the table in paragraph (a)(4)(iii) of this section.

Prior to the 1998–1999 season, the minimum size for kiwifruit was defined as a maximum of 55 pieces of fruit in an 8-pound sample regardless of pack style. As previously mentioned, a change of pack requirements recommended by the Committee last summer and implemented by an interim final rule published on September 3, 1998 (63 FR 46861) unintentionally limited application of minimum size requirements to kiwifruit packed in bulk bins, bags, consumer packs, master containers and volume fill containers. The Committee members attended a meeting in November 1998 and again in January 1999 wherein they clarified their initial intent, and set preliminary recommendations for the 1999–2000 season.

On February 25, 1999, the Committee unanimously recommended that kiwifruit be at least a minimum Size 45, and that Size 45 be defined in terms of weight and not pack requirements. The Committee recommended that Size 45 be defined as a maximum of 55 pieces of fruit in an 8-pound sample. This recommendation reflected the Committee's original intent to apply uniform minimum size requirements to all kiwifruit regardless of pack style. To further clarify its intent, the Committee recommended adding the size definition to the size requirements in § 920.302(a)(2), deleting the size designation definition in § 920.302(b)(2), and defining Size 45 in terms of weight and not pack.

The Committee considered other alternatives to maintaining Size 45, defined as a maximum of 55 pieces of fruit in an 8-pound sample, as the minimum size, but determined that these alternatives will not adequately address the industry's problems. The Committee discussed establishing two minimum net weight requirements, a lower net weight requirement for Size 45 fruit packed into trays and a higher net weight requirement for Size 45 kiwifruit packed into volume fill containers. This suggestion was not acceptable as the Committee believed pack style should not be the deciding factor in what size fruit is acceptable and that lower weights on trays would discriminate against Size 45 kiwifruit packed into containers other than trays. In addition, members commented that packers of volume fill containers might then have to meet a more restrictive minimum size requirement than importers of kiwifruit, and that two different minimum size requirements could cause confusion in the marketplace and result in disorderly marketing.

The Committee also considered establishing a count of 58 or 59 pieces of fruit for the Size 45 trays, but concluded that the count should remain a maximum of 55 pieces of fruit per 8-pound sample because the current minimum size continues to prevent shipments of low-quality, undersized fruit, and because repacking problems during the 1998–1999 season resulted from the cup size in the Size 45 tray and the variance in the shape and density of the fruit from year to year, and not from the current minimum size.

Over the years, the size designation (pieces of fruit) for Size 45 has changed, but the tray inserts for this size fruit have not changed. In 1989, the size designation for Size 45 was changed to 57 pieces of fruit per 8-pound sample and remained there until 1994, when Size 45 became the minimum size and was defined as 55 pieces of fruit per 8-pound sample.

Kiwifruit was not packed in Size 45 trays during the three seasons preceding the 1998–1999 season as it was not profitable for growers. A small amount of kiwifruit was packed during the 1998–1999 season. The Committee believes that the molded trays utilized during the 1998–1999 season were manufactured prior to 1994, that the cell cups of these molded trays were

designed to fit smaller fruit, and that the size of the cups contributed to the packing problems associated with Size 45 trays during the 1998–1999 season.

Tray manufacturers attending Committee meetings in January and February 1999 expressed interest in working with the industry in developing molded tray inserts with slightly larger cell cups for Size 45 trays. These slightly larger cell cups would allow slightly larger fruit to be packed and thus enable the minimum size requirements to be met.

As a result, the Committee unanimously recommended that the minimum size for all pack styles be established as a maximum of 55 pieces of fruit in an 8-pound sample. These changes would not impact the kiwifruit import regulation implemented under section 8e of the Act, because this recommendation would only clarify that the minimum size requirement applies to all shipments regardless of pack style.

The Committee further recommended that all rule and regulation changes begin as soon as possible to enable handlers to make operational decisions in time for the 1999–2000 harvest and shipping season.

*Lot Stamp Requirement*

Section 920.303 of the order's rules and regulations outlines container marking requirements for fresh shipments of California kiwifruit.

Section 920.303(d) requires all exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on a pallet, to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector. Individual consumer packages and containers that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service are not subject to this requirement.

Prior to the 1998–1999 season, handlers did not place individual consumer packages directly on pallets for shipping. Individual consumer packages were placed in master containers and the master containers bore the container marking requirements.

During the 1998–1999 season, new individual consumer packages that interlock and fit on a pallet were utilized. These individual consumer packages are stacked six packages by six packages on a pallet resulting in 36 individual consumer packages per layer. Pallets are normally stacked 8–10 layers high. The Committee determined that this style of container would not meet the current marking requirements of not less than 75 percent of the total containers on a pallet being plainly marked with the lot stamp number. Due to the size and configuration of the interlocking individual consumer packages, approximately 57 percent of the individual consumer packages would be marked if all exposed or outside containers are marked with the lot stamp number.

Therefore, when the Committee met on February 25, 1999, it unanimously recommended adding language to § 920.303(d) that would require individual consumer packages placed directly on a pallet to have all exposed containers plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector or that a total of four placards be applied to the pallet of kiwifruit. The Committee believes that relaxing the requirement to have all exposed or outside containers and at least 75 percent of the containers on the pallet marked with the lot stamp number, would allow handlers to ship individual consumer packages without incurring the additional costs of marking containers that are not exposed, and slowing down the packing line to mark the containers.

The Committee considered other alternatives to the requirement to stamp all exposed or outside containers, or to attach four placards to the pallet, but determined that these suggestions would not adequately address the positive lot identification requirements.

One suggestion was to utilize one or two placards, but the industry believed that four placards (one on each side) would be a more adequate means of ensuring that the pallet met the positive lot identification (PLI) requirements.

Another suggestion was to identify each package in such a way that it could be traced back to the original inspection certificate. Placing date codes or other types of codes on every container prior to palletizing and using that as PLI on the inspection certificate was discussed. The Committee did not adopt this suggestion as it believed that all containers, including those in the center stacks would have to be marked with a special code, and that this would be more restrictive than current requirements for other containers placed on pallets. The Committee also believed that this might slow down the packing process, thus resulting in increased packing costs.

After considering the alternatives, the Committee unanimously recommended that individual consumer packages placed directly on a pallet have all exposed containers plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector or that a total of four placards be applied to the pallet of kiwifruit.

*Changes To Clarify Pack and Container Marking Requirements*

Section 920.303 of the order's rules and regulations outlines container marking requirements for fresh shipments of California kiwifruit.

Section 920.303(c)(3) establishes how the quantity shall be marked on bulk bins and requires the quantity to be indicated in terms of the size designation and net weight, or in terms of the size designation, net weight, and count.

Section 920.303(c)(5) establishes how the quantity shall be marked on individual consumer packages and requires that the quantity shall be indicated in terms of either net weight or count (or both) for individual consumer packages. It further requires that if count is used, it must be accompanied by the size designation.

At the February 25, 1999, meeting, the Committee recommended the following changes to pack requirements in §§ 920.302(a)(4)(ii) and (iv): (1) Change language in the first table of § 920.302(a)(4)(ii) as follows: Change ''Sizes'' to ''Count,'' change ''30 or larger'' to ''30 or less,'' and change ''39 or smaller'' to ''39 or more''; (2) add language to § 920.302(a)(4)(ii) to exclude individual consumer packages from the list of containers that utilize the size variation tolerance table for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays; (3) change language in the second table of § 920.302(a)(4)(ii) from ''Sizes'' to ''Size Designation''; (4) change language in § 920.302(a)(4)(ii) to add individual consumer packages to the list of containers which specifies size variation tolerances for kiwifruit packed in bags, volume fill, or bulk containers; and (5) change language in § 920.302(a)(4)(iv) by adding ''individual consumer packages'' to the list of containers that utilize the table which specifies the numerical size and maximum number of fruit per 8-pound sample; delete the word ''numerical'' when describing size; and delete the words ''Column 1,'' ''Column 2,'' and ''Numerical Count'' from the size designation table in § 920.302(a)(4)(iv) as they are not necessary.

These changes will: (1) Reflect current industry practices; (2) clarify that the size variation tolerances which are applied to fruit packed in volume fill containers are also applied to individual consumer packages; (3) clarify that the

size designation chart is utilized to determine the maximum number of fruit per 8-pound sample for individual consumer packages; and (4) delete unnecessary language.

The Committee also recommended the following changes to container requirements in §§ 920.303(c)(3) and (5) as follows: (1) Change language in § 920.303(c)(3) by adding ''individual consumer packages not within a master container'' to the list of containers in the size designation table specifying the size and maximum number of fruit per 8-pound sample; (2) delete the word ''bins'' and replace it with ''containers''; (3) delete the words ''net weight'' as they are not necessary; and (4) change language in § 920.302(a)(5) by adding ''within a master container'' after individual consumer packages.

These changes clearly define marking requirements for individual consumer packages placed directly on a pallet as well as those packed within a master container.

**Continuation of 1998–1999 Season Suspended Actions for the 1999–2000 Season**

*Continued Suspension of Minimum Net Weight Requirements for Trays*

Section 920.302(a)(4) of the order's rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Before the suspension action last September, § 920.302(a)(4)(iii) specified minimum net weight requirements for fruit of various sizes packed in containers with cell compartments, cardboard fillers, or molded trays.

Prior to the 1989–1990 season, there were no minimum tray weight requirements although 73.5 percent of the crop was packed in trays. During the 1989–1990 season, minimum tray weights were mandated, as there were many new packers involved in the kiwifruit packing process and stricter regulations were viewed as necessary to provide uniform container weights for each size. However, since that season the proportion of the crop packed in trays has steadily declined.

During the 1997–1998 season, only 15.5 percent of the crop was packed into molded trays and less than 1 percent of this fruit was rejected for failure to meet minimum tray weights. As a consequence, the Committee believed that minimum tray weight requirements might no longer be necessary to maintain uniformity in the marketplace.

Prior to the 1998–1999 season handlers were required to meet the minimum net weight requirements as shown in the following chart:

| Count designation of fruit | Minimum net weight of fruit (Pounds) |
|---|---|
| 34 or larger | 7.5 |
| 35 to 37 | 7.25 |
| 38 to 40 | 6.875 |
| 41 to 43 | 6.75 |
| 44 and smaller | 6.5 |

The Committee met on July 8, 1998, and unanimously recommended suspension of the minimum net weight requirements for kiwifruit packed in cell compartments, cardboard fillers, or molded trays for the 1998–1999 season. Section 920.302(a)(4)(iii) was suspended for the 1998–1999 season by an interim final rule published September 3, 1998 (63 FR 46861).

As previously mentioned, both small and large handlers were able to reduce packing costs and to compete more effectively in the market during the 1998–1999 season because of the relaxation in packing requirements. The industry continued to pack well filled trays without having to spend the extra time weighing them. There was no reduction in the uniform appearance of fruit packed into trays.

Therefore, when the Committee met on January 13, 1999, to consider its preliminary recommendations for the season, it concluded that minimum net weight requirements for trays should continue to be suspended for the 1999–2000 season.

The Committee met on February 25, 1999, and unanimously recommended continuing the suspension of § 920.302(a)(4)(iii) for the 1999–2000 season. The 1999–2000 season ends July 31, 2000. The Committee plans to further evaluate the benefits during the 1999–2000 season.

*Continued Suspension of Reinspection Requirements*

Section 920.55 of the order requires that prior to handling any variety of California kiwifruit, such kiwifruit shall be inspected by the Federal or Federal-State Inspection Service (inspection service) and certified as meeting the applicable grade, size, quality, or maturity requirements in effect pursuant to § 920.52 or § 920.53.

Section 920.55(b) provides authority for the establishment, through the order's rules and regulations, of a period prior to shipment during which inspections must be performed.

Prior to the 1998–1999 season, § 920.155 of the order's rules and regulations prescribed that the certification of grade, size, quality, and maturity of kiwifruit pursuant to § 920.52 or § 920.53 during each fiscal year was valid until December 31 of such year or 21 days from the date of inspection, whichever was later. Any inspected kiwifruit to be shipped after the certification period lapses was required to be reinspected and recertified before shipping.

Section 920.155 was suspended for the 1998–1999 season by a final rule published August 4, 1998 (63 FR 41390). The Committee recommended this suspension to lessen the expenses upon the many kiwifruit growers who had either lost money or merely recovered their production costs in recent years. It concluded that the cost of reinspecting kiwifruit was too high to justify requiring it in view of the limited benefit reinspection provides. The Committee also believed it was no longer necessary to have fruit reinspected to provide consumers with a high quality product because storage and handling operations had improved in the industry.

During the 1998–1999 season, handlers voluntarily checked stored fruit prior to shipment to ensure that the condition of the fruit had not deteriorated. This enabled handlers to ship quality kiwifruit during the 1998–1999 season without the necessity for reinspection and recertification and the costs associated with such requirements. The Committee had estimated that handlers will save $50,000 by conducting their own reinspection during the 1998–1999 season.

At the February 25, 1999, meeting, the Committee unanimously recommended suspending § 920.155 for the 1999–2000 season. The Committee still believes that handlers saved $50,000 by conducting their own reinspection during the 1998–1999 season even though the marketed crop was less than projected, more fruit was in-line inspected than projected, and shipments had started later during the 1998–1999 season than anticipated.

Although freezing temperatures and winds during the spring have reduced the 1999–2000 crop estimate, the Committee believes the industry will continue to benefit from conducting its own reinspection.

The Committee plans to evaluate this suspension one more season before making a decision to permanently remove this requirement from the rules and regulations. Thus, the Committee unanimously recommended suspending § 920.155 for the 1999–2000 season. The 1999–2000 season ends July 31, 2000.

**Maintaining Current Regulatory Changes**

*Maintaining the Current Size Variation Tolerance for Size 42 Kiwifruit*

Section 920.302(a)(4) of the order's rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(ii) specifies size variation ranges in terms of fruit diameter for each size of kiwifruit and size variation tolerances.

Section 920.302(a)(4)(ii) was revised by an interim final rule published September 3, 1998 (63 FR 46861) to include a provision to increase the size variation tolerance for Size 42 kiwifruit from 10 percent, by count, to 25 percent, by count.

During the 1998–1999 season, a significantly smaller amount of kiwifruit was packed into the 40 series sizes than anticipated. Only 7 percent of the fruit was packed into Size 42 containers, and only 15.3 percent was packed into Size 42 and 45 containers. This is significantly less than the previous two years when 35 percent of the fruit was packed into the 40 series sizes.

In addition, size variation was not a problem for Size 42 fruit during the 1998–1999 season, as the majority of the fruit was round and short and not a mixture of round and flat fruit. A typical crop has a mixture of round and flat fruit. A mixture of round and flat fruit is difficult to pack and slows down the packing line.

The Committee believes that maintaining the increased size variation tolerance for Size 42 kiwifruit for the 1999–2000 season will continue to benefit the industry by easing the packing burden and reducing costs, while maintaining uniform looking boxes of fruit desired by customers.

*Maintaining the Current Maximum Number of Fruit Per 8-Pound Sample for Kiwifruit Packed in Bags, Volume Fill, or Bulk Containers*

Section 920.302(a)(4) of the order's rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iv) establishes a maximum number of fruit per 8-pound sample for each numerical count size designation for fruit packed in bags, volume fill, or bulk containers.

Section 920.302(a)(4)(iv) was revised by an interim final rule published September 3, 1998 (63 FR 46861) to include a provision that increased the maximum number of fruit per 8-pound sample for Sizes 42 through 30. Size 42 fruit is smaller than Size 30 fruit. The size designation chart below depicts these changes:

| Size designation | Maximum number of Fruit per 8 pound sample |
|---|---|
| 21 | 22 |
| 25 | 25 |
| 27/28 | 30 |
| 30 | 33 |
| 33 | 36 |
| 36 | 42 |
| 39 | 48 |
| 42 | 53 |
| 45 | 55 |

Currently, under the rules and regulations, kiwifruit packed in bags, volume fill, or bulk containers, must not exceed the maximum number of fruit per an 8-pound sample for each size designation.

Under the current regulations, handlers are better able to meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold. California handlers are applying weight standards that are similar to those used by importers, thereby lessening confusion in the marketplace and facilitating the marketing of California kiwifruit.

These changes address the marketing and shipping needs of the kiwifruit industry and are in the interest of handlers, producers, buyers, and consumers. The impact of these changes on producers and handlers is expected to be beneficial for all levels of business.

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

Further, the Committee's meetings were widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meetings and participate in Committee deliberations. Like all Committee meetings, the February 25, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 12 members. Three of these members are handlers and producers, eight are producers only, and one is a public member. The majority of the industry are small entities.

A proposed rule covering this action was published in the **Federal Register** on June 25, 1999 (64 FR 34144). Copies of the rule were mailed or sent via facsimile to all Committee members on June 25, 1999. Finally, the rule was made available through the Internet by the Office of the Federal Register. A 20-day comment period was provided to allow interested persons to respond to this proposal. No comments were received. The interim final rule suspending, for the 1998–1999 season, the minimum net weight requirements in § 920.302(a)(4)(iii) for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays was published last September (63 FR 46861; September 3, 1998). No comments were received.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes pack and inspection requirements; (2) this rule continues to suspend for one more season, the pack and inspection requirements which were suspended from August 1, 1998 to July 31, 1999; (3) the 1999–2000 harvest is expected to begin the end of September, and this rule should be in effect before that time so producers and handlers can make plans to operate under the relaxed requirements; and (4) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input.

**List of Subjects in 7 CFR Part 920**

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

## PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

**§ 920.155 [Suspended]**

2. In part 920, § 920.155 is suspended in its entirety effective August 1, 1999, through July 31, 2000.

3. Section 920.302 is amended:

A. By revising paragraphs (a)(2), (a)(4)(ii), and (a)(4)(iv)to read as set forth below;

B. By suspending paragraph (a)(4)(iii) effective August 1, 1999, through July 31, 2000;

C. By removing paragraph (b)(2) and redesignating paragraph (b)(1) as the text of paragraph (b).

**§ 920.302 Grade, size, pack, and container regulations.**

(a) * * *

(2) *Size Requirements.* Such kiwifruit shall be at least a minimum Size 45. Size 45 is defined as a maximum of 55 pieces of fruit in an 8-pound sample.

* * * * *

(4) * * *

(ii) (A) Kiwifruit packed in cell compartments, cardboard fillers or molded trays (excluding individual consumer packages) may not vary in diameter more than:

| Count | Diameter |
|---|---|
| 30 or less | ½-inch (12.7 mm). |
| 31–38 | ⅜-inch (9.5 mm). |
| 39 or more | ¼-inch (6.4 mm). |

(B) Kiwifruit packed in individual consumer packages, bags, volume fill, or bulk containers, fruit may not vary more than:

| Size designation | Diameter |
|---|---|
| 30 or larger | ½-inch (12.7 mm). |
| 33, 36, 39, and 42 | ⅜-inch (9.5 mm). |
| 45 or smaller | ¼-inch (6.4 mm). |

(C) Not more than 10 percent, by count of the containers in any lot and not more than 5 percent, by count, of kiwifruit in any container, (except that for Sizes 42 and 45 kiwifruit, the tolerance, by count, in any one container, may not be more than 25 percent) may fail to meet the requirements of this paragraph.

* * * * *

(iv) When kiwifruit is packed in individual consumer packages, bags, volume fill or bulk containers, the following table specifying the size designation and maximum number of fruit per 8-pound sample is to be used.

| Size designation | Maximum number of fruit per 8-pound sample |
|---|---|
| 21 | 22 |
| 25 | 27 |
| 27/28 | 30 |
| 30 | 33 |
| 33 | 36 |
| 36 | 42 |
| 39 | 48 |
| 42 | 53 |
| 45 | 55 |

* * * * *

4. In § 920.303, paragraphs (c)(3), (c)(5), and (d) are revised to read as follows:

**§ 920.303 Container marking regulations.**

(c) * * *

(3) For bulk containers or individual consumer packages not within a master container, the quantity shall be indicated in terms of the size designation and net weight, or in terms of the size designation and count.

* * * * *

(5) The quantity shall be indicated in terms of either net weight or count (or both) for individual consumer packages within a master container. If count is used, it must be accompanied by the size designation.

* * * * *

(d) All exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on a pallet, shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, except for individual consumer packages within a master container and containers that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service. Individual consumer packages of kiwifruit placed directly on a pallet shall have all outside or exposed packages on a pallet plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector or have one inspection label placed on each side of the pallet.

* * * * *

Dated: July 22, 1999.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99–19092 Filed 7–28–99; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 979

**[Docket No. FV99–979–1 FIR]**

## Melons Grown in South Texas; Change in Container Regulation

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule changing the handling regulation currently prescribed under the South Texas melon (cantaloupes and honeydews) marketing order. The marketing order regulates the handling of melons grown in South Texas and is administered locally by the South Texas Melon Committee (committee). This rule continues in effect changes to the dimensions of bulk containers used for shipping honeydew melons, requirements that these containers be octagonal or rectangular in shape, and the addition of a dimension tolerance for that container. It also continues the provisions allowing the committee to approve the use of experimental containers and melon shipments for experimental purposes, and the removal of two experimental containers that have not been used by the industry for several years. These changes were unanimously recommended by the committee and will enable handlers to compete more effectively in the marketplace.

**EFFECTIVE DATE:** August 30, 1999.

**FOR FURTHER INFORMATION CONTACT:** Belinda G. Garza, McAllen Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone; (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail:

Jay.Guerber@usda.gov. You may also view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

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

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

This rule continues in effect changes to the dimensions of bulk containers used for shipping honeydew melons, specifications for the shapes of these bulk containers, the addition of a dimension tolerance for that container, the addition of procedures that allow the committee to approve the use of experimental containers and melon shipments for experimental purposes, and the removal of two experimental containers that have not been used by the industry for several years. The changes will enable handlers to compete more effectively in the marketplace, better meet market needs, and prevent confusion in the industry. A subcommittee met on January 28, 1999, and unanimously recommended that the committee approve these changes to the regulation. The committee met and unanimously recommended the changes on March 30, 1999.

Section 979.52 authorizes the issuance of regulations for grade, size, maturity, quality, and pack of any or all varieties of melons during any period. Section 979.54 authorizes the issuance of regulations that modify, suspend, or terminate requirements issued under §§ 979.42, 979.52, or 979.60 to facilitate the handling of melons for special purposes. Section 979.55 requires adequate safeguards to ensure that melons handled under § 979.54 are used for the stated purposes.

### Changes to the Bulk Container Requirements for Honeydew Melons

Section 979.304 of the order's rules and regulations sets container requirements for both cantaloupes and honeydew melons. Only honeydews are authorized to be packed in bulk containers. Thus, these changes to bulk container requirements do not apply to cantaloupes.

Prior to the issuance of the interim final rule, § 979.304(b)(4) authorized the use of a bulk container for honeydew melons and specified that the container be 48 inches long by 40 inches wide by 24 inches deep or similar dimensions. The phrase ''or similar dimensions'' was included to provide flexibility recognizing that the dimensions of containers sometimes are a little less or more than those specified in the regulation. The committee determined that the provisions were too flexible, and that the lack of specificity could result in administrative, compliance, and enforcement problems.

It now believes that a more precise tolerance is needed so there is no room for misinterpretation by the industry. The committee, therefore, recommended removing the phrase ''or similar dimensions'' and adding in its place provisions establishing a dimension tolerance of 1½ inch for each dimension. The 1½ inch tolerance for each dimension for this container will allow handlers to pack honeydew melons in containers with dimensions slightly different from the sizes specified in the regulation. Identifying a specific dimension tolerance in the regulation will prevent misunderstandings, and provide handlers the flexibility to use bulk containers with slight dimension variations when packing honeydew melons.

The committee also recommended allowing the depth of the bulk container to range between 24 and 36 inches to permit melon handlers to pack larger or a greater number of honeydew melons in the container, if they desire. The industry's need to pack larger or a greater number of honeydews in the bulk container, depending on buyer or retailer needs, led to this committee recommendation for increased container flexibility.

The committee further recommended that the shape of bulk containers used for honeydew melons be rectangular or octagonal. Currently, these are the only shapes used by handlers, and the limitation will not impose an added burden on handlers. The change is expected to foster compliance and simplify enforcement. Last season a total of 1,727 bulk containers were shipped by the industry, compared to 1,655 containers in 1997. Demand for bulk containers has increased in recent years because their use results in reduced costs to receivers. Bulk bins can be re-used, whereas other containers cannot. The cost of disposing of used containers has increased.

### Addition of Provisions Allowing the Committee To Approve the Use of Experimental Containers and Melon Shipments for Experimental Purposes

The market for both cantaloupes and honeydew melons continues to undergo rapid changes. Buyers, retailers, and consumers continually demand flexibility in container availability. The committee is always looking for ways to strengthen and expand the market for melons. Except for an experimental honeydew pony carton that was removed by the interim final rule, there were no provisions in place allowing the committee to approve melon shipments for experimental purposes nor in experimental containers unless informal rulemaking was initiated. There are times during the melon shipping season when the trade is interested in receiving melons in containers other than those authorized by the regulations. The industry has been using only fiberboard containers, and they are interested in experimenting with plastic bins.

Not being able to respond quickly to market demands for testing different types of melon containers could have caused the South Texas melon industry to lose sales to competing melon-producing areas. Competition from other melon production areas demands that the Texas melon industry have the ability to quickly respond to buyer, retailer, and consumer demands for new containers. The committee may become aware of the need for new containers during the shipping season. The shipping season normally runs from

May 1 through June 20 each year. For the committee to respond quickly to market needs for containers, it should have flexibility to approve the use of experimental containers whenever the need arises. Also, melon-producing areas without marketing orders are not bound by container restrictions and have the flexibility to use different types and sizes of containers as needed by consumers and retailers. The added flexibility allows handlers to better meet buyers' needs.

In addition, the committee recommended that provisions be added to the regulations to permit it to approve shipments for experimental purposes to allow the industry to test different types of melon shipments whenever needed to meet competition from other growing areas, and buyers' needs. Some handlers have expressed an interest in experimenting with the shipment of cantaloupe and honeydew melons in the same container.

Establishing provisions in the regulations to allow the committee to approve the use of experimental containers will allow the industry to respond quickly to market needs for containers not approved under the order's container regulations. Establishing provisions in the regulations to allow the committee to approve shipments for experimental purposes will allow the industry to test different types of melon shipments when needed.

Safeguards for these types of shipments are currently specified in paragraph (f) of § 979.304. A handler wanting an exemption for an experimental container or experimental use would apply to the committee for a Certificate of Privilege. The Certificate would be issued by the committee after consideration of the application. Handlers using a Certificate of Privilege are required to report each exempt shipment to the committee. This enables the committee to easily track such shipments, and ensure compliance with the order's rules and regulations.

Once the committee approves the use of experimental containers or experimental shipments, the industry will be able to determine the benefits and market acceptance of the containers and other types of shipments. Also, allowing handlers to ship melons in test containers enables the committee to determine whether such containers should be added to the permanent list of approved containers in the regulations.

**Removal of Two Experimental Containers**

An experimental honeydew pony carton added in 1985 to paragraph (e)(3) and a cantaloupe carton added in 1990 to paragraph (e)(4) in § 979.304 have not been used for several years. The committee, therefore, recommended that they be removed from the handling regulation.

**Other Changes in the Regulations**

Prior to the issuance of the interim final rule, the name of one of the designated inspection offices and the telephone area codes of the designated inspection offices in § 979.304(c)(4) were incorrect. To correct these references, the committee recommended that the name of the inspection office be changed to ''Texas Cooperative Inspection Program'' office and the telephone area codes be changed from ''210'' to ''956.''

In addition, in § 979.180 and § 979.304, the word ''cantaloup'' was misspelled. To correct the misspelling, all references to ''cantaloup'' were changed to ''cantaloupe'' by the interim final rule.

**Final Regulatory Flexibility Analysis**

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

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

There are 14 handlers of South Texas melons who are subject to regulation under the marketing order and approximately 33 melon growers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural growers are defined as those having annual receipts of less than $500,000.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing melons. For the 1997–98 marketing year, 6,770 acres of production were shipped by the industry's 14 handlers; the average acreage and median acreage handled totaled 484 acres and 417 acres, respectively. In terms of production value, total revenues from the 14 handlers were estimated to be $16.4 million.

The Rio Grande Valley melon industry is characterized by growers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of melons. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the melon production season is complete. For this reason, typical melon growers and handlers either double-crop melons during other times of the year or produce alternate commodities, like onions.

Based on the SBA's definition of small entities, the committee estimates that a majority of the 14 handlers regulated by the order would be considered small entities if only their spring melon revenues are considered. However, revenues from other productive enterprises would likely push a large number of these handlers above the $5,000,000 annual receipt threshold. Of the 33 growers within the production area, few have sufficient acreage to generate sales in excess of $500,000; therefore, the majority of growers may be classified as small entities.

This rule continues the changes to the container regulation to accurately identify the shapes and dimensions of bulk containers handlers use for shipping honeydew melons, the addition of procedures allowing the committee to approve use of experimental containers and melon shipments for experimental purposes, the removal of two experimental containers that have not been used by the industry for several years, and several minor modifications to update the regulations. These changes will enable handlers to compete more effectively in the marketplace, better meet market needs, and prevent confusion. A subcommittee met on January 28, 1999, and unanimously recommended that the committee approve these changes to the regulation. The committee met and unanimously recommended the changes on March 30, 1999.

Section 979.52 authorizes the issuance of regulations for grade, size, maturity, quality, and pack for any or all varieties of melons during any period. Section 979.54 authorizes the issuance of regulations that modify, suspend, or

terminate requirements issued under §§ 979.42, 979.52, or 979.60 to facilitate handling of melons for special purposes. Section 979.55 requries adequate safeguards to ensure that melons handled under § 979.54 are used for the stated purpose.

At its meeting on March 30, 1999, the committee unanimously recommended revising § 979.304 as follows:

(1) Modify the bulk container requirements to accurately identify the shapes and dimensions of bulk containers used for shipping honeydew melons;

(2) Add provisions to allow the committee to approve the use of experimental containers and melon shipments for experimental purposes;

(3) Remove two experimental containers that have not been used by the industry for several years; and

(4) Make several minor modifications to update the regulations.

**Changes in the Bulk Container Requirements for Honeydew Melons**

Prior to the issuance of the interim final rule, § 979.304(b)(4) authorized the use of a bulk container for honeydew melons and specified that the container be 48 inches long by 40 inches wide by 24 inches deep or similar dimensions. The committee recommended that the regulation specify that the bulk containers be rectangular or octagonal, the types of containers currently being used by the industry, in order to help administer the program. Making the regulation more specific will foster compliance and simplify enforcement. Last season 1,727 of these bulk containers were shipped by the industry. Specifying the shape of the bulk container in the regulation cleared up any misunderstanding that any shape bulk container could be used for shipping honeydew melons.

The former regulation did not provide specific tolerances on the container dimensions, and the committee did not know exactly how ''similar dimensions'' was being interpreted. Differences in interpretation among handlers and the industry regarding the phrase ''or similar dimensions'' could have caused problems enforcing the marketing order program. A more precise tolerance was needed so that there was no room for misinterpretation by the industry. To clarify the industry's intentions, the committee recommended removing the phrase ''or similar dimensions'' and adding in its place, ''A tolerance of 1½ inch for each dimension shall be permitted.'' The committee believes the recommendation to provide a 1½ inch tolerance for each dimension on this container has provided handlers some flexibility to pack honeydew melons in containers with slightly different dimensions from the sizes specified in the regulation. Identifying specific dimension tolerances in the regulation also has prevented possible misunderstandings on authorized container dimensions.

The committee also recommended increasing the depth allowance of the bulk container by 12 inches to permit melon handlers to pack larger or a greater number of honeydew melons in the container.

Adding tolerances to the dimensions of the approved bulk container and increasing the depth allowance has allowed the melon industry to accept containers with slight dimension variations from box manufacturers. This has given handlers additional flexibility in making container purchases.

The industry's need to pack larger or a greater number of honeydews in the bulk container, depending on buyer or retailer needs, led to the committee's recommendation to increase the depth allowance of the container by an additional 12 inches to permit a range from 24 to 36 inches deep.

**Addition of Provisions Allowing the Committee To Approve the Use of Experimental Containers and Melon Shipments for Experimental Purposes**

The marketplace continues to undergo rapid changes. Buyers, retailers, and consumers continually demand flexibility in container availability. The committee is always looking for ways to strengthen and expand the market for melons. Except for an experimental honeydew pony carton provision that was removed by the interim final rule, there were no procedures in place to allow the committee to approve melon shipments for experimental purposes nor in experimental containers unless they initiated informal rulemaking. There are times during the melon shipping season when the trade is interested in receiving melons in containers other than those authorized by the regulations. The industry has been using only fiberboard containers, and they are interested in experimenting with plastic bins. The committee did not have the flexibility to react quickly to the need for containers not approved for South Texas melon shipments. Not being able to respond quickly to market demands for testing different types of melon containers could have caused the South Texas melon industry to lose sales to competing melon-producing areas.

Competition from other melon production areas demands that the Texas melon industry be able to quickly respond to buyer, retailer, and consumer demands for new containers. Because the melon regulatory period begins May 1 each year and runs through June 20, the committee is not able to meet, approve regulatory changes, and promptly complete the rulemaking process in order to approve various types of experimental containers. The industry may not be aware of the need for new containers until it is in the middle of its shipping season. For the committee to respond quickly to market needs for containers which were not currently authorized, it needed the flexibility to approve the use of experimental containers whenever the need arose. Also, melon-producing areas without marketing orders are not bound by container restrictions and have the flexibility to use different types and sizes of containers as needed by consumers and retailers. The added flexibility will allow handlers to meet the competition from other areas and better meet buyers' needs. In addition, the committee recommended that provisions be added to the regulations to permit it to approve shipments for experimental purposes to allow the industry to test different types of melon shipments whenever needed. As mentioned before, some handlers have expressed an interest in experimenting with the shipment of cantaloupes and honeydew melons in the same container.

Establishing provisions to allow the committee to approve the use of experimental containers will allow the industry to respond quickly to market needs for containers not approved under the orders's container regulations, and establishing provisions to authorize the committee to approve shipments for experimental purposes will allow the industry to test different types of melon shipments when needed. Because the committee has established safeguard for these types of experimental containers or experimental shipments, the industry will be able to determine the benefits and market acceptance of the containers or other types of shipments. Also, allowing handlers to ship melons in test containers will enable the committee to determine whether such containers should be added to the permanent list of approved containers.

**Removal of Two Experimental Containers**

Two experimental containers in (e)(3) (a honeydew pony carton added in 1985) and (e)(4) (a cantaloupe carton added in 1990) of § 979.304 are obsolete and have not been used for several years, and the committee recommended that they be removed from the handling

regulation. The interim final rule removed these containers from the regulation.

**Other Changes in the Regulations**

Prior to the interim final rule, the name and telephone area codes of an inspection office in § 979.304(c)(4) were incorrect. To correct these references, the committee recommended that the name of the inspection office be changed to ''Texas Cooperative Inspection Program'' office and the telephone area codes be changed from ''210'' to ''956.''

In Marketing Order No. 979 the correct spelling of ''cantaloupe'' is used, and in §§ 979.180 and 979.304, ''cantaloup'' was misspelled. To correct the misspelling and for consistency, all references to ''cantaloup'' were changed to ''cantaloupe'' by the interim final rule.

This rule will continue to permit the South Texas melon industry to experiment with different types of containers prior to adding them to their approved container list. The committee believes this will allow handlers to more effectively accommodate retailer and customer needs.

The committee recommended these changes to assist the consuming public in receiving Texas melons in containers they desire. Permitting the South Texas melon industry to experiment with different types of containers without the need for rulemaking and adding tolerance to the approved honeydew bulk container have small entity orientation.

An alternative to the recommended changes would have been to keep the regulations as they are, however:

(1) It was the committee's desire to come up with a more workable bulk honeydew container regulation to make it more precise and eliminate potential problems. Not permitting a 1½ inch tolerance for each dimension on the bulk container could have prevented the industry from marketing honeydew melons in containers which might be manufactured slightly different from the sizes specified in the regulation.

(2) Not permitting the committee to quickly approve shipments for experimental purposes exempt from regulations or in experimental containers without rulemaking could have hindered the industry's ability to respond to market needs and prevented it from marketing more melons. Not providing the committee the flexibility to quickly respond to market demands for test containers or shipments could have resulted in the industry losing sales to other melon producing areas.

(3) The two permanent experimental containers were no longer needed because the containers have not been used for a number of years, and a new section was added to make it possible for the committee to quickly approve the use of experimental containers.

(4) Not updating the name and telephone numbers of the inspection office to accurately reflect the correct information could have caused confusion in the industry.

Although authorizing melon shipments for experimental purposes and the use of experimental containers will impose some additional reporting and recordkeeping requirements on melon handlers, this will be minimal. Currently, handlers making shipments of melons for special purposes, including experimental, are required to obtain a Certificate of Privilege to notify the committee of their intent to ship melons for these purposes. Also, handlers must prepare a special purpose shipment report on each shipment and forward it to the committee. The committee estimates that approximately two or four handlers might request approval for the use of experimental containers, which will increase the total reporting and recordkeeping burden by approximately .1 to .2 hours, and this time to currently approved under OMB No. 0581–0178 by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules and duplicate, overlap or conflict with this rule.

Further, the committee's meeting was publicized throughout the melon industry and all interested persons were invited to attend the meeting and participate in committee deliberations. Like all committee meetings, the March 30, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The committee itself is composed of 10 members, of which 9 are growers and handlers, and one represents the public. Also, the committee has a subcommittee to review certain issues and make recommendations to the committee. The subcommittee met on January 28, 1999, and discussed this issue in detail. The meeting was a public meeting and both large and small entities were able to participate and express their views.

An interim final rule concerning this action was published in the **Federal Register** on May 4, 1999. Copies of the rule were mailed by the committee's staff to all committee members and melon handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended July 6, 1999. No comments were received.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing an interim final rule, without change, was published in the **Federal Register** (64 FR 23754, May 4, 1999) will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 981**

Marketing agreements, Melons, Reporting and recordkeeping requirements.

## PART 979—MELONS GROWN IN SOUTH TEXAS

Accordingly, the intermin final rule amending 7 CFR part 979 which was published at 64 FR 23754 on May 4, 1999, is adopted as a final rule without change.

Dated: July 23, 1999.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99–19353 Filed 7–28–99; 8:45 am]

BILLING CODE 3410–02–M

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 981

**[Docket No. FV99–981–2 FR]**

## Almonds Grown in California; Revisions to Requirements Regarding Credit for Promotion and Advertising Activities

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule revises the requirements regarding credit for promotion and advertising activities prescribed under the administrative rules and regulations of the California almond marketing order (order). The order regulates the handling of almonds grown in California and is administered locally by the Almond Board of

California (Board). The order is funded through the collection of assessments from almond handlers. Under the terms of the order's regulations, handlers may receive credit towards their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule revises the requirements regarding the activities for which handlers may receive such credit. The changes make the promotion program more effective and efficient, clarify the regulations, and improve program administration.

**EFFECTIVE DATE:** This final rule becomes effective August 1, 1999.

**FOR FURTHER INFORMATION CONTACT:** Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the ''order.'' The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This final rule revises the requirements regarding credit for promotion and advertising activities prescribed under the administrative rules and regulations of the order. The order is funded through the collection of assessments from almond handlers. Under the terms of the order's regulations, handlers may receive credit towards their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule revises the requirements regarding the activities for which handlers may receive such credit. It provides for more effective promotion programs and improved clarity to the regulations, resulting in improved program administration and more efficient and effective use of industry promotion funds. This rule was unanimously recommended by the Board at meetings on December 2, 1998, and March 5, 1999.

The order provides authority for the Board to incur expenses for administering the order and to collect assessments from handlers to cover these expenses. Section 981.41(a) provides authority for the Board to conduct marketing promotion projects, including projects involving paid advertising. Section 989.41(c) allows the Board to credit a handler's assessment obligation with all or a portion of his or her direct expenditures for marketing promotion, including paid advertising, that promotes the sale of almonds, almond products, or their uses. Section 981.41(e) allows the Board to prescribe rules and regulations regarding such credit for market promotion, including paid advertising activities. Those regulations are prescribed in § 981.441. The Board recommended the following changes to those regulations. These changes apply only to promotional activities conducted during the 1999–2000 and future crop years.

### Revising Time Frames for Submitting Documentation

Section 981.441(a) provides that, in order for handlers to receive credit against their assessment obligation for their own promotional expenditures, the Board must determine that such expenditures meet applicable requirements. Currently, credit may be granted in the form of a payment from the Board, or as an offset to the Board's assessment if activities are conducted and documented to the satisfaction of the Board at least 2 weeks prior to assessment billings. This 2-week period is also currently specified in § 981.441(b) and 981.441(e)(6)(ii). Assessments are typically billed in four installments for a crop year near the end of the following months—November, January, April, and August.

Based on past experience with the program, the majority of handlers file claims for credit for their promotional activities during the later months of a crop year. The vast majority of claims are thus received at the Board's office near the third and fourth filing deadlines. Because of this, the Board's staff has found that it needs more time to review and process handler documentation for promotional claims submitted during this time to grant credit against handlers' assessment obligations at the time assessment notices are issued. Thus, the Board recommended that, in order for handlers to receive credit for their promotional activities on their third and fourth assessment billings (April and August), the documentation for such activities must be submitted to the Board 3 weeks, rather than 2 weeks, prior to those billings. However, this requirement should not apply to documentation submitted prior to the fourth assessment billing for activities conducted during the 1998–99 crop year. Handlers conducted activities and operated under program parameters in place throughout the 1998–99 crop year. They should be allowed to continue to follow those parameters for activities conducted during the 1998–99 crop year. Thus, the two week timeframe should apply to submission of documentation prior to the fourth assessment billing of the 1998–99 crop year. Appropriate changes are made to paragraphs (a), (b), and (e)(6)(ii) of § 981.441.

Section 981.441(e)(6)(iv) currently provides that final claims for credit-back advertising be submitted to the Board within 105 days after the close of the crop year, in situations when handlers

have filed a statement of credit-back commitments outstanding as of the close of the crop year. The Board recommended changing this 105-day time frame for several reasons. First, the deadline can cause confusion among handlers because it overlaps with the time frame for filing the first claims of the new crop year. In addition, the overlap creates program administration problems for Board staff with regard to reviewing claims and applying credit for two separate years during the same time period. Finally, the current deadline causes a delay in completion of the Board's year-end accounting practices and annual financial audit. Thus, the Board recommended that this deadline be reduced from 105 to 76 days after the close of the end of the crop year. This will eliminate confusion and program administration problems associated with the overlap period for filing claims, and allow the Board's end-of-year financial audit to be completed by December or earlier of the following crop year, as opposed to January or later. However, for reasons discussed in the preceding paragraph, the deadline should remain at 105 days for activities conducted during the 1998–99 crop year. Section 981.441(e)(6)(iv) is modified accordingly.

When handlers have not filed a statement of credit-back commitments outstanding at the close of a crop year, the deadline for filing final promotional claims with the Board is 2 weeks prior to the final assessment notice (mid-August). However, this deadline date is not clearly specified in the current regulations and has caused some confusion in the past. Therefore, the Board recommended establishing August 15 as the deadline for filing final claims in this situation. This will provide more clarity and reduce confusion regarding the deadline for filing final claims. Section 981.441(e)(6)(iv) is modified accordingly.

**Redefining Growing Region**

Section 981.441(e)(3) currently does not generally allow handlers to receive credit against their assessment obligation for outdoor advertising or sponsorships that are conducted in the major growing regions of California. The major growing regions currently listed in the regulation are the following 11 almond-growing counties: Butte, Colusa, Fresno, Glenn, Kern, Madera, Merced, Sacramento, San Joaquin, Stanislaus, and Tulare counties. The rationale for this exclusion is that historically, much of the outdoor advertising and sponsorship activities in the major growing areas have been to encourage growers to do business with specific handlers rather than encouraging consumption of almonds. This is contrary to the intent of this program, which is to promote the sale, consumption, or use of almonds.

The Board recommended removing this list of counties from the regulations and adding substitute language. Production and new acreage planted in the almond industry have increased significantly in recent years, and production areas have been shifting within the State. The current regulations do not take this into account, and the aforementioned list of counties no longer accurately reflects the major growing areas.

The Board believes a more effective approach will be to revise the regulations to specify that no credit be given for outdoor advertising activities conducted in any California county with more than 1,000 bearing acres of almonds. This approach will adequately define the major growing regions, and accommodate production shifts in the future. This, in effect, removes Sacramento County as a major growing area and thus allows outdoor advertising in that county. Sacramento County contains a major metropolitan area, which lends itself to the use of outdoor advertising, and is a minor almond growing area, with only 110 acres compared to an industry total of over 400,000 acres. The other 10 counties listed above continue to be regions ineligible for this type of credit. Other counties with significant almond acreage such as Kings, San Luis Obispo, Solano, Sutter, Tehama, Yolo, and Yuba are classified as major almond growing areas, and outdoor advertising in those counties, thus, will be considered ineligible for credit-back.

The Board further believes that modifying the regulations in this manner will better reflect the original intent of the regulation, and allow more flexibility for shifts in production within the growing area. Section 981.441(e)(3) is modified accordingly. The Board also recommended that sponsorship be completely eliminated as a credit-back activity; this recommendation is discussed below.

**Revisions to List of Credit-Back Activities**

Section 981.441(e)(4)(ii) lists 13 other market promotion activities for which credit may be granted. These activities currently include marketing research (except pre-testing and test-marketing of paid advertising); trade and consumer product publicity; printing costs for promotional material; direct mail printing and distribution; retail in-store demonstrations; point-of-sale materials (not including packaging); sales and marketing presentation kits; trade fairs and exhibits; trade seminars; 50/50 advertising with retailers; couponing (printing, distribution, and handling costs only); purchase of Board-produced promotional materials; and sponsorships.

The Board recommended revising the requirements regarding trade and consumer product publicity. Trade and consumer product publicity includes disseminating information through various communications media to attract public attention. Handlers often hire an outside agency to conduct such activities. Usually, such an agency charges a fee for its work. In the past, this agency fee has been included as part of the credit-back activity, as agency fees for paid advertising are. However, in the case of trade and consumer product publicity, the Board has encountered difficulties in associating agency fees to particular credit-back activities, and determining whether this fee is appropriate, because there is no standard fee or guidelines for such fees. For paid advertising, this does not pose a problem because there is a standard agency fee that can easily be associated directly to a particular activity. Thus, the Board recommended that agency fees for publicity no longer be included as a credit-back activity. All of the other allowable activities associated with publicity (such as materials) which can be directly tied to a specific publicity campaign will still be eligible for credit.

The Board also recommended that trade seminars be removed from this list of credit-back activities. Trade seminars include special events designed to educate the trade about the almond industry and its products. Although Board records indicate there has been no use of this area as a credit-back activity by handlers, the Board believes that there is a high possibility of misuse in this area. Trade seminars are not well defined and standardized activities; thus, lavish entertainment or elaborate sales meetings are characterized as trade seminars. Trade shows will remain as a credit-back activity, however. These events are widely used and the activities are well-defined and standardized, such as setting up booths to exhibit merchandise to customers. Thus, the Board recommended that trade seminars be removed from the list of credit-back activities.

The Board also recommended that handlers' purchases of Board-produced promotional materials be removed from the list of credit-back activities. Board funds are used to develop various

promotional materials that are made available to handlers. In the past, handlers purchased such materials from the Board and received promotion credit. However, the Board has recently developed an allocation system whereby handlers may receive a certain percentage of promotional material produced by the Board free of charge. Each handler's allocation for a crop year is based on the percentage of almonds handled during the prior year. Handlers may purchase additional material at cost. This new system, not covered by the credit-back regulations, allows Board staff to plan more effectively and to purchase materials more cost effectively, while maintaining a promotional tool for handlers. Since this new system was developed, the Board determined that continuing to allow credit for purchase of Board-produced promotional material results in overlap of two similar programs. Therefore, the Board recommended that purchase of such material be removed from the list of credit-back activities.

In addition, the Board recommended that sponsorship be removed from the list of credit-back activities. Sponsorship includes the financial support of an event or person carried out by another group or person. Sponsorship can be targeted towards consumers, the trade, or may be undertaken for general goodwill. A review of sponsorship claims submitted in the past indicates several claims appear to fall into the category of general goodwill rather than to promote the sale and consumption of almonds as the primary purpose. Further, Board staff has had difficulty in determining a reasonable rate for crediting some of the activities due to a lack of an industry standard. Finally, Board staff has found that many of the most effective activities typically claimed as sponsorship can be applicable under other credit-back areas in the regulations. Thus, the Board recommended that sponsorship be removed from the list of credit-back activities.

The Board also recommended that a new credit-back activity be added to the regulations concerning use of the Internet. Several handlers have or are developing web-sites to promote their almonds. This is a rapidly developing communication medium becoming widely recognized as a valuable promotional tool. Thus, the Board believes handlers should be allowed credit for development and use of the Internet for promotional purposes. Because of the vast array of uses of the Internet, however, the Board believes guidelines should be implemented regarding crediting handlers' expenditures in this area. Thus, the Board recommended that handlers be allowed up to $5,000 credit against their assessment obligation for the development and use of a web-site on the Internet for advertising and public relations purposes. No credit is given for costs regarding E-commerce (which is equivalent to opening a store), Extranet (private web sites within the Internet), or portions of a web-site that target the farming or grower trade. The Board believes these types of activities lend themselves to potential abuses and do not necessarily advance the intent of the program, which is to promote the sale, use, and consumption of almonds.

Appropriate changes have been made to the list of credit-back activities specified in § 981.441(e)(4)(ii) to incorporate all of these changes.

**Recommendation Regarding Credit-Back for Almond Products**

Section 981.441(a) specifies that handlers may be granted credit against their assessment obligation for an amount not to exceed 66⅔ percent of a handler's proven expenditures for qualified activities. Section 981.441(e)(iv) provides that when products containing almonds are promoted, the amount allowed for credit-back shall reflect that portion of the product weight represented by almonds, or the handler's actual payment, whichever is less. For example, if a handler paid $1,000 in advertising costs to promote a product which contained 60 percent almonds by weight, such handler is able to file a claim for credit against his or her assessment obligation of 60 percent of $1,000, or $600. The amount of credit is 66⅔ percent of $600, or $400. If the product contained 70 percent almonds by weight, the handler is eligible to receive a credit against his or her assessment of 66⅔ percent of the 70 percent, or $467.

The Board recommended adding an exception to this portion of the regulations. Specifically, handlers who own almond-containing ''unique'' or ''non-traditional'' products would be allowed to request that the Board grant them a one-year exemption from this ''percentage rule.'' Thus, in the above example, a handler could request from the Board an exemption and receive credit for 66⅔ percent of his or her advertising costs for the product, or $667, regardless of the weight of the almonds in the product. The Board believes that this special exception would provide handlers incentive to produce and advertise unique almond products, resulting in increased almond sales for the industry. Board members would be responsible for reviewing such requests from handlers and determining whether an exception would be granted on a case-by-case basis.

The Department has concerns with this recommendation. Although there was support for this concept at the industry meetings which led to the recommendations, those participating in the meetings were not able to develop criteria to define a ''unique'' or ''non-traditional'' product. Thus, there are no specific parameters for Board staff to review claims against. Because of this, the recommendation calls for the Board itself, rather than staff, to determine what products would qualify (Board staff currently reviews all promotion claims). It is unclear how the Board would make such determinations. The lack of criteria could potentially lead to subjective decision-making and Board members reviewing claims could create potential conflicts of interest. The purpose of these regulations is to provide a clear set of guidelines that can be applied uniformly by Board staff to avoid these situations. While the Department supports the concept of providing incentive for new product development, it is not proceeding with this recommendation at this time because of the aforementioned concerns.

**Final Regulatory Flexibility Analysis**

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

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

There are approximately 105 handlers of California almonds who are subject to regulation under the order and approximately 6,000 almond producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Based on the most current data available, about 54 percent of the handlers ship under $5,000,000 worth

of almonds and 46 percent ship over $5,000,000 worth on an annual basis. In addition, based on acreage, production, and grower prices reported by the National Agricultural Statistics Service, and the total number of almond growers, the average annual grower revenue is approximately $195,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of California almonds may be classified as small entities.

This final rule revises § 981.441 of the order's administrative rules and regulations regarding credit-back promotion and advertising. Under the terms of the regulations, handlers may receive credit towards their assessment obligation for certain of their direct expenditures for marketing promotion activities, including paid advertising. This rule makes several revisions to the requirements regarding the activities for which handlers may receive such credit. These revisions include: Revising the time frames and clarifying deadlines for when handlers must submit documentation to the Board on activities conducted; redefining the growing region eligible for credit for certain types of outdoor advertising; revising the list of creditable activities by eliminating credit for fees charged by advertising and public relations agencies for publicity, trade seminars, purchase of Board-produced promotional material, and sponsorships; and adding use of the Internet as a promotional tool as a new, credit-back activity.

Regarding the impact of this rule on affected entities, the changes specified herein are designed to provide for a more effective and efficient use of the industry's advertising and promotion funds, and to improve program administration. Requiring handlers to submit documentation to the Board 3 weeks, as opposed to 2 weeks, prior to the Board's April and August assessment billings changes the timing, but not the frequency, of the filings submitted by handlers. This change is not expected to increase the reporting burden on handlers, but rather provide the Board's staff sufficient time to review the material and credit handlers' accounts in a more timely manner. Clarifying the deadline for filing claims at the end of a crop year will eliminate confusion among handlers and allow the Board to complete its year-end accounting practices more timely. Redefining the growing region eligible for credit for outdoor advertising to include only counties with less than 1,000 bearing acres of almonds will help ensure that credit only be given for outdoor advertising that encourages consumers to buy almonds (as opposed to such advertising done in larger bearing counties directing growers to specific handlers). This change also adds flexibility to the regulations to accommodate production shifts in the future. Adding the Internet as a credit-back activity will allow handlers to take advantage of a new communication medium and provide them with a new promotional opportunity that can be used to offset a portion of their assessment obligation. Removing certain activities available for credit-back is not expected to negatively impact handlers, as numerous promotional activities remain for them to offset a portion of their assessment obligation. The activities removed have received little use in the past, and in some cases lend themselves to potential abuses that result in ineffective use of promotional funds. The changes are expected to be equally beneficial to all handlers who conduct their own promotional activities and to the industry as a whole.

Several alternatives to the changes were considered. The first alternative in all cases was to leave the regulations as they currently exist. However, this does not address the changes in the industry, technology, or promotional practices. Nor does it address the administrative inefficiencies and the potential program abuses that have been identified. Alternatives to the recommendations concerning removing certain activities from the list of credit-back activities included leaving the activities in the regulations, with further definition and clarification added. However, it was determined that this would lead to increased regulations and guidelines, with no assurance of solving the problems. In addition, most of the activities being removed have been used very infrequently by handlers. The removal of credit for purchase of Board-produced promotional materials was replaced by an alternative system whereby handlers are provided a free allocation of such materials, with the option of purchasing additional materials at cost.

Regarding the changing of dates for submitting documents to the Board, different dates were considered. However, it was determined that the dates ultimately recommended allow the minimum amount of time necessary for Board staff to review documents, apply credit to handlers' assessment accounts, and to complete year-end accounting practices in a timely manner. Alternatives to changing the growing region definition included using a different acreage number as a threshold to defining a producing county. However, the industry agreed for purposes of the credit-back program, 1,000 acres was appropriate. Another alternative considered was to remove the restriction of outdoor advertising in almond growing counties, but that does not address the problem of handlers advertising to growers.

It was determined that the changes herein are the best way to address the situation at this time. These regulations were designed to reflect the industry's practices, and these revisions are intended to respond to an evolving marketplace and changing promotional practices. Changes have been and will continue to be recommended based on industry and program experiences.

This rule imposes no additional reporting or recordkeeping requirements on either small or large almond handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0071. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Additionally, the Board's meetings were widely publicized throughout the almond industry and all interested persons were invited to attend the meetings and participate in Board deliberations. Like all Board meetings, the December 2, 1998, and March 5, 1999, meetings were public meetings and all entities, both large and small, were able to express their views on this issue. The Board itself is composed of 10 members, of which 5 are producers and 5 are handlers.

Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board. The Board formed a task force in July 1998 to review its credit-back advertising program. The task force met periodically during the following months to review the program and consider appropriate changes. The task force presented its recommendations to the Board's Public Relations and Advertising Committee on November 13, 1998, and that committee presented its recommendations to the Board on December 2, 1998. The March 5, 1999, meeting was held to finalize the Board's recommendations. All of these meetings were open to the public, and both large

and small entities were able to participate and express their views.

A proposed rule concerning this action was published in the **Federal Register** on June 10, 1999 (64 FR 31153). Copies of the rule were mailed to all Board members and almond handlers. The proposal was also made available through the Internet by the Office of the Federal Register. A 30-day comment period was provided for interested persons to respond to the proposal. The comment period ended July 12, 1999. No comments were received.

The Department made some changes to the amendatory language as stated in the proposed rule for clarity and conformity between provisions. These changes include a change pertaining to the development and use of web-sites on the Internet for advertising and public relations purposes. The words ''for such activities'' were added to the proviso in paragraph (e)(4)(ii)(K) of § 981.441 to clarify that handlers may be allowed up to $5,000 credit against their assessment obligation for activities concerning web-sites and the Internet. Another change conforms language in paragraph (b) of § 981.441 to be consistent with the change requiring handlers to submit documentation to the Board three weeks prior to the third and fourth assessment billings in order to offset a portion of the assessment obligation. Language was added to paragraphs (a), (e)(6)(ii), and (e)(6)(iv) to clarify that the changes do not apply to promotional activities conducted prior to the 1999–2000 crop year.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) This rule should be in effect by August 1, the beginning of the 1999–2000 crop year; (2) these changes were unanimously recommended by the Board and interested persons had an opportunity to provide input; (3) handlers are aware of these changes which were recommended at public meetings; and (4) a 30-day comment period was provided for in the proposed rule.

**List of Subjects in 7 CFR Part 981**

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

## PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 981.441 is amended by revising the second sentence in paragraph (a), paragraphs (b), (e)(3), (e)(4)(ii), the first sentence in paragraph (e)(6)(ii), and paragraph (e)(6)(iv) to read as follows:

**§ 981.441 Credit for market promotion activities, including paid advertising.**

(a) * * * Credit will be granted either in the form of a payment from the Board, or as an offset to that portion of the assessment if activities are conducted and documented to the satisfaction of the Board at least 2 weeks prior to the Board's first and second assessment billings, and at least 3 weeks prior to the Board's third and fourth assessment billings in a crop year: *Provided,* That promotional activities conducted during the 1998–99 crop year must be conducted and documented at least 2 weeks prior to the Board's fourth assessment billing in order to receive credit in the form of a payment from the Board, or as an offset to that portion of the assessment. * * *

(b) The portion of the handler assessment for which credit may be received under this section will be billed, and is due and payable, at the same time as the portion of the handler assessment used for the Board's administrative expenses, unless the handler(s) conduct and document activities at least 2 weeks prior to the first and second assessment billings and 3 weeks prior to the third and fourth assessment billings: *Provided,* That promotional activities conducted during the 1998–99 crop year must be conducted and documented at least 2 weeks prior to the Board's fourth assessment billing in order to receive credit. If the handler(s) conduct activities and submit documentation according to applicable provisions in this section, their advertising assessment obligation will be reduced according to the amount of proven activities approved by the Board.

* * * * *

(e) * * *

(3) No Credit-Back will be given for advertising placed in publications that target the farming or grower trade. No Credit-Back shall be given for any outdoor advertising in California almond growing counties with more than 1,000 bearing acres: *Provided,* That outdoor advertising in these counties which specifically directs consumers to a handler-operated outlet offering direct purchase of almonds will be eligible for Credit-Back.

(4) * * *

(ii) *Other market promotion activities.* Credit-Back shall be granted for market promotion other than paid advertising, for the following activities:

(A) Marketing research (except pre-testing and test-marketing of paid advertising);

(B) Trade and consumer product publicity: *Provided,* That no Credit-Back shall be given for related fees charged by an advertising or public relations agency;

(C) Printing costs for promotional material;

(D) Direct mail printing and distribution;

(E) Retail in-store demonstrations;

(F) Point-of-sale materials (not including packaging);

(G) Sales and marketing presentation kits;

(H) Trade fairs and exhibits;

(I) 50/50 advertising with retailers;

(J) Couponing (printing, distribution, and handling costs only); and

(K) Development and use of web-site on the Internet for advertising and public relations purposes: *Provided,* That Credit-Back shall be limited to $5,000 per year for such activities, and no credit shall be given for costs for E-commerce (mail ordering through the Internet), Extranet (restricted web sites within the Internet), or portions of a web-site that target the farming or grower trade.

* * * * *

(6) * * *

(ii) Handlers may receive credit against their assessment obligation up to the advertising amount of the assessment installment due: *Provided,* That handlers submit the required documentation for a qualified activity at least 2 weeks prior to the mailing of the Board's first and second assessment notices, and at least 3 weeks prior to the mailing of the Board's third and fourth assessment notices in a crop year: *Provided further,* That promotional activities conducted during the 1998–99 crop year must be conducted and documented at least 2 weeks prior to the mailing of the Board's fourth assessment notice in order to receive credit. * * *

(iii) * * *

(iv) A statement of the Credit-Back commitments outstanding as of the close of a crop year must be submitted in full to the Board within 15 days after the close of that crop year. Final claims

pertaining to such commitments outstanding must be submitted within 76 days after the close of that crop year: *Provided*, That for activities conducted during the 1998–99 crop year, final claims pertaining to such commitments outstanding must be submitted within 105 days after the close of the crop year. All other final claims for which no statement of Credit-Back commitments outstanding has been filed must be submitted by August 15 of that calendar year.

* * * * *

Dated: July 22, 1999.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99–19091 Filed 7–28–99; 8:45 am]

BILLING CODE 3410–02–U

## NATIONAL CREDIT UNION ADMINISTRATION

## 12 CFR Parts 701, 715 and 741

## Supervisory Committee Audits and Verifications

**AGENCY:** National Credit Union Administration.

**ACTION:** Final rule.

**SUMMARY:** The Credit Union Membership Access Act amended certain audit and financial reporting requirements of the Federal Credit Union Act. The National Credit Union Administration has received and reviewed public comments on its proposed rule implementing those amendments. As revised to reflect commenters' suggestions and to enhance clarity, the final rule specifies the minimum annual audit a credit union is required to obtain according to its charter type and asset size, the licensing authority required of persons performing certain audits, the auditing principles that apply to certain audits, and the accounting principles that must be followed in reports filed with the NCUA Board.

**DATES:** Effective January 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Karen Kelbly, Program Officer, Office of Examination and Insurance at (703) 518–6360, or Steven W. Widerman, Trial Attorney, Office of General Counsel, at (703) 518–6557, National Credit Union Administration Board, 1775 Duke Street, Alexandria, VA 22314–3428.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. Credit Union Membership Access Act*

Section 201(a) of the Credit Union Membership Access Act (CUMAA), Public Law 105–219, 112 Stat. 918 (1998), added two new subsections to section 202(a)(6) of the Federal Credit Union Act (FCUA), 12 U.S.C. 1782(a)(6)(C) and (D). Subsection (C) addresses accounting principles, generally requiring credit unions having assets of $10 million or more to follow generally accepted accounting principles (GAAP) in all reports or statements filed with the NCUA Board.[1] 12 U.S.C. 1782(a)(6)(C). The NCUA Board, and State credit union supervisors under applicable statutes, are given the authority to require credit unions having less than $10 million in assets to follow GAAP. 12 U.S.C. 1782(a)(6)(C)(iii).

Subsection (D) imposes audit requirements for large federally-insured credit unions—those having assets of $500 million or more. A credit union at or above that level of assets, whether State-or Federally-chartered, is required to obtain an annual independent audit of its financial statements performed in accordance with generally accepted auditing standards (GAAS)—hereinafter referred to as a ''financial statement audit.'' Furthermore, that audit must be performed by an independent certified public accountant or public accountant licensed to do so by the appropriate State or jurisdiction. 12 U.S.C. 1782(a)(6)(D)(i). For a breakdown of State-licensing requirements for persons who perform audits, see proposed rule, 64 FR 777n.2.

A federally-chartered credit union having total assets of less than $500 million but more than $10 million is subject to only one requirement under subsection (D). If that credit union elects to obtain the financial statement audit required of a credit union having assets of $500 million or more, the audit must be performed consistent with the accountancy laws and licensing requirements of the appropriate State or jurisdiction. 12 U.S.C. 1782(a)(6)(D)(ii). The appropriate State or jurisdiction normally is the State in which the credit union is principally located.

Subsection (D) imposes no minimum audit requirements at all on federally-chartered credit unions having total assets of less than $500 million but more than $10 million that do not voluntarily elect to obtain a financial statement audit performed in accordance with GAAS (as credit unions having assets of $500 million or more must obtain under subsection (D)(i)). *See* § 715.2(f) (GAAS definition). Only in the case of a financial statement audit performed in accordance with GAAS, whether by choice or by law, do State accountancy laws and licensing requirements apply.[2] Subsection (D) is silent regarding audits of federally-chartered credit unions having assets of $10 million or less, and Federally-insured State-chartered credit unions (FISCUs) having assets of less than $500 million.

With respect to financial statement audits, the threshold set by subsection (D) at $500 million for requiring a financial statement audit puts federally-insured credit unions in parity with other federally-insured depository institutions. The institutions supervised by the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Office of Comptroller of the Currency and the Federal Reserve Board are required to obtain a financial statement audit if they have assets of $500 million or more.[3] 12 CFR 363. For institutions having assets of less than $500 million, the Federal Financial Institutions Examination Council (FFIEC) has proposed audit options similar to two of those which this final rule prescribes for credit unions. FFIEC, *Policy Statement on External Auditing Programs of Banks and Savings Associations*, 63 FR 7796 (Feb. 17, 1998) (*FFIEC Policy Statement*).

*B. Proposed Rule*

On January 6, 1999, NCUA published a Notice of Proposed Rule, 64 FR 776 (Jan. 6, 1999), establishing new part 715 to implement the statutory minimum audit requirements imposed by

[1] In lieu of GAAP, the NCUA Board may prescribe ''an accounting principle * * * that is no less stringent than [GAAP].'' 12 U.S.C. 1782(a)(6)(c)(ii).

[2] FCUA section 202(a)(6)(D)(ii), 12 U.S.C. 1782(a)(6)(D)(ii), provides: If a Federal credit union that is not required to conduct and audit under clause (i), and that has total assets of more than $10,000,000 conducts such an audit for any purpose, using an independent auditor who is compensated for his or her audit services with respect to that audit, the audit shall be performed consistent with the accountancy laws of the appropriate State or jurisdiction, including licensing requirements.'' (emphasis added.) ''Such an audit'' refers back to ''an audit under clause (i)'' of section 1782(a)(6)(D). A clause (i) audit is a financial statement audit performed in accordance with GAAS. The clause (ii) requirement to follow State accountancy and licensing laws is triggered only when a credit union voluntarily chooses a financial statement audit.

[3] The statute authorizing 12 CFR 363, originally established a $150 million asset floor for requiring a financial statement audit. 12 U.S.C. 1831m(j)(2). However, the banking agencies exercised their statutory authority to increase the asset floor to $500 million, thereby exempting two-thirds of all institutions required under § 1831m to obtain a financial statement audit. 12 CFR 363.1(a) 58 FR 31332 (June 2, 1993).

CUMAA, 12 U.S.C. 1782(a)(6) (C) and (D); to provide supervisory committee audit alternatives for credit unions which are not required to obtain a financial statement audit; and to retain in substance the current rules relating to Supervisory Committee audit responsibilities, verification of accounts, independence of outside auditors, the requirement of an engagement letter, audit report and workpaper maintenance and access, and sanctions and remedies for inadequate audits. §§ 701.12 and 701.13. In addition, the proposed rule revised section 741.6 [financial and statistical and other reports] to change certain Call Report filing dates and to introduce the use of GAAP in Call Reports filed by credit unions having $10 million or more in assets. Finally, the proposed rule conformed the citations in section 741.202 to apply part 715 to Federally-insured State-chartered credit unions. *See* 12 U.S.C. 1781(b)(9), 1789(a)(11) (authority for application to FISCUs).

By the comment deadline of March 8, 1999, NCUA received thirty-one comments in response to the Notice of Proposed Rule. Comments were submitted by eleven Federal credit unions, seven credit union industry trade associations, seven certified public accounting or auditing firms, two auditing industry trade associations, two unlicensed credit union auditors, an association of state credit union supervisors, and one banking industry trade association.

Except for the latter group, the comments generally support NCUA's interpretation of the statutory ''financial statement audit'' requirement and, in concept if not in detail, all three of the audit engagements proposed in the rule as alternatives to a financial statement audit—a balance sheet audit; a ''review and evaluation of internal controls over Call Reporting'' (renamed and redefined in the final rule); and an audit pursuant to NCUA's *Supervisory Committee Guide*.[4] Predictably, licensed individuals opposed provisions of the rule allowing unlicensed persons a role in the credit union auditing process. Conversely, unlicensed individuals were grateful that NCUA preserved their role in the process. The comments are analyzed generally in section II. immediately below, except that comments of the internal auditing industry and banking industry trade associations are addressed separately in section II.I.

[4] NCUA anticipates issuing the revised *Supervisory Committee Guide* in late 1999.

## II. Section-Within-Subject Analysis of Comments

### *A. Definitions*

Section 715.2 establishes definitions for the terms that are used in part 715, nearly all of which are virtually identical in form and substance to their predecessors in current § 701.12(a). Several commenters suggested revisions to the proposed definitions as follows.

''*Balance sheet audit.*'' One commenter suggested that the ''balance sheet audit'' definition, § 715.2(a), should prescribe GAAP as a basis of accounting for this engagement. The definition has been revised to provide that a credit union which obtains a ''balance sheet audit'' engagement shall use as a basis of accounting the same basis of accounting used in its Call Reports. Effectively, this means that credit unions which have $10 million or more in assets will be required to use GAAP as a basis of accounting for this engagement. *See* § 741.6(b) (requiring credit unions having assets of $10 million or greater to follow GAAP in Call Reports).

''*Compensated person.*'' Two commenters objected to the definition of a ''compensated person,'' § 715.2(b), because it expressly omits individuals or firms who are compensated to perform only one supervisory committee audit per year. The omission is intentionally designed to exempt from this rule persons who are not in the business of auditing credit unions, but who are modestly compensated by a single credit union to perform its annual supervisory committee audit. NCUA remains committed to ensuring that such one-time audit engagements do not trigger the requirements of this rule.

''*Financial statement* .'' One commenter strongly urged deleting the ''statement of assets and liabilities that does not include members'' equity accounts'' from the definition of ''financial statement'' § 715.2(c), because that statement is rarely used and is of little benefit to the financial statement reader. NCUA agrees and has amended the proposed definition accordingly.

''*Independent person.*'' Two commenters pointed out that the interchangeable use of the terms ''independent person'' and ''independent auditor'' throughout the proposed rule was confusing. Thus, the final rule retains ''independent person'' and omits ''independent auditor.'' Two commenters urged that the terms ''independent'' and ''independence'' be redefined either to parallel the GAAS definition of ''independence'' as it applies to State-licensed persons, or to otherwise incorporate the GAAS definition to some extent.[5] To define ''independence'' as GAAS does would have the unintended effect of limiting the auditing of Federal credit unions to State-licensed individuals. NCUA is committed to enabling both licensed and unlicensed persons to satisfy its ''independence'' definition, so that both may have a role in auditing credit unions. Regardless of NCUA's definition, licensed persons already would be required under State law to comply with GAAS independence rules. The proposed definition of ''independence,'' § 715.2(g), is no less stringent than the GAAS definition, and may in certain circumstances be more stringent.

''*Qualified person.*'' Although not defined in the proposed rule, the term ''qualified person'' is used throughout as the minimum standard for persons who may perform certain audit engagements although they are not State-licensed. Four commenters suggested expressly defining a ''qualified person.'' NCUA declines to add such a definition because the proposed rule already identifies persons who would be qualified to perform an audit under the *Supervisory Committee Guide*, e.g., a certified public accountant, public accountant, league auditor, credit union auditor consultant, retired financial institutions examiner. § 715.7(c). It is the responsibility of the Supervisory Committee to apply its judgment within given guidance to determine who is a ''qualified person.''

''*Report on examination of internal control over Call Reporting.*'' The proposed rule referred to this engagement as a ''review and evaluation of internal controls over Call Reporting.'' An auditing industry trade association suggested that the proper term of art for this engagement is an ''examination,'' not a ''review,'' and should be subject to attestation standards. NCUA agrees and has renamed this engagement a ''Report on the examination of internal control over Call Reporting'' and is redefining it consistent with attestation standards.[6] § 715.2(j). *See* discussion of § 715.7(b) *infra.*

''*State-licensed person.*'' The proposed definition of ''State-licensed person'' refers to a ''person who is licensed by the State or jurisdiction where the credit union is located . . . .''

[5] *See* 1 AICPA, *AICPA Professional Standards* AU§ 220.02 (1997) (GAAS definition of ''independence'').

[6] In the final rule, 715.7(b) provides that a ''Report on examination of internal control over Call Reporting'' may be performed only by a ''State-licensed per.'' *See* discussion of § 715.7(b) *infra.*

§ 715.2(k). One commenter insists that this definition departs from CUMAA because it is not as specific or restrictive as the statute provides. In fact, the definition in the rule mirrors the language of CUMAA. *Compare* § 715.2(k) *and* 12 U.S.C. 1786(a)(2)(D). Another commenter suggested replacing the word ''located'' with the word ''headquartered'' to address instances where a credit union has multiple branches and overseas locations. This point is well taken. To eliminate confusion as to where a person must be licensed, NCUA is replacing the term ''located'' with the term'' principally located'' throughout the final rule. *See, e.g.*, §§ 715.4(b), 715.5(a), 715.6(a) and (b), 715.7(a) and (b).

*''Supervisory committee audit.''* One commenter objected that the last sentence of the proposed definition of a ''supervisory committee audit''—which had provided that a financial statement audit ''fulfills the requirements of a 'supervisory committee audit' ''—is redundant and outside the scope of a definition. § 715.2(m). This sentence has been eliminated in view of the fact that the point it makes is expressed elsewhere in the rule. *See, e.g.*, § 715.4(b).

*''Working papers.''* NCUA staff determined that the phrase ''by the independent, compensated auditor'' at the end of the definition of ''working papers,'' § 715.2(n), unintentionally excluded uncompensated auditors from that definition. Therefore, that phrase has been eliminated.

*B. Supervisory Committee Responsibilities*

Section 715.3—General Responsibilities of the Supervisory Committee

Under this section, a principal duty of the Supervisory Committee is to ''establish practices and procedures sufficient to safeguard members' assets'' against ''error, conflict of interest, self-dealing and fraud.'' § 715.3(a) and (b)(4). The sole commenter addressing this section, who generally supported the rule, interpreted this language as improperly creating a duty to prevent acts which constitute error, conflict of interest, self-dealing and fraud. NCUA disagrees with that interpretation; the rule clearly mandates a duty to establish practices and procedures designed to ''safeguard members'' assets'' against such misconduct, but imposes no absolute liability on the board of directors or management to prevent such misconduct. Therefore, NCUA retains the original language of paragraph (a). Although there were no further substantive comments on this section, paragraph (b) is modified in form to improve clarify and parallelism.

Section 715.4—Audit Responsibility of the Supervisory Committee

This section restates the Supervisory Committee's annual audit responsibility under 12 U.S.C. 1761d, § 715.4(c); provides that a financial statement audit will always satisfy that responsibility, § 715.4(b); and that other options to satisfy that responsibility are available to credit unions which do not choose to obtain a financial statement audit. § 715.4(c). For the convenience of the reader, the minimum audit requirements according to charter type and asset size are summarized in a diagram preceding § 715.5. NCUA received no comments directly addressing this section. To eliminate ambiguity in determining asset size, NCUA has added a sentence indicating that ''asset size is the amount of total assets reported in the Call Report for the year-end immediately preceding and outside of the period under audit.'' § 715.4(c).

*C. Minimum Audit Requirements*

The proposed rule was organized primarily according to asset size—$500 million and above, less than $500 million but more than $10 million, and $10 million or less—rather than by charter type. An association of state credit union supervisors urged reorganization of part 715 primarily by charter type, and then by asset size, so that audit requirements which apply to FISCUs are consolidated according to asset size in one section and those which apply to federally-chartered credit unions (FCUs) are consolidated according to asset size in a separate section. NCUA believes that the benefits of such a reorganization—namely, improved clarity and accessibility—outweigh the minimal duplication that results. Accordingly, in the final rule, § 715.5 addresses audit requirements exclusive to federal charters, and § 715.6 addresses audit requirements exclusive to State charters. The substance of the applicable audit requirements remains unchanged in both sections.

Section 715.5—Audit of Federal Credit Unions

This section sets forth the minimum requirements for the audit of federal credit unions (FCUs) according to asset size. As CUMAA mandates, 12 U.S.C. 1782(a)(6)(D), an FCU having assets of $500 million or greater must obtain a financial statement audit. § 715.5(a). For FCUs having less than $500 million in assets, § 715.5(b) reflects NCUA's interpretation that CUMAA allows credit unions the choice of obtaining a financial statement audit under § 715.6(a)—as credit unions having $500 million or more in assets must do—or one of three alternative audit engagements set forth in § 715.7. *See* 12 U.S.C. 1782(a)(6)(D)(ii). NCUA received eight comments expressly agreeing with NCUA's interpretation of CUMAA; four opposing the interpretation; and eighteen which did not comment on the matter. One supporter enclosed a legal opinion concurring with NCUA's interpretation. Another pronounced the rule clear and concise and the interpretation appropriate.

The four commenters opposing NCUA's interpretation of CUMAA consist of licensed auditing professionals and an auditing industry trade association, all of whom favored an interpretation of CUMAA limiting auditing of credit unions above $10 million in assets exclusively to State-licensed individuals like themselves. In stark contrast, another commenter who is an unlicensed auditor insisted that, compared to current § 701.12, the proposed rule is a concession to the auditing profession and is contrary to the best interests of the credit unions, even though it maximizes audit choice for credit unions.

Consistent with its interpretation of CUMAA, NCUA stands by section 715.5 as proposed, except to add a final paragraph (d) indicating that FCUs must meet applicable requirements elsewhere in part 715 regardless of which audit engagement they choose under § 715.5. *See* §§ 715.8, 715.9(b) through (e), 715.10.

Section 715.6—Audit of Federally-insured, State-chartered Credit Unions

This section sets forth the minimum requirements for the audit of FISCUs according to asset size. As in the case of FCUs, CUMAA mandates that FISCUs having assets of $500 million or greater must obtain a financial statement audit. § 715.6(a). For FISCUs having less than $500 million in assets, § 715.6 gives FISCUs the choice of obtaining a financial statement audit per § 715.6(a), or one of three alternative audit engagements set forth in § 715.7. The rule provides, however, that if the State or jurisdiction in which the credit union is principally located prescribes an audit engagement which is more stringent than the alternative engagements offered in § 715.7, the FISCU must comply with the State-mandated audit. § 715.6(b).[7] As in the

[7] NCUA does not define ''stringent'' except to suggest that it might involve enhanced audit scope

Continued

case of FCUs, a new subsection (c) has been added to indicate that FISCUs must meet applicable requirements elsewhere in part 715 regardless of which engagement they choose under § 715.6. *See* §§ 715.8, 715.9(b) through (e), 715.10. NCUA received no comments on the predecessor provision to this section.

Section 715.7—Supervisory Committee Audit Alternatives To a Financial Statement Audit

This section establishes alternative supervisory committee audit engagements for federally-insured credit unions that are not required by virtue of asset size to obtain a financial statement audit, and that otherwise do not voluntarily elect to obtain a financial statement audit.

*''Opinion on the balance sheet.''* Like a financial statement audit, this engagement, also known as a ''balance sheet audit,'' must be performed in accordance with GAAS by a person who is licensed under State law to do so. § 715.7(a). This engagement consists of an examination of assets, liabilities and equity and requires an opinion by the auditor on the fairness of the balance sheet only. Apart from the basis of accounting required, *see* § 715.2(a), this option is identical to that of the same name proposed for other federally-insured financial institutions by the FFIEC. *FFIEC Policy Statement,* 63 F.R. at 7797, 7800.

Five commenters addressed the ''balance sheet audit'' option. One commenter fully supported the option. One characterized it as a step backwards due to insufficient testing of the internal control structure and less assurance than in current § 701.12. Three commenters were cautious—one suggesting this engagement should incorporate supplemental analytic procedures, one criticizing the limited scope and limited assurance of this option, and one urging mandatory linkage to a basis of accounting consistent with GAAP. NCUA believes that these generally are matters of judgment which, to the extent possible, should be left to the supervisory committee. Thus, the ''opinion on the balance sheet'' is modified only to require the same basis of accounting as that which is reflected in the credit union's Call Reports. *See* discussion of § 715.2(a) *supra.*

*''Report on examination of internal control over Call Reporting.''* This engagement was originally proposed as a ''review and evaluation of internal controls over Call Reporting,'' consisting of an examination of management's written assertions concerning the effectiveness of internal controls over data reported in Call Reports (NCUA Form 5300) which addresses high risk areas. In this engagement, the auditor produces a report on the written assertions of management. *See* § 715.2(j).

Ten commenters addressed the originally proposed ''review and evaluation of internal controls over Call Reporting. One commenter fully supported this option as written; one commenter believed it would confuse credit unions and should be clarified; and a third opposed it outright. The latter commenter argued that this engagement is too limited, does not consider many areas of the financial structure, and does not identify problems that may exist with account balances. As a remedy, this commenter recommended that the ''review and evaluation'' be subject to attestation standards of the auditing profession—thus allowing only licensed individuals to perform this examination—and be increased in scope.

Seven commenters supported this audit option in a revised form. Five argued that only external, licensed certified public accountants under the attestation standards of the profession should be allowed to perform this engagement. One of these commenters suggested that attestation standards demand use of the nomenclature ''examination,'' rather than ''review,'' as these terms have different ascribed meanings under auditing standards. This same commenter strongly recommended that the rule clearly define the scope and level of work for this engagement, specify the criteria for the evaluation of internal controls, and define a ''complex'' credit union. Another commenter argued that small credit unions lack sound internal controls and that this engagement will not be helpful to them. This commenter also contended that it would be difficult for credit union management to document its internal control assertions,[8] and that the engagement would not yield a particularly reduced fee. This commenter joined two others in opposing the use of differing levels of expertise for performing this engagement—a ''State-licensed person'' if performed for a credit union defined as ''complex,'' but only a ''qualified person'' if not. NCUA found these comments generally persuasive and has revised the final rule as follows.

First, the final rule renames this engagement a ''report on the examination of internal control over Call Reporting'' and requires it to satisfy the attestation standards of the auditing profession. § 715.7(b). Second, whereas the proposed rule was silent about the criteria on which the review of internal controls is based, the final rule assigns credit union management the responsibility of ''specif[ying] the criteria on which it based its evaluation of internal controls.''[9]

Third, whereas the proposed rule prescribed the ''high risk areas'' on which this engagement concentrates—loans, investments, and cash and deposit activity—the final rule gives management the responsibility of designating the areas it considers high risk. However, the NCUA Board still believes that high risk areas should most often include: lending activities, investing activities, and cash-handling and deposit-taking activities.

Finally, the final rule abandons the proposed two-tier approach to the expertise required to perform this engagement, in favor of a single, higher level of expertise. The final rule now provides that only State-licensed persons under attestation standards of the auditing profession may perform a ''report and examination of internal control over Call Reporting'' regardless whether the credit union is defined as ''complex'' for prompt corrective action purposes. *See* CUMAA § 301(d)(2)(B) and (e)(2) (requirement to adopt definition of ''complex'' credit union).

As modified in the final rule, the ''report on examination of internal control over Call Reporting'' is comparable to the FFIEC-proposed option of an ''attestation report on

and depth. ''Stringent'' is not defined in 12 U.S.C. 1782(a)(6)(C)(iii), which refers to an accounting principle that is ''no less stringent'' than GAAP.

In comparison to NCUA's current supervisory committee audit rule, § 701.12, State-prescribed audits for credit unions generally fall into three categories: (1) States which prescribe audits substantially similar to 12 U.S.C. 1761d and/or § 701.12; (2) States which prescribe audits which differ in some respects from 12 U.S.C. 1761d and/or § 701.12, but which are not necessarily ''more stringent,'' including four States which determine the type of audit by asset size, e.g., Mich. Comp. Laws § 490.11(2); and (3) States in which a financial statement audit is prescribed for certain credit unions.

[8] In the case of a small credit union which lacks the expertise to develop management's written assertions and is unable to gain such expertise, this engagement would not be a viable alternative for fulfilling its supervisory committee audit responsibility.

[9] For example, *Internal Control—Integrated Framework* published by the Committee of Sponsoring Organizations of the Treadway Commission identifies an entity's internal control as consisting of five components: control environment, risk assessment, control activities, information and communication, and monitoring.

internal control assertions.'' 63 FR at 7797, 7800.

''*Supervisory Committee Guide audit.*'' This engagement follows an audit program prescribed in NCUA's *Supervisory Committee Guide (Guide),* as revised to conform to part 715, and is similar to a ''Directors' Examination'' used by some Federally-insured banks. The *Guide* engagement is the only audit alternative under the final rule that can be performed either by a ''State-licensed person'' or by a ''qualified person'' who is not licensed. As revised, the *Guide* will provide guidance regarding the minimum scope and procedures of the engagement, and clearly distinguish a *Guide* engagement from a financial statement audit engagement.

Eleven comments addressed the *Guide* option. Two advocated limiting performance of the *Guide* engagement to ''State-licensed persons.'' The NCUA Board disagrees because this is directly contrary to the objective of providing a supervisory committee audit option that can be performed by individuals who are not ''State-licensed.'' The *Guide* engagement accomplishes this objective.

Five of the commenters asked that NCUA issue the proposed *Guide* for public comment before finalizing it. Because it is likely that the *Guide* will be revised periodically, NCUA has decided to issue the *Guide* as a manual rather than as a rule. As such, the *Guide* will not be issued for public comment. Three commenters strongly encouraged NCUA to write the Guide so that it conforms to auditing standards governing an ''agreed-upon procedures'' engagement, thereby permitting ''State-licensed persons'' to perform this engagement. To achieve this objective in revising the *Guide,* and in lieu of soliciting public comment, NCUA is seeking the assistance of the Credit Unions Committee of the American Institute of Certified Public Accountants in identifying appropriate minimum procedures to append to the *Guide.*

A commenter suggested that the *Guide* audit be available only to credit unions under $50 million in assets, and another encouraged NCUA to tailor the *Guide* audit program according to asset size. NCUA declines both suggestions. Although NCUA prefers to make the *Guide* audit universally available to all credit unions regardless of asset size, experience indicates that it is the option most often chosen by credit unions which are relatively small in asset size. NCUA also prefers to offer a uniform audit program regardless of asset size. NCUA believes that an audit program which varies by asset size is unworkable and would substitute the regulator's judgment for that which is properly reserved to the supervisory committee.

*Choice among audit options.* One commenter suggested that the final rule should provide guidance as to which audit option is appropriate for a credit union which is not required to obtain a financial statement audit—a voluntary-chosen ''financial statement audit,'' a ''balance sheet audit,'' a ''report on examination of internal controls over Call Reporting,'' or a ''*Supervisory Committee Guide* audit.'' The NCUA Board declines to provide such guidance, believing instead that it is the supervisory committee's responsibility to obtain the highest level of supervisory committee audit service that is consistent with the credit union's size, the nature and scope of its activities, and any compensating internal controls. Cost of service alone should not be the deciding factor in this decision. Cost should be one among many factors the supervisory committee thoughtfully considers when weighing the purpose and benefit of each audit alternative. A supervisory committee which is unfamiliar with distinctions among the different types of audits should seek the advice of an independent accountant in choosing among them.

December 1998 NCUA Call Report data shows that 80% of Federally-insured credit unions above $50 million in assets already obtain a financial statement audit voluntarily. NCUA encourages all credit unions, regardless of asset size, to obtain financial statement audits, but recognizes that financial statement audits may not be practical for all credit unions. Accordingly, the final rule seeks to preserve less burdensome audit alternatives for credit unions that do not obtain financial statement audits, without compromising the Supervisory Committee's ability to carry out its oversight responsibilities.

### *D. Verification of Accounts*

#### Section 715.8—Requirements for Verification of Accounts and Passbooks

As mandated by 12 U.S.C. 1761d, this section requires the Supervisory Committee to conduct a verification of the passbooks and accounts of the members against the records of the credit union at least once every two years. One commenter urged removing proposed language requiring the auditor to ''provide assurance'' or draw conclusions in reference to both the statistical and non-statistical methods of verification. NCUA agrees with regard to the statistical sampling methods under § 715.8(b)(2), but disagrees with regard to the non-statistical methods under § 715.8(b)(3).

Consistent with State licensing requirements, NCUA prohibits persons who are not ''State-licensed'' from providing assurance services in connection with a verification. § 715.7(c). Because a ''controlled verification,'' § 715.8(b)(1), and statistical sampling methods, § 715.8(b)(2), may be performed by persons who are not ''State-licensed,'' the ''assurance'' language has been removed from § 715.8(b)(2)(iv). Because non-statistical sampling methods consistent with GAAS, § 715.8(b)(3), may be performed only by a ''State-licensed person,'' who is authorized to provide assurance services, the ''assurance'' language remains intact in § 715.8(b)(3)(i).

### *E. Other Audit Requirements*

#### Section 715.9—Assistance From Outside Compensated Person

This section sets the independence and engagement letter requirements that are triggered when the Supervisory Committee engages an outside person who is compensated to perform, or to assist in the performance of, a supervisory committee audit under this part. Paragraph (a) concerns the auditor's independence from credit union officials. Although NCUA received no comments on this provision, it has determined that the definition of persons ''unrelated to officials'' of the credit union (i.e., persons who qualify as independent of credit union officials) was too narrow with respect to relatives of credit union employees. This made the category of persons not sufficiently independent of credit union officials overinclusive. Accordingly, the final rule provides that a compensated auditor ''shall not be related by blood or marriage to any management employee * * * of the credit union,'' and eliminates as redundant the list of blood and marital relations. § 715.9(a) (emphasis added).

Paragraph (b) sets forth the general requirement for an engagement letter between the Supervisory Committee and the outside auditor memorializing the terms and conditions of the audit engagement. Two commenters sought clarification of the requirement that ''the engagement must be contracted with the supervisory committee,'' § 715.9(b), suggesting the possibility that the supervisory committee may not have the authority to contract for the audit. The NCUA Board disagrees, believing that the supervisory committee's authority to contract for the credit union's audit is clear from the language of the FCUA,

which provides that ''the supervisory committee shall make or cause to be made an annual audit.'' 12 U.S.C. 1761d.

Paragraph (c) sets forth the required contents of an engagement letter. Proposed paragraph (c)(6) required the engagement letter to ''specify a target date of delivery'' for the audit report. At the suggestion of an auditing industry trade association, this provision has been revised to prescribe a fixed target date of delivery ''not to exceed 120 days from date of calendar or fiscal year-end under audit (period covered), unless the supervisory committee obtains a waiver from the supervising NCUA Regional Director.'' § 715.9(c)(6). NCUA believes that prescribing a uniform fixed date of delivery, rather than allowing the date to be set on an engagement-by-engagement basis, will improve the consistency and efficiency of the auditing process.

To avert post-engagement disputes between the credit union and its outside auditor, proposed paragraphs (d) and (e) together mirrored the current rule, § 701.12(d)(2)–(3), in requiring an auditor to certify in the engagement letter when all items within the scope of a supervisory committee audit will be addressed in the engagement, and conversely, to identify any items that will be excluded from the engagement. The final rule is revised to reflect that certification of complete scope is redundant with respect to three types of audit engagements under part 715—the financial statement audit, the balance sheet audit, and the report on examination of internal control over Call Reporting—because reporting standards under GAAS and attestation standards, respectively, for those engagements already would require any excluded items to be reflected in the level of assurance the independent accountant provides in rendering an opinion. In contrast, the *Supervisory Committee Guide* audit engagement available under part 715 does not by definition include all items within the scope of the engagement. Therefore, with regard to that engagement only, the final rule still requires the auditor to certify the completeness of scope or, conversely, to specify the exclusions from the scope of the engagement. § 715.9(d) and (e).

In the case of a *Guide* engagement, for example, the auditor and the supervisory committee may by agreement exclude the allowance for loan losses from the scope of the engagement. In that event, paragraph (e) would require the engagement letter to specify the excluded items.

Section 715.10—Audit Report and Working Paper Maintenance and Access

This section addresses the procedure for distributing the audit report produced either by the Supervisory Committee or by an outside person who performed the audit, and the responsibility for maintenance of, and access to, the auditor's ''working papers'' once the engagement is complete. Whereas the proposed rule expressly stated that credit union members must be provided with ''a report of the results of an audit at the next annual meeting,'' the final rule provides that members must be provided with a ''summary'' of the results of the audit, ''orally or in writing''. § 715.10(a). The purpose of this revision is to indicate that credit unions need not provide members a written, abridged version of the audit report itself.

One commenter suggested that NCUA specify minimum information to be included in a report (or summary) of the results of the audit. Although NCUA has not experienced problems of insufficient disclosure of audit results, the final rule nonetheless includes a remedy: ''If a member so requests, the Supervisory Committee shall provide the member access to the full audit report,'' § 715.10(b), although the member would not necessarily have a right to a copy of the report.

Paragraph (b) concerns maintenance of, and access to, audit working papers. § 701.10(e)(2). Two commenters sought a commitment from NCUA, either by rule or otherwise, to maintain the confidentiality of working papers to which it is given access under this section. Such a commitment is not necessary because audit workpapers fall within the scope of confidential, commercial and financial information protected from disclosure by NCUA regulations, except to other government agencies and as required by law. 12 CFR 792.11(a)(4) and (8), 792.30, 792.60.

*F. Sanctions and Remedies*

Section 715.11—Sanctions for Failure To Comply With This Part

This section authorizes NCUA to reject an audit or to impose formal administrative sanctions when a Supervisory Committee or its independent compensated auditor violates a provision of this part or a provision of an engagement letter prescribed by this part. Although NCUA received no substantive comments on this section, the final rule has been revised in two ways. First, to provide that when a regional director rejects an audit, he or she must ''provide a reasonable opportunity to correct the deficiencies.'' § 715.11(a)(1). Second, to clarify that this section applies to FISCUs, the final rule cites section 741.202 of chapter VII as authority. § 715.11(b).

Section 715.12—Statutory Audit Remedies for Federal Credit Unions

This section provides the NCUA Board with a pair of additional remedies which, if certain conditions are met, apply to federally-chartered credit unions by statute, 12 U.S.C. 1782(a)(6)(A), and to State-chartered credit unions by regulation. 12 CFR 701.13(a)(2). The remedies are the authority to compel a credit union in this category to have its audit performed by a State-licensed person, § 715.12(a), or to compel the credit union to obtain a financial statement audit even when it is not otherwise required to do so. § 715.12(b). NCUA received a single comment on this section, cautioning that these sanctions alone, when imposed against a small credit union, could drive that credit union into liquidation. NCUA emphasizes in response its commitment to chartering and continued growth of small credit unions when feasible, and to considering all circumstances in imposing lawful sanctions and remedies under this section. Finally, this section has been modified in the last sentence to indicate that, in addition to a ''adverse opinion,'' a ''disclaimer of opinion'' should be an exception to the objective of producing an unqualified opinion. § 71512(b).

*G. Appropriation for Non-conforming Investments*

Section 741.3—Criteria

Although not raised in the proposed rule, § 741.3(a)(3) is revised in the final rule to conform to a change in the technical nomenclature used in NCUA's Call Report (NCUA Form 5300). The phrases ''Investment Valuation Reserve Account'' and ''Investment Valuation Reserve'' both are renamed the ''Appropriation for Non-conforming Investments''. This account receives appropriated funds from undivided earnings in amounts by which investment fair value exceeds book value in FISCUs that hold investments which would be impermissible investments for an FCU to hold, i.e., non-conforming investments. As the auditing industry trade association suggested, this change more appropriately reflects the function and composition of the account under GAAP.

*H. Call Reporting Requirements*

Section 741.6—Financial and Statistical and Other Reports

This section sets deadlines for filing Call Reports with NCUA and implements the statutory mandate that Call Reports filed by credit unions having assets of $10 million or more must be consistent with GAAP. 12 U.S.C. 1782(a)(6)(C)(i). The proposed rule required that such Call Reports ''reflect measurement principles consistent with GAAP.'' An auditing industry trade association encouraged NCUA to specify other principles of GAAP in addition to ''measurement principles.'' Instead of identifying specific principles of GAAP, however, NCUA has concluded that it is consistent with CUMAA to simply require Call Reporting to ''reflect GAAP'' without further specification. § 741.6(b). Because NCUA received no other comments on this section, it is otherwise unchanged.

*I. Comments of Principal Trade Associations*

Internal Auditing Industry

The principal trade association of the internal auditing industry agreed with the intent of the proposed rule but disagreed with its implementation, advocating that certain requirements of the rule can be met only by internal auditors. The association urged the NCUA to relieve untrained, unpaid supervisory committee volunteers of the burden of meeting those requirements. Seeking a niche for internal auditors, the trade association further proposed to replace the regulatory scheme in part 715 with a hierarchy of both mandatory internal and external audit requirements based on six asset size categories. Depending on the category in which a credit union falls, the hierarchy prescribes an examination period ranging between 12 and 36 months, the option or requirement to conduct an internal audit, and different supervisory committee audit alternatives available in each category.

While NCUA appreciates the constructive input of the internal auditing industry trade association, it is not prepared at this juncture to tailor auditing requirements by asset size, to prescribe examination periods of varying lengths, to mandate an internal audit function, or to designate particular types of audits available under different asset categories. Rather, the NCUA's objective in part 715 is to implement the auditing requirements of CUMAA and to establish for federally-insured credit unions having less than $500 million in assets a uniform structure of universally available alternatives to fulfill the supervisory committee audit responsibility. All but one of these alternatives may be performed only by State-licensed auditors.

Principal Banking Industry Trade Association

In sum, the principal banking industry trade association contends that while the proposed rule fulfills the requirements of CUMAA, those requirements still are much less stringent than those to which banks are held. Many of the points raised by the trade association were raised by other commenters and are addressed earlier in this preamble. Apart from these points, the trade association complains that even though part 715 complies with CUMAA, it still is less stringent than audit requirements imposed on banks; that although not required to do so, NCUA should require the Call Reports of credit unions having less than $10 million in assets to reflect GAAP; that the statutory minimum audit requirements should be addressed in a rule which is entirely separate from part 715, which as proposed purportedly is ''missing critical elements''; that many of the definitions in part 715 are deficient and many terms used in the rule are undefined; that the Supervisory Committee's responsibilities need to be ''clarified and strengthened''; and that the standards and scope provisions of the current rule, § 701.12(c)(2) and (3), should be retained in part 715 and in the *Supervisory Committee Guide*.

In general, the trade association's views are fundamentally contrary to NCUA's objectives in part 715. Whereas NCUA wishes to faithfully implement the minimum audit requirements of CUMAA, the trade association apparently wants to hold credit unions to a standard approaching that which applies to the institutions which are its members. To do so would impose an unwarranted burden on credit unions. Rather, NCUA's objective in part 715 is to serve the distinctive needs of credit unions for simplicity, choice and flexibility in the auditing process, consistent with the supervisory committee's oversight responsibility and NCUA's duty to protect the National Credit Union Share Insurance Fund.

**Regulatory Procedures**

*Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions. Thus, a Regulatory Flexibility Analysis is not required.

*Paperwork Reduction Act*

The final rule imposes no additional information collection requirements beyond those in the current rule it replaces. Therefore, no Paperwork Reduction Act analysis is required.

*Executive Order 12612*

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of rights and responsibilities among the various levels of government.

**List of Subjects**

*12 CFR Parts 710 and 741*

Credit unions, Reporting and recordkeeping requirements.

*12 CFR Part 715*

Audits, Credit unions, Reporting and recordkeeping requirements, Supervisory committee.

By the National Credit Union Administration Board on July 22, 1999.

**Becky Baker,**

*Secretary of the Board.*

Accordingly, 12 CFR parts 701, 715 and 741 are amended as set forth below:

## PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789 and 1798. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

**§§ 701.12 and 701.13 [Removed]**

2. Sections 701.12 and 701.13 are removed.

3. Part 715 is added to read as follows:

## PART 715—SUPERVISORY COMMITTEE AUDITS AND VERIFICATIONS

Sec.

715.1 Scope of this part.
715.2 Definitions used in this part.

715.3 General responsibilities of the Supervisory Committee.
715.4 Audit responsibility of the Supervisory Committee.
715.5 Audit of Federal Credit Unions.
715.6 Audit of Federally-insured State-chartered credit unions.
715.7 Supervisory Committee audit alternatives to a financial statement audit.
715.8 Requirements for verification of accounts and passbooks.
715.9 Assistance from outside, compensated person.
715.10 Audit report and working paper maintenance and access.
715.11 Sanctions for failure to comply with this part.
715.12 Statutory audit remedies for Federal credit unions.

**Authority:** 12 U.S.C. 1761d, 1782(a)(6).

### § 715.1 Scope of this part.

This part implements section 202(a)(6)(D) of the Federal Credit Union Act, 12 U.S.C. 1782(a)(6)(D), as added by section 201(a) of the Credit Union Membership Access Act, Pub. L. No. 105–219, 112 Stat. 918 (1998). This part prescribes the responsibilities of the Supervisory Committee to obtain an annual audit of the credit union according to its charter type and asset size, and to conduct a verification of members' accounts.

### § 715.2 Definitions used in this part.

As used in this part:

(a) *Balance sheet audit* refers to the examination of a credit union's assets, liabilities, and equity under generally accepted auditing standards (GAAS) by an independent public accountant for the purpose of opining on the fairness of the presentation on the balance sheet. Credit unions required to file call reports consistent with GAAP should ensure the audited balance sheet is likewise prepared on a GAAP basis. The opinion under this type of engagement would not address the fairness of the presentation of the credit union's income statement, statement of changes in equity (including comprehensive income), or statement of cash flows.

(b) *Compensated person* refers to any accounting/auditing professional, excluding a credit union employee, who is compensated for performing more than one supervisory committee audit and/or verification of members' accounts per calendar year.

(c) *Financial statements* refers to a presentation of financial data, including accompanying notes, derived from accounting records of the credit union, and intended to disclose a credit union's economic resources or obligations at a point in time, or the changes therein for a period of time, in conformity with GAAP, as defined herein, or regulatory accounting procedures. Each of the following is considered to be a financial statement: a balance sheet or statement of financial condition; statement of income or statement of operations; statement of undivided earnings; statement of cash flows; statement of changes in members' equity; statement of revenue and expenses; and statement of cash receipts and disbursements.

(d) *Financial statement audit* (also known as an ''opinion audit'') refers to an audit of the financial statements of a credit union performed in accordance with GAAS by an independent person who is licensed by the appropriate State or jurisdiction. The objective of a financial statement audit is to express an opinion as to whether those financial statements of the credit union present fairly, in all material respects, the financial position and the results of its operations and its cash flows in conformity with GAAP, as defined herein, or regulatory accounting practices.

(e) *GAAP* is an acronym for ''generally accepted accounting principles'' which refers to the conventions, rules, and procedures which define accepted accounting practice. GAAP includes both broad general guidelines and detailed practices and procedures, provides a standard by which to measure financial statement presentations, and encompasses not only accounting principles and practices but also the methods of applying them.

(f) *GAAS* is an acronym for ''generally accepted auditing standards'' which refers to the standards approved and adopted by the American Institute of Certified Public Accountants which apply when an ''independent, licensed certified public accountant'' audits financial statements. Auditing standards differ from auditing procedures in that ''procedures'' address acts to be performed, whereas ''standards'' measure the quality of the performance of those acts and the objectives to be achieved by use of the procedures undertaken. In addition, auditing standards address the auditor's professional qualifications as well as the judgment exercised in performing the audit and in preparing the report of the audit.

(g) *Independent* means the impartiality necessary for the dependability of the compensated auditor's findings. Independence requires the exercise of fairness toward credit union officials, members, creditors and others who may rely upon the report of a supervisory committee audit report.

(h) *Internal control* refers to the process, established by the credit union's board of directors, officers and employees, designed to provide reasonable assurance of reliable financial reporting and safeguarding of assets against unauthorized acquisition, use, or disposition. A credit union's internal control structure consists of five components: control environment; risk assessment; control activities; information and communication; and monitoring. Reliable financial reporting refers to preparation of Call Reports (NCUA Forms 5300 and 5310) that meet management's financial reporting objectives. Internal control over safeguarding of assets against unauthorized acquisition, use, or disposition refers to prevention or timely detection of transactions involving such unauthorized access, use, or disposition of assets which could result in a loss that is material to the financial statements.

(i) *Reportable conditions* refers to a matter coming to the attention of the independent, compensated auditor which, in his or her judgment, represents a significant deficiency in the design or operation of the internal control structure of the credit union, which could adversely affect its ability to record, process, summarize, and report financial data consistent with the representations of management in the financial statements.

(j) *Report on Examination of Internal Control over Call Reporting* refers to an engagement in which an independent, licensed, certified public accountant or public accountant, consistent with attestation standards, examines and reports on management's written assertions concerning the effectiveness of its internal control over financial reporting in its most recently filed semiannual or year-end Call Report, with a concentration in high risk areas. For credit unions, such high risk areas most often include: lending activity; investing activity; and cash handling and deposit-taking activity.

(k) *State-licensed person* refers to a certified public accountant or public accountant who is licensed by the State or jurisdiction where the credit union is principally located to perform accounting or auditing services for that credit union.

(l) *Supervisory committee* refers to a supervisory committee as defined in Section 111(b) of the Federal Credit Union Act, 12 U.S.C. 1786(r). For some federally-insured state chartered credit unions, the ''audit committee'' designated by state statute or regulation is the equivalent of a supervisory committee.

(m) *Supervisory committee audit* refers to an engagement under either § 715.5 or § 715.6 of this part.

(n) *Working papers* refers to the principal record, in any form, of the work performed by the auditor and/or supervisory committee to support its findings and/or conclusions concerning significant matters. Examples include the written record of procedures applied, tests performed, information obtained, and pertinent conclusions reached in the engagement, proprietary audit programs, analyses, memoranda, letters of confirmation and representation, abstracts of credit union documents, reviewer's notes, if retained, and schedules or commentaries prepared or obtained in the course of the engagement.

**§ 715.3 General responsibilities of the Supervisory Committee.**

(a) *Basic.* The supervisory committee is responsible for ensuring that the board of directors and management of the credit union—

(1) Meet required financial reporting objectives;

(2) And establish practices and procedures sufficient to safeguard members' assets.

(b) *Specific.* To carry out the responsibilities set forth in paragraph (a) of this section, the supervisory committee must determine whether:

(1) Internal controls are established and effectively maintained to achieve the credit union's financial reporting objectives which must be sufficient to satisfy the requirements of the supervisory committee audit, verification of members' accounts and its additional responsibilities;

(2) The credit union's accounting records and financial reports are promptly prepared and accurately reflect operations and results;

(3) The relevant plans, policies, and control procedures established by the board of directors are properly administered; and

(4) Policies and control procedures are sufficient to safeguard against error, conflict of interest, self-dealing and fraud.

(c) *Mandates.* In carrying out the responsibilities set forth in paragraphs (a) and (b) of this section, the Supervisory Committee must:

(1) Ensure that the credit union adheres to the measurement and filing requirements for reports filed with the NCUA Board under § 741.6 of this chapter;

(2) Perform or obtain a supervisory committee audit, as prescribed in § 715.4 of this part;

(3) Verify or cause the verification of members' passbooks and accounts against the records of the credit union, as prescribed in § 715.8 of this part;

(4) Act to avoid imposition of sanctions for failure to comply with the requirements of this part, as prescribed in § 715.11 and § 715.12 of this part.

**§ 715.4 Audit responsibility of the Supervisory Committee.**

(a) *Annual audit requirement.* A federally-insured credit union is required to obtain an annual supervisory committee audit which occurs at least once every calendar year (period of performance) and must cover the period elapsed since the last audit period (period effectively covered).

(b) *Financial statement audit option.* Any federally-insured credit union, whether Federally- or State-chartered and regardless of asset size, may choose to fulfill its Supervisory Committee audit responsibility by obtaining an annual audit of its financial statements performed in accordance with GAAS by an independent person who is licensed to do so by the State or jurisdiction in which the credit union is principally located. (A ''financial statement audit'' is distinct from a ''supervisory committee audit,'' although a financial statement audit is included among the options for fulfilling the supervisory committee audit requirement. *Compare* § 715.2(c) and (j).)

(c) *Other audit options.* A federally insured credit union which does not choose to obtain a financial statement audit as permitted by subsection (b) must fulfill its supervisory audit responsibility under either of § 715.5 or § 715.6 of this part, whichever is applicable. *See* Table 1. For purposes of this part, a credit union's asset size is the amount of total assets reported in the year-end Call Report (NCUA form 5300) filed for the calendar year-end immediately preceding the period under audit.

| *Type of Charter* | *Asset Size* | *Minimum Audit Required to Fulfill Supervisory Committee Audit Responsibility*[1] | *Part 715 section* |
|---|---|---|---|
| **Federal charter** | $500 Million or more | Financial statement audit per GAAS by independent, State-licensed person | § 715.5 |
| | Less than $500 Million but greater than $10 Million | Either financial statement audit or other supervisory committee audit options | |
| | $10 Million or less | Either of three supervisory committee audit options | |
| **State charter** | $500 Million or more | Financial statement audit per GAAS by independent, State-licensed person | § 715.6 |
| | Less than $500 Million | Either of three supervisory committee audit options unless audit prescribed by State law is more stringent. | |

[1] The Supervisory Committee audit responsibility under Part 715 can always be fulfilled by obtaining a financial statement audit. § 715.4(b).

**§ 715.5 Audit of Federal Credit Unions.**

(a) *Total assets of $500 million or greater.* To fulfill its Supervisory Committee audit responsibility, a federal credit union having total assets of $500 million or greater must obtain an annual audit of its financial statements performed in accordance with GAAS by an independent person who is licensed to do so by the State or jurisdiction in which the credit union is principally located.

(b) *Total assets of less than $500 million but more than $10 million.* To fulfill its Supervisory Committee audit responsibility, a Federally-chartered credit union having total assets of less than $500 million but more than $10 Million which does not choose to obtain an audit under § 715.5(a), must obtain an annual supervisory committee audit as prescribed in § 715.7.

(c) *Total assets of $10 million or less.* To fulfill its Supervisory Committee audit responsibility, a Federally-chartered credit union having total assets of $10 million or less must obtain an annual Supervisory Committee audit as prescribed in § 715.7.

(d) *Other requirements.* A federally chartered credit union, regardless of which audit it is required to obtain under this section, must meet other applicable requirements of this part.

**§ 715.6 Audit of Federally-insured State-chartered credit unions.**

(a) *Total assets of $500 million or greater.* To fulfill its Supervisory Committee audit responsibility, a federally-insured State-chartered credit union having total assets of $500 million or greater must obtain an annual audit of its financial statements performed in accordance with GAAS by an independent person who is licensed to do so by the State or jurisdiction in which the credit union is principally located.

(b) *Total assets of less than $500 million.* To fulfill its Supervisory Committee audit responsibility, a federally-insured State-chartered credit union having total assets of less than $500 million must obtain either an annual supervisory committee audit as prescribed under either § 715.6(a) or § 715.7, or an audit as prescribed by the State or jurisdiction in which the credit union is principally located, whichever audit is more stringent.

(c) *Other requirements.* A federally-insured, state-chartered credit union, regardless of which audit it is required to obtain under this section, must meet other applicable requirements of this part except §§ 715.5 and 715.12.

**§ 715.7 Supervisory Committee audit alternatives to a financial statement audit.**

A credit union which is not required to obtain a financial statement audit may fulfill its supervisory committee responsibility by any one of the following engagements:

(a) *Balance sheet audit.* A balance sheet audit, as defined in § 715.2(a), performed by a person who is licensed to do so by the State or jurisdiction in which the credit union is principally located; or

(b) *Report on Examination of Internal Control over Call Reporting.* An engagement and report on management's written assertions concerning the effectiveness of internal control over financial reporting in the credit union's most recently filed semiannual or year-end call report (NCUA Form 5300), as defined in § 715.2(j), performed by a person who is licensed to do so by the State or jurisdiction in which the credit union is principally located, and in which management specifies the criteria on which it based its evaluation of internal control; or

(c) *Audit per Supervisory Committee Guide.* An audit performed by the supervisory committee, its internal auditor, or any other qualified person (such as a certified public accountant, public accountant, league auditor, credit union auditor consultant, retired financial institutions examiner, etc.) in accordance with the procedures prescribed in NCUA's *Supervisory Committee Guide.* Qualified persons who are not State-licensed cannot provide assurance services under this subsection.

**§ 715.8 Requirements for verification of accounts and passbooks.**

(a) *Verification obligation.* The Supervisory Committee shall, at least once every two years, cause the passbooks (including any book, statements of account, or other record approved by the NCUA Board) and accounts of the members to be verified against the records of the treasurer of the credit union.

(b) *Methods.* Any of the following methods may be used to verify members' passbooks and accounts, as appropriate:

(1) *Controlled verification.* A controlled verification of 100 percent of members' share and loan accounts;

(2) *Statistical method.* A sampling method which provides for:

(i) Random selection:

(ii) A sample which is representative of the population from which it was selected;

(iii) An equal chance of selecting each dollar in the population;

(iv) Sufficient accounts in both number and scope on which to base conclusions concerning management's financial reporting objectives; and

(v) Additional procedures to be performed if evidence provided by confirmations alone is not sufficient.

(3) *Non-statistical method.* When the verification is performed by an Independent person licensed by the State or jurisdiction in which the credit union is principally located, the auditor may choose among the sampling methods set forth in paragraphs (b)(1) and (2) of this section and non-statistical sampling methods consistent with GAAS if such methods provide for:

(i) Sufficient accounts in both number and scope on which to base conclusions concerning management's financial reporting objectives to provide assurance that the General Ledger accounts are fairly stated in relation to the financial statements taken as a whole;

(ii) Additional procedures to be performed by the auditor if evidence provided by confirmations alone is not sufficient; and

(iii) Documentation of the sampling procedures used and of their consistency with GAAS (to be provided to the NCUA Board upon request).

(c) *Retention of records.* The supervisory committee must retain the records of each verification of members' passbooks and accounts until it completes the next verification of members' passbooks and accounts.

**§ 715.9 Assistance from outside, compensated person.**

(a) *Unrelated to officials.* A compensated auditor who performs a Supervisory Committee audit on behalf of a credit union shall not be related by blood or marriage to any management employee, member of either the board of directors, the Supervisory Committee or the credit committee, or loan officer of that credit union.

(b) *Engagement letter.* The engagement of a compensated auditor to perform all or a portion of the scope of a financial statement audit or supervisory committee audit shall be evidenced by an engagement letter. In all cases, the engagement must be contracted directly with the Supervisory Committee. The engagement letter must be signed by the compensated auditor and acknowledged therein by the Supervisory Committee prior to commencement of the engagement.

(c) *Contents of letter.* The engagement letter shall:

(1) Specify the terms, conditions, and objectives of the engagement;

(2) Identify the basis of accounting to be used;

(3) If a Supervisory Committee Guide audit, include an appendix setting forth the procedures to be performed;

(4) Specify the rate of, or total, compensation to be paid for the audit;

(5) Provide that the auditor shall, upon completion of the engagement, deliver to the Supervisory Committee a written report of the audit and notice in writing, either within the report or communicated separately, of any internal control reportable conditions and/or irregularities or illegal acts, if any, which come to the auditor's attention during the normal course of the audit (i.e., no notice required if none noted);

(6) Specify a target date of delivery of the written reports, such target date not to exceed 120 days from date of calendar or fiscal year-end under audit (period covered), unless the supervisory committee obtains a waiver from the supervising NCUA Regional Director;

(7) Certify that NCUA staff and/or the State credit union supervisor, or designated representatives of each, will be provided unconditional access to the complete set of original working papers, either at the offices of the credit union or at a mutually agreed upon location, for purposes of inspection; and

(8) Acknowledge that working papers shall be retained for a minimum of three years from the date of the written audit report.

(d) *Complete scope.* If the engagement is to perform a *Supervisory Committee Guide* audit intended to fully meet the requirements of § 715.7(c), the engagement letter shall certify that the audit will address the complete scope of that engagement;

(e) *Exclusions from scope.* If the engagement is to perform a *Supervisory Committee Guide* audit which will exclude any item required by the applicable section, the engagement letter shall:

(1) Identify the excluded items;

(2) State that, because of the exclusion(s), the resulting audit will not, by itself, fulfill the scope of a supervisory committee audit; and

(3) Caution that the supervisory committee will remain responsible for fulfilling the scope of a supervisory committee audit with respect to the excluded items.

**§ 715.10 Audit report and working paper maintenance and access.**

(a) *Audit report.* Upon completion and/or receipt of the written report of a financial statement audit or a supervisory committee audit, the Supervisory Committee must verify that the audit was performed and reported in accordance with the terms of the engagement letter prescribed herein. The Supervisory Committee must submit the report(s) to the board of directors, and provide a summary of the results of the audit to the members of the credit union orally or in writing at the next annual meeting of the credit union. If a member so requests, the Supervisory Committee shall provide the member access to the full audit report. If the National Credit Union Administration (''NCUA'') so requests, the Supervisory Committee shall provide NCUA a copy of each of the audit reports it receives or produces.

(b) *Working papers.* The supervisory committee shall be responsible for preparing and maintaining, or making available, a complete set of original working papers supporting each supervisory committee audit. The supervisory committee shall, upon request, provide NCUA staff unconditional access to such working papers, either at the offices of the credit union or at a mutually agreeable location, for purposes of inspecting such working papers.

**§ 715.11 Sanctions for failure to comply with this part.**

(a) *Sanctions.* Failure of a supervisory committee and/or its independent compensated auditor or other person to comply with the requirements of this section, or the terms of an engagement letter required by this section, is grounds for:

(1) The regional director to reject the supervisory committee audit and provide a reasonable opportunity to correct deficiencies;

(2) The regional director to impose the remedies available in § 715.12, provided

any of the conditions specified therein is present; and

(3) The NCUA Board to seek formal administrative sanctions against the supervisory committee and/or its independent, compensated auditor pursuant to section 206(r) of the Federal Credit Union Act, 12 U.S.C. 1786(r).

(b) *State Charters.* In the case of a federally-insured state chartered credit union, NCUA shall provide the state regulator an opportunity to timely impose a remedy satisfactory to NCUA before exercising it authority under § 741.202 of this chapter to impose a sanction permitted under paragraph (a) of this section.

**§ 715.12 Statutory audit remedies for Federal credit unions.**

(a) *Audit by alternative licensed person.* The NCUA Board may compel a federal credit union to obtain a supervisory committee audit which meets the minimum requirements of § 715.5 or § 715.7, and which is performed by an independent person who is licensed by the State or jurisdiction in which the credit union is principally located, for any fiscal year in which any of the following three conditions is present:

(1) The Supervisory Committee has not obtained an annual financial statement audit or performed a supervisory committee audit; or

(2) The Supervisory Committee has obtained a financial statement audit or performed a supervisory committee audit which does not meet the requirements of part 715 including those in § 715.8.

(3) The credit union has experienced serious and persistent recordkeeping deficiencies as defined in paragraph (c) of this section.

(b) *Financial statement audit required.* The NCUA Board may compel a federal credit union to obtain a financial statement audit performed in accordance with GAAS by an independent person who is licensed by the State or jurisdiction in which the credit union is principally located (even if such audit is not required by § 715.5), for any fiscal year in which the credit union has experienced serious and persistent recordkeeping deficiencies as defined in paragraph (c) of this section. The objective of a financial statement audit performed under this paragraph is to reconstruct the records of the credit union sufficient to allow an unqualified or, if necessary, a qualified opinion on the credit union's financial statements. An adverse opinion or disclaimer of opinion should be the exception rather than the norm.

(c) ''*Serious and persistent recordkeeping deficiencies.*'' A record-keeping deficiency is ''serious'' if the NCUA Board reasonably believes that the board of directors and management of the credit union have not timely met financial reporting objectives and established practices and procedures sufficient to safeguard members' assets. A serious recordkeeping deficiency is ''persistent'' when it continues beyond a usual, expected or reasonable period of time.

## PART 741—REQUIREMENTS FOR INSURANCE

4. The authority citation for part 741 continues to read as follows:

**Authority:** 12 U.S.C. 1757, 1766, and 1781–1790. Section 741.4 is also authorized by 31 U.S.C. 3717.

**§ 741.3 [Amended]**

5. Section 741.3 is amended to change both the phrase ''Investment Valuation Reserve Account'' and the phrase ''Investment Valuation Reserve'' in paragraph (a)(3) to ''Appropriation for Non-conforming Investments''.

6. Section 741.6 is amended to change the phrase in paragraph (a) from ''before January 31 and on or before July 31'' to ''before January 22 and on or before July 22''; and to redesignate paragraph (b) as paragraph (d) and to add paragraphs (b) and (c) to read as follows:

**§ 741.6 Financial and statistical and other reports.**

* * * * *

(b) *Consistency with GAAP.* The accounts of financial statements and reports required to be filed quarterly or semiannually under paragraph (a) of this section must reflect GAAP if the credit union has total assets of $10 million or greater, but may reflect regulatory accounting principles other than GAAP if the credit union has total assets of less than $10 million (except that a Federally-insured State-chartered credit union may be required by its state credit union supervisor to follow GAAP regardless of asset size).

(c) *GAAP sources.* GAAP means generally accepted accounting principles, as defined in § 715.2(e) of this chapter. GAAP is distinct from GAAS, which means generally accepted auditing standards, as defined in § 715.2(f) of this chapter. Authoritative sources of GAAP include, but are not limited to, pronouncements of the Financial Accounting Standards Board (FASB) and its predecessor organizations, the Accounting Standards Executive Committee (AcSEC) of the American Institute of Certified Public Accountants (AICPA), the FASB's Emerging Issues Task Force (EITF), and the applicable AICPA Audit and Accounting Guide.

* * * * *

**§ 741.202 [Amended]**

7. Section 741.202 is amended to change: the references in paragraph (a) from ''requirements set forth in §§ 701.12 and 701.13'' to ''applicable requirements set forth in part 715''; to add at the ending of paragraph (a) after ''of this chapter'' the phrase ''or applicable state law, whichever requirement is more stringent.''; and to change references in paragraph (b) from ''§§ 701.12(e) and 701.13'' to ''§ 715.8''.

[FR Doc. 99–19254 Filed 7–28–99; 8:45 am]

BILLING CODE 7535–01–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 97–AWP–2]**

## Establishment of Class E Airspace; Taylor, AZ

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final Rule; correction.

**SUMMARY:** This action corrects an error in the geographic coordinates and removes an airport header of a Final Rule that was published in the **Federal Register** on June 21, 1999 (64 FR 33014), Airspace Docket No. 97–AWP–2.

**EFFECTIVE DATE:** 0901 UTC September 9, 1999.

**FOR FURTHER INFORMATION CONTACT:** Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6539.

**SUPPLEMENTARY INFORMATION:**

### History

**Federal Register** Document 99–15592, Airspace Docket No. 97–AWP–2, published on June 21, 1999 (64 FR 33014), revised the geographic coordinates for the Taylor Municipal Airport and removes the Show Low airport header of the Class E airspace area at Taylor, AZ. A typographical error was discovered in the geographic coordinates of the Taylor Municipal Airport and removes the Show Low airport header for the Taylor, AZ, Class E airspace area. This action corrects that error.

**Correction to Final Rule**

Accordingly, pursuant to the authority delegated to me, the Show Low airport header is removed and the geographic coordinates for the Taylor Municipal Airport for the Class E airspace area at Taylor, AZ, as published in the **Federal Register** on June 21, 1999 (64 FR 33014), (**Federal Register** Document 99–15592), are corrected as follows:

**71.1 [Corrected]**

* * * * *

**AWP AZ E5 Taylor, AZ [Corrected]**

On page 33015, column 2, line 1, the Taylor Municipal Airport, AZ, airspace area, correct (lat. 34°27′17″ N, Long. 110°06′89″ W), to read (lat. 34°27′10″ N, long. 110°06′53″ W).

* * * * *

Issued in Los Angeles, California, on July 19, 1999.

**John Clancy,**

*Manager, Air Traffic Division Western-Pacific Region.*

[FR Doc. 99–19370 Filed 7–28–99; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF THE TREASURY

## Financial Crimes Enforcement Network

## 31 CFR Part 103

## Extension of Grant of Conditional Exception

**AGENCY:** Financial Crimes Enforcement Network, Treasury.

**ACTION:** Extension of a Grant of Conditional Exception.

**SUMMARY:** The Financial Crimes Enforcement Network (''FinCEN'') extends for two years a conditional exception to a provision of the Bank Secrecy Act. The exception, which would otherwise expire on May 31, 1999, permits financial institutions to comply more efficiently with requirements for inclusion of certain information in orders for transmissions of funds.

**EFFECTIVE DATE:** June 1, 1999.

**FOR FURTHER INFORMATION CONTACT:** Peter Djinis, Associate Director, FinCEN, (703) 905–3930; Charles Klingman, Financial Institutions Policy Specialist, Office of Program Development, FinCEN, (703) 905–3602; Stephen R. Kroll, Chief Counsel, FinCEN, and Cynthia L. Clark, Deputy Chief Counsel, Office of Chief Counsel, FinCEN, (703) 905–3590.

**SUPPLEMENTARY INFORMATION:**

**I. Background.**

FinCEN Issuance 98–1, 63 FR 3640 (January 26, 1998), contains two ''conditional exceptions'' to the strict operation of 31 CFR 103.33(g) (the ''Travel Rule''). The Travel Rule requires a financial institution to include certain information in transmittal orders relating to transmittals of funds of $3,000 or more. The first (the ''CIF Exception'') of the two conditional exceptions addressed computer programming problems in the banking and securities industries; it relaxed a requirement that a customer's true name and street address be included in a funds transmittal order, so long as alternate steps, described in the issuance and designed to prevent avoidance of the Travel Rule, were satisfied. By its terms, that exception to the Travel Rule was to expire on May 31, 1999, for transmittals of funds initiated after that date. However, the rationale for the CIF Exception remains valid, and Treasury wishes to avoid any change in Travel Rule requirements that might entail changes in the computer programming of financial institutions at this time.

**II. FinCEN Issuance 99–1**

By virtue of the authority contained in 31 CFR 103.45 (a) and (b), which has been delegated to the Director of FinCEN, the effective period of the CIF Exception, as such Exception is set forth (as part of FinCEN Issuance 98–1, 63 FR 3640 (January 26, 1998) under the heading ''Grant of Exceptions'' (63 FR 3641) is extended so that the CIF Exception will expire, on May 31, 2001, for transmittals of funds initiated after that date, if not revoked or modified with respect to such expiration date prior to that time.

Signed this 28th day of May, 1999.

**James F. Sloan,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. 99–19259 Filed 7–28–99; 8:45 am]

BILLING CODE 4820–03–P

## FEDERAL MARITIME COMMISSION

## 46 CFR Part 530

**[Docket No. 99–12]**

## Termination of Dial-Up Service Contract Filing System

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements the Federal Maritime Commission's full transition to the internet-based service contract filing system and removes all references to the dial-up filing system.

**DATES:** Effective date October 1, 1999.

**FOR FURTHER INFORMATION CONTACT:**

Austin L. Schmitt, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573–0001, (202) 523–5796

Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573–0001, (202) 523–5740

**SUPPLEMENTARY INFORMATION:** In Docket No. 98–30, *Service Contracts Subject to the Shipping Act of 1984*, the Federal Maritime Commission (''FMC'' or ''Commission'') implemented new rules governing the filing of service contracts to reflect changes made to the Shipping Act of 1984, 46 U.S.C. app. sec. 1701 *et seq.*, by the Ocean Shipping Reform Act of 1998, Pub. L. 105–258, 112 Stat. 1902. In that rulemaking, the Commission adopted an internet-based service contract filing system effective May 1, 1999. The Commission also retained its dial-up system for service contract filing for a limited time to allow for a smooth transition to the internet-based system.

In the interim final rule in Docket No. 98–30, effective March 1, 1999, and published in the **Federal Register** March 8, 1999, the Commission stated:

> Interactive internet filing of service contracts with the Commission will be provided, and while the dial-up system will be available, the Commission expects to phase it out as soon as possible, but certainly no later than the end of Fiscal Year 1999.

64 FR 11186, 11195. Accordingly, the purpose of this final rule is to implement the anticipated requirement that all service contracts be filed through the Commission's internet-based service contract filing system no later than October 1, 1999. The dial-up system will be shut down and no service contract filings will be accepted in the dial-up system after September 30, 1999. Users who currently use the dial-up system for filing service contracts must, on a timely basis, submit an amendment to their Form FMC–83 (Registration) to obtain the new log-on IDs and passwords necessary to file in the internet system.

Notice and an opportunity for public comment are not necessary prior to the issuance of this final rule inasmuch as both were provided previously in the course of the rulemaking for Docket No. 98–30. *See* Notice of Proposed Rulemaking, 63 FR 71062 (December 23, 1998); Interim Final Rule, 64 FR 11186

(March 8, 1999); and Final Rule, 64 FR 23782 (May 4, 1999).

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chairman of the Federal Maritime Commission has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule will not have a significant impact on a substantial number of small entities. The affected universe of the parties is limited to vessel-operating common carriers. The Commission has determined that these entities do not come under the programs and policies mandated by the Small Business Regulatory Enforcement Fairness Act as they typically exceed the threshold figures for number of employees and/or annual receipts to qualify as a small entity under Small Business Administration guidelines.

This regulatory action is not a ''major rule'' under 5 U.S.C. 804(2).

### List of Subjects for 46 CFR part 530

Freight, Maritime carriers, Reporting and recordkeeping requirements.

Accordingly, the FMC amends 46 CFR part 530 as follows:

## PART 530—SERVICE CONTRACTS

1. The authority citation for part 530 continues to read as follows:

**Authority:** 5 U.S.C. App. 1704, 1705, 1707, 1716.

2. Amend § 530.3 to revise paragraph (k) as follows:

**§ 530.3 Definitions.**

* * * * *

(k) *File* or *filing* (of service contracts or amendments thereto) means the use of the Commission's electronic filing system for receipt of a service contract or an amendment thereto by the Commission, consistent with the method set forth in Appendix A of this part, and the recording of its receipt by the Commission.

* * * * *

3. Amend § 530.5 to revise paragraph (c)(1) and remove paragraphs (c)(3), (c)(4) and (c)(5) to read as follows:

**§ 530.5 Duty to file.**

* * * * *

(c) *Registration.* (1) *Application.* Authority to file or delegate the authority to file must be requested by a responsible official of the service contract carrier in writing by submitting to BTCL the Registration Form (FMC–83) in Exhibit 1 to this part.

* * * * *

4. Amend § 530.8 to revise paragraphs (a) and (c) to read as follows:

**§ 530.8 Service contracts.**

(a) Authorized persons shall file with BTCL, in the manner set forth in Appendix A of this part, a true and complete copy of every service contract or amendment to a filed service contract before any cargo moves pursuant to that service contract or amendment.

* * * * *

(c) *Certainty of terms.* The terms described in paragraph (b) of this section may not:

(1) Be uncertain, vague or ambiguous; or

(2) Make reference to terms not explicitly contained in the service contract itself unless those terms are contained in a publication widely available to the public and well known within the industry.

* * * * *

**§ 530.11 [Removed and Reserved]**

5. Remove and reserve § 530.11.

6. Revise Appendix A to part 530 to read as follows:

### Appendix A to Part 530—Instructions for the Filing of Service Contracts

Service contracts shall be filed in accordance with the instructions found on the Commission's home page, http://www.fmc.gov.

*A. Registration, Log-on ID and Password*

To register for filing, a carrier, conference, agreement or publisher must submit the Service Contract Registration Form (Form FMC–83) to BTCL. A separate Service Contract Registration Form is required for each individual that will file service contracts. BTCL will direct OIRM to provide approved filers with a log-on ID and password. Filers who wish a third party (publisher) to file their service contracts must so indicate on Form FMC–83. Authority for organizational filing can be transferred by submitting an amended registration form requesting the assignment of a new log-on ID and password. The original log-on ID will be canceled when a replacement log-on ID is issued. Log-on IDs and passwords may not be shared with, loaned to or used by any individual other than the individual registrant. The Commission reserves the right to disable any log-on ID that is shared with, loaned to or used by parties other than the registrant.

*B. Filing*

After receiving a log-on ID and a password, a filer may log-on to the service contract filing area on the Commission's home page and file service contracts. The filing screen will request such information as: filer name, Registered Persons Index (''RPI'') number and carrier RPI number (if different); Service Contract and amendment number; and effective date. The filer will attach the entire service contract file and submit it into the system. When the service contract has been submitted for filing, the system will assign a filing date and an FMC control number, both of which will be included in the acknowledgment/confirmation message.

By the Commission.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 99–19325 Filed 7–28–99; 8:45 am]

BILLING CODE 6730–01–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 48 CFR Part 1509

**[FRL–6409–6]**

## Acquisition Regulation: Contractor Performance Evaluations

**AGENCY:** Environmental Protection Agency

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Environmental Protection Agency is revising its EPA Acquisition Regulation (48 CFR Chapter 15) concerning contractor performance evaluations to clarify that contractor performance evaluations will be completed after each 12 month period from the effective date of contract. The final rule dated April 26, 1999 (64 FR 20201) indicated that contractor performance evaluations will be completed each 12 months after contract award. Because an EPA contract award date may commence prior to the contract effective date, EPA's regulation will be technically amended to reflect that contractor performance evaluations will be completed each 12 months after the effective date of contract.

**DATES:** This amendment was effective as of May 26, 1999.

**FOR FURTHER INFORMATION CONTACT:** Frances Smith, U.S. Environmental Protection Agency, Office of Acquisition Management, (3802R), 401 M Street, SW, Washington, D.C. 20460, Telephone: (202) 564–4368.

**SUPPLEMENTARY INFORMATION:**

### A. Background

The final rule for contractor performance evaluations was published in the **Federal Register** on April 26, 1999 (64 FR 20201). The final rule indicated that contractor performance evaluations will be completed each 12 months after contract award. EPA contracts often have a contract award date and a contract effective date which may or may not be the same date. As such, this technical amendment provides a revision to the EPA Acquisition Regulation to clarify that contractor performance evaluations will be completed each 12 months after the

effective date of contract. The effective date of contract denotes the beginning of contractor performance.

**B. Executive Order 12866**

This action is a technical amendment to the final rule concerning contractor performance evaluations (April 26, 1999, 64 FR 20201). This technical amendment is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget.

**C. Paperwork Reduction Act**

This technical amendment merely changes the wording in the final rule (April 26, 1999, 64 FR 20201) to reflect that contractor performance evaluations will be completed each 12 months after the effective date of contract. Reference the final rule for an analysis pertaining to the Paperwork Reduction Act.

**D. Regulatory Flexibility Act**

This technical amendment does not exert a significant economic impact on a substantial number of small entities. The final rule (April 26, 1999, 64 FR 20201) for contractor performance evaluations provides supporting rationale.

**E. The National Technology Transfer and Advancement Act**

As referenced in the final rule (April 26, 1999, 64 FR 20201), section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This technical amendment does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

**F. Executive Order 12875: Enhancing the Intergovernmental Partnership**

This technical amendment does not create a mandate on State, local or tribal governments. Reference the final rule (April 26, 1999, 64 FR 20201) for an analysis concerning Executive Order 12875.

**G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments**

This technical amendment does not significantly or uniquely affect the communities of Indian tribal governments. Reference the final rule (April 26, 1999, 64 FR 20201) for a complete analysis.

**H. Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and tribal governments, and the private sector. This technical amendment does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or the private sector in one year. This technical amendment is not subject to the requirements of sections 202 and 205 of the UMRA. Reference the final rule (April 26, 1999, 64 FR 20201).

**I. Executive Order 13045**

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. Reference the final rule (April 26, 1999, 64 FR 20201).

This technical amendment is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions on environmental health or safety.

**J. Submission to Congress and the General Accounting Office**

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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This finding must be supported by a brief statement (5 U.S.C. 808(2)). We are making a good cause finding for this rule under 5 U.S.C. 553(b) that notice and comment are unnecessary because this rule is a minor technical clarification as described earlier. In light of this finding, we have established an effective date of May 26, 1999. EPA will submit a report containing this technical amendment 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 technical amendment is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 48 CFR Part 1509**

Environmental protection, Government procurement.

Therefore, 48 CFR Chapter 15 is amended as set forth below:

1. The authority citation for part 1509 continues to read as follows:

**Authority:** The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended.

2. Section 1509.170–4 is amended by revising paragraph (b) to read as follows:

**§ 1509.170–4 Definitions.**

* * * * *

(b) *Interim Report* refers to a Contractor Performance Report that covers each 12 month period after the effective date of contract.

* * * * *

3. Section 1509.170–5 is amended by revising paragraph (d) to read as follows:

**§ 1509.170–5 Policy.**

* * * * *

(d) The contracting officer must complete interim Reports covering each 12 month period after the effective date of contract for all contracts in excess of $100,000, except those acquisitions identified in 1509.170–3, Applicability. In addition to interim Reports, the contracting officer must complete a final Report which covers the last 12 months (or less) of contract performance.

* * * * *

**Pat Patterson,**

*Acting Director, Office of Acquisition Management.*

[FR Doc. 99–19435 Filed 7–28–99; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

**[Docket No. 980406085–8164–01; I.D. 031998C]**

**RIN 0648–AJ27**

## Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Management Measures for Nontrawl Sablefish; Correction

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Correcting amendments.

**SUMMARY:** This document corrects the Pacific coast groundfish regulations at 50 CFR part 660, subpart G. The effect of this correction is to remove redundant language that ''Gear endorsements may not be transferred separately from the limited entry permit.'' in § 660.333(f)(3), because it is included in § 660.333(f)(2) as follows: ''Gear endorsements, sablefish endorsements, and sablefish tier assignments may not be transferred separately from the limited entry permit.''

**DATES:** Effective July 29, 1999.

**FOR FURTHER INFORMATION CONTACT:** Yvonne de Reynier, NMFS, 206–526–6120.

### Need for Correction

As published, the final rule document 98–18751 on page 38114, in the **Federal Register** issue of Wednesday, July 15, 1998, implementing management measures for nontrawl sablefish contained an incorrect amendatory instruction 3. for § 660.333(f)(2).

### List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: July 23, 1999.

**Andrew A. Rosenberg,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

Accordingly, 50 CFR 660.333(f) is corrected by making the following correcting amendments:

## PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 660.333, paragraph (f)(3) is removed, and paragraph (f)(4) is redesignated as paragraph (f)(3).

[FR Doc. 99–19429 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–22–F

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

**[Docket No. 971208294–8154–02; I.D. 103097B]**

**RIN 0648–AJ20**

## Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Correction

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Correcting amendments.

**SUMMARY:** This document corrects the Pacific Coast groundfish regulations at 50 CFR part 660, subpart G. The effect of this correction is to reinstate the following sentence to introductory paragraph (d) in § 660.333: ''A permit holder applying to register a limited entry permit has the burden to submit evidence to prove that registration requirements are met.''

**DATES:** Effective July 29, 1999.

**FOR FURTHER INFORMATION CONTACT:** Yvonne de Reynier, NMFS, 206–526–6120.

### Need for Correction

In correction document 98–20011, on page 40067, in the **Federal Register** issue of Monday, July 27, 1998, contained an incorrect amendatory instruction 3. for § 660.333(d), which improperly removed a sentence reading, ''A permit holder applying to register a limited entry permit has the burden to submit evidence to prove that registration requirements are met.''

### List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: July 23, 1999.

**Andrew A. Rosenberg,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

Accordingly, 50 CFR part 660 is corrected by making the following correcting amendments:

## PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 660.333, paragraph (d) introductory text is revised to read as follows:

**§ 660.333 Limited entry fishery-general.**

* * * * *

(d) Evidence and burden of proof. A vessel owner (or persons holding limited entry rights under the express terms of a written contract) applying for issuance, renewal, transfer, or registration of a limited entry permit has the burden to provide evidence that qualification requirements are met. The owner of a permit endorsed for longline or trap (or pot) gear applying for a sablefish endorsement or a tier assignment under § 660.336, paragraph (c) or (d) has the burden to submit evidence to prove that qualification requirements are met. A permit holder applying to register a limited entry permit has the burden to submit evidence to prove that registration requirements are met. The following evidentiary standards apply:

* * * * *

[FR Doc. 99–19428 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 64, No. 145
Thursday, July 29, 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 AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 993

**[Docket No. FV99–993–3 PR]**

### Dried Prunes Produced in California; Decreased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule would decrease the current assessment rate from $3.28 to $2.00 per ton of salable dried prunes established for the Prune Marketing Committee (Committee) under Marketing Order No. 993 for the 1999–2000 and subsequent crop years. The Committee is responsible for local administration of the marketing order which regulates the handling of dried prunes grown in California. Authorization to assess dried prune handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The assessment rate decrease is possible because the 1999–2000 assessable tonnage is expected to total 173,700 salable tons (74 percent higher than last crop year). The $2.00 assessment rate would allow the Committee to meet its 1999–2000 expenses. The crop year begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by August 30, 1999.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Toni Sasselli, Marketing Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone (559) 487–5901; Fax (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes grown in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California dried prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable dried prunes beginning on August 1, 1999, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule would decrease the assessment rate established for the Committee for the 1999–2000 and subsequent crop years from $3.28 per ton to $2.00 per ton of salable dried prunes.

The California dried prune marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California dried prunes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1998–99 and subsequent crop years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on June 29, 1999, and unanimously recommended to

increase its 1999–2000 budget from $327,180 to $347,400 and decrease the current assessment rate from $3.28 to $2.00 per ton of salable dried prunes. Even with the increased budget, the $1.28 per ton decrease in the assessment rate to $2.00 per ton would allow the Committee to meet its 1999–2000 expenses. The California Agricultural Statistical Service estimates a 180,000 ton crop during the 1999–2000 crop year, of which 6,300 tons are not expected to be salable because of size or quality, leaving a balance of 173,700 salable tons. This is a 74 percent increase in salable tonnage from last year and allows the Committee to recommend lowering its assessment rate.

The following table compares major budget expenditures recommended by the Committee on June 29, 1999, and major budget expenditures in the revised budget recommended on December 1, 1998.

| Budget expense categories | ($1,000) | |
|---|---|---|
| | 1998–99 | 1999–2000 |
| Salaries, Wages and Benefits | 189.7 | 201.265 |
| Research and Development | 0 | 30 |
| Office Rent | 23 | 24 |
| Travel | 18.5 | 21 |
| Reserve (Contingencies) | 50.93 | 16.735 |
| Equipment Rental | 9 | 9.5 |
| Data Processing | 3.85 | 5 |
| Stationary and Printing | 5 | 5.5 |
| Office Supplies | 5 | 5 |
| Postage and Messenger | 5 | 7 |

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by the estimated salable tons of California dried prunes. Production of dried prunes for the year is estimated at 173,700 salable tons which should provide $347,400 in assessment income. Income derived from handler assessments would be adequate to cover budgeted expenses. Interest income also would be available if assessment income is reduced for some reason. The Committee is authorized to use excess assessment funds from the 1998–99 crop year (currently estimated at $51,857) for up to 5 months beyond the end of the crop year to meet 1999–2000 crop year expenses. At the end of the 5 months, the Committee refunds or credits excess funds to handlers (§ 993.81(c)).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 1999–2000 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by the Department.

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

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

There are approximately 1,250 producers of dried prunes in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Currently the prune industry profile shows that 8 of the 20 handlers (40 percent) shipped over $5,000,000 of dried prunes and could be considered large handlers by the Small Business Administration. Twelve of the 20 handlers (60 percent) shipped under $5,000,000 of dried prunes and could be considered small handlers. An estimated 90 producers, or about 7 percent of the 1,250 total producers, would be considered large growers with annual income over $500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This rule would decrease the current assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent crop years from $3.28 per ton to $2.00 per ton of salable dried prunes. The Committee unanimously recommended 1999–2000 expenditures of $347,400 and an assessment rate of $2.00 per ton of salable dried prunes. The proposed assessment rate of $2.00 is $1.28 lower than the current 1998–99 rate (64 FR 3621, January 25, 1999). The quantity of assessable dried prunes for the 1999–2000 crop year is now estimated at 173,700 salable tons. Thus, the $2.00 rate should provide $347,400 in assessment income and be adequate to meet this year's expenses. Interest income also would be available to cover budgeted expenses if the 1999–2000 expected assessment income falls short.

The following table compares major budget expenditures recommended by the Committee on June 29, 1999, with major budget expenditures in the revised budget recommended on December 1, 1998.

| Budget expense categories | ($1,000) | |
|---|---|---|
| | 1998–99 | 1999–2000 |
| Salaries, Wages and Benefits | 189.7 | 201.265 |
| Research and Development | 0 | 30 |
| Office Rent | 23 | 24 |
| Travel | 18.5 | 21 |
| Reserve (Contingencies) | 50.93 | 16.735 |
| Equipment Rental | 9 | 9.5 |
| Data Processing | 3.85 | 5 |
| Stationery and Printing | 5 | 5.5 |
| Office Supplies | 5 | 5 |
| Postage and Messenger | 5 | 7 |

The Committee reviewed and unanimously recommended 1999–2000 expenditures of $347,400. The assessment rate of $2.00 per ton of salable dried prunes was then determined by dividing the total recommended budget by the estimated salable dried prunes. The Committee is authorized to use excess assessment funds from the 1998–99 crop year (currently estimated at $51,857) for up to 5 months beyond the end of the crop year to fund 1999–2000 crop year expenses. At the end of the 5 months, the Committee refunds or credits excess funds to handlers (§ 993.81(c)). Anticipated assessment income and interest income during 1999–2000 would be adequate to cover authorized expenses.

Recent price information indicates that the grower price for the 1999–2000 season should average above $850 per salable ton of dried prunes. Based on estimated shipments of 173,700 salable tons, assessment revenue during the 1999–2000 crop year is expected to be less than 1 percent of the total expected grower revenue.

This action would decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate would reduce the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California dried prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 29, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 1999–2000 crop year begins on August 1, 1999, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dried prunes handled during such crop year; (2) the proposed rule would decrease the assessment rate for assessable prunes beginning with the 1999–2000 crop year; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

### List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and Recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is proposed to be amended as follows:

## PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 993.347 is revised to read as follows:

**§ 993.347 Assessment rate.**

On and after August 1, 1999, an assessment rate of $2.00 per ton is established for California dried prunes.

Dated: July 23, 1999.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99–19352 Filed 7–28–99; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 1079

**[DA–99–02]**

## Milk in the Iowa Marketing Area; Termination of Proceeding

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Termination of Proceeding.

**SUMMARY:** This document terminates the proceeding that was initiated to consider a proposal to reduce the percentage of a supply plant's receipts that must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa Federal milk order for the months of July and August 1999, and to further reduce the percentage for June 1999.

**FOR FURTHER INFORMATION CONTACT:** Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357, e-mail address connie.brenner@usda.gov.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding:

Proposed Rule: Issued April 14, 1999; published April 19, 1999 (64 FR 19071).

Final Rule: Issued May 5, 1999; published May 11,1999 (64 FR 25193).

Notice of Reopening and Extension of Time for Filing Comments: Issued May 7, 1999; published May 13, 1999 (64 FR 25851).

### Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the

Agricultural Marketing Service considered the economic impact of the action on small entities and certified that it would not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of February 1999, 3,788 dairy farmers were producers under the Iowa order. Of these, 3,714 producers (i.e., 98 percent) were considered small businesses, having monthly milk production under 326,000 pounds. A further breakdown of the monthly milk production of the producers on the order during February 1999 was as follows: 2,804 produced less than 100,000 pounds of milk; 776 produced between 100,000 and 200,000 pounds; 134 produced between 200,000 and 326,000 pounds; and 74 produced over 326,000 pounds. During the same month, 11 handlers were pooled under the order. Five were considered small businesses.

Because this termination of the proceeding concerning the proposed revision results in no change in regulation, the economic conditions of small entities will remain unchanged. Also, it does not change reporting, record keeping, or other compliance requirements.

Based on the comment received in response to the initial proposed revision from Anderson-Erickson Dairy Company, the later comment from Swiss Valley Farms, Co., a cooperative organization in Davenport, Iowa, and on our analysis of relevant information connected with the proposed rulemaking, we have determined that the revision request should not be granted. While reduction of the pool supply plant shipping standards may have made qualification for pool status more easily obtainable for one supply plant operator, the order should assure that adequate supplies of milk are available to meet the fluid milk needs of the Iowa market. The current level of supply plant shipping percentages should meet those needs without preventing producers whose milk historically has been associated with the order from maintaining their pool status.

**Preliminary Statement**

This termination of proceeding is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Iowa marketing area.

Notice of reopening and extension of time for filing comments was published in the **Federal Register** on May 13, 1999 (64 FR 25851). The time for filing comments on the proposed reduction of the percentage of a supply plant's receipts that must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa Federal milk order for the months of July and August 1999, and a further reduction for June 1999, was extended through June 14, 1999. Interested persons were afforded opportunity to file written data, views and arguments thereon.

One comment opposing the reduction of supply plant shipping requirements was received.

**Statement of Consideration**

This document terminates the proceeding that was initiated to consider a proposal to reduce the percentage of a supply plant's receipts that must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa Federal milk order for the months of July and August 1999, and to further reduce the percentage for June 1999.

The original request for a reduction in the percentage of a supply plant's shipping percentage requirements came from Beatrice Cheese, Inc., (Beatrice), a proprietary manufacturer of dairy products in Fredericksburg, Iowa. Beatrice requested a decrease in the applicable percentage of 10 percentage points from 20 percent to 10 percent for the months of April through August 1999. This request was based on Beatrice's contention that the action would allow the milk of dairymen who historically had supplied the market to continue to be pooled under the Federal order and also would prevent uneconomic milk movements. Beatrice stated that the 10 percent decrease for April through August 1999 was warranted due to the fact that current raw milk supplies available for fluid use from outside of Iowa's traditional procurement area exceeded the needs of the fluid milk plants pooled under Federal Order 79 and that these available supplies had replaced milk formerly shipped by Beatrice producers. Beatrice contended that if the pool supply plant shipping percentages remained unchanged, the milk of dairymen who historically had supplied the Iowa market would not be able to continue to be pooled under the Federal Order or Beatrice would be forced to move milk uneconomically to qualify it for pooling.

A comment filed by Anderson-Erickson Dairy Company, a pool distributing plant operator regulated under Order 79, did not oppose the proposed reduction for the months of April and May, but proposed a reduction of no more than 5 percentage points for June and opposed any reduction at that time for the months of July and August 1999. Anderson-Erickson stated that the summer could likely lead to a different marketing scenario than that projected by Beatrice due to a volatile milk supply situation in Iowa.

As a result of Beatrice's request and Anderson-Erickson's comments, the Iowa order supply plant shipping percentages were reduced for April and May by 10 percentage points, and for June by 5 percentage points. In addition, a notice of reopening and extension of time for filing comments through June 14, 1999, was issued to consider a further 5-percent reduction for June and a continuation of the 10-percentage point reduction for July and August.

Comments from Swiss Valley Farms, Co., a cooperative organization in Davenport, Iowa, recommend termination of the proceeding due to indications that Iowa milk production during the traditionally short supply months may be lower than normal. Swiss Valley also states that shipping percentages, once properly set, should be changed based only on changes in the supply-demand factors in the market. The cooperative association contends that such factors would represent only emergency situations beyond the control of the producers or processors in a market. Swiss Valley argues that these emergency situations are not currently in existence.

After consideration of all relevant material, including the proposal in the notice, the comment received from the cooperative organization, and other information connected with the rulemaking, it is hereby found and determined that the proposed revision action be terminated.

**List of Subjects in 7 CFR Part 1079**

Milk marketing orders.

The authority citation for 7 CFR part 1079 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

Dated: July 23, 1999.

**Richard M. McKee,**

*Deputy Administrator, Dairy Programs.*

[FR Doc. 99–19351 Filed 7–28–99; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF AGRICULTURE

## Office of Operations

## 7 CFR Part 2812

**RIN 0599–AA03**

## Priorities and Administrative Guidelines for Donation of Excess Research Equipment

**AGENCY:** Office of Procurement and Property Management, Office of Operations, USDA.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of Procurement and Property Management of the Department of Agriculture (USDA) proposes to amend its procedures for the donation of excess research equipment for technical and scientific education and research activities to educational institutions and nonprofit organizations under section 11(I) of the Stevenson-Wydler Technology Act (15 U.S.C. 3710(I)). This amendment would expand the list of entities eligible to receive such equipment, establish a priority list for eligible entities seeking transfer of such equipment, and clarify administrative rules regarding equipment transfer.

**DATES:** Comments must be submitted by August 30, 1999.

**ADDRESSES:** Comments should be sent to USDA, OPPM, PMD, 1400 Independence Ave., S.W., Mail Stop 9304, Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Kathy Fay on 202–720–9779.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Procedural Requirements
A. Executive Order Number 12866.
B. Regulatory Flexibility Act.
C. Paperwork Reduction Act.
III. Electronic Access Addresses

### I. Background

USDA regulations for the donation of excess research equipment for technical and scientific educational and research activities under section 11(I) of the Stevenson-Wydler Technology Act (15 U.S.C. 3710(I)) were promulgated at 7 CFR part 2812 on July 3, 1995. USDA has determined that the eligibility of organizations to receive excess research equipment under this part is not clear.

The President signed Executive Order (EO) 12999 on April 17, 1996, requiring Federal agencies, when donating educationally useful Federal research equipment under section 11(I) of the Stevenson-Wydler Technology Act and other laws, to give the highest preference to schools (including pre-kindergarten through twelfth grade) and nonprofit organizations (including community-based educational organizations) with particular preference to such schools and nonprofit organizations located in Federal enterprise communities and empowerment zones designated pursuant to the Omnibus Reconciliation Act of 1993, Public Law 103–66. USDA is taking action in this rule-making to implement EO 12999.

Further, consistent with the EO 12999 and other authorities available to USDA for transfer of excess personal property (such as that implemented in 7 CFR part 3200), USDA desires to establish a preference list for those eligible entities seeking to receive property donated under this part.

### II. Procedural Requirements

*A. Executive Order Number 12866*

This proposed rule was reviewed under EO 12866, and it has been determined that it is not a significant regulatory action because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This proposed rule will not create any serious inconsistencies or otherwise interfere with any actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof.

*B. Regulatory Flexibility Act*

USDA certifies that this proposed rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, for the reason that this regulation imposes no new requirements on small entities.

*C. Paperwork Reduction*

The information collection and record keeping requirements to implement these procedures have been cleared by the Office of Management and Budget (OMB), under 0505–0019, in accordance with the Paperwork Reduction Act (44 U.S.C. ch. 35).

### III. Electronic Access Addresses

You may send electronic mail (E-mail) to kathy.fay@usda.gov or contact us via fax at (202) 720–3747.

**List of Subjects in 7 CFR part 2812**

Government property management.

For the reasons set forth in the preamble, 7 CFR part 2812 is proposed to be amended as set forth below:

## PART 2812—DEPARTMENT OF AGRICULTURE GUIDELINES FOR THE DONATION OF EXCESS RESEARCH EQUIPMENT UNDER 15 U.S.C. 3710(I)

1. The authority citation for part 2812 is revised to read as follows:

**Authority:** 5 U.S.C. 301; E.O. 12999, 61 FR 17227, 3 CFR, 1997 Comp., p. 180.

2. Amend § 2812.3 by removing paragraph (b), redesignating paragraphs (c), (d), and (e) as (e), (h), and (i), respectively, and adding new paragraphs (b), (c), (d), (f) and (g) to read as follows:

**§ 2812.3 Definitions.**

* * * * *

(b) *Community-based educational organization* means nonprofit organizations that are engaged in collaborative projects with pre-kindergarten through twelfth grade educational institutions or that have education as their primary focus. Such organizations shall qualify as nonprofit educational institutions for purposes of section 203(j) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(j)).

(c) *Educational institution* means a public or private, non-profit educational institution, encompassing pre-kindergarten through twelfth grade and two- and four-year institutions of higher education, as well as public school districts.

(d) *Educationally useful Federal equipment* means computers and related peripheral tools (e.g., printers, modems, routers, and servers), including telecommunications and research equipment, that are appropriate for use in prekindergarten, elementary, middle, or secondary school education. It shall also include computer software, where the transfer of licenses is permitted.

* * * * *

(f) *Federal empowerment zone or enterprise community (EZ/EC)* means a

rural area designated by the Secretary of Agriculture under 7 CFR part 25.

(g) *Non-profit organization* means: (1) Any corporation, trust association, cooperative, or other organization which—

(i) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(ii) Is not organized primarily for profit; and

(iii) Uses its net proceeds to maintain, improve, or expand its operations.

(2) For the purposes of this part, ''non-profit organizations'' may include entities affiliated with institutions of higher education, or with state and local governments and federally recognized Indian tribes.

* * * * *

4. Amend § 2812.4 by removing and reserving paragraph (a), and revising paragraphs (c) and (d) to read as follows:

**§ 2812.4 Procedures.**

(a) [Reserved]

* * * * *

(c) After USDA screening has been accomplished, excess personal property targeted for donation under this part will be made available on a first-come, first-served basis. If there are competing requests, donations will be made to eligible recipients in the following priority order:

(1) Educationally useful Federal equipment for pre-kindergarten through twelfth grade educational institutions and community-based educational organizations in rural EZ/EC communities;

(2) Educationally useful Federal equipment for pre-kindergarten through twelfth grade educational institutions and community-based educational organizations not in rural EZ/EC areas;

(3) All other eligible organizations.

(d) Upon reporting property for excess screening, if the pertinent USDA agency has an eligible organization in mind for donation under this part, it shall enter ''Public Law 102–245'' in the note field. The property will remain in the excess system approximately 30–45 days, and if no USDA agency or cooperator requests it during the excess cycle, Departmental Excess Personal Property Coordinator will send the agency a copy of the excess report stamped, ''DONATION AUTHORITY TO THE HOLDING AGENCY IN ACCORDANCE WITH PUBLIC LAW 102–245.'' The holding USDA agency may then donate the excess property to the eligible organization.

* * * * *

5. Appendix A to part 2812 is removed.

Done at Washington, D.C., this 12th day of July, 1999.

**W.R. Ashworth,**

*Director, Office of Procurement and Property Management.*

[FR Doc. 99–19289 Filed 7–28–99; 8:45 am]

BILLING CODE 3410–PA–P]

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## NUCLEAR REGULATORY COMMISSION

## 10 CFR Part 20

## Release of Solid Materials at Licensed Facilities: Postponement of Public Meeting Currently Scheduled for August 4–5, 1999, in Chicago, Illinois

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of postponement of public meeting scheduled for Chicago, Illinois, on August 4–5, 1999.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is considering a rulemaking that would set specific requirements on releases of solid materials in order to establish a regulatory framework more consistent with existing NRC requirements on air and liquid releases. The NRC previously announced its intent to conduct a public meeting on August 4 and 5 in Chicago, Illinois, to discuss those issues, however that meeting is being postponed to allow additional time for participants to familiarize themselves with the issues involved.

**FOR FURTHER INFORMATION CONTACT:** Chip Cameron; e-mail fxc@nrc.gov, telephone: (301) 415–1642; Office of the General Counsel, USNRC, Washington DC 20555–0001.

**SUPPLEMENTARY INFORMATION:** The NRC previously announced in a **Federal Register** Document (FRD) dated June 30, 1999 (64 FR 35090), that it is considering a rulemaking that would set specific requirements for release of solid materials. That notice also indicated that NRC is supplementing its standard rulemaking process by conducting enhanced public participatory activities including facilitated public meetings, before the start of any formal rulemaking process, to solicit early and active public input on major issues associated with release of solid materials, including whether the NRC should proceed with such a rulemaking. The FRD noted that four public meetings were planned from August through November 1999, in Chicago, San Francisco, Atlanta, and Washington, DC.

The first public meeting planned was to be held in Chicago, Illinois, on August 4 and 5, 1999. However the NRC has decided to postpone the Chicago meeting and reschedule it. The postponed meeting will still be held in Chicago on a date to be announced soon. We decided to postpone this meeting because several stakeholder groups indicated that the short time frame between publication of the June 30, 1999, FRD and the August 4–5 meeting did not allow for adequate preparation and participation. Since NRC is looking for substantive reactions and discussions based on the June 30 FRD, it was felt that postponing the first of the four workshops to a later date would allow all stakeholders to adequately prepare for the discussions and obtain the participation of their key leaders knowledgeable about these issues.

The enhanced participatory rulemaking process will begin with the San Francisco meeting on September 15–16, 1999. As noted in the June 30 FRD, the meeting in San Francisco will take place at the Radisson Miyako Hotel, 1625 Post St., San Francisco, California. As also noted in the June 30 FRD, the meetings in Atlanta and Washington DC will take place as scheduled on October 5–6, 1999, and November 1–2, 1999, respectively.

The NRC regrets any inconvenience this postponement may cause those that planned to attend the Chicago meeting. However, we believe that a balance of stakeholders familiar with the issues and alternatives associated with potential release of solid materials is critical to conducting a comprehensive discussion.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 23rd day of July, 1999.

**Donald A. Cool,**

*Director, Division of Industrial and Medical Nuclear Safety.*

[FR Doc. 99–19366 Filed 7–28–99; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

## 10 CFR Part 72

**RIN 3150–AG19**

## List of Approved Spent Fuel Storage Casks; Revision, NUHOMS 24–P and NUHOMS 52–B

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations containing the list

of approved spent fuel storage cask designs to add an amended version of Certificate of Compliance Number (CoC No.) 1004 to this list. The amended version reflects a change of ownership of this certificate from VECTRA Technologies, Inc. to Transnuclear West, Inc., (TN West) as well as an amendment to the certificate. This rulemaking also implements a Director's Decision, in response to a petition filed by the Toledo Coalition for Safe Energy, *et al.*, regarding the cask design, approved by CoC No. 1004, in which the Director determined that a rulemaking should be conducted to require a fabrication inspection of dry shielded canister (DSC) shell welds.

**DATES:** The comment period expires October 12, 1999. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Hand deliver comments to 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC's home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail cag@nrc.gov.

Certain documents related to this rulemaking, including comments received by the NRC, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20003–1527. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Stan Turel, telephone (301) 415–6234, e-mail, spt@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires, ''. . . for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR Part 72 entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within Part 72, entitled ''Approval of Spent Fuel Storage Casks,'' that contains procedures and criteria for obtaining NRC approval of dry storage cask designs.

The NRC subsequently issued a final rule to amend Part 72 by adding to the list of approved spent fuel storage cask designs CoC No. 1004 to VECTRA Technologies, Inc., of San Jose, California, for the standardized NUHOMS–24P and NUHOMS–52B spent fuel storage cask designs (59 FR 65898; December 22, 1994). The NUHOMS design consists of a sealed, dry shielded canister (DSC), which contains the spent fuel assemblies. A loaded DSC is stored inside a ventilated, horizontal, concrete vault (i.e., storage module).

## The Petition

The Toledo Coalition for Safe Energy, *et al.*, filed a petition with the NRC on December 5, 1995, pursuant to 10 CFR 2.206. The petitioners raised concerns on the safety of the NUHOMS–24P spent fuel storage cask design regarding a reduction in the thickness of the welds in the walls of three DSCs fabricated for use at the Davis-Besse nuclear power plant. In addition, the petitioners questioned the NRC's administrative process by which VECTRA was permitted to deliver the DSCs containing wall thinning to the Davis-Besse facility and by which the licensee for Davis Besse was permitted to use these casks. The petitioners claimed that an NRC rulemaking or some other public proceeding was necessary to grant permission for the transfer and use of these spent fuel storage casks.

The Petition was referred to the Director of the NRC's Office of Nuclear Material Safety and Safeguards (NMSS) for action under the NRC's regulations in 10 CFR 2.206. On February 5, 1997, the Director of NMSS issued Director's Decision 97–03 (DD–97–03) that granted the Petition, in part. The decision found that the minimum wall thickness measured by VECTRA in the three DSCs was 0.581 inch, less than the original design wall thickness of 0.625 inch specified in the Safety Analysis Report (SAR). VECTRA performed calculations demonstrating that a DSC with a 0.500 inch uniform minimum wall thickness still met the American Society of Mechanical Engineers, Boiler and Pressure Vessel Code (ASME Code), allowable stress values and satisfied the NRC's design criteria. VECTRA submitted these calculations in a letter dated September 5, 1995. In a Safety Evaluation (SE), dated October 5, 1995, the NRC accepted VECTRA's wall thickness calculation as meeting the ASME Code allowable stress values. However, the NRC indicated that because of the limited experience in performing weld thickness measurements, it was reasonable for VECTRA to establish a fabrication margin of 0.063 inch above the 0.500 inch minimum design wall thickness. The decision stated, in part, ''while VECTRA failed to comply with its SAR commitment of 0.625 inch, its failure resulted in no compromise of safety. Nonetheless, the failure raised an issue of poor control during the fabrication process.'' The decision also found that existing NUHOMS–24P casks remained acceptable for continued use. The decision further found that VECTRA had no procedure to measure the final wall thickness in the area of the welds, after grinding or in any subsequent steps in the fabrication process, which would provide an adequate level of control in maintaining minimum acceptable wall thickness. VECTRA failed to comply with the NRC's requirement under § 72.150 to have procedures that include appropriate qualitative and quantitative acceptance criteria for determining that important activities have been satisfactorily accomplished. The decision indicated that CoC No. 1004 should be modified to require a fabrication inspection procedure to assure that DSC weld-grinding operations do not result in wall thinning below acceptable levels. Accordingly, the petitioners' request was granted, in part. The decision is available for review in the NRC Public Document Room as ''Director's Decision Under 10 CFR 2.206, DD # 97–03.''

## Discussion

The NRC is proposing to revise information contained in § 72.214 under

CoC No. 1004 to reflect Amendment No. 1 to CoC No. 1004 and to address four administrative issues in the current language in § 72.214. These four administrative issues include (1) correcting the expiration date of CoC No. 1004 from the present ''(20 years after the final rule effective date)'' to ''January 23, 2015;'' (2) correcting the title and revision number of the standardized NUHOMS SAR to be consistent with the approach the NRC proposed for CoC SARs in a new § 72.248 (see proposed rule in 63 FR 56098; October 21, 1998); (3) revising the CoC to reflect the transfer of the CoC from VECTRA Technologies, Inc. to Transnuclear West, Inc., (TN West); and (4) specifying the applicability of Amendment No. 0 and Amendment No. 1 to this CoC.

Change 1 keeps the certificate expiration date consistent with the NRC's policy for Part 72 CoCs, which is to use 20 years from the date the final rule is effective. The final rule adding CoC No. 1004 to § 72.214 was effective on January 23, 1995; consequently, the expiration date for this CoC is January 23, 2015.

Change 2 keeps CoC No. 1004 consistent with other proposed changes to Part 72. The SAR Title will be changed from ''Safety Analysis Report for the Standardized NUHOMS Horizontal Modular Storage System for Irradiated Nuclear Fuel, Revision 2'' to ''Final Safety Analysis Report for the Standardized NUHOMS Horizontal Modular Storage System for Irradiated Nuclear Fuel.'' In the new § 72.248, a final SAR is to be submitted to the Commission within 90 days after approval of the cask design and then will be updated periodically. Replacement pages will be provided to the Commission, but FSAR revision numbers will not be used.

Change 3 recognizes the transfer of the CoC from VECTRA to TN West, NRC received letters dated December 18, 1997, from both VECTRA and TN West describing the purchase of VECTRA's intellectual properties and assets associated with NUHOMS technology by TN West. In its December 18, 1997, letter, TN West described that it planned to conduct fabrication activities in accordance with the quality assurance program described in Section 11 of the NUHOMS SAR. TN West further described that it had acquired the composite records of casks manufactured under CoC No. 1004 and that it had records associated with changes to the NUHOMS design implemented after issuance of the CoC.

Change 4 describes how general licensees would continue to use spent fuel storage casks manufactured under CoC No. 1004, Amendment No. 0 (i.e., the initial CoC), if the cask being used was fabricated before [insert effective date of the final rule]. After [insert effective date of the final rule], casks must be manufactured in accordance with CoC No. 1004, Amendment No. 1.

This proposed rule would issue Amendment No. 1 to CoC No. 1004. Amendment No. 1 would revise and reformat the CoC to be consistent with the NRC's current format and layout for Part 72 certificates. Conditions No. 1 through 8 would be renumbered and Condition No. 9 would remain the same. Additionally, Condition No. 4 (previously Condition No. 6) would be revised to implement DD–97–03. Because the Director granted the Petition, in part, and to ensure future compliance with § 72.150 with respect to DSC shell-weld thickness, the revised Condition No. 4 to CoC No.1004 would require inspection of DSC shell welds and specify a minimum shell-weld thickness. Condition No. 4 would be revised to read as follows:

> Fabrication activities shall be conducted in accordance with a quality assurance program as described in Section 11.0 of the SAR. All fabrication acceptance tests and procedures shall be performed in accordance with detailed written procedures. TN West shall ensure that 100 percent of the full penetration longitudinal and circumferential butt welds used for the DSC shell are inspected using radiographic examination. Inspections shall be performed on each shell weld after the weld is ground flush with surrounding surfaces, and the weld and the base metal wall thickness shall be greater than or equal to 0.500 inch.

VECTRA's analysis indicated that a wall design of 0.500 inch would satisfy NRC design criteria. In a letter dated August 7, 1995, VECTRA described plans to perform measurements of shell-weld thickness during the DSC fabrication process. By letter dated September 5, 1995 (NRC document Accession Number 9509110095), VECTRA submitted an analysis, NUH004.0213, ''Standardized NUHOMS–24P DSC Shell Minimum Acceptable Uniform Thickness,'' Revision 1, which evaluated the structural acceptability of a standardized NUHOMS–24P DSC with a minimum shell thickness of 0.500 inch.[1] In a Safety Evaluation (SE) dated October 5, 1995, (Accession Number 9512200130) the NRC staff concluded that the structural capability of the DSC would not be compromised with a shell-weld thickness of 0.500 inch. In a letter dated December 11, 1998 (Accession Number 9812300347), VECTRA [TN West] submitted an analysis, NUH004.0218, ''Standardized NUHOMS–52B DSC Shell Minimum Acceptable Uniform Thickness,'' Revision 1, that evaluated the structural acceptability of a standardized NUHOMS–52B DSC with a minimum shell thickness of 0.500 inch. In a safety evaluation dated January 22, 1999 (Accession Number 9902110261), the NRC staff concluded that with a wall thickness of 0.500 inch, the NUHOMS–52B DSC can acceptably meet structural design codes.

The Director, in his Decision, specifically proposed amending CoC No. 1004 to require that, in the fabrication of the DSC, the shell and basket assembly must be inspected to ensure that structural design margins, associated with the ASME Code Section III allowable stress values, are not compromised. VECTRA established fabrication inspection procedures, including fabrication margins to ensure that the DSC shell welds are not reduced to a thickness less than 0.500 inch. VECTRA established an ''administrative'' minimum fabrication limit of 0.563 inch. This limit would allow for uncertainties in weld thickness measurements, weld shrinkage, and weld grinding operations and would ensure that the weld and base metal are not reduced less than the analyzed wall thickness of 0.500 Inch. Because the safety evaluation supporting the Director's Decision relied on a 0.500 inch weld thickness, proposed Amendment No 1 to CoC No. 1004 requiring a 0.500 inch weld thickness is consistent with DD–97–03.

Based on the October 1995 and January 1999 safety evaluations, the newly established fabrication inspection procedures, and the proposed Amendment No. 1 to CoC No. 1004, the NRC staff has concluded that the NUHOMS–24P and -52B cask design when used in accordance with the conditions specified in the CoC as amended, and NRC regulations, will meet the requirements of Part 72 and thus ensure adequate protection of the public health and safety. Furthermore, as indicated in DD–97–03, NUHOMS–24P casks previously manufactured before DD–97–03 was issued will continue to adequately protect public health and safety.

The proposed Amendment No. 1 to CoC No. 1004, the VECTRA safety

[1] The Standardized NUHOMS system includes two versions: the NUHOMS–24P which stores up to 24 pressurized-water reactor assemblies and the NUHOMS–52B which stores up to 52 boiling-water reactor assemblies. The staff examined minimum weld thickness issues for the NUHOMS–24P in a safety evaluation dated October 5, 1995. For completeness, the staff examined minimum weld thickness issues for the NUHOMS–52B in a safety evaluation dated January 22, 1999.

analyses, and the NRC staff safety evaluations are available for inspection and comment at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20003–1527. Single copies of the proposed Amendment No. 1 to CoC No. 1004 may be obtained from Stan Turel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6234, email spt@nrc.gov.

## Discussion of Proposed Amendments by Section

*Section 72.214 List of Approved Spent Fuel Storage Casks*

The text in § 72.214 for Certificate No. 1004 would be revised as follows:

(1) The name of person that submitted the SAR (i.e., name of the certificate holder) would be changed to ''Transnuclear West, Inc.'';

(2) The title of the SAR would be changed to ''Final Safety Analysis Report for the Standardized NUHOMS Horizontal Modular Storage System for Irradiated Nuclear Fuel'';

(3) The expiration date for the certificate would be changed to ''January 23, 2015''; and

(4) A new line on the applicability of Amendment No. 0 and Amendment No. 1 would be added.

In addition to the changes to the rule language in § 72.214, the text for Condition No. 4 of CoC No. 1004 would be revised as described above.

## Applicability

Amendment No. 1 to CoC No. 1004 would apply to TN West's manufacture of NUHOMS–24P or –52B DSCs, or to a general licensee using the NUHOMS–24P or –52B cask system, where the manufacture of the DSC was completed after [insert effective date of the final rule]. General licensees who possess a NUHOMS–24P or –52B DSC, whose fabrication was completed before [insert effective date of the final rule], would continue to use the original version [Amendment No. 0] of CoC No. 1004 in implementing the requirements of § 72.212 for the operation of an independent spent fuel storage installation.

## Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. It would not change safety requirements and would not have significant environmental impacts. The proposed rule would revise the listing of approved spent fuel storage casks contained in § 72.214 by correcting certain information listed under this certificate and by issuing Amendment No. 1 which revises Condition No. 4 to CoC No. 1004 for the Standardized NUHOMS–24P and –52B cask system. The NRC has concluded that Standardized NUHOMS–24P and –52B cask system designs, as modified by Amendment No. 1 to the CoC, can continue to be used to safely store spent fuel. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Stan Turel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6234, email spt@nrc.gov.

## Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

## Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

## Voluntary Consensus Standards

The National Technology Transfer Act of 1995, (Pub. L. 104–113), requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would issue Amendment No. 1 to CoC No. 1004 for the NUHOMS–24P and –52B cask system, which is currently listed in § 72.214. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

## Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing,'' directed that the Government's writing be in plain language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

## Regulatory Analysis

On July 18, 1990 (55 FR 29181), the Commission amended 10 CFR Part 72 to provide regulations for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any civilian nuclear power reactor licensed under 10 CFR Part 50 was issued a general license under Part 72 to use NRC-approved cask designs to store spent nuclear fuel if: (1) They notify the NRC in advance, (2) the spent fuel is stored under the conditions specified in the CoC, and (3) the conditions of the general license are met. In that rulemaking, four spent fuel storage cask designs were approved for use at reactor sites, and were listed in § 72.214. That rulemaking envisioned that storage cask designs approved in the future would be added to the listing in § 72.214 through the rulemaking process. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in Part 72, Subpart L. The NRC subsequently amended Part 72 and authorized issuance of CoC No. 1004 to VECTRA Technologies, Inc., of San Jose, California, for the standardized NUHOMS–24P and –52B spent fuel storage cask designs (59 FR 65898; December 22, 1994).

This proposed rule would issue Amendment No. 1 to CoC No. 1004. Amendment No. 1 would revise and reformat the CoC to be consistent with the NRC's current format and layout for Part 72 certificates. Conditions No. 1 through 8 would be renumbered and Condition No. 9 would remain the same. Additionally, Condition No. 4 (previously Condition No. 6) would be revised to implement the direction of DD–97–03. The NRC has deemed necessary the changes to CoC No. 1004 to ensure compliance with Part 72 quality assurance requirements. On August 29, 1995, the NRC issued an enforcement action in the form of a Notice of Nonconformance to VECTRA regarding VECTRA's failure to comply with the quality assurance regulations in § 72.150. Specifically, VECTRA failed to ensure that adequate wall thickness was maintained in DSCs manufactured

under CoC No. 1004. Subsequently, the Director, NMSS, in response to a petition from the Toledo Coalition for Safe Energy, et al. found, in Director's Decision 97–03, that an inspection procedure requiring the performance of minimum wall thickness measurements would be reasonable and directed that CoC No. 1004 be amended to include such a requirement. Consequently, the NRC considers this rule, in part, to be an administrative action taken to implement DD–97–03.

General licensees would continue to use spent fuel storage casks manufactured under CoC No. 1004, Amendment No. 0, if the cask was fabricated before [insert effective date of the final rule]. After [insert effective date of the final rule], casks must be manufactured in accordance with CoC No. 1004, Amendment No. 1.

The alternative to this proposed action would be to allow outdated information to remain in CoC No. 1004 and to withhold Amendment No. 1 to CoC No. 1004 and forgo inclusion of an explicit requirement for measuring DSC shell-weld thickness. However, based on the concerns identified with VECTRA's control of the fabrication process described in the Notice of Nonconformance, the NRC deemed that addition of an explicit requirement for measuring wall thickness in CoC No. 1004 is necessary.

Approval of the proposed rule would provide both the NRC staff and the public additional assurance that DSCs manufactured under CoC No. 1004 are fabricated in accordance with the approved design and Part 72 quality assurance requirements, and would have no adverse effect on public health and safety.

This proposed rule has no significant identifiable impact or benefit on other Government agencies. Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the proposed rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be satisfactory, and thus, this action is recommended.

### Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the operation of nuclear power plants, independent spent fuel storage facilities, and Transnuclear West, Inc. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

### Backfit Analysis

The backfit rule (§§ 50.109 or 72.62) does not apply to certificate holders. Moreover, this proposed rule does not involve any provisions that would impose backfits as defined in those regulations because the amended version of CoC No. 1004 is applicable only to casks to be fabricated after the effective date of the final rule. General licensees who currently possess these casks may operate under the original CoC No. 1004 (Amendment No. 0) which remains on the list of approved cask designs at § 72.214. Therefore, a backfit analysis is not required.

### List of Subjects In 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

## PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. Section 72.214, Certificate of Compliance Number 1004, is revised to read as follows:

**§ 72.214 List of approved spent fuel storage casks.**

* * * * *

Certificate Number: 1004
Amendment Number: 0 and 1
Amendment Applicability:

Amendment No. 0 is applicable for casks manufactured before [insert effective date of final rule].

Amendment No. 1 is applicable for casks manufactured after [insert effective date of final rule].

SAR Submitted by: Transnuclear West, Inc.
SAR Title: Final Safety Analysis Report for the Standardized NUHOMS Horizontal Modular Storage System for Irradiated Nuclear Fuel
Docket Number: 72–1004
Certificate Expiration Date: January 23, 2015
Model Numbers: Standardized NUHOMS–24P and NUHOMS–52B

* * * * *

Dated at Rockville, Maryland, this 7th day of July, 1999.

For the Nuclear Regulatory Commission.

**William D. Travers,**

*Executive Director for Operations.*

[FR Doc. 99–19130 Filed 7–28–99; 8:45 am]

BILLING CODE 7590–01–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 99–AWP–4]**

## Proposed Modification of Class E Airspace; Sedona, AZ

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to modify the Class E airspace area at Sedona, AZ. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 3 at Sedona Airport has made this proposal necessary. Additional controlled airspace extending upward from 700

feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 3 SIAP to Sedona Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Sedona Airport, Sedona, AZ.

**DATES:** Comments must be received on or before September 17, 1999.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 99–AWP–4, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

**FOR FURTHER INFORMATION CONTACT:** Larry Tonish, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AWP–4.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

## Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

## The Proposal

The FAA is considering an amendment to 14 CFR part 71 by modifying the Class E airspace area at Santa Rosa, AZ. The establishment of a GPS RWY 3 SIAP at Sedona Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS approach procedure at Sedona Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS RWY 3 SIAP at Sedona Airport, Sedona, AZ. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

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

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## The Proposed Amendment

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

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

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

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 39.

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

**AWP AZ E5 Sedona, AZ [Revised]**

Sedona Airport, AZ
(Lat. 34°50′55″ N. long. 111°47′19″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Sedona Airport, excluding the portion within the Flagstaff, AZ, Class E airspace area.

* * * * *

Issued in Los Angeles, California, on July 19, 1999.

**John Clancy,**

*Manager, Air Traffic Division, Western-Pacific Region.*

[FR Doc. 99–19371 Filed 7–28–99; 8:45 am]

BILLING CODE 4910–13–M

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Part 240**

**[Release No. 34–41644, International Series Release No. 1200, File No. S7–18–99]**

**RIN 3235–AH76**

## Exemption of the Securities of the Republic of Portugal Under the Securities Exchange Act of 1934 for Purposes of Trading Futures Contracts on Those Securities

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission proposes for comment an amendment to Rule 3a12–8 under the Securities Exchange Act of 1934 that would designate debt obligations issued by the Republic of Portugal as ''exempted securities'' for the purpose of the marketing and trading of futures contracts on those securities in the United States. The proposed amendment is intended to permit futures trading on the sovereign debt of Portugal.

**DATES:** Comments should be submitted on or before August 30, 1999.

**ADDRESSES:** All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comments should refer to File No. S7–18–99; 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 at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will also be posted on the Commission's Internet web site (http://www.sec.gov).

**FOR FURTHER INFORMATION CONTACT:** Kenneth M. Rosen, Attorney, Office of Market Supervision (OMS), Division of Market Regulation (Division), Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001, at (202) 942–0096.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Under the Commodity Exchange Act (CEA),[1] it is unlawful to trade a futures contract on any individual security unless the security in question is an exempted security (other than a municipal security) under the Securities Act of 1933 (Securities Act)[2] or the Securities Exchange Act of 1934 (Exchange Act).[3] Debt obligations of foreign governments are not exempted securities under either of these statutes.

The Securities and Exchange Commission (SEC or Commission), however, has adopted Rule 3a12–8[4] (Rule) under the Exchange Act to designate debt obligations issued by certain foreign governments as exempted securities under the Exchange Act solely for the purpose of the marketing and trading futures contracts on those securities in the United States. The foreign governments currently designated in the Rule are the United Kingdom of Great Britain and Northern Ireland, Canada, Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, the Republic of Ireland, Italy, Spain, Mexico, Brazil, Argentina, Venezuela, Belgium, and, most recently, Sweden (the Designated Foreign Governments). As a result, futures contracts on the debt obligations of these countries may be sold in the United States, as long as the other terms of the Rule are satisfied.

The Commission is soliciting comments on a proposal to amend Rule 3a12–8 to add the debt obligations of the Republic of Portugal (Portugal) to the list of Designated Foreign Governments whose debt obligations are exempted by Rule 3a12–8. To qualify for the exemption, futures contracts on the debt obligations of Portugal would have to meet the existing requirements of the Rule.

### II. Background

Adopted in 1984 pursuant to the exemptive authority contained in Section 3(a)(12) of the Exchange Act,[5] Rule 3a12–8 provides a limited exception from the CEA's prohibition on futures overlying individual securities.[6] As originally adopted, the Rule provided that the debt obligations of the United Kingdom of Great Britain and Northern Ireland and Canada would be deemed to be exempted securities, solely for the purpose of permitting the offer, sale, and confirmation of ''qualifying foreign futures contracts'' on such securities. The securities in question were not eligible for the exemption if they were registered under the Securities Act or were the subject of any American depositary receipt so registered. A futures contract on the covered debt obligation under the Rule is deemed to be a ''qualifying foreign futures contract'' if the contract is deliverable outside the United States and is traded on a board of trade.[7]

The conditions imposed by the Rule were intended to facilitate the trading of futures contracts on foreign government securities in the United States while requiring offerings of foreign government securities to comply with the federal securities laws. Accordingly, the conditions set forth in the Rule were designed to ensure that, absent registration, a domestic market in unregistered foreign government securities would not develop, and that markets for futures on these instruments would not be used to avoid the securities law registration requirements. In particular, the Rule was intended to ensure that futures on exempted sovereign debt did not operate as a surrogate means of trading the unregistered debt.[8]

Subsequently, the Commission amended the Rule to include the debt securities issued by Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, Ireland, Italy, Spain, Mexico, Brazil, Argentina, Venezuela, Belgium, and, most recently, Sweden.[9]

[1] 7 U.S.C. 1 *et seq.*

[2] 15 U.S.C. 77a *et seq.*

[3] 15 U.S.C. 78a *et seq.*

[4] 17 CFR 240.3a12–8.

[5] *See* Securities Exchange Act Release No. 20708 (Original Adopting Release) (March 2, 1984) 49 FR 8595 (March 8, 1984); Securities Exchange Act Release No. 19811 (Original Proposing Release) (May 25, 1983) 48 FR 24725 (June 2, 1983).

[6] In approving the Futures Trading Act of 1982, Congress expressed its understanding that neither the SEC nor the Commodity Futures Trading Commission (CFTC) had intended to bar the sale of futures on debt obligations of the United Kingdom of Great Britain and Northern Ireland to U.S. persons, and its expectation that administrative action would be taken to allow the sale of such futures contracts in the United States. *See* Original Proposing Release, *supra* note 5, 48 FR at 24725 (citing 128 Cong. Rec. H7492 (daily ed. September 23, 1982) (statements of Representatives Daschle and Wirth)).

[7] As originally adopted, the Rule required that the board of trade be located in the country that issued the underlying securities. This requirement was eliminated in 1987. *See* Securities Exchange Act Release No. 24209 (March 12, 1987) 52 FR 8875 (March 20, 1987).

[8] The CFTC regulates the marketing and trading of foreign futures contracts. CFTC rules provide that any person who offers or sells a foreign futures contract to a U.S. customer must be registered under the CEA, unless otherwise specifically exempted.

[9] In 1986, the Rule was amended to include Japanese government securities. *See* Securities Exchange Act Release No. 23423 (July 11, 1986) 51 FR 25996 (July 18, 1986). In 1987, the Rule was amended to include debt securities issued by Australia, France and New Zealand. *See* Securities Exchange Act Release No. 25072 (October 29, 1987) 52 FR 42277 (November 4, 1987). In 1988, the Rule was amended to include debt securities issued by Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany. *See* Securities Exchange Act Release No. 26217 (October 26, 1988) 53 FR 43860 (October 31, 1988). In 1992, the Rule

## III. Discussion

The Bolsa de Derivados do Porto (BDP) has proposed that the Commission amend Rule 3a12–8 to include the sovereign debt of Portugal. The BDP has stated that futures contracts on Portuguese ''OT 10'' Fixed Rate Bonds have traded on the BDP since 1996, and that its Petition for Rulemaking to amend Rule 3a12–8 is made principally to permit the lawful marketing of those contracts to U.S. investors.[10] The BDP further represents that the Instituto de Gestão do Crédito Público (IGCP)—a body established by the Portuguese government that possesses the authority to issue and manage all of Portugal's direct public debt—supports the BDP's request for the amendment of Rule 3a12–8.[11]

Under the proposed amendment, the existing conditions set forth in the Rule (*i.e.*, that the underlying securities not be registered in the United States, the futures contracts require delivery outside the United States, and the contracts be traded on a board of trade) would continue to apply. The BDP has represented that the securities underlying the futures contracts it intends to list are not registered in the United States,[12] that delivery will occur through book entry registration in the Central de Valores Mobiliarios (the Portuguese Central Depositary System), and that the BDP is a ''board of trade'' as defined by the CEA.[13]

When amending the Rule to include Belgium, the Commission stated that it would consider two types of evidence about whether there was an active and liquid secondary trading market for the security—credit rating (as indirect evidence) and trading data.[14] Earlier, when amending the Rule to include Mexico, Brazil, Argentina, and Venezuela, the Commission considered primarily whether market evidence indicated that an active and liquid secondary trading market exists for the sovereign debt of those countries.[15] Prior to the addition of those countries to the Rule, the Commission considered principally whether the particular sovereign debt had been rated in one of the two highest rating categories [16] by at least two nationally recognized statistical rating organizations (NRSROs).[17]

Portugal's long-term local and foreign currency ratings meet the credit rating standard. Moody's has assigned Portugal a long-term local currency credit rating of Aa2 and a long-term foreign currency credit rating of Aa2. S&P has assigned Portugal a long-term local currency credit rating of AA and a long-term foreign currency credit rating of AA.

The Commission also observes that market data indicates that there exists an active and liquid trading market for Portuguese issued debt instruments. At the end of 1998, the total Portuguese direct public debt outstanding was equivalent to approximately US$66.35 billion (11.70 trillion Portuguese escudo (PTE)).[18] As of January 31, 1999, the largest portion of this debt, Fixed Rate Bonds (OT) denominated in Portuguese escudo or euro, amounted to approximately US$29.26 billion.[19] Floating Rate Notes (FIP and OTRV) amounted to approximately US$7.38 billion.[20] Treasury Bills (BT) amounted to approximately US$2.12 billion.[21] Other non-escudo and non-euro foreign currency-denominated debt amounted to in excess of approximately US$14.1 million.[22]

The BDP has submitted data indicating that secondary market trading in OT Fixed Rate Bonds amounted to approximately US$71.7 billion (PTE 12.637 trillion) in 1997, approximately US$125 billion (PTE 22.005 trillion) in 1998, and approximately US$15.9 billion (PTE 2.809 trillion) in the first month of 1999.[23] The average daily trading volume was US$290 million (PTE 51.195 billion) in 1997, US$505 million (PTE 88.959 billion) in 1998, and US$797 million (PTE 140.450 billion) for the first month of 1999.[24] The BDP adds that there were 44,873

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was again amended to (1) include debt securities offered by the Republic of Ireland and Italy; (2) change the country designation of ''West Germany'' to the ''Federal Republic of Germany;'' and (3) replace all references to the informal names of the countries listed in the Rule with references to their official names. *See* Securities Exchange Act Release No. 30166 (January 8, 1992) 57 FR 1375 (January 14, 1992). In 1994, the Rule was amended to include debt securities issued by the Kingdom of Spain. *See* Securities Exchange Act Release No. 34908 (October 27, 1994) 59 FR 54812 (November 2, 1994). In 1995, the Rule was amended to include the debt securities of Mexico. *See* Securities Exchange Act Release No. 36530 (November 30, 1995) 60 FR 62323 (December 6, 1995). In 1996, the Rule was amended to include debt securities issued by the Federative Republic of Brazil, the Republic of Argentina, and the Republic of Venezuela. *See* Securities Exchange Act Release No. 36940 (March 7, 1996) 61 FR 10271 (March 13, 1996). In 1999, the Rule was amended to include debt securities issued by the Kingdom of Belgium and the Kingdom of Sweden. *See* Securities Exchange Act Release No. 41116 (February 26, 1999) 64 FR 10564 (March 5, 1999); Securities Exchange Act Release No. 41453 (May 26, 1999) 64 FR 29550 (June 2, 1999).

[10] *See* Letter from Mark D. Wiseman, counsel for BDP, to Jonathan G. Katz, Secretary, Commission, dated June 1, 1999 (BDP Petition).

[11] *See* BDP Petition, *supra* note 10.

[12] A number of Portuguese government debt securities have been registered under the Securities Act. *See* BDP Petition, *supra* note 10. The Rule does not exempt futures contracts on those securities.

[13] *See* BDP Petition, *supra* note 10.

[14] *See* Securities Exchange Act Release No. 41116 (February 26, 1999) 64 FR 10564 (March 5, 1999).

[15] *See, e.g.,* Securities Exchange Act Release No. 36530 (November 30, 1995) 60 FR 62323 (December 6, 1995) (amending the Rule to add Mexico because the Commission believed that as a whole, the market for Mexican sovereign debt was sufficiently liquid and deep for the purposes of the Rule); Securities Exchange Act Release No. 36940 (March 7, 1996) 61 FR 10271 (March 13, 1996) (amending the Rule to add Brazil, Argentina and Venezuela because the Commission believed that the market for the sovereign debt of those countries was sufficiently liquid and deep for the purposes of the Rule).

[16] The two highest categories used by Moody's Investor Services (Moody's) for long-term debt are ''Aaa'' and ''Aa.'' The two highest categories used by Standard and Poor's (S&P) for long-term debt are ''AAA'' and ''AA.''

[17] *See, e.g.,* Securities Exchange Act Release No. 30166 (January 6, 1992) 57 FR 1375 (January 14, 1992) (amending the Rule to include debt securities issued by Ireland and Italy—Ireland's long-term sovereign debt was rated Aa3 by Moody's and AA– by S&P, and Italy's long-term sovereign debt was rated Aaa by Moody's and AA+ by S&P); and Securities Exchange Act Release No. 34908 (October 27, 1994) 59 FR 54812 (November 2, 1994) (amending the Rule to include Spain, which had long-term debt ratings of Aa2 from Moody's and AA from S&P); *see also* Securities Exchange Act Release No. 36213 (September 11, 1995) 60 FR 48078 (September 18, 1995) (proposal to add Mexico to list of countries encompassed by the Rule); Securities Exchange Act Release No. 24428 (May 5, 1987) 52 FR 18237 (May 14, 1987) (proposed amendment, which was not implemented, that would have extended the Rule to encompass all countries rated in one of the two highest categories by at least two NRSROs).

[18] *See* BDP Petition, *supra* note 10. All U.S. dollar equivalents set forth in this release are based on a conversion rate of PTE 176.31 for US$1.00 in effect as of January 29, 1999. The BDP calculated this rate used for its representations by taking the January 29, 1999 noon buying rate in The City of New York for cable transfers in euro as certified for customs purposes by the Federal Reserve Bank of New York ($1.1371=1 euro) multiplied by the European Monetary Union's official determination of the number of Portuguese escudo per euro (1 euro=PTE 200.482). *See id.*

[19] *See* BDP Petition, *supra* note 10.

[20] *See* BDP Petition, *supra* note 10.

[21] *See* BDP Petition, *supra* note 10. Other escudo-denominated and euro-denominated tradable Portuguese domestic debt securities amounted to US$35.6 million.

[22] *See* BDP Petition, *supra* note 10.

[23] *See* BDP Petition, *supra* note 10. The BDP states that the statistics about secondary market trading in Portuguese debt were derived from information supplied by Sistema de Informacão de Bolsa do Porto (SIBOP). SIBOP is an electronic market information system managed by the BDP and is used by market members and institutional investors. The SIBOP system provides market participants with securities and futures real time data, historical information for securities and derivatives, daily and monthly trading volume information, market news, and file transfer capabilities. *Id.*

[24] *See* BDP Petition, *supra* note 10. The BDP represents that the activity and liquidity of the OT Fixed Rate Bond secondary market has increased substantially during the past two years. The BDP believes that the increase in average daily and monthly trading volumes for OT Fixed Rate Bonds reflects both Portugal's decision to issue a greater number of OT fixed Rate Bonds in lieu of other classes of securities and increased market interest in Portugal's securities. *See id.*

transactions in OT Fixed Rate Bonds in 1997, 45,676 transactions in 1998, and 3,835 transactions in the first month of 1999.[25]

The BDP also submitted data stating that secondary market trading in FIP Floating Notes amounted to approximately US$3.6 billion (PTE 640 billion) in 1997, approximately US$0.01 billion (PTE 2.4 billion) in 1998, and approximately US$0.00007 billion (PTE 0.01 billion) in the first month of 1999.[26] The average daily trading volume was US$14.2 million (PTE 2.501 billion) in 1997, US$0.05 million (PTE 9.3 million in 1998), and US$0.003 million (PTE 0.6 million) for the first month of 1999.[27] The BDP adds that there were 2,414 transactions in FIP Floating Notes in 1997, 1,777 transactions in 1998, and 74 transactions in the first month of 1999.[28]

The BDP further submitted data stating that secondary market trading in ORTV Floating Notes amounted to approximately US$4.7 billion (PTE 827 billion) in 1997, approximately US$4.2 billion (PTE 739 billion) in 1998, and approximately US$0.4 billion (PTE 72.7 billion) in the first month of 1999.[29] The average daily trading volume was US$19.6 million (PTE 3.477 billion) in 1997, US$17.3 million (PTE 3.047 billion in 1998), and US$20.6 million (PTE 3.633 billion) for the first month of 1999.[30] The BDP adds that there were 2,679 transactions in FIP Floating Notes in 1997, 2,284 transactions in 1998, and 127 transactions in the first month of 1999.[31]

In light of the above data, the Commission preliminarily believes that the debt obligations of Portugal should be subject to the same regulatory treatment under the Rule as the debt obligations of the Designated Foreign Governments.

## IV. General Request for Comments

The Commission seeks comments on the desirability of designating the debt securities of Portugal as exempted securities under Rule 3a12–8. Comments should address whether the trading or other characteristics of Portugal's sovereign debt warrant an exemption for purposes of futures trading. Commentators may wish to discuss whether there are any legal or policy reasons for distinguishing between Portugal and the Designated Foreign Governments for purposes of the Rule. The Commission also requests information regarding the potential impact of the proposed rule on the U.S. economy on an annual basis. If possible, commenters should provide empirical data to support their views. The Commission also seeks comments on the general application and operation of the Rule given the increased globalization of the securities markets since the Rule was adopted.

## V. Costs and Benefits of the Proposed Amendments

The Commission has considered the costs and benefits of the proposed amendment to the Rule and preliminarily believes that the proposed amendment offers potential benefits for U.S. investors, with no direct costs. If adopted, the proposed amendment would allow U.S. and foreign boards of trade to offer in the United States, and U.S. investors to trade, a greater range of futures contracts on foreign government debt obligations. Consistent with Congressional support for futures on foreign sovereign debt securities, the trading of futures on the sovereign debt of Portugal should provide U.S. investors with a vehicle for hedging the risks involved in the trading of the underlying sovereign debt of Portugal. The Commission does not anticipate that the proposed amendment would result in any direct cost for U.S. investors or others because the proposed amendment would impose no recordkeeping or compliance burdens, and merely would provide a limited purpose exemption under the federal securities laws. The restrictions imposed under the proposed amendment are identical to the restrictions currently imposed under the terms of the Rule and are designed to protect U.S. investors.

The Commission requests comments on the costs and benefits of the proposed amendment to Rule 3a12–8. In particular, the Commission requests commentators to address whether the proposed amendment would generate the anticipated benefits, or impose any costs on U.S. investors or others.

## VI. Effect of the Proposed Amendment on Competition, Efficiency and Capital Formation

Section 23(a)(2) of the Exchange Act[32] requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effect of such rules, if any, and to refrain from adopting a rule that would impose a burden on competition not necessary or appropriate in furthering the purposes of the Exchange Act. Moreover, Section 3 of the Exchange Act,[33] as amended by the National Securities Markets Improvement Act of 1996,[34] provides that whenever the Commission is engaged in a rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission must consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

In light of the standards cited in Sections 3 and 23(a)(2) of the Exchange Act, the Commission preliminarily believes that the proposed amendment to the Rule will promote efficiency, competition and capital formation. The proposal is intended to expand the range of financial products available in the United States, and will make available to U.S. investors an additional product to use to hedge the risks associated with the trading of the underlying sovereign debt of Portugal. Insofar as the proposed amendment contains limitations, they are designed to promote the purposes of the Exchange Act by ensuring that futures trading on government securities of Portugal is consistent with the goals and purposes of the federal securities laws by minimizing the impact of the Rule on securities trading and distribution in the United States.

The Commission requests comments as to whether the amendment to the Rule will have any anti-competitive effects.

## VII. Administrative Requirements

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendment proposed herein would not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release as Appendix A. We encourage written comments on the Certification. Commentators are asked to describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

The Paperwork Reduction Act does not apply because the proposed amendment does not impose recordkeeping or information collection requirements, or other collections of information that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

[25] *See* BDP Petition, *supra* note 10.
[26] *See* BDP Petition, *supra* note 10.
[27] *See* BDP Petition, *supra* note 10.
[28] *See* BDP Petition, *supra* note 10.
[29] *See* BDP Petition, *supra* note 10.
[30] *See* BDP Petition, *supra* note 10.
[31] *See* BDP Petition, *supra* note 10.

[32] 15 U.S.C. 78w(a)(2).

[33] 15 U.S.C. 78c.
[34] Pub. L. 104–290, 110 Stat. 3416 (1996).

## VIII. Statutory Basis

The amendment to Rule 3a12–8 is being proposed pursuant to 15 U.S.C. 78a *et seq.*, particularly Sections 3(a)(12) and 23(a), 15 U.S.C. 78c(a)(12) and 78w(a).

## List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

## Text of the Proposed Amendment

For the reasons set forth in the preamble, the Commission is proposing to amend Part 240 of Chapter II, Title 17 of the *Code of Federal Regulations* as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.3a12–8 is amended by removing the word ''or'' at the end of paragraph (a)(1)(xx), removing the period at the end of paragraph (a)(1)(xxi) and adding ''; or'' in its place, and adding paragraph (a)(1)(xxii), to read as follows:

**§ 240.3a12–8 Exemption for designated foreign government securities for purposes of futures trading.**

(a) * * *

(1) * * *

(xxii) The Republic of Portugal.

* * * * *

Dated: July 23, 1999.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

**Note:** Appendix A to the Preamble will not appear in the Code of Federal Regulations.

## Appendix A

*Regulatory Flexibility Act Certification*

I, Arthur Levitt, Jr., Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendment to Rule 3a12–8 (Rule) under the Securities Exchange Act of 1934 (Exchange Act), which would define the government debt securities of the Republic of Portugal (Portugal) as exempted securities under the Exchange Act for the purpose of trading futures on such securities, will not have a significant economic impact on a substantial number of small entities for the following reasons. First, the proposed amendment imposes no record-keeping or compliance burden in itself and merely allows, in effect, the marketing and trading in the United States of futures contracts overlying the government debt securities of Portugal. Second, because futures contracts on the twenty-one countries whose debt obligations are designated as ''exempted securities'' under the Rule, which already can be traded and marketed in the United States, still will be eligible for trading under the proposed amendment, the proposal will not affect any entity currently engaged in trading such futures contracts. Third, because those primarily interested in trading such futures contracts are large, institutional investors, neither the availability nor the unavailability of these futures products will have a significant economic impact on a substantial number of small entities, as that term is defined for broker-dealers in 17 CFR 240.0–10.

Dated: July 21, 1999.

Arthur Levitt, Jr.,

*Chairman.*

[FR Doc. 99–19415 Filed 7–28–99; 8:45 am]

BILLING CODE 8010–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 1, 22, 24, 26, 27, 73, 74, 80, 87, 90, 95, 97, and 101

**[WT Docket No. 99–87, RM–9332, RM–9405; DA 99–1431]**

## Comments Requested on Licensing of PMRS Channels in the 800 MHz Band for Use In Commercial SMR Systems

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; request for additional comments.

**SUMMARY:** This document supplements the *Notice of Proposed Rule Making* (''*NPRM*'') published in the **Federal Register** of May 3, 1999, regarding Revised Competitive Bidding Authority. This document requests comment on whether the Commission should amend its licensing rules for the 800 MHz band to allow the incorporation of Private Mobile Radio Service channels into a Commercial Mobile Radio Service system.

**DATES:** Comments must be filed on or before August 2, 1999 and reply comments must be filed on or before September 16, 1999.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, S.W., Room TW–A325, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Gary D. Michaels, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660, or Ramona Melson, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0680.

**SUPPLEMENTARY INFORMATION:** This is a summary of a *Public Notice* (DA 99–1431) released on July 21, 1999. The full text of the *Public Notice* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C. 20554, and may also be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. The *Public Notice* is also available on the Internet at the Commission's web site: http://www.fcc.gov/wtb/documents.html.

## Synopsis of Document

1. On July 21, 1999, the Wireless Telecommunications Bureau (''Bureau'') issued an *Order* (DA 99–1404) conditionally granting in part and denying in part 50 Requests for Waiver submitted by Nextel Communications, Inc. (''Nextel'') in conjunction with applications seeking the Commission's consent to assignment of Part 90 Private Mobile Radio Service (''PMRS'') Business channels from various entities to Nextel (''*Nextel Order*''). In its waiver requests, Nextel indicated that it desired to utilize these PMRS frequencies for Commercial Mobile Radio Service (''CMRS'') operation in its 800 MHz Specialized Mobile Radio (''SMR'') systems. Nextel sought waiver of Sections 90.617 and/or 90.619 of the Commission's rules, 47 CFR 90.617 and 90.619, because these rules do not permit the authorization of SMR systems on Business Radio Category and Industrial/Land Transportation Category channels.

2. In the *Nextel Order,* the Bureau conditionally granted Nextel's waiver requests to the extent that Nextel will use the PMRS frequencies predominantly to relocate incumbent licensees on the upper 200 channels of the 800 MHz band. However, the Bureau denied Nextel's waiver requests to the extent that Nextel sought a waiver for the purpose of incorporating PMRS Business channels in its CMRS system.

3. In the *Nextel Order,* the Bureau concluded that the practical effect of granting Nextel's waiver requests would have been to establish a policy of general applicability for all Private Land Mobile Radio (''PLMR'') channels. Thus, the Bureau determined that the issue of incorporating PMRS channels into CMRS systems was better addressed in a rulemaking proceeding than in a rule waiver proceeding. The Bureau noted

that the Commission recently adopted a *Notice of Proposed Rule Making,* seeking comment on the impact of the Balanced Budget Act of 1997 on the Commission's licensing schemes for private radio services. *See* Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, WT Docket No. 99–87, RM–9332, RM–9405, *Notice of Proposed Rule Making,* 64 FR 23571, May 3, 1999 (''*Balanced Budget Act NPRM*''). In light of the ongoing proceeding examining licensing issues concerning private spectrum in the 800 MHz band, as well as other bands, the Bureau decided that it would not grant a broad waiver of existing licensing rules for the 800 MHz band.

4. In the *Balanced Budget Act NPRM,* the Commission noted Nextel's pending waiver requests in seeking comment on whether it should consider the purpose for which spectrum is used or allocated in deciding whether to implement geographic area licensing. The Bureau issues this *Public Notice* as a supplement to the *Balanced Budget Act NPRM.* The Bureau specifically incorporates the record gathered in response to Nextel's waiver requests into WT Docket No. 99–87 and seeks comment on the underlying issues raised by Nextel's waiver requests. Specifically, the Bureau seeks comment on whether the Commission should amend its licensing rules for the 800 MHz band to allow the incorporation of PMRS channels into a CMRS system. The Bureau seeks comment on whether the licensing of PMRS frequencies in the 800 MHz band for commercial SMR use would serve the public interest. If parties believe it would be in the public interest to allow PMRS channels in the 800 MHz band to be incorporated into a CMRS system, but only under certain conditions, they should describe these conditions and address how they should be implemented and enforced.

5. Comments and reply comments submitted in response to this Public Notice will be incorporated as part of the record in WT Docket No. 99–87, and addressed by the Commission in that proceeding. Interested parties may file comments on or before August 2, 1999. Parties interested in submitting reply comments must do so on or before September 16, 1999. Parties should limit their comments to the issue of licensing PMRS spectrum in the 800 MHz band for commercial SMR use.

6. All comments should reference WT Docket No. 99–87 and should be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW–A325, Washington, DC 20554. In addition, courtesy copies of each filing should be sent to Gary D. Michaels, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, and Ramona Melson, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Washington, DC 20554. A copy of each filing should also be sent to International Transcription Services, Inc., 445 Twelfth Street, S.W., Room CY–B400, Washington, DC 20554.

7. Copies of comments and reply comments will be available for inspection and duplication during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, DC 20554. Copies also may be obtained from International Transcription Services, Inc., 445 Twelfth Street, S.W., Room CY–B400, Washington, DC 20554, (202) 314–3070.

8. This is a permit-but-disclose proceeding. *Ex-parte* presentations are permitted provided that they are disclosed as specified in the Commission's rules. *See generally,* 47 CFR 1.1202, 1.1203, and 1.1206.

Federal Communications Commission.

**Mark R. Bollinger,**

*Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.*

[FR Doc. 99–19496 Filed 7–28–99; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF DEFENSE

## 48 CFR Parts 201 and 213

**[DFARS Case 99–D002]**

## Defense Federal Acquisition Regulation Supplement; Overseas Use of the Purchase Card

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed a rule; extension of comment period.

**SUMMARY:** This extends the public comment period for the proposed rule published in the **Federal Register** at 64 FR 28134 on May 25, 1999. The rule proposed amendments to the Defense Federal Acquisition Regulation Supplement to permit use of the Governmentwide commercial purchase card for purchases valued at or below $25,000, that are made outside the United States for use outside the United States and are for commercial items. The end of the comment period is extended from July 26, 1999, to August 25, 1999.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before August 25, 1999, to be considered in the formation of the final rule.

**ADDRESSES:** Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms. Susan L. Schneider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted via the Internet should be addressed to: dfars@acq.osd.mil.

Please cite DFARS Case 99–D002 in all correspondence related to this proposed rule. E-mail correspondence should cite DFARS Case 99–D002 in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan L. Schneider, (703) 602–0326. Please cite DFARS Case 99–D002.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

[FR Doc. 99–19393 Filed 7–28–99; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Junaluska Salamander as Endangered With Critical Habitat

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** We, the Fish and Wildlife Service, announce a 12-month finding for a petition to list the Junaluska salamander (*Eurycea junaluska*) under the Endangered Species Act of 1973, as amended (Act). After reviewing all available scientific and commercial information, we have determined that listing is not warranted for the Junaluska salamander at this time.

The status of the Junaluska salamander is more secure than indicated by the petitioners, in a large part because the number of populations is more than twice the number previously known to exist. Further, many of the factors the petitioners identified as those threatening the species are merely conjecture or have been lessened by the finding of additional populations. The species occurs in North Carolina and Tennessee.

**DATES:** The finding announced in this document was made on July 14, 1999.

**ADDRESSES:** Send questions, comments, data, or information concerning this petition to the State Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 160 Zillicoa Street, Asheville, North Carolina 28801. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. J. Allen Ratzlaff at the above address or telephone 828/258–3939, ext. 229.

**SUPPLEMENTARY INFORMATION:**

## Background

Under section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), for any petition to revise the Federal List of Endangered and Threatened Wildlife and Plants that presents substantial scientific and commercial information, we are required to make a finding within 12 months of the date of receipt of the petition as to whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority.

On March 31, 1998, we received a petition dated March 30, 1998, from Appalachian Voices and the Biodiversity Legal Foundation. The petition requested that we list the Junaluska salamander (*Eurycea junaluska*) as an endangered species and designate critical habitat under 16 U.S.C. 1533(a)(3)(A) of the Act. The petition identified timber harvesting, predation by nonnative trout, exposure to acid-bearing rock, siltation, genetic drift, the inadequacy of current laws, and random events as immediate threats to the species' continued existence. We made a 90-day finding that the petition presented substantial information indicating that the requested action may be warranted. We announced the 90-day finding and the initiation of a status review in the **Federal Register** on October 28, 1998 (63 FR 57640).

The processing of this petition conforms with our final listing priority guidance for fiscal years 1998 and 1999, published in the **Federal Register** on May 8, 1998 (63 FR 25502). The guidance calls for giving highest priority to handling emergency situations (Tier 1); second highest priority to resolving the listing status of outstanding proposed listings, resolving the conservation status of candidate species, processing administrative findings on petitions, and processing a limited number of delistings and reclassifications (Tier 2); and third priority to processing proposed and final designations of critical habitat (Tier 3). The processing of this petition falls under Tier 2.

We reviewed the petition, the literature cited in the petition, and other available literature and information, and consulted with biologists and researchers familiar with the Junaluska salamander. Based on the best available scientific and commercial information, we find that listing the Junaluska salamander (*Eurycea junaluska*) as endangered or threatened is not warranted at the present time.

The Junaluska salamander is an aquatic to semi-aquatic lungless (*plethodontid*) salamander known from a portion of the Blue Ridge Mountains in southwestern North Carolina and southeastern Tennessee. Bruce and Ryan (1995) described the habitat of the Junaluska salamander at three sites in North Carolina as relatively low-elevation and wide-basin streams, with sand-gravel substrates and numerous large rocks that serve as refugia and brooding sites.

Prior to receiving the petition, we had some knowledge of the status of the Junaluska salamander, principally from North Carolina. Consequently, we had already initiated a status survey for the Tennessee portion of the species' range. Through this survey and surveys being conducted by the National Park Service in the Great Smoky Mountains National Park, biologists observed the Junaluska salamander in 11 additional streams, for a total of 17 inhabited streams. Many of these streams are on National Park Service land, where the species receives considerable protection. The discovery of additional populations also lessens the potential impacts that any particular project or random event could have on the species. We do not expect any of the other threats outlined by the petitioner to occur so quickly or extensively as to pose substantial immediate threats to the Junaluska salamander's continued existence. There is no direct evidence of any population decline and no populations are known to have been lost since the species was described, though it is likely that reservoir impoundment negatively affected some populations. While small populations are inherently more vulnerable to extirpation, many of the reservoirs in the salamander's range have been in place for more than 60 years, and there is no evidence that the smaller populations are suffering from genetic problems. Additionally, there is no evidence to suggest that predation by nonnative trout is a significant threat to the species. Trout feeding studies conducted in western North Carolina show that salamanders are a rare food item for trout (Tebo and Hassler 1963).

We now consider threats to the Junaluska salamander to be low. Listing this species as either threatened or endangered is not appropriate at this time because it is not presently in danger of extinction or likely to become so in the foreseeable future. However, in the event that conditions change and the species becomes imperiled due to the factors discussed in this finding, or other unforseen factors, we could propose to list the species under the Act or, if circumstances warranted, invoke the emergency listing provisions of the Act.

## References Cited

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

Author: The primary author of this document is Mr. J. Allen Ratzlaff (see **ADDRESSES** section).

## Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: July 14, 1999.

**Marshall P. Jones,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 99–19425 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–55–P

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AC91**

# Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule To List the Least Chub as Endangered With Critical Habitat

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** We withdraw the September 29, 1995, proposed rule to list the least chub (*Iotichthys phlegethontis*), a fish, as an endangered species with critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act). After reviewing all available scientific and commercial information we find that the least chub is no longer likely to become endangered in the foreseeable future throughout all or a significant portion of its range.

Habitat loss and degradation were significant threats to the least chub at

the time of the proposed rule and a major causes of the least chub's decline. Conservation activities implemented in the last several years have significantly reduced these threats. Enhancement, maintenance, and protection projects implemented over the last several years have focused on those specific factors that have contributed to habitat degradation. Extensive monitoring of the status of the least chub indicate that the status of the species has improved. The known range of the least chub was enlarged by the inclusion of three previously unknown populations discovered during surveys in historical habitats.

The State of Utah, other cooperating agencies and stakeholders continue as active participants in the effort to reduce or eliminate threats to the least chub through the implementation of the Least Chub Conservation Agreement and Strategy (Perkins *et al.* 1997). This Agreement calls for enhancement, maintenance, and protection of least chub habitat, as well as the development of mitigation protocols for proposed water development and future habitat alteration. Conservation actions implemented since the publication of the proposed rule include extensive surveys, habitat protection and enhancement activities, the acquisition of wetland habitat, genetic studies and the introduction of the least chub onto Fish Spring National Wildlife Refuge.

**ADDRESSES:** The complete administrative file for this rule is available for inspection, by appointment, during normal business hours at the Utah Field Office, Ecological Services, U.S. Fish and Wildlife Service, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115.

**FOR FURTHER INFORMATION CONTACT:** Mr. Reed E. Harris, Field Supervisor, Utah Field Office, at the above address, telephone (801)524–5001.

**SUPPLEMENTARY INFORMATION:**

## Background

The least chub is a small monotypic (the sole member of its genera) minnow (Family Cyprinidae), less than 2.5 inches long, that is endemic to the Bonneville Basin of Utah, an area within the Great Basin of southwestern North America. The least chub has a very oblique or upturned mouth, large scales, and lacks a lateral line (rarely with one or two pored scales). It has a deeply compressed body and a slender caudal peduncle (the narrowest section of the rear of the body just anterior to the caudal fin). A colorful fish, the least chub has a gold stripe along its blue sides with white to yellow fins. Males are olive-green above, steel-blue on the sides, and have a golden stripe behind the upper end of the gill opening. The fins are lemon-amber, and the paired fins are sometimes bright golden-amber. Females and young are pale olive above, silvery on the sides and have watery white fins. Their eyes are silvery with only a little gold coloration, rather than golden as in the males (Sigler and Miller 1963).

Historically, the least chub was widely distributed within the Bonneville Basin of northwestern Utah. The species occupied a variety of aquatic habitats including springs, streams, and ponds and was classified as excessively common in its preferred habitats (Jordan and Evermann 1896). The species was historically found in the Beaver River, ponds near the mouth of the Provo River, tributaries of the Great Salt Lake and Sevier Lake, Utah Lake, Parawan Creek, Clear Creek, the Provo River, Gandy Salt Marsh, and the Leland Harris Spring complex (Cope and Yarrow 1875; Jordan 1891, cited in Jordan and Evermann 1896; Sigler and Miller 1963; Hickman 1989).

The proposed rule to list the least chub as endangered with critical habitat (60 FR 50518, September 29, 1995) was based on the decline of the species' occupied range, its relative abundance, and the continued threats to the species' survival. A decline in distribution and abundance of the least chub was first noted in the 1940's and 1950's (Baugh 1980; Holden *et al.* 1974). The decline of the species has been attributed to predation and competition from nonnative species, and habitat loss and alteration. The known distribution of the species at the time it was proposed for listing was limited to the Snake Valley in northwestern Utah, where the species inhabits springs, marshes, pools and stream habitats. Since the proposed rule to list the species as endangered with critical habitat was published, the existing range of the species has expanded to include two newly discovered populations along Utah's Wasatch Front, one newly discovered population at Lucin Pond in Box Elder County, and a new population at the Fish Springs National Wildlife Refuge (FSNWR) where the least chub has been introduced into two springs. Additional introductions at the Refuge are planned for the spring of 1999.

Conservation actions implemented since publication of the proposed rule to reduce the threats to the least chub and conserve the species include—

(1) *Extensive surveys throughout least chub historical habitat.* Surveys have identified three previously unknown populations; one at Lucin Pond in Box Elder County, Utah, where a 1989 least chub introduction effort was thought to have failed; and two populations discovered along Utah's Wasatch Front, one at a spring complex in Juab County and another in the Sevier River drainage in Mills Valley.

(2) *Habitat protection and enhancement activities.* In 1995, the Bureau of Land Management (BLM) constructed a second cattle exclosure (a barrier for the exclusion of cattle) on part of the Gandy Salt Marsh Complex in order to protect occupied least chub habitat. BLM has also entered into an extension agreement with a private landowner to fund an additional cattle exclosure, a small dam to control water releases, and fencing materials at and surrounding a spring head in least chub occupied habitat in the Utah's West Desert. The fencing material will be used to implement a rotational grazing system to decrease grazing pressure at this least chub occupied spring head and adjacent marsh habitat. The project will be completed in the summer of 1999. Plans to implement an additional rotational grazing system at a nearby spring source are being negotiated with a private landowner. BLM has also declined a request from Juab County, Utah, to implement a mosquito control spraying operation in marsh and spring areas on BLM lands occupied by least chub. The State of Utah has further begun discussions with Juab County to protect occupied least chub habitats on private lands from this threat. BLM conducted several years of intensive habitat use studies in least chub occupied springs to better define the habitat needs of the species. The Utah Reclamation Mitigation and Conservation Commission (URMCC) also acquired 85.5 acres (ac) (34.6 hectares (ha)) of wetland habitat occupied by least chub along Utah's Wasatch Front. Negotiations are currently underway with the landowner to acquire either a conservation easement or fee title for an additional 20 ac to protect this sensitive habitat. A management plan for these acquired habitats and fencing projects to exclude cattle are scheduled for completion by the summer of 1999.

(3) *Range expansion activities.* In addition to expanding the known range of the species by locating three additional populations, two introductions were completed at FSNWR after removal of nonnative species was completed. Introductions of least chub in two additional springs at the Refuge will be completed in the spring of 1999 after nonnative species were removed last fall. An interpretive sign will be posted at these sites to

inform visitors to the Refuge of the life history and presence of this sensitive species. Negotiations are also underway to introduce the least chub to a suitable spring on lands managed by Hill Air Force Base. To assist with range expansion activities and the development of least chub brood stock, as well as other native species, feasibility studies were done at Gandy and Goshen Warm Springs for a native aquatic/warm water species hatchery. To further assist with range expansion activities, potential survey and reintroduction sites were identified from historic least chub habitat using aerial photography.

(4) *Nonnative interactions.* To remove the threat to least chub and other native species from competition and predation by nonnative species, in 1997 the State of Utah enacted a new policy for Fish Stocking and Transfer Procedures that specifically protects native species, including the least chub. Additionally, nonnative species were removed from springs at the FSNWR prior to introducing least chub. Nonnative species will also be removed from any new introduction or reintroduction sites. Selective removal of nonnative species will continue at occupied least chub habitats.

(5) *Genetic analysis.* Utah State University is conducting genetic characterization of all known least chub populations and is expected to complete this effort by the fall of 1999. This information will be used for developing broodstock for the planned warmwater fish hatchery and for reintroduction efforts.

**Previous Federal Action**

We have conducted three status reviews and prepared two status reports on the least chub. In 1980, we reviewed all existing information on the least chub and determined that insufficient data was available to warrant listing as either endangered or threatened. On December 30, 1982, we classified the least chub as a category 2 candidate species (47 FR 58454). We included this species again as a category 2 candidate in the revised vertebrate notice of review of September 18, 1985 (50 FR 37958). Category 2 comprised taxa for which there was available biological information in our possession indicating that listing was possibly appropriate, but the information was insufficient to support listing the species as endangered or threatened. After preparation of a 1989 status report, we reclassified the least chub as a category 1 candidate species (54 FR 554; January 6, 1989).

We included this species as a Category 1 candidate in the Animal Candidate notice of review of November 21, 1991 (56 FR 58804), and maintained it as a Category 1 species in the subsequent Animal Candidate notice of review of November 15, 1994 (59 FR 58982). Category 1 comprised taxa for which sufficient information was on file to support proposals for endangered and threatened status. On February 28, 1996, we published a notice of review in the **Federal Register** (61 FR 7596) that discontinued the use of different categories of candidate species. Candidate species are now those species for which sufficient information is on file detailing biological vulnerability and threats to support issuance of a proposed rule, but issuance of the proposed rule is precluded by other listing actions.

On September 29, 1995, after reviewing available information, we proposed the least chub as an endangered species with critical habitat (60 FR 50518). We solicited public comment on the proposal and informed the public of the availability of a public hearing upon request. Several requests for a public hearing were made in writing to our Utah Field Supervisor. However, due to the moratorium on listing actions imposed by Congress in 1995, we postponed further actions regarding the least chub proposal.

A serious backlog of listing actions resulted from decreases in the listing budget beginning in Fiscal Year 1995 and as a result of a moratorium on certain listing actions during parts of Fiscal Year 1995 and Fiscal Year 1996. The enactment of Public Law 104–6 in April 1995 rescinded $1.5 million from our budget for carrying out listing activities through the remainder of Fiscal Year 1995. Public Law 104–6 also prohibited the expenditure of the remaining appropriated funds for final determinations to list species, whether foreign or domestic, or designate critical habitat; thus placing a moratorium on those activities. During the first half of Fiscal Year 1996, the moratorium continued while a series of continuing resolutions provided little or no funding for listing activities. The net effect of the moratorium and reductions in funding resulted in a suspension of all listing activities. The moratorium on final listings and the immediate budget constraints remained in effect until April 26, 1996, when President Clinton approved the Omnibus Budget Reconciliation Act of 1996 and exercised the authority that the Act gave him to waive the moratorium. By that time a backlog of proposed listings for 243 domestic and foreign species had accrued.

To deal with this considerable backlog, we developed and published the Interim (61 FR 9651) and Final Listing Priority Guidelines for Fiscal Year 1996 (61 FR 24722). Using a multi-tiered approach, we prioritized listing activities giving priority to the processing emergency listing actions for species that faced an imminent risk of extinction. During this period, on June 7, 1996, we reopened the comment period on the least chub proposed listing and announced that a public hearing would be held on the proposal on June 27, 1996 in Wendover, Utah (61 FR 29047). At the public hearing numerous individuals expressed an interest in meeting with us to discuss the proposed listing of the least chub and other options available to conserve the species, in particular, the idea of a conservation agreement. In response to this interest our staff scheduled and attended a public informational meeting in Partoun, Utah on July 17, 1996.

On December 5, 1996, we published a Final Listing Priority Guidance for Fiscal Year 1997 (61 FR 64475) that maintained a four tiered listing priority process, identifying the processing of final decisions on proposed listings as the tier two activity. However, the effort required to update status information on the least chub and our work on other higher priority species delayed publication of a final rule to list the least chub.

On September 25, 1997, we announced the availability of a draft conservation agreement for the least chub and comment on the draft document from the public was solicited (62 FR 50394). On May 8, 1998, we published in the **Federal Register** the Final Listing Priority Guidance for Fiscal Years 1998 and 1999 (63 FR 25502). This new guidance adopted the existing three-tiered approach and further identified that during Fiscal Years 1998 and 1999 we will concurrently undertake: tier 1 emergency listing actions and; tier 2, the processing of final decisions on proposed listings, resolving the conservation status of candidate species, processing administrative findings on petitions to add species to the lists and petitions to delist or reclassify species, and a limited number of delisting or reclassifying actions. Tier 3 encompasses the processing of critical habitat determinations. This final listing decision for the least chub is a tier 2 activity under the current listing priority guidance.

**Summary of Comments and Recommendations**

In the September 29, 1995, proposed rule and the associated notifications, we invited all interested parties to submit comments or suggestions concerning biological information and potential threats to the least chub that might contribute to the development of a final rule to list the least chub as an endangered species with critical habitat. We requested comments directly from appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties. We also published a notice inviting general public comment on the proposed listing in the following newspapers— Salt Lake Tribune/Deseret News, Millard County Chronicle, Fillmore Chronicle Progress, Tooele Transcript Bulletin, Nephi Times News, and the Wendover Times. We received no public comments in response.

We received requests to hold a public hearing on the proposed listing from three separate parties, all landowners within the Snake Valley of western Utah. On June 7, 1996, we published a notice in the **Federal Register** reopening the comment period on the least chub proposed listing until July 15, 1996, and also announced that a public hearing would be held on the proposal on June 27, 1996, in Wendover, Utah (61 FR 29047). In addition to the announcement in the **Federal Register** and in local newspapers, we sent a letter to all interested parties announcing the date of the public hearing and the extended closing date for public comment. Six parties presented testimony at a public hearing held on June 27, 1996, in Wendover, Utah. At the public hearing many individuals expressed an interest in meeting with us to discuss the proposed listing of the least chub and other options available to conserve the species, the idea of a conservation agreement was of particular interest. In light of the above request, we held a second public informational meeting in Partoun, Utah on July 17, 1996, that was attended by nineteen individuals.

During the comment period we received written and oral comments from 17 parties, including the testimony presented at the public hearing. We received comments from two State agencies, two environmental organizations, nine private individuals or groups, and four representatives of the petroleum and energy industry. Of the 17 comments received, 1 supported the listing, 11 opposed the listing, 2 were neutral, and 3 recommended the development of a conservation agreement. We have combined written and oral statements from both the public hearing and the comment period in the following discussion. Comments and other information submitted by respondents are incorporated into this notice of withdrawal and organized into specific issue topics. These issues and our response to each are summarized as follows—

*Issue 1*: Several respondents suggested that listing was not warranted given the current conservation efforts on behalf of the least chub, including the conservation agreement being developed by the State of Utah. These comments generally supported efforts in behalf of the agreement rather than listing the species.

*Service Response*: We actively participated in the development of the conservation agreement and believe that its continued implementation will facilitate the recovery of the species. The implementation of the conservation measures outlined in the agreement has reduced the actual and potential threats to the species. These efforts are directed at restoring and maintaining least chub populations throughout its historic range to ensure its continued existence. For a list of conservation actions completed to date, please refer to the Background discussion of this rule.

*Issue 2*: Several respondents opposed the listing due to direct economic impacts to the local livestock industry, petroleum and energy industries from the proposed listing and designation of critical habitat.

*Service Response*: Under the Act, the Secretary must make determinations on the listing of species solely on the basis of the best available scientific and commercial information without reference to economic or other social impacts. The listing of the least chub could indirectly affect some industry sectors by modifying the allowable land use practices on certain Federal lands. However, we believe that if the least chub became listed in a final rule there would be no significant impact upon either the livestock, petroleum, or energy industries. The Act requires that Federal agencies consult on any action they undertake, authorize or fund which may affect a proposed or listed species. However, in the majority of cases consultation neither slows or halts project planning or construction. In fact, the likelihood that any implementation or enforcement actions resulting from a species listing under the Act would result in economic impacts is minimal, given the ready availability of conservation tools and balancing mechanisms such as incidental take permits, habitat conservation plans, and safe harbor agreements.

*Issue 3*: One respondent suggested that a more proactive approach be taken in working with Snake Valley citizens to assure adequate habitat restoration, species reintroduction, and recovery of the least chub.

*Service Response*: In response to considerable local concern regarding the listing of the least chub, we held a public hearing on June 27, 1996, and a second public informational meeting on July 17, 1996, for the citizens of Snake Valley, Utah. During these meetings issues such as the development of a conservation agreement, the possibility of Safe Harbor Agreements, and the local involvement of the public, especially school children, in the conservation of the species were discussed.

We are actively working in a cooperative effort with the State of Utah and with private landowners located within Miller Springs and Leland Harris Spring Complex, to protect populations of least chub through the Partners for Wildlife Program. To support this effort, Federal and State funds were disbursed for such conservation measures as the purchase of fencing materials to exclude cattle from the spring heads and to allow for implementation of a rotational grazing regime to lessen cattle impacts at the spring complexes.

*Issue 4*: One respondent raised the issue of reintroducing the least chub onto the FSNWR which is already under our management and within the historical range of the species.

*Service Response*: On July 11, 1997, we entered into a Challenge Cost Share Agreement with the State of Utah under the authority of the U.S. Fish and Wildlife Coordination Act (16 U.S.C. 661–667) and the provisions of the Interior and Related Agencies Appropriation Act (Public Law 104–208, 110 STAT. 3009). The purpose of this agreement is to facilitate the reintroduction of the least chub onto the FSNWR. FSNWR is located within the historical range of least chub and offers high potential for creating refugia for additional populations to aid recovery. Funds have already been disbursed pursuant to this agreement to implement structural changes at the Refuge, eliminate nonnative mosquitofish, and to introduce least chub into two springs on the refuge. There are also plans for the introduction of least chub into two additional springs on the Refuge and the construction of an educational bulletin board alongside one of these springs.

*Issue 5:* One respondent suggested that since there are no recent studies

assessing least chub population status, that such studies be initiated as soon as possible to ascertain its occurrence, genetic purity, and habitat condition.

*Service Response:* Through the combined effort of the Utah Division of Wildlife Resources, BLM, and ourselves the yearly monitoring of least chub populations was expanded to include extended surveys for least chub within historical habitat. These extended surveys have resulted in the identification of two previously unknown populations of least chub along Utah's Wasatch Front, where the species was previously considered extirpated (no longer present), and an additional population in Box Elder County.

Researchers at Utah State University have initiated the genetic analysis of all known least chub populations with completion of this analysis scheduled by Spring of 1999. In separate research efforts, least chub habitat condition, availability and use are being analyzed in several different ways. BLM is conducting an extensive habitat use survey of all known least chub populations in the Snake Valley. The State of Utah also has conducted aerial photography in Utah's West Desert and Wasatch Front to identify potential least chub habitat.

*Issue 6:* One respondent noted that the greatest factor in the decrease of the least chub population is the 10 years of extended drought, and suggested that because the least chub has endured drought in the past that their numbers will again increase when conditions become wetter and additional springs begin flowing.

*Service Response:* Researchers have identified nonnative fish predation and competition (Hickman 1989; Osmundson 1985) and direct physical habitat loss and habitat degradation (Holden et al. 1974; Hickman 1989; Crist 1990) as factors in the decline of the least chub. While drought may play a role in the current reduced numbers of the species, historically, the species has been able to recover from such drought-induced declines. Presently, however, other factors such as habitat loss and degradation, and nonnative fish predation and competition, may be contributing to slower species recovery.

*Issue 7:* One respondent noted that cattle have coexisted with least chub for over 100 years and explained that livestock grazing practices have improved considerably and that ranchers are no longer mismanaging pasture land with continuous grazing as in the past.

*Service Response:* Livestock grazing practices have improved. However, in the proposed rule to list the least chub as endangered (60 FR 50518), we identified habitat degradation caused by livestock trampling as a significant threat to the species. Additionally, large influxes of organic material to springheads as a result of livestock activities may result in the extirpation of least chub from these habitats. Local ranchers are working with us in an effort to secure funding and manpower for fencing projects on private lands to provide for rotational grazing practices and/or exclusion of cattle from least chub occupied springheads.

*Issue 8:* One respondent expressed the opinion that there are unsurveyed spring complexes that probably contained least chub and suggested that these areas had not been surveyed because they were on the military's test and training range where access has been denied.

*Service Response:* Cooperating staff biologists for the military continue to periodically advise us of the status of the species and of the availability of habitat on military lands. Presently there are no known populations of least chub on military lands. However, we have joined with staff of the military's test and training range and the State of Utah to begin discussions with the goal of introducing least chub into unoccupied springs on military lands in Utah's West Desert.

*Issue 9:* One respondent, who supported the listing and critical habitat designation, suggested that BLM needed greater inducements to abate or prevent habitat degradation than are presently provided under BLM's current stipulations or activity plan objectives.

*Service Response:* If the least chub became listed under the Act, BLM would have an affirmative obligation under section 7(a)(1) of the Act to utilize its authorities in furtherance of the purposes of the Act and to carry out programs for the conservation of endangered and threatened species. BLM has been a participating member of both the Least Chub Conservation Technical Team and the Bonneville Basin Conservation and Recovery Team since the inception of both teams. BLM is also involved in several fencing projects designed to exclude cattle from spring heads occupied by least chub and is currently involved in evaluating habitat preferences of least chub in the West Desert. Furthermore, BLM is a signatory to the Least Chub Conservation Agreement and, as such, has agreed to protect and conserve the species.

*Issue 10:* One respondent expressed the opinion that although human activity has had an impact on the welfare of the least chub, it is endangered primarily because Lake Bonneville has dried up. The respondent anticipated, therefore, that the endangerment of this fish was inevitable.

*Service Response:* Ancient Lake Bonneville has undergone at least ten separate cycles of desiccation and flooding. The most recent desiccation occurred approximately 10,000 years ago and the Great Salt Lake has remained relatively stable since that time. Least chub were abundant until the 1940's and 1950's at which time a decline in their distribution and abundance was noted (Baugh 1980). This decline can be attributed to human intervention through habitat loss and alteration and the introduction of nonnative species.

*Issue 11:* One respondent identified that some oil and gas leases have been denied in anticipation of the least chub endangered species designation.

*Service Response:* We proposed the least chub as an endangered species in September 29, 1995. Prior to this, it was a candidate species for listing under the Act. As a precautionary measure Federal agencies proposing projects that may affect sensitive species would take the sensitive status of the species into consideration, whether or not it is actually listed under the Act. The protection and conservation of sensitive species is cost effective for project proponents as well, for it may preclude the need to list a species as federally endangered or threatened pursuant to the Act. When a species is proposed, Federal agencies are required under section 7(a)(4) of the Act to confer on any action which is likely to jeopardize the continued existence of the species.

*Issue 12:* Several respondents suggested that the economic impacts of critical habitat designation be minimized by defining the needed critical habitat as narrowly as possible and restricting it to areas immediately adjacent to springs where the least chub has been identified. One respondent was concerned that the designation of critical habitat would eliminate family operated ranches.

*Service Response:* In determining what areas to propose as critical habitat, we must consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. Such features include but are not limited to the following: (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover,

shelter; (4) sites for breeding, reproduction, rearing of offspring; and generally; (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species. In making this critical habitat determination, areas can only be excluded from the designated critical habitat if the economic or other benefits of exclusion outweighed the benefits of designating the area, unless such exclusion would result in extinction of the species. Critical habitat plays more than an informational role only through section 7 consultations in which the Service reviews proposed Federal actions. Activities on private or state-owned lands that do not involve Federal permits, funding, or other Federal actions are not restricted by the designation of critical habitat, although the ''take'' provisions of sections 9 and 10 of the Act still apply. If no Federal agency is involved in management, funding, or by other means on non-Federal areas with critical habitat, activities on private lands are not subject to the section 7 consultation process for critical habitat. Thus, activities on private or state-owned lands that do not involve Federal permits, funding, or other Federal actions are not restricted by the designation of critical habitat.

**Peer Review**

In accordance with policy promulgated July 1, 1994 (59 FR 34270), we solicited the expert opinions of independent specialists. In a letter dated October 20, 1995, we requested review and comments on the proposed listing rule from knowledgeable parties. This letter further identified that such advice would be helpful in the decision as to the proposed rule and specifically requested assistance in—(1) providing any factual data concerning the conservation of the species; (2) advising of any special consideration that should be taken into account prior to our final decision of the species status; (3) advice as to whether it would be prudent and determinable to designate critical habitat for the species at this time and; (4) providing any other relevant advice or guidance. We received no additional comments or information in response to this request.

**Summary of Factors Affecting the Species**

We must consider five factors described in section 4(a)(1) of the Act when determining whether to list a species. These factors, and their effects on the decision to withdraw the proposal to list the least chub, are as follows—

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Historically, least chub were widely distributed within the Bonneville Basin of northwestern Utah and occupied many streams, springs, and ponds (Cope and Yarrow 1875; Jordan 1891, cited by Jordan and Evermann 1896; Sigler and Miller 1963; Hickman 1989). At the time of the proposed listing of the species, least chub surveys and monitoring had indicated a steady decline in their distribution and numbers. Extensive monitoring in pre-established sites conducted in the three marsh complexes which comprise the majority of least chub habitat in Utah's West Desert indicated that in 1993, 51.4 percent of springs sampled contained least chub while in 1994, 43.8 percent contained least chub and in 1995, 40.5 percent were occupied by least chub. Habitat loss and degradation have been indicated as major causes of the least chub's decline (Holden *et al.* 1974; Hickman 1989; Crist 1990). Conservation activities implemented over the last several years have reduced the threats to the least chub from habitat loss and degradation. The downward trend in least chub occupied springs in the Utah's West Desert was slowed and in 1998 reversed. Monitoring data from 1996 identified that 40.0 percent of springs sampled contained least chub while in 1997, 38.4 percent were occupied and in 1998, 43.1 percent were occupied by least chub.

Enhancement, maintenance, and protection projects implemented over the last several years have focused on those specific factors that have contributed to habitat degradation such as livestock trampling and grazing, water development and mining activities. Many activities are already underway. In 1995, BLM constructed a second cattle exclosure on part of the Gandy Salt Marsh Complex in order to protect occupied least chub habitat. An extension agreement is being developed with a private landowner to fund an additional cattle exclosure around a springhead in least chub occupied habitat in Utah's West Desert. In addition, plans to implement a rotational grazing system to decrease grazing pressure at sensitive least chub occupied springs are in negotiation with a private landowner. The Utah Division of Wildlife Resources has completed aerial photography mapping of all least chub potential habitat, in part, to assist in the identification of private and public lands available for conservation easements and exclosures, acquisition, wetland revegetation, and water quality improvements. The State of Utah has also developed plans, in conjunction with the BLM, for the dredging of springheads to alleviate accelerated succession of spring complexes. BLM further declined a request from Juab County, Utah, to implement a mosquito control spraying operation in marsh and spring areas on BLM lands occupied by least chub. The State of Utah has initiated discussions with the County to protect occupied least chub habitats on private lands from this threat. BLM, in addition to the annual habitat surveys conducted during least chub monitoring, has conducted several years of intensive habitat use studies in least chub occupied springs to better define the habitat needs of the species. Acquisition of wetland habitat occupied by least chub along Utah's Wasatch Front is underway, with the purchase of approximately 85.5 ac (34.6 ha) completed by the end of 1998 and additional purchases under negotiations. This habitat will then be enhanced by removal of cattle, re-opening springheads that have been impacted by cattle, reseeding with native vegetation, and selective removal of nonnative species.

In addition to the above completed and planned conservation activities, the development of the Least Chub Conservation Agreement, a multi-agency cooperation effort, has established a means to curtail future habitat loss and degradation. The Agreement calls for enhancement, maintenance, and protection of least chub habitat, as well as the development of a mitigation protocol for proposed water development and future habitat alteration. The Agreement requires; (1) enhancement and/or restoration of habitat conditions in designated areas throughout the historical range of least chub, including bank stabilization, riparian/spring fencing, and sustainable grazing practices; and (2) maintaining and restoring, where possible, the natural hydrologic characteristics and water quality.

B. *Over utilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not presently a factor in the decline of the species. Although some least chub specimens have been collected for scientific and educational purposes (Sigler and Workman 1975; Workman *et al.* 1979; Crawford 1979; Osmundson 1985), such collections do not presently present a significant threat. No commercial or recreational uses for the least chub are known at this time.

C. *Disease or predation.* The introduction of nonnative species into

least chub habitat has contributed to the decline of the least chub (Workman *et al.* 1979; Hickman 1989; Osmundson 1985). Predation by nonnative fishes has been a major factor in the decline and extirpation of desert fishes in southwestern North America (Shoenherr 1981; Meffe 1985; Minckley *et al.* 1991). Surveys of spring complexes indicate that where nonnative fishes have been introduced, few if any least chub remain (Osmundson 1985). To reduce this threat to the least chub the following conservation activities have been implemented. In 1997, the State of Utah enacted a new policy for Fish Stocking and Transfer Procedures that specifically protects native species, including the least chub. The new policy puts the protection of native aquatic species above the enhancement of recreational fisheries providing for fish stocking and transfer in a manner that does not adversely affect the long term viability of native aquatic species or their habitat and, among other things, aiding native species conservation. Additional activities completed to remove the threat of competition and predation by nonnative species include the removal of all nonnatives from two springs at FSNWR prior to introducing least chub, and at two additional springs in the fall of 1998 prior to reintroductions proposed for 1999. Nonnative species will be removed from any future introduction or reintroduction sites. Selective removal of nonnative species has and will continue to occur at occupied least chub habitats. To educate the public on the adverse effects of introducing nonnative species to previously unoccupied habitats, an interpretive billboard has been developed and will be installed at FSNWR.

In addition to the conservation activities already implemented and in the planning stages, future threats from disease and predation are directly addressed in the conservation agreement for the Least Chub. The selective control of nonnative species is one of the seven conservation actions to be implemented by the Agreement. Management and control of nonnative species will focus on—(1) determining where detrimental interactions, such as predation, competition, hybridization, or disease occur or could occur; (2) control or modification of stocking, introductions, and spread of nonnative aquatic species where appropriate; and (3) eradication of detrimental nonnative fish where feasible, and control to the maximum extent possible where eradication is not possible. Several species targeted for control and/or eradication include mosquitofish, killifish, and in some cases, nonnative sportfish and forage fish. In addition, in an effort to reduce such threats, we have planned a public education and outreach campaign to explain the benefits of ecosystem integrity, the detrimental effects of nonnative introductions, and the potential for disease transmission from such introductions.

D. *Inadequacy of existing regulatory mechanisms.* While the land ownership of occupied and potential least chub habitat is divided among Federal, State and private landowners, cooperation among the various groups is helping to protect the least chub. The establishment by the State of Utah, in 1997, of a new Fish Stocking and Transfer Procedures Policy established a regulatory mechanism that has and will afford the least chub greater protection from the threats to the species from introductions of nonnative species. Furthermore, the status of the least chub in Utah has changed, for it is now identified as a conservation species. This status identifies the species as one which is currently receiving special management under a conservation agreement. Signatory parties to the conservation agreement include the Utah Department of Natural Resources, BLM, Utah Reclamation Mitigation and Conservation Commission, the U.S. Bureau of Reclamation, the Confederated Tribes of the Goshute Reservation, the Central Utah Water Conservancy District and the Service. The conservation agreement was developed to expedite conservation measures needed for the continued existence and recovery of the least chub. It focuses on two objectives: (1) To eliminate or significantly reduce threats to least chub and its habitat to the greatest extent possible, and (2) to restore and maintain a minimum number of least chub populations throughout its historical range to ensure the continued existence of least chub. These objectives will be met through: determining baseline least chub population, life history, and habitat needs; determining and maintaining genetic integrity; enhancing, maintaining and protecting habitat; selectively controlling nonnative species; expanding least chub populations and range through introduction or reintroduction; monitoring populations and habitat; and developing a mitigation protocol for proposed water development and future habitat alteration that may affect least chub. When the agreement is fully implemented it will provide for the recovery of the least chub by establishing a framework for interagency cooperation and coordination on conservation efforts and setting recovery priorities. In addition to the Agreement, other partnerships will continue to be developed on specific actions within the least chub's range involving other interested agencies or groups. In light of the change in the State status of the least chub, the adoption of the conservation agreement and of a new State stocking policy affording greater protection to the least chub, we conclude that the existing regulatory mechanisms are adequate to address significant threat to the species.

E. *Other natural or human caused factors affecting its continued existence.* Competition and hybridization are identified factors contributing to the decline of the least chub (Lamarra 1981; Sigler and Sigler 1987; Crawford 1979). We expect the control of nonnative species identified in the Least Chub Conservation Agreement as identified in C and D above, to significantly reduce such threats.

A proposed mosquito abatement program for Juab County, Utah, is also a potential threat to least chub. BLM has declined the county's request to implement a mosquito control spraying project on Federal lands. Because spraying by the county may still occur on privately held lands, the Division of Wildlife Resources for the State of Utah has begun negotiations with the Juab County mosquito abatement program to ensure that their activities do not result in additional declines of least chub.

Due to the small number of populations of least chub, they are very susceptible to stochastic (random or naturally occurring) events. The likelihood of such events was identified as a possible threat to the species in the proposed rule. A single catastrophic event could destroy a significant portion of remaining chub habitat, or one or more of their populations. Extensive surveys throughout least chub historical habitat have been conducted over the last six years, and such efforts will continue to identify the known range and populations of least chub. These survey efforts identified three previously unknown populations; one at Lucin Pond in Box Elder County, Utah, where a 1989 least chub introduction effort was thought to have failed; and two populations along Utah's Wasatch Front, one at a spring complex in Juab County and another in the Sevier River drainage in Mills Valley. In addition to expanding the known range of the species by locating three additional populations, FSNRW completed two introductions after removal of nonnative

species, with the introductions of least chub in two additional springs in the spring of 1999. Negotiations are also underway to introduce the least chub to a suitable spring on lands managed by Hill Air Force Base. These additional populations reduce the likelihood of a single catastrophic event affecting a major portion of the population. To assist with range expansion activities and the development of least chub brood stock, as well as other native species, feasibility studies were conducted at Gandy and Goshen Warm Springs for a native aquatic/warm water species hatchery. To further assist with range expansion activities, all least chub historical habitats were aerial photographed to identify potential survey and reintroduction sites.

The expansion in the range of least chub is identified in the Least Chub Conservation Agreement as a necessary action to conserve the species. To expand the range of the least chub, the conservation agreement calls for: (1) Establishing additional populations through introductions or reintroductions from either transplanted (wildstock) or brood stock least chub raised in a designated hatchery; (2) identifying and developing broodstock sources, including identification and taking of wild sources, and hatching and rearing facilities; and (3) restoring least chub populations into appropriate areas.

## Finding and Withdrawal

Section 4(b)(1)(a) of the Act provides that the Secretary shall make listing decisions solely on the basis of the best scientific and commercial data available and after taking into account those efforts being made by any State or foreign nation to protect such species. In accordance with this requirement we have evaluated the species on the basis of each of the five listing factors discussed above; the current improved status of the least chub, and the efforts being made by the State of Utah, other signatories to the Least Chub Conservation Agreement and other private entities; to protect the species. Based on our evaluation of the above information, completed and ongoing actions and protective measures have substantially reduced the threats to the least chub such that the species is not likely to become endangered in the foreseeable future and, therefore, listing is not warranted at this time. We consequently withdraw the proposed rule to list the least chub as endangered with critical habitat.

## Endangered Species Act Oversight

We will continue to monitor the status of the least chub throughout the term of the conservation agreement and maintain oversight. If it is deemed necessary, an emergency listing of the least chub would not be precluded by the 60-day written notice required to withdraw from the conservation agreement. We will initiate the process for listing the least chub if—(1) an emergency which poses a significant threat to the least chub is identified and not immediately and adequately addressed; (2) the biological status of the least chub becomes such that it is in danger of extinction throughout all or a significant portion of its range; or (3) the biological status of the least chub becomes such that it is likely to become endangered in the foreseeable future throughout all or a significant portion of its range. Appropriate notice will be given to signatory members of the Least Chub Conservation Agreement should we find that it is necessary to reinitiate the listing process.

## References Cited

A complete list of all references cited is available upon request from the Salt Lake City Field Office (see **ADDRESSES** above)

Authors: The primary author of this document is Janet A. Mizzi (see **ADDRESSES** above).

## Authority

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

Dated: July 8, 1999.

**John G. Rogers, Jr.,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 99–19360 Filed 7–28–99; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 990304063–9063–01; I.D. 072199B]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Halibut Bycatch Mortality Allowance in the Bering Sea and Aleutian Islands Management Area

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed reapportionment of Pacific halibut bycatch mortality allowance specified for the nontrawl fishery categories; request for comments.

**SUMMARY:** NMFS proposes the reapportionment of the 1999 halibut bycatch mortality allowance specified for the Pacific cod hook-and-line fishery category to the ''other nontrawl'' fishery category in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the harvest of species constrained by the other nontrawl halibut bycatch mortality allowance, in particular Greenland turbot, while not further restricting the hook-and-line Pacific cod fishery. This action is intended to promote the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutians Islands Area (FMP).

**DATES:** Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., August 12, 1999.

**ADDRESSES:** Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801. The final environmental assessment and final regulatory flexibility analysis prepared for the final 1999 total allowable catch (TAC) specifications may be obtained from the same address.

**FOR FURTHER INFORMATION CONTACT:** Andrew Smoker, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the FMP prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP are codified at Subpart H of 50 CFR part 600 and 50 CFR part 679.

The BSAI halibut prohibited species catch (PSC) limit for nontrawl gear is an amount of halibut equivalent to 900 mt of halibut mortality (§ 679.21(e)(2)(i)). The Final 1999 Harvest Specifications of Groundfish for the BSAI (64 FR 12103, March 11, 1999) established the apportionment of the nontrawl halibut PSC limit for bycatch allowances for the Pacific cod hook-and-line and ''other nontrawl'' fisheries as 748 mt and 84 mt respectively. As of July 3, 1999, 480 mt remained of the total 1999 halibut bycatch mortality allowance for the

hook-and-line Pacific cod fishery. The ''other nontrawl'' fishery has exceeded its halibut bycatch mortality allowance by 6 mt and is closed for the remainder of the year unless its halibut bycatch mortality allowance is increased.

The hook-and-line fishery for Pacific cod will reopen on September 15, 1999, and is projected to take as much as 250 mt of halibut mortality for the remainder of 1999. The directed fishery for Greenland turbot, a constituent and primary fishery of the ''other nontrawl'' category, would require an estimated 150 mt of halibut mortality to fully harvest the remaining directed fishing allowance of Greenland turbot.

NMFS has determined, therefore, that a reapportionment of 150 mt of halibut bycatch mortality allowance from the hook-and-line Pacific cod to the ''other nontrawl'' fishery category is necessary to achieve the optimum yield harvest of the BSAI nontrawl fisheries. This reapportionment is based on the best available scientific information pertaining to bycatch rates reported by NMFS-certified observers.

In order to provide greater opportunity to harvest the BSAI Greenland turbot TAC, while not jeopardizing the opportunity to harvest the amount of the Pacific cod TAC allocated to hook-and-line vessels, NMFS proposes to increase the halibut bycatch mortality allowance specified for the other nontrawl fishery category by 150 mt and reduce the halibut bycatch mortality allowance specified for the Pacific cod hook-and-line fishery by the same amount. The halibut bycatch mortality specifications for the 1999 BSAI nontrawl fisheries are listed in Table 7 of the final 1999 harvest specifications (64 FR 12103, March 11, 1999). To accommodate the proposed action, the 1999 BSAI final harvest specifications would be amended by adding the following Table 7A.

TABLE 7A.—1999 BSAI PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI NON-TRAWL FISHERIES

| Non-trawl fisheries | Halibut mortality (mt) BSAI |
|---|---|
| Pacific cod—Total | 598. |
| Jan. 1–April 30 | 457. |
| May 1–Sept. 14 | 0. |
| Sept.15–Dec. 31 | 141. |
| Other non-trawl—Total | 234. |
| May 1–Aug. 31 [1] | 42. |
| Sept.1–Dec.31 | 192. |
| Groundfish pot & jig | exempt. |
| Sablefish hook-and-line | Exempt. |

[1] Consistent with § 679.21(e)(5)(iv)(A), any portion of the first seasonal allowance of the Pacific cod halibut bycatch mortality allowance that is not harvested by the end of the first season will become available on September 15, the beginning of the third season.

NMFS invites public comments on its proposal to reallocate the projected unused amount of halibut mortality from the hook-and-line Pacific cod fishery to the other nontrawl fishery category.

## Classification

This action is authorized under 50 CFR 679.21(e)(4) and is exempt from OMB review under E.O. 12866.

NMFS prepared an environmental assessment (EA) and final regulatory flexibility assessment (FRFA) for the 1999 harvest specifications (See **ADDRESSES**). The proposed reapportionment of the BSAI nontrawl halibut PSC limit is intended to provide fuller opportunity to conduct the fishing activities considered in the EA/FRFA and is fully within the scope of these analyses.

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

Dated: July 23, 1999.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 99–19427 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register
Vol. 64, No. 145
Thursday, July 29, 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

### Submission for OMB Review; Comment Request

July 23, 1999.

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

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

### Food and Nutrition Service

*Title:* 7 CFR Part 235, State Administrative Expense Funds.

*OMB Control Number:* 0584–0067.

*Summary of Collection:* Because the Food and Nutrition Service (FNS) is accountable for State Administrative Expense (SAE) funds by fiscal year, State Agencies (SAs) are requested to report their SAE budget information on that basis. If the State budgets coincide with a fiscal year other than that used by the Federal government, the SA must convert its State budget figures to amounts to be used during the applicable Federal fiscal year for this purpose. Under 7 CFR Part 235, State Administrative Expense Funds, there are five reporting requirements which necessitate the collection of information. They are as follows: SAE Plan, Reallocation Report, Coordinated Review Effort (CRE) Data Base Update, Report of SAE Funds Usage, and Responses to Sanctions. SAs also must maintain records pertaining to SAE. These include Ledger Accounts, Source Documents, Documentation of 10 Percent Transfer Limitation, and Equipment Records. FNS will collect information using forms FCS–74 and 525.

*Need and Use of the Information:* FNS will collect information on the total SAE cost the SA expects to incur in the course of administering the Child Nutrition Programs (CNP); the indirect cost rate used by the SA in charging indirect cost to SAE, together with the name of the Federal agency that assigned the rate and the date the rate was assigned; breakdown of the current year's SAE budget between the amount allocated for the current year and the amount carried over from the prior year; and the number and types of personnel currently employed in administering the CNPs. The information is used to determine whether SA intends to use SAE funds for purposes allowable under OMB Circular A–87, Cost Principles for State and Local Governments; does SA's administrative budget provides for sufficient funding from State sources to meet the Maintenance of Effort requirement; and is SA's staff adequate to effectively administer the programs covered by the SA's agreement with FNS.

*Description of Respondents:* State, Local or Tribal Government.

*Number of Respondents:* 87.

*Frequency of Responses:* Recordkeeping; Reporting: Annually.

*Total Burden Hours:* 20,912.

### Rural Housing Service

*Title:* 7 CFR 3575–A, Community Program Guaranteed Loans.

*OMB Control Number:* 0575–0137.

*Summary of Collection:* The Rural Housing Service (RHS) is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, nonprofit corporations, and Indian tribes for the development of essential community facilities primarily serving rural residents. The Community Facilities Division of the RHS is considered Community Programs under the 7 CFR, part 3575, subpart A. Implementation of the Community Programs guaranteed loan program was effected to comply with the Appropriations Act of 1990 when Congress allocated funds for this authority. The guaranteed loan program encourages lender participation and provides specific guidance in the processing and servicing of guaranteed community facilities loans. RHS will collect information using several forms.

*Need and Use of the Information:* RHS will collect information to determine applicant borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use loan funds for authorized purposes. Failure to collect proper information could result in improper determination of eligibility, improper use of funds, and/or unsound loans.

*Description of Respondents:* Not-for-profit institutions; State, Local or Tribal Government.

*Number of Respondents:* 125.

*Frequency of Responses:* Reporting: Quarterly.

*Total Burden Hours:* 76,977.

### Agricultural Marketing Service

*Title:* Provisions Regulating the Quality of Domestically Produced Peanuts Handled by Persons Not Subject to the Peanut Marketing Agreement.

*OMB Control Number:* 0581–0163.

*Summary of Collection:* Public Law 101–220, enacted December 12, 1989, amended 608(b) of the Agricultural Agreement Act of 1937 (Act) to require all peanuts handled by persons who

have not entered into the Peanut Marketing Agreement (Agreement) to be subject to the same quality and inspection requirements as are in effect under the Agreement. The Agreement, a contract between handlers and the Secretary of Agriculture, requires inspection of peanuts coming from the farm to a handler (incoming inspection) and inspection of peanuts sold by the handler in commercial outlets (outgoing) inspection. Quality requirements include sizing and tolerances for damage, minor defects, moisture, and foreign material. Aflatoxin testing is also required. The Agricultural Marketing Service (AMS) will collect information using forms FV–117, Handlers Monthly Report of Farmers' Stock and FV–117–1, Monthly Report of Dispositions of Peanuts.

*Need and use of the Information:* AMS will collect information on a farmers' stock of their own production; a farmer's stock received form others and from the USDA loan program; the month of which peanuts are received, the source of the peanuts (farmer's name and address), whether the peanuts are custom shelled, remilled or blanched, or crushed for oil, and disposition of residuals. AMS will also collect information on total inedible peanut inventory yet the end of the month and total edible processed inventory at the end of the month; the shipping date of the disposed peanuts, and the location shipped to; lot number; milled certificate number; aflatoxin certification number; aflatoxin test results; and allowed a determination of the type of disposal-remilling or blanching, crushing for oil, animal feed, seed residuals, or exported. The information will be used for administrative assessing billing and compliance purposes as well as being input into the Non-Signer Peanut Program Databases. Without these forms, AMS will not be able to accurately assess each handler.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 33.

*Frequency of Responses:* Recordkeeping; Reporting; Weekly; Monthly.

*Total Burden Hours:* 264.

**National Agricultural Statistics Service**

*Title:* Agricultural Labor Survey.

*OMB Control Number:* 0535–0109.

*Summary of Collection:* The 1938 Agricultural Adjustment Act, as amended in 1948, requires wage rate data for computation of an index component. This component is used in calculation of parity prices. General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204. Agricultural labor statistics are an integral part of National Agricultural Statistics Service (NASS) primary function of collecting, processing, and disseminating current state, regional, and national agricultural statistics. Comprehensive and reliable agricultural labor data are also needed by the Department of Labor in the administration of that H–2A program (non-immigrants who enter the United States for temporary or seasonal agricultural labor) and for setting Advance Effect Wage Rates. The Agricultural Labor Survey is the only timely and reliable sources of information on the size of the farm worker population. NASS will collect information using survey.

*Need and Use of the Information* NASS will collect information on wage rate estimates and the year-to-year changes in these rates and how change in wage rates help measure the changes in costs of production of major farm commodities. NASS will also collect information on data to measure the availability of national farm workers. The information is used by farm worker organizations to help set wage rates and negotiate labor contracts as well as determine the need for additional workers and help ensure federal assistance for farm worker assistance programs supported with government funding.

*Description of Respondents:* Farm.

*Number of Respondents:* 12,425.

*Frequency of Responses:* Reporting; Quarterly.

*Total Burden Hours:* 10,608.

**Farm Service Agency**

*Title:* Tobacco Marketing Quota Referenda Ballot—7 CFR 717.

*OMB Control Number:* 0560–0182.

*Summary of Collection:* The Agricultural Adjustment Act of 1938, as amended, (1938 Act) requires the proclamation of national marketing quotas for tobacco and requires the Secretary of Agriculture to conduct referenda to determine whether producers favor or oppose marketing quotas. Section 312 of the 1938 Act requires the Secretary of Agriculture to proclaim national marketing quotas for tobacco and to conduct a referendum of the farmers who are engaged in the production of the crop of tobacco harvested immediately prior to the referendum to determine whether such farmers are in favor of, or opposed to, national marketing quotas for the next succeeding marketing years. The Farm Service Agency (FSA) will collect information using voting ballots.

*Need and Use of the Information:* FSA will collect information to determine whether marketing quotas will be in effect for certain kinds of tobacco and voters eligibility. Without conducting a referendum, the Secretary would be unable to administer statutory requirements regarding tobacco marketing quotas. If no referendum were held and approved by eligible voters, tobacco producers would not have the benefits of a marketing quota and thereby a price support program.

*Description of Respondents:* Individuals or households; Farms.

*Number of Respondents:* 51,666.

*Frequency of Responses:* Reporting: Other (every 3 yr).

*Total Burden Hours:* 4,300.

**Rural Business-Cooperative Service**

*Title:* Mid-To Upper Level Management and Sales/Field Representative Compensation.

*OMB Control Number:* 0570–NEW.

*Summary of Collection:* The Rural Business-Cooperative Service (RBS) provides technical assistance, research, and education to all types of agricultural cooperatives. RBS has been mandated the responsibility to acquire and disseminate information pertaining to cooperatives under the Cooperative Marketing Act of 1926; 7 U.S.C. 451–457, and Public Law No. 450. Section 3(b). RBS receives an increasing number of inquiries from cooperatives, farm organizations (NCFC, University extension agents, etc.), and other interested clientele asking for updated data on employee compensation and comparable salary information for various job categories; with an added interest for cooperative directors' compensation. The changing agricultural markets, services, and new farming techniques/technology available to cooperatives requires them to closely examine better methods to identify, attract, and retain the employment of competent, productive employees. To attract competent employees, salaries and benefits must be comparable to the skills they bring to the job and what other industries can offer them. RBS will collect information using a study.

*Need and use of the Information:* RBS will collect information to do a comparison of their present salary/benefits base; to evaluate perspective employees' educational and/or work experience and backgrounds in order to formulate an adequate benefit/compensation package. The information will be used by cooperative managers to set their cooperative's salary levels, used as a recruiting tool for new employees, used to analyze the cost effectiveness of their own employee

expenses, use for management planning-staffing costs for future activities, and to reevaluate their salary/benefits base in case of mergers and reorganizations. If the study is not undertaken, the salary and compensation structures adopted by many cooperatives will continue to be diverted from that necessary to attract and hold the quality and type of employees crucial to their ongoing economic success.

*Description of Respondents:* Not-for-profit institutions; Business or other for-profit; Farms; Individuals or households; Federal Government; State, Local or Tribal Government.

*Number of Respondents:* 300.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 300.

**Agricultural Marketing Service**

*Title:* Handling of Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida.

*OMB Control Number:* 0581–0094.

*Summary of Collection:* Mrketing Order No. 905 (7 CFR Part 905), covering handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, is authorized under the Agricultural Marketing Agreement Act of 1937 (Act) (7 U.S.C. 601–674). The Act authorizes the regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate commerce and to improve returns to growers. Regulatory provisions apply to varieties of citrus fruit grown in Florida shipped out of the production area to any market, except those specifically exempt. The Agricultural Marketing Service (AMS) will collect information using several forms.

*Need and Use of the Information:* AMS will collect information on the issuance of grade, size, quality, maturity, pack container, inspection, and reporting requirements. The Order is administered by an 18-member Florida Citrus Administrative Committee. The Committee has developed forms as a convenience to persons who are required to file information with the Committee relating to Florida Citrus fruit production, shipments, inspection and export. This information is needed to effectively carry out the administration of the program.

*Description of Respondents:* Business or other for-profit; Farms.

*Number of Respondents:* 1,729.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion; Weekly; Annually.

*Total Burden Hours:* 334.

**Agricultural Marketing Service**

*Title:* Livestock & Meat Market News.

*OMB Control Number:* 0581–0154.

*Summary of Collection:* The Agricultural Marketing Act of 1946 (7 U.S.C. 1621), Section 203(q), directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements aiding in the maintenance of farm income and to bring about a balance between production and utilization. Livestock and Meat Market News provides a timely exchange of accurate and unbiased information on current marketing conditions (supply, demand, prices, trends, movement, and other information) affecting trade in livestock, meats, grain, and wool. Administered by the U.S. Department of Agriculture's Agricultural Marketing Service (AMS), this nationwide market news program is conducted in cooperation with 30 state departments of agriculture. AMS will collect information using market reports.

*Need and Use of the Information:* AMS will collect information on price, supply, and movement of livestock, meat carcasses, meat and pork cuts, and meat byproducts. The information collected is used by several agencies, agricultural universities and colleges to keep appraised of the current market conditions and movement of livestock and meat in the United States and also to determine available supplies and current pricing.

*Description of Respondents:* State, Local or Tribal Government; Farm; Individuals or households; Business or other for-profit.

*Number of Respondents:* 450.

*Frequency of Responses:* Reporting: Other (Daily).

*Total Burden Hours:* 7,020.

**Rural Utilities Service**

*Title:* 7 CFR Part 1724, Electric Engineering Architectural Services and Design Policies.

*OMB Control Number:* 0272–NEW.

*Summary of Collection:* The Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 et seq., as amended provides authorities for the Rural Utilities Service (RUS) for carrying out its obligations and responsibilities. RUS is a credit agency of the U.S. Department of Agriculture. It makes loans (direct and guaranteed) to finance electric, telecommunications, and water and waste water facilities in rural areas. RUS's electric program is a leader in lending to upgrade, expand, maintain, and replace the vast rural American electric infrastructure. As a condition of a loan or loan guarantee under the RE Act, borrowers are normally required to enter into RUS loan agreements, whereby the borrowers agree to use RUS standard forms of contracts for construction, procurement, engineering services and architectural services financed in whole or in part by the RUS loan. RUS will collect information using RUS Forms 211, 220, and 236.

*Need and Use of the Information:* RUS will collect information on detailed contractual obligations and services to be provided and performed relating to construction, project design, construction management, compensation, and related information. The information is used by RUS electric borrowers, their engineering and architectural contractors, and RUS. The information is used to comply with the RUS standard loan contract and RUS regulations.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 75.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 153.

**Agricultural Marketing Service**

*Title:* Cranberries Grown in the States of MA, RI, CT, NJ, WI, MN, OR, WA, and Long Island in the State of NY—Marketing Order No. 929.

*OMB Control Number:* 0581–0103.

*Summary of Collection:* Marketing Order No. 929 (7 CFR Part 929), regulates the handling of cranberries grown in 10 states and emanates from enabling legislation (the Agricultural Marketing Agreement Act of 1937, §§ 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674). The act was designed to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate commerce and improving returns to growers. The objective of the marketing agreement and order is to correlate the supply of cranberries available for sale in the various trade channels with the demand in those outlets. The Agricultural Marketing Service will collect information using forms FV–53, –259, –260, and –263.

*Need and Use of the Information:* AMS will collect information from the form on cranberry production, shipments, inspection, and export. The Cranberry Marketing Committee, which represents growers and locally administers the order are responsible for keeping information on individual handlers' inventories and receipt confidential. Information gathered by the committee would only be reported in the aggregate, along with other

pertinent cranberry data. If information was not collected, data needed to keep the cranberry industry and the Secretary abreast of changes at the State and local level would not be available

*Description of Respondents:* Business or other for-profit; farms.

*Number of Respondents:* 1,306.

*Frequency of Responses:* Recordkeeping; reporting: quarterly; annually.

*Total Burden Hours:* 874.

**Food and Nutrition Service**

*Title:* Food Stamp Program—Store Applications.

*OMB Control Number:* 0584–0008.

*Summary of Collection:* The Food Stamp Program (FSP) is designed to promote the general welfare and safeguard the health and well being of the Nation's population by raising levels of nutrition among low-income households. Section 2 of the Food Stamp Act of 1977, as amended states in part, that a Food Stamp Program is herein authorized which will permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation. Section 9(a) of the Act requires that regulations provide for an application to be submitted by retailers and wholesalers to request approval for authorization to accept and redeem food coupons. The need to collect information is established under the Act to determine the eligibility of retail food stores, wholesale food concerns, and food service organizations applying for authorization to accept and redeem food stamp benefits, to monitor these firms for continued eligibility, to sanction stores for non-compliance with the Act, and for program management. The Food and Nutrition Service (FNS) will collect information using forms FNS–252, Food Stamp Application for Store, FN252–R, Food Stamp Program Application for Stores—Reauthorization, and FNS 252–2, Application to Participate in the Food Stamp Program for Communal Dining Facility/Others.

*Need and Use of the Information:* FNS will collect information to determine a firm's eligibility for participation in the Food Stamp Program, program administration, compliance monitoring and investigations, and for sanctioning stores found to be violating the program. FNS is also responsible for requiring updates to application information and reviewing that information to determine whether or not the retail food store, wholesale food concern, or food service organization continues to meet eligibility requirements. Owners Employer Identification Numbers (EIN) and Social Security Numbers (SSN) may be disclosed to and used by Federal agencies or instrumentalities that otherwise gave access to EINs and SSNs. FNS and other Federal Government agencies examine such information during compliance review, audit review, special studies or evaluation efforts.

*Description of Respondents:* Business or other for-profit; Not-for-profit institutions; Farms; Federal Government.

*Number of Respondents:* 68,770.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 15,777.

**Nancy B. Sternberg,**

*Departmental Clearance Officer.*

[FR Doc. 99–19350 Filed 7–28–99; 8:45 am]

BILLING CODE 3410–01–M

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### National Agricultural Research, Extension, Education, and Economics Advisory Board, Southern Regional Listening Session

**AGENCY:** Research, Education, and Economics, USDA.

**ACTION:** Notice of Listening Session.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a Southern Regional Listening Session of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

**FOR FURTHER INFORMATION CONTACT:** Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, Research, Education, and Economics Advisory Board Office, Room 3918 South Building, U.S. Department of Agriculture, STOP: 2255, 1400 Independence Avenue, SW, Washington, DC 20250–2255. Telephone: 202–720–3684. Fax: 202–720–6199, or e-mail: lshea@reeusda.gov.

**SUPPLEMENTARY INFORMATION:** The National Agricultural Research, Extension, Education, and Economics Advisory Board, which represents 30 constituent categories, as specified in section 802 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127), will send representatives of its membership (11 members, the Executive Director, and a USDA administrative support person) to the Southern Region to hold a Southern Regional Listening Session, 8:00 a.m. until 3:00 p.m. on August 2, 1999.

The Southern Regional Listening Session will engage southern stakeholders (small farmers, producers/ranchers, academia including 1890 and 1994 institutions, the private sector, and other stakeholder groups) in panel sessions to present statements to Advisory Board members on agricultural research and education priorities and other issues of significant concern to the South. Findings of this Listening Session will be presented to the full Advisory Board for consideration in its ongoing effort to advise USDA on future agricultural research and education priorities. Time will be allowed at the end of Listening Session panels for open discussion and audience participation.

*Dates:* Southern Regional Listening Session, August 2, 1999, 8:00 a.m. until 3:00 p.m.

*Place:* Alcorn State University, Lorman, MS.

*Type of Meeting:* Open to the public.

*Comments:* The public may file written comments before or within 2 weeks after the meeting with the contact person. All statements will become a part of the official records of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Office of the Advisory Board; Research, Education, and Economics; U.S. Department of Agriculture; Washington, D.C. 20250–2255.

Done at Washington, D.C. this 26th day of July 1999.

**Eileen Kennedy,**

*Deputy Under Secretary, Research, Education, and Economics.*

[FR Doc. 99–19419 Filed 7–28–99; 8:45 am]

BILLING CODE 3410–22–P

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## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. 99–040N]**

### Codex Alimentarius Commission: Forty-sixth Session of the Executive Committee of the Codex Alimentarius Commission (Codex) and Twenty-third Session of the CODEX

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice of public meeting; request for comment.

**SUMMARY:** The Office of Under Secretary for Food Safety, United States Department of Agriculture (USDA) is sponsoring a public meeting on August

17, 1999. The purpose of this meeting is to provide information about decisions on issues considered at the Forty-sixth Session of the Executive Committee of the Codex Alimentarius Commission and the Twenty-third Session of the Codex Alimentarius Commission which were held in Rome, Italy June 24–25, 1999, and June 28–July 3, 1999, respectively, and to take comments on the future direction of U.S. efforts in Codex.

**DATES:** The public meeting is scheduled for Tuesday, August 17, 1999, from 1 p.m. to 4 p.m.

**ADDRESSES:** The public meeting will be held in Room 107A, Jamie L. Whitten Building, 12th Street and Jefferson Drive, SW, Washington, DC. Send an original and two copies of comments to: FSIS Docket Clerk, Docket #99–040N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. All comments submitted in response to this notice will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** F. Edward Scarbrough, Ph.D., U.S. Manager for Codex Alimentarius, Room 4861, South Building, U.S. Department of Agriculture, 14th and Independence Avenue SW, Washington, DC 20250; Telephone (202) 205–7760.

**SUPPLEMENTARY INFORMATION:**

## Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Codex is the principal international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. Codex meets biennially. The Executive Committee serves as the executive body of Codex between the biennial meetings.

## Issues To Be Discussed at the Public Meeting

The following items will be discussed during the public meeting on August 17, 1999.

1. Election of Officers of the Commission and Appointment of Regional Coordinators.
2. Report on the Forty-sixth Session of the Executive Committee.
3. Report of the financial situation of the Joint FAO/WHO Food Standards Programme for 1998/99 and 2000/01.
4. Consideration of the Draft Medium-term Plan for 1998 to 2002 (This plan identifies work to be conducted by the Commission by program area and describes the medium-term objectives of that work.)
5. Consumers' involvement in the work of the Codex Alimentarius Commission.
6. Principles of Risk Analysis.
7. Consideration of Amendments to the Procedure Manual of the Codex Alimentarius Commission.(These are matters that pertain to the operations of the Commission.)
8. Consideration of Draft Standards and Related Texts. (These are items considered at Step 5 or Step 8 of the Codex Procedure for the elaboration of Codex Standards and Related Texts.)
9. Consideration of Proposals to Elaborate New Standards and/or Related Texts.
10. Matters Arising from Reports of Codex Committees.
11. Designation of Host Governments for Codex Committees.

## Public Meeting

The public meeting is scheduled for August 17, 1999, in Room 107A, Jamie L. Whitten Building, 12th Street and Jefferson Drive, SW, Washington, DC. Attendees will hear brief descriptions of the issues and the outcome of Commission deliberations and will have the opportunity to pose questions and offer comments.

Done at Washington, DC on: July 23, 1999.

**F. Edward Scarbrough,**

*U.S. Manager for Codex Alimentarius.*

[FR Doc. 99–19422 Filed 7–28–99; 8:45 am]

BILLING CODE 3410–DM–P

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# DEPARTMENT OF AGRICULTURE

## Forest Service

## Northwest Sacramento Provincial Advisory Committee (PAC)

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Northwest Sacramento Provincial Advisory Committee (PAC) will meet on Wednesday, August 11, 1999, at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Avenue, Willows, California. The meeting will consist of a field trip, starting from the office at 7:00 a.m. and adjourning at 5:00 p.m. The main agenda item for this meeting and the objective of the field trip is to view the Upper Stoney Creek and discuss the grant proposal for completing the watershed analysis for this watershed. Public comment periods will be held throughout the field trip. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

**FOR FURTHER INFORMATION CONTACT:** Connie Hendryx, USDA, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097; telephone 530–841–4468; TDD (530) 841–4573; email: chendryx/r5__klamath@fs.fed.us.

Dated: July 23, 1999.

**Nancy J. Gibson,**

*Administrative Officer.*

[FR Doc. 99–19356 Filed 7–28–99; 8:45 am]

BILLING CODE 3410–11–M

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# DEPARTMENT OF COMMERCE

## Submission for OMB Review; Comment Request

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).

*Agency:* Economic Development Administration.

*Title:* Proposal and Application for Federal Assistance, and Civil Rights Guidelines.

*Agency Form Number:* ED–900P and ED–900A.

*OMB Approval Number:* 0610–0094.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 47,350 hours (7,350 for ED–900P and 40,000 for ED–900A).

*Average Hours Per Response:* ED–900P Proposal for Federal Assistance—7 hours. ED–900A Application for Federal Assistance and Civil Rights Guidelines—50 hours.

*Number of Respondents:* Approximately 1,850 respondents.

*Needs and Uses:* The information in the application is needed to determine conformance to statutory and regulatory requirements, the quality of the scope of work proposed to address the pressing needs and other economic problem(s) of the area, the merits of the activity for which funding is requested and the ability of the prospective applicants to carry out the proposed activities successfully. Those interested in obtaining a grant are to first submit a preapplication and then be invited to submit an application. The Civil Rights Guidelines are required by the

Department of Justice Regulations at 28 CFR 42.404, which directs Federal agencies to publish (Title VI of the Civil Rights Act of 1964, as amended) guidelines for each type of program to which they extend financial assistance, where such guidelines would be appropriate to provide detailed information of the requirements of Title VI. To responsibly administer its programs, EDA must obtain certain data on the jobs to be created and saved, by those that apply for and receive its assistance (applicants and recipients), and by those that create or save 15 or more jobs as a result of EDA's assistance.

*Affected Public:* State, local or Tribal Government and not-for profit organizations.

*Frequency:* One time for preapplication and application, and on occasion for the Civil Rights Guidelines for post approval and monitoring compliance.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DoC Forms Clearance Officer, (202) 482–3272, US Department of Commerce, Room 5033, 14th and Constitution Avenue, N.W., Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 23, 1999.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 99–19348 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–34–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

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

**ACTION:** Notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocation in part.

**SUMMARY:** The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke two antidumping duty orders in part.

**EFFECTIVE DATE:** July 29, 1999.

**FOR FURTHER INFORMATION CONTACT:** Holly Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4737.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(1997), for administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on tapered roller bearings and parts thereof from the People's Republic of China and polyethylene terephthalate film, sheet and strip (Pet Film) from the Republic of Korea.

#### Initiation of Reviews

In accordance with sections 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than June 30, 2000.

| Antidumping duty proceedings | Period to be reviewed |
|---|---|
| Hungary: Tapered Roller Bearings A–437–601 | 06/01/98–05/31/99 |
| Daewoo–MGM Rt. | |
| Netherlands: Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide (''PPD–T'') A–421–805 | 06/01/98–05/31/99 |
| Twaron Products V.O.F. | |
| Republic of Korea: Polyethylene Terephthalate Film, Sheet and Strip (Pet Film) A–580–807 | 06/01/98–05/31/99 |
| SKC Limited | |
| H.S. Industries Co., Ltd. | |
| Hyosung Corporation | |
| Sweden: Stainless Steel Plate A–401–040 | 06/01/98–05/31/99 |
| Uddeholms AB | |
| Taiwan: Certain Stainless Steel Butt-Weld Pipe Fittings A–583–816 | 06/01/98–05/31/99 |
| Ta Chen Stainless Steel Pipe, Ltd. | |
| The People's Republic of China: Sparklers* A–570–804 | 06/01/98–05/31/99 |
| Gaungxi Native Produce Import & Export Corp. | |
| Benai Fireworks and Firecrackers Branch | |
| Hunan Provincial Firecrackers & Fireworks Import & Export (Holding) Corp. | |
| Jiangxi Native Produce Import & Export Corp. | |
| Guangzhou Fireworks Company | |
| *If one of the above named companies does not qualify for a separate rate, all other exporters of sparklers from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part. | |
| The People's Republic of China: Tapered Roller Bearings* A–570–601 | 06/01/98–05/31/99 |
| Zhejiang changsan (Bearing) Group Co. Ltd. | |
| Yantai CMC Bearing Co., Ltd. Louyang Bearing Factory | |
| Wafangdian Bearing Factory | |
| Wafangdian Bearing Industry Co. | |
| Wafangdian Bearing Factory, Liaoning Province | |
| China National Machinery & Equipment Import and Export Corporation, Beijing | |
| China National Machinery and Equipment Import and Export Corporation (CMEC), Beijing | |

| Antidumping duty proceedings | Period to be reviewed |
|---|---|
| Henan Machinery and Equipment Import and Export Corporation | |
| The China National Machinery and Equipment Import and Export Corporation, Henan Co., Ltd. | |
| Guizhou Machinery Import and Export Corporation | |
| Liaoning Machinery Import and Export Corporation | |
| The China National Machinery and Equipment Import and Export Corporation, Liaoning Co., Ltd. | |
| Liaoning MEC Group Co., Ltd. | |
| Jilin Machinery Import and Export Corporation | |
| China National Machinery Import and Export Corporation of Jilin Province | |
| The China National Machinery and Equipment Import and Export Corporation, Guizhou Branch | |
| China National Machinery and Equipment Import and Export Company (CMEC), Zhejiang | |
| Guizhou Machinery Import and Export Corporation Guiyang, Guizhou China | |
| China National Automotive Industry Import & Export Corporation | |
| China National Automotive Industry Import & Export Corporation, Guizhou China | |
| China National Automotive Industry Guizhou Import/Export Corp. | |
| Xiangfan Machinery Import & Export (Group) Corp. | |
| Xiangfan Machinery Foreign Trade Corporation | |
| Xiangfan International Trade Corp. | |
| Wanxiang Group Corporation | |
| Shandong Machinery and Equipment Import & Export Corporation | |
| Shandong Machinery and Equipment Import & Export Group Corporation | |
| Hangzhou Metals, Minerals, Machinery & Chemical Import Export Corporation | |
| China Metals, Minerals, Machinery & Chemicals Import Export Corporation | |
| China Great Wall Industry Company | |
| Premier Bearing & Equipment, Ltd. | |
| Chin Jun Industrial, Ltd. | |
| China National Machinery Import/Export Corporation, Yantai | |
| China National Machinery and Equipment Corp., Changsha | |
| China National Machinery and Equipment Import Export Company (CMEC), Hunan | |
| Shanghai Machinery & Equipment Import & Export Corp. | |
| Shanghai Machinery Import/Export Corp. | |
| Hubei Provincial Machinery Import & Export Corp. | |
| Zhejang Machinery Import/Export Corp. | |
| Tianshui Hailin Import & Export Corporation | |
| Heilongjang Machinery Import/Export | |
| Shandong Machinery Import/Export Corp. | |
| Shanghai Pacific Machinery Import & Export Corp. | |
| Shaanxi Machinery & Equipment I/E Corp. | |
| Guangdong Machinery and Equipment Import & Export | |
| Guangdong Machinery and Equipment Import & Export (Group) Corporation | |
| East Sea Bearing Co., Ltd. | |
| Shanghai General Bearing Co., Ltd.** | |
| Direct Source International | |
| Goldhill International Trading & Services Co. | |
| Bilop International | |
| China Aeolus Automotive Industries Import Export Corporation | |
| Flying Dragon Machinery | |
| Harbin Bearing Factory | |
| Luoyang Bearing Research Institute of the Ministry of Machinery & Electronics Industry | |
| The Tenth Institute of Machinery Project Planning & Research of the Ministry of Machinery & Electronics Industry | |
| Shanghai Rolling Bearing Factory | |
| Xiangyang Bearing Factory | |
| Shanghai Miniature Bearing Factory | |
| Suzhou Bearing Factory | |
| Chengdu General Bearing Factory | |
| Hailin Bearing Factory | |
| Hongshan Bearing Factory | |
| Guiyang Bearing Factory | |
| Haihong Bearing Factory | |
| Lanzhou Bearing Factory | |
| Xibei Bearing Factory | |
| Beijing Bearing Research Institute | |
| Changzhi People Factory | |
| Beijing People Bearing Factory | |
| Handan Bearing Factory | |
| Jining Bearing Factory | |
| Shenyang Bearing Factory | |
| Chaoyang Bearing Factory | |
| Shenyang Steel Ball Plant | |
| Gongzhuling Bearing Factory | |
| Wuxi Miniature Bearing Factory | |
| Jiamusi Bearing Factory | |
| Shanghai Bearing Technology Research Institute | |
| Zhongguo Bearing Factory | |
| Xiamen Bearing Factory | |

| Antidumping duty proceedings | Period to be reviewed |
|---|---|
| Shanghai Hongxing Bearing Factory | |
| Shanghai Steel Ball Plant | |
| Wuxi Bearing Factory | |
| Hangzhou Bearing Factory | |
| Hefei Bearing Factory | |
| Huainan Bearing Factory | |
| Longxi Bearing Factory | |
| Jiangxi Bearing Factory | |
| Liangshan Bearing Factory | |
| Jinan Bearing Factory | |
| Qingdao Steel Ball Plant | |
| Huangshi Bearing Factory | |
| Hubei Steel Ball Plant | |
| Changsha Bearing Factory | |
| Guangzhou Bearing Factory | |
| Guangxi Bearing Factory | |
| Chongqing General Bearing Factory | |
| Chongqing Steel Ball Plant | |
| Yunnan Bearing Factory | |
| Baoji Bearing Factory | |
| Tianshui Bearing Instrument Plant | |
| Beijing Needle Roller Bearing Factory | |
| Tianjin Miniature Bearing Factory | |
| Datong Bearing Factory | |
| Hebei Rolling Mill Bearing Factory | |
| Hebei Bearing Factory | |
| Chengde Bearing Factory | |
| The Third Bearing Factory of Shanxi | |
| Anshan Bearing Factory | |
| Yingkou Bearing Factory | |
| Xingcheng Bearing Factory | |
| Hunijang Bearing Factory | |
| Daan Bearing Factory | |
| Shanghai Hunan Bearing Factory | |
| Shanghai Pujiang Bearing Factory | |
| Shanghai Changning Bearing Factory | |
| Shanghai Needle Roller Bearing Factory | |
| Xuzhou Revolving Support Factory | |
| Taian Bearing Factory | |
| Changshu Bearing Factory | |
| Northwest Bearing Plant | |
| Huangshi Bearing Factory | |
| Guangxi Bearing Factory | |
| Chongqing Bearing Factory | |
| Yunnan Bearing Factory | |
| Baoji Bearing Factory | |
| Xiangtan Bearing Factory | |
| Shaoguan Bearing Factory | |
| Xinjiang Bearing Factory | |
| The Second Bearing Factory of Xuzhou | |
| Houzhou Bearing Factory | |
| Yuxi Bearing Factory | |
| Chifeng Bearing Factory | |
| Huangyian Bearing Factory | |
| Xingchang Bearing Factory | |
| Liuan Bearing Factory | |
| Zibo Bearing Factory | |
| Jining Bearing Factory (Shandong) | |
| Luoyang Dongfeng Bearing Factory | |
| Kaifeng Bearing Factory | |
| Ghangge Bearing Factory | |
| The Second Machine Tools Electric Apparatus Plant of Anyang | |
| Shashi Bearing Factory | |
| Wuhan Bearing Factory | |
| Changde Bearing Factory | |
| Hengyang Bearing Factory | |
| Hubei Bearing Factory | |
| Yueyang Bearing Factory | |
| Zhuzhou Bearing Factory | |
| Fanchang Bearing Factory | |
| Dongguan Bearing Factory | |
| Chengdu Bearing Factory | |
| Sichuan Small Size Bearing Factory | |
| Leshan Bearing Factory | |

| Antidumping duty proceedings | Period to be reviewed |
|---|---|
| Honghe Bearing Factory | |
| Shaanxi Bearing Factory | |
| Shijiazhuang Bearing Factory | |
| Shanxi Bearing Factory | |
| Xiangtan Bearing Factory | |
| Shaoguan Bearing Factory | |
| Xinjiang Bearing Factory | |
| Beijing-Pinggu Bearing Factory | |
| Huhhot Bearing Factory | |
| Dalian Bearing Instrument Plant | |
| Nantong Bearing Factory | |
| Qingjiang Bearing Factory | |
| Wuhu Bearing Factory | |
| Yiyang Bearing Factory | |
| Zhongshan Bearing Factory | |
| Handan Bearing Factory | |
| Xingcheng Bearing Factory | |
| China National Automotive Import & Export Corporation | |
| China National Automotive Industry Import & Export Corporation | |
| China National Automotive Industry Xiamen Import/Export Corporation/Shanghai | |
| China National Automotive Industry Xiamen Import/Export Corporation | |
| China National Machinery/Equipment Corp., Harbin Branch | |
| Kenwa Shipping Co., Ltd. | |
| Far East Enterprising Co. (H.K.) Ltd. | |
| Far East Enterprising (H.K.) Co. | |
| Pantainer Express Line Co. | |
| Intermodal Systems Ltd. | |
| China Ningbo Int'l Economic & Technical Cooperation Corp. | |
| China Ningbo Cixi Import/Export Corp. | |
| Ningbo Xing Li Bearing Co., Ltd. | |
| Ningbo Yinxian Import/Export Corp., China | |
| Ningbo Yinxian Import/Export Corp., Hong Kong | |
| Santoh HK Ltd. | |
| Huuzhou Import and Export Corp. | |
| Ideal Consolidators Ltd. | |
| Cargo Services Far East Ltd. | |
| China Resources Transportation & Godown Co., Ltd. | |
| China Travel Service (HK) Ltd. | |
| Fortune Network Ltd. | |
| China Jiangsu Technical Import/Export Corp. | |
| Kaitone Shipping Co., Ltd. | |
| Profit Cargo Service Co., Ltd. | |
| United Cargo Management, Inc. | |
| Zhejang Expanded Bearing Co., China | |
| Zhejang Expanded Bearing Co., Hong Kong | |
| Zhejang Yongtong Company, China | |
| Zhejang Yongtong Company, Hong Kong | |
| Wafangdian Hyatt Bearing Manufacturing Co., Ltd. | |
| China National Bearing Joint Export Corp. | |
| PFL Pacific Forwarding, Ltd. | |
| Sui Jun International Ltd. | |
| Wah Shun Shipping Co., Ltd. | |
| Aempac System, Inc. | |
| Xinguang Ind. Prod. Import/Export Corp. of Sichuan Province | |
| Sunway Line, Inc. | |
| Trans-Ocean Bridge Services, Ltd. | |
| Scanwell Container Line Ltd. | |
| Scanwell Consolidators & Forwarders Ltd. | |
| China Machine-Bearing International Corp. | |
| Hyaline Shipping (HK) Co., Ltd. | |
| Long Trend Ltd. | |
| Waiwell Shipping Ltd. | |
| Special Line Ltd. | |
| YK Shipping International, Inc. | |
| Blue Anchor Line Co. | |
| Onan Shipping Ltd. | |
| Shanghai Bearing Corporation | |
| Wing Tung Wei (China) Ltd. | |
| China Merchants S & E Co., Ltd. | |
| Zhejiang Huangli Bearing Co., Ltd. | |
| China Ningbo International Economic & Technical Cooperation Corporation | |
| Ningbo Free Trade Zone | |
| China National Machinery Imp. & Exp. Corp., Chongquing Branch | |
| China-East Resources International | |

| Antidumping duty proceedings | Period to be reviewed |
|---|---|
| Distribution Services Ltd. | |
| Inteks Inc. N.V.O.C.C. | |
| Shaanxi Machinery & Equipment Imp. & Exp. Corp. | |
| United Cargo Management Inc., Dalian Office | |
| China Tiancheng Jiangsu China., Nanjing | |
| China Tiancheng Jiangsu China., Shanghai | |
| Zhejiang East Sea Bearing Co., Ltd. | |
| Mayer Shipping Ltd., HK | |
| Wholelucks Industrial Lim. | |
| Peko Incorporation | |
| O/B Manfred Development Co., (HK) Ltd. | |
| Asia Stone Company Limited | |
| Asia (USA) Inc. (Shanghai) | |
| Xiamen Special Economic Zone Trade Co., Ltd. | |
| SEC Line Ltd. | |
| Jebsin Shipping Ltd. | |
| Heika Express International Ltd. | |
| J.P. Freight, Inc., Shanghai, PRC | |
| Brilliant Ocean Ltd. Corp. (USA) | |
| Transunion International Company, Hong Kong | |
| Roson Express Int'l Co., Ltd. | |
| Streamline Shippers Association, Hong Kong | |
| Laconic Freight Forwarding Co., Ltd. | |
| Mitrans Shipping Co., Ltd. | |
| Distribution Services Ltd. | |
| The Ultimate Freight Management (H.K.) Ltd. | |
| Ideal Consolidators Ltd. | |
| Luoyang Bearing Research Institute | |
| Burlington Air Express Ltd. | |
| Janco Int'l Freight Ltd. | |
| Phoenix Shanghai China | |
| Shanghai Dong Yu Materials Co., Ltd. | |
| Guandong Lingnan Industrial Products | |
| Guandong Lingnan Industrial Products, Import & Export Corporation | |
| Sunrise Industrial Technology Co. | |
| Dongguan Industry Development Corp. | |
| Hi Light Int'l, Inc. | |
| Ever Concord Ltd. | |
| Kin Bridge Express (USA) Inc. | |
| Wice Marine Services Ltd. | |
| Welley Shipping, Ltd. | |
| WSA Lines, Ltd. | |
| Triumph Express Service Int'l Ltd. | |
| World Pacific Container Line Ltd. | |
| Hellman Int'l Forwarders, Ltd. | |
| Sino Eagle Co. | |
| Ever Concord Ltd. (Guangzhou) | |
| Ideal Ocean Lines, Ltd. | |
| MSAS Cargo Int'l (Far East) Ltd. | |
| Ocean Navigator Express Line | |
| Sunrise Industries Technology Co. | |
| China Mudanjiang Heading Factory | |
| Apex Maritime Co., Inc. | |
| Apex Maritime Co., Inc. (Dalian) | |
| Dalian Machine Tool Accessories | |
| Everich Shipping, Ltd. | |
| Eternity Int'l Freight Forwarder | |
| Ningbo Tiansheng Bearing Corp. | |
| Trans-Am Sea Freight (HK) Ltd. | |
| Zhong Shan Transportation Co., Ltd. | |
| Shenzhen Rising Sun Bearing | |
| Goldline Ltd. | |
| Leader Express International (HK) | |
| Transnation Shipping Ltd. | |
| Mayer Shipping Ltd. | |
| Shenzhen Jinyuan Industrial | |
| Transunion International Co., Ltd. | |
| Orient Star Consolidating | |
| Capital Distribution Services | |
| Buyers Consolidators Ltd. | |
| Versatile Int'l Corp. | |
| Panalpina China, Ltd. | |
| Trust Freight Services, Inc. | |
| Wah Hing Trading Co. | |

| Antidumping duty proceedings | Period to be reviewed |
|---|---|
| China North Industries | |
| Point Talent International Ltd. | |
| Votainer Far East BV | |
| Seatop Shipping Ltd. | |
| AEL Asia Express (HK). Ltd. | |
| Kenwa Shipping Co., Ltd. | |
| Wuxi Viking General | |
| Exbo Shipping Co., Ltd. | |
| Cots Shipping Co., Ltd. | |
| Shenzhen South China International | |
| Oceanic Bridge International Inc. | |
| Streamline Shippers Association | |
| China Jiansu Technical Import & Export Corp. | |
| Ever Concord Ltd. | |
| Air Sea Container Line, Inc. | |
| CL Consolidator Services Ltd. | |
| OAG International, Inc. | |
| Zhejiang Xinchang Foreign Economic | |
| Heicone Jiang Machinery Import & Export | |
| Wenling Foreign Trading Corporation | |
| Scanwell Freight Express Co., Ltd. | |
| C.U. Transport, Inc. | |
| Shanghai Dongyu Materials Co. | |
| EAS International | |
| EAS International Transportation Co., Ltd. | |
| Ensign Freight (China) Ltd. | |
| Amec International Co., Inc. | |
| China Dong Feng Motor | |
| Rong Shang International Corp. | |
| Air Sea Transport, Inc. | |
| Air Sea Transport, Inc., Yantai Office | |
| Air Sea Transport, Inc., Dalian | |
| Wuhan Machinery & Equipment | |
| STS Machinery, Inc. | |
| USA International Business | |
| Hang Cheong Shipping Co., Ltd. | |
| Deckwell Sky Express, Inc. | |
| China Machinery Equipment Import & Export Wuxi Co., Ltd. | |
| China Machinery & Equipment Import & Export Co., Ltd. (Jiangying Bearing Works) | |
| China Xian Import & Export Corporation | |
| China Jiangsu Machinery and Equipment Import & Export Wuxi Co., Ltd. | |
| China Jiangsu Machinery Import and Export (Group) Corp. | |
| China National Packaging Import & Export Nanjing Corporation | |
| China National Machinery and Equipment Import And Expert Corporation (CEMEC) | |
| CMEC Sichan | |
| CMEC Henan | |
| CMEC Shandong | |
| CMEC Jiangsu | |
| CMEC Guangdong | |
| CMEC Hebei | |
| CMEC Hunan | |
| CMEC Anhui | |
| CMEC Hubei | |
| CMEC Zhejiang | |
| CMEC Liaoning | |
| CMEC Jiangxi | |
| CMEC Yunnan | |
| CMEC Heilongjiang | |
| CMEC Shaanxi | |
| CMEC Guizhou | |
| CMEC Fujian | |
| CMEC Shanxi | |
| CMEC Jilin | |
| CMEC Gansu | |
| CMEC Hainan | |
| CMEC Qinghai | |
| CMEC Chengdu | |
| CMEC Zengzhou | |
| CMEC Tsinan | |
| CMEC Nanjing | |
| CMEC Guangzhou | |
| CMEC Shijiazhuang | |
| CMEC Changsha | |
| CMEC Hefei | |

| Antidumping duty proceedings | Period to be reviewed |
|---|---|
| CMEC Wuhan | |
| CMEC Hangzhou | |
| CMEC Shenyang | |
| CMEC Nanchang | |
| CMEC Kunming | |
| CMEC Harbin | |
| CMEC Xian | |
| CMEC Guiyang | |
| CMEC Fuzhou | |
| CMEC Taiyuan | |
| CMEC Changchun | |
| CMEC Lanzhou | |
| CMEC Haikou | |
| CMEC Xining | |
| CMEC Guangxi Zhuang | |
| CMEC Nei Monggol | |
| CMEC Xinjiang Uygur | |
| CMEC Ningxia Hui | |
| CMEC Xizang | |
| CMEC Nanning | |
| CMEC Hohhot | |
| CMEC Urumqi | |
| CMEC Yinchuan | |
| CMEC Lhasa | |
| CMEC Shanghai | |
| CMEC Beijing | |
| CMEC Tianjin | |
| China National Machinery Import and Export Corporation (CMC) | |
| Sichuan CMC | |
| Henan CMC | |
| Shandong CMC | |
| Jiangsu CMC | |
| Guangdong CMC | |
| Hebei CMC | |
| Hunan CMC | |
| Anhui CMC | |
| Hubei CMC | |
| Zhejiang CMC | |
| Liaoning CMC | |
| Jiangxi CMC | |
| Yunnan CMC | |
| Heilongjiag CMC | |
| Shannxi CMC | |
| Guizhou CMC | |
| Fujian CMC | |
| Shanxi CMC | |
| Jilin CMC | |
| Gansu CMC | |
| Hainan CMC | |
| Qinghai CMC | |
| Chengdu CMC | |
| Zengzhou CMC | |
| Tsinan CMC | |
| Nanjing CMC | |
| Guangzhou CMC | |
| Shijiazhuang CMC | |
| Changsha CMC | |
| Hefei CMC | |
| Wuhan CMC | |
| Hangzhou CMC | |
| Shenyang CMC | |
| Nanchang CMC | |
| Kunming CMC | |
| Harbin CMC | |
| Xian CMC | |
| Guiyang CMC | |
| Fuzhou CMC | |
| Taiyuan CMC | |
| Changchun CMC | |
| Lanzhou CMC | |
| Haikou CMC | |
| Xining CMC | |
| Guangxi Zhuang CMC | |
| Nei Monggol CMC | |

| Antidumping duty proceedings | Period to be reviewed |
|---|---|
| Xinjiang Uygur CMC<br>Ningxia Hui CMC<br>Xizang CMC<br>Nanning CMC<br>Hohhot CMC<br>Urumqi CMC<br>Yinchuan CMC<br>Lhasa CMC<br>Shanghai CMC<br>Beijing CMC<br>Tianjin CMC<br>*If one of the above named companies does not qualify for a separate rate, all other exporters of tapered roller bearings from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.<br>**With respect to Shanghai General Bearing Co., Ltd., this initiation notice only applies with respect to subject merchanidse entered or sold during the period by Shanghai General Bearing Co., Ltd., but not produced by Shanghai General Bearing Co., Ltd. | |
| Venezuela: Ferrosilicon A–307–807<br>Ferroatlantica de Venezuela S.A. | 06/01/98–05/31/99 |

| | Period/class or kind |
|---|---|
| **Anti-Friction Bearings Proceeding and Firm** | |
| Japan: A–588–804 | 05/01/98–04/30/99 |
| SNR Roulements* | All |
| *Inadvertently omitted from previous initiation notice. | |
| **Countervailing Duty Proceedings** | |
| Italy: Grain-Oriented Electrical Steel C–475–812<br>Acciai Speciali Terni S.p.A. | 01/01/98–12/31/98 |
| **Suspension Agreements** | |
| None. | |

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, we will determine, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: July 23, 1999.

**Bernard T. Carreau,**

*Deputy Assistant Secretary for Group II, AD/CVD Enforcement.*

[FR Doc. 99–19443 Filed 7–28–99; 8:45 am]

**BILLING CODE 3510–DS–M**

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–549–601]**

## Preliminary Results of Full Sunset Review: Malleable Cast Iron Pipe Fittings From Thailand

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

**ACTION:** Notice of preliminary results of Full Sunset Review: Malleable cast iron pipe fittings from Thailand.

**SUMMARY:** On January 4, 1999 the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on malleable cast iron pipe fittings from Thailand (64 FR 364) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate filed on behalf of domestic interested parties and adequate substantive comments filed on behalf of both domestic and respondent interested parties, the Department is conducting a full review. As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Preliminary Results of Review section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

**EFFECTIVE DATE:** July 29, 1999.

### Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*'') and 19 CFR 351

(1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

**Scope**

Imports covered by this review are shipments of certain malleable cast iron pipe fittings, other than grooved, from Thailand. In the original order, these products were classified in the Tariff Schedules of the United States, Annotated, (TSUSA) under item numbers 610.7000 and 610.7400. These products are currently classifiable under item numbers 7307.19.90.30, 7307.19.90.60, and 7307.19.90.80 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

This order applies to all imports of certain malleable cast iron pipe fittings from Thailand.

**History of the Order**

The Department issued a final determination of sales at less than fair value on July 6, 1989, finding a weighted-average margin of 1.70 percent for Siam Fittings Ltd. (''Siam'') and for all others (52 FR 25282). The antidumping duty order on malleable cast iron pipe fittings from Thailand was published in the **Federal Register** on July 6, 1987 (52 FR 25282), as amended (52 FR 37351, October 6, 1987). Since that time the Department has not conducted an administrative review of this order.

**Background**

On January 4, 1999, the Department initiated a sunset review of the antidumping duty order on malleable cast iron pipe fittings from Thailand (64 FR 364) pursuant to section 751(c) of the Act. On January 19, 1999, the Department received a Notice of Intent to Participate on behalf of the Cast Iron Pipe Fittings Committee and its members, Grinnell Corporation and Ward Manufacturing (collectively ''CIPFC''), within the applicable deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations.* The CIPFC claimed interested party status under section 771(9)(F) of the Act as an *ad hoc* trade association consisting entirely of U.S. manufacturers of malleable cast iron pipe fittings.

We received a complete substantive response to the notice of initiation on February 3, 1999, on behalf of CIPFC. In its substantive response, CIPFC stated that both itself and its two current members have been participants in this proceeding since the Department's original investigation. We received a complete substantive response on behalf of Thai Malleable Iron and Steel Co., Ltd, BIS Pipe Fitting Industry Co., Ltd., and Siam (collectively respondent interested parties) on February 3, 1999. In their substantive response, each company claimed interested party status under section 771(9) of the Act, as a foreign manufacturer of malleable cast iron pipe fittings. Further, respondent interested parties claimed that although only Siam participated in the Department's original investigation, each company participated in the injury determination conducted by the International Trade Commission (''the Commission'').

On February 8, 1999, we received rebuttal comments from CIPFC and respondent interested parties.

Respondent interested parties stated that they are the only known exporters of subject merchandise from Thailand to the United States and they claimed to account for more than 50 percent of imports of the subject merchandise over the most recent five years. Because the Department determined that respondent interested parties accounted for significantly more than 50 percent of the value of total exports of the subject merchandise over the five calendar years preceding the initiation of the sunset review, their response constituted an adequate response to the notice of initiation. Thus, the Department is conducting a full (240 day) review in accordance with section 351.218(e)(2)(i) of the *Sunset Regulations.*

The Department determined that the sunset review of the antidumping duty order on malleable cast iron pipe fittings from Thailand is extraordinarily complicated. In accordance with section 751(c)(6)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.,* an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on May 3, 1999, the Department extended the time limit for completion of the preliminary results of this review until not later than July 23, 1999, in accordance with section 751(c)(5)(B) of the Act.[1]

**Determination**

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the original investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and shall provide to the Commission the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's preliminary determinations concerning continuation or recurrence of dumping and magnitude of the margin likely to prevail are discussed below. In addition, parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin likely to prevail are addressed within the respective sections below.

**Continuation or Recurrence of Dumping**

*Party Comments*

In its substantive response, CIPFC argued that revocation of the antidumping duty order would likely result in the continuation or resumption of dumping of malleable cast iron pipe fittings from Thailand. CIPFC asserted that, in accordance with the *Sunset Policy Bulletin,* the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where dumping continued at any level above de minimis after the issuance of the order. Further, CIPFC cited to the SAA and noted that continuation of dumping at any level above de minimis after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. Based on these policies, the CIPFC asserts that the estimated weighted-average dumping margin of 1.70 percent as determined in the original investigation has remained unchanged since the imposition of the antidumping duty order.

[1] *See Malleable Cast Iron Pipe Fittings From Brazil and Thailand: Extension of Time Limit for Preliminary Results of Five-Year Reviews,* 64 FR 23598 (May 3, 1999).

In their substantive response, respondent interested parties asserted that the likely effects of revocation are that the trade will continue as it has for the last ten years, with the Thai exporters shipping to the United States when there is sufficient demand. Further, respondent interested parties argued that exports of pipe fittings from Thailand have fluctuated during the last five years while the dumping margin has remained constant. In conclusion, the respondent interested parties asserted that the fact that revocation is unlikely to have any effect is supported by the fact that no member of the domestic industry has requested an administrative review of the order.

In its rebuttal comments CIPFC argued that the respondent interested parties failed to apply, or even identify, the test used by the Department to determine whether revocation of an order is likely to lead to continuation or recurrence of dumping. Rather, respondent interested parties proffered arguments that speak to the issues that may be relevant to the Commission. CIPFC asserted that dumping was not eliminated after the issuance of the order and, based on statistics provided by respondent interested parties, exports over the past five years have decreased. Therefore, CIPFC asserted that the evidence on the record justifies a determination that revocation would be likely to lead to continuation or recurrence of dumping.

In their rebuttal comments, respondent interested parties referred to the language of the SAA that specifies that declining (or no) dumping margins accompanied by steady or increasing imports may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked. Citing to the volume of exports prior to the issuance of the order, as reported in their substantive response, and using import statistics CIPFC relied on in contemporaneous sunset reviews of other antidumping duty orders on pipe fittings, respondent interested parties argued that exports from Thailand after the issuance of the dumping order actually increased over three-fold. In conclusion, respondent interested parties argued that the Department must conclude that dumping is not likely to resume if the order were revoked given that exports from Thailand to the United States increased after the issuance of the order, that the 1.70 percent ad valorem margin would be deemed de minimis under the 1995 WTO standards, and that the domestic industry never requested an administrative review of the order.

*Department's Determination*

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3 of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of a antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3.a of the *Sunset Policy Bulletin*).

Although respondent interested parties argue that the 2.0 percent is the de minimis standard of Article 5.8 of the Antidumping Agreement should apply, we disagree. Both the statute and regulations clearly provide that in reviews of orders, the Department will treat as de minimis any weighted average dumping margin that is less than 0.5 percent ad valorem (*see* section 752(c)(4)(B) of the Act and 19 CFR 351.106(c)(1)). Further, the SAA specifies that the requirements of Article 5.8 apply only to investigations, not to reviews of antidumping duty orders or suspended investigations (*see* SAA at 845).

As discussed in section II.A.3 of the *Sunset Policy Bulletin,* the SAA at 890, and the House Report at 63–64, the existence of dumping margins after the order is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were revoked. Deposit rates above de minimis remain in effect for exports of malleable cast iron pipe fittings from Thailand.

Therefore, since dumping margins have continued over the life of the order, the Department preliminarily determines that dumping is likely to continue if the order were revoked.

**Magnitude of the Margin**

*Party Comments*

In its substantive response, CIPFC argued that the Department should determine that the margin likely to prevail if the antidumping duty order were to be revoked is the Siam-specific and all other rates from the original investigation, 1.70 percent. CIPFC asserted that they would be consistent with the provisions of the statute, SAA, and *Sunset Policy Bulletin*.

In their substantive response, the respondent interested parties asserted that Article 5.8 of the Antidumping Agreement approved by the WTO in 1995 provides that any dumping margin of less than 2 percent ad valorem is to be treated as de minimis. Further, respondent interested parties asserted that de minimis margins are regarded as zero margins and referred to the language of the SAA (at 844) for support. In conclusion, the respondent interested parties argued that given that the only margin ever calculated was 1.70 percent ad valorem, there has never been any sales in the United States with dumping margins. Further, because there is no factual information available upon which to forecast a dumping margin were the order to be revoked, the Department should assume a margin of zero.

In its rebuttal comments, CIPFC argued that respondent interested parties' reliance on the Antidumping Agreement Article 5.8 de minimis standard of 2 percent ad valorem is misplaced. CIPFC noted that 19 U.S.C. 1675a(c)(4)(B) and 19 CFR 351.106(c)(1) provide that the de minimis standard in sunset reviews is margins less than 0.5 percent ad valorem. Thus, CIPFC argued that the Department should provide the Commission with a magnitude of dumping margin of 1.7 percent for all Thai producers.

As noted above, in their rebuttal comments, the respondent interested parties asserted that the margin determined by the Department in the original investigation was only 1.70 percent ad valorem, a rate that would be deemed de minimis under the 1995 WTO standards. As such, respondent interested parties asserted that the Department must conclude that dumping is not likely to resume if the order were to be revoked.

*Department's Determination*

In the *Sunset Policy Bulletin,* the Department stated that, consistent with

the SAA and House Report, the Department normally will provide to the Commission a margin from the investigation, because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the ''all others'' rate from the investigation. *See* Section II.B.1 of the *Sunset Policy Bulletin*. Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations.

As noted above, in its final determination, the Department published a weighted-average dumping margin of 1.70 percent for SIAM and applied that same rate to all other producers/exporters of malleable cast iron pipe fittings from Thailand. This is the only margin of dumping determined by the Department over the life of this order. For the reasons stated above, we agree with CIPFC that respondent interested parties' reliance on a 2 percent de minimis standard is misplaced. Therefore, the Department preliminarily determines that the weighted-averaged dumping margin likely to prevail if the order were to be revoked is 1.70 percent margin from the original investigation.

**Preliminary Results of Review**

As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The magnitude of the margin that is likely to prevail is 1.70 percent for Siam and all others.

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on September 22, 1999. Interested parties may submit case briefs no later than September 13, 1999, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than September 20, 1999. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than November 30, 1999.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 23, 1999.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 99–19445 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–351–505]**

## Preliminary Results of Full Sunset Review: Malleable Cast Iron Pipe Fittings From Brazil

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

**ACTION:** Notice of preliminary results of full sunset review: malleable cast iron pipe fittings from Brazil.

**SUMMARY:** On January 4, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on malleable cast iron pipe fittings from Brazil (64 FR 364) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate filed on behalf of domestic interested parties and subsequent adequate responses from both domestic and respondent interested parties, the Department is conducting a full review. As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of a dumping at the levels indicated in the Preliminary Results of Review section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

**EFFECTIVE DATE:** July 29, 1999.

**Statute and Regulations**

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''), and 19 C.F.R. Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

**Scope**

Imports covered by this review are shipments of certain malleable cast iron pipe fittings, other than grooved, from Brazil. In the original order, these products were classified in the Tariff Schedules of the United States, Annotated (TSUSA), under item numbers 610.7000 and 610.7400. These products are currently classifiable under item numbers 7307.19.90.30, 7307.19.90.60, and 7307.19.90.80 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

This order applies to all imports of certain malleable cast iron pipe fittings from Brazil.

**History of the Order**

The Department issued a final determination of sales at less than fair value on March 31, 1986, finding a weighted-average margin of 5.64 percent for Industria de Fundicao Tupy, S.A. (''Tupy''), and for all others (51 FR 10897). The antidumping duty order on malleable cast iron pipe fittings from Brazil was published in the **Federal Register** on May 21, 1986 (51 FR 18640). Since that time the Department has conducted one administrative review of this order, which covered the period from May 1, 1993, to April 30, 1994.[1]

**Background**

On January 4, 1999, the Department initiated a sunset review of the antidumping duty order on malleable cast iron pipe fittings from Brazil (64 FR 364) pursuant to section 751(c) of the Act. On January 19, 1999, the Department received a Notice of Intent to Participate on behalf of the Cast Iron Pipe Fittings Committee and its members, Grinnell Corporation and Ward Manufacturing (collectively ''CIPFC''), within the applicable deadline specified in section 351.218(d)(1)(i) of the *Sunset*

[1] *See Malleable Cast Iron Pipe Fittings, Other Than Grooved, From Brazil; Final Determination of Sales at Less Than Fair Value*, 51 FR 10897 (May 31, 1986); *Antidumping Duty Order: Malleable Cast Iron Pipe Fittings From Brazil*, 51 FR 18640 (May 21, 1986); and *Malleable Cast Iron Pipe Fittings From Brazil; Final Results of Antidumping Duty Administrative Review*, 60 FR 41876 (August 14, 1995).

*Regulations.* The CIPFC claimed interested party status under section 771(9)(F) of the Act as an *ad hoc* trade association consisting entirely of U.S. manufacturers of malleable cast iron pipe fittings.

We received a complete substantive response to the notice of initiation on February 3, 1999, on behalf of CIPFC. In its substantive response, CIPFC stated that both it and its two current members have been participants in both the Department's original investigation and in the sole administrative review conducted by the Department.[2] We received a complete substantive response on behalf of Tupy on February 4, 1999. In its substantive response, Tupy claimed interested party status under section 771(9) of the Act, as a foreign producer of malleable cast iron pipe fittings. Tupy also asserted that, to the best of its knowledge, it has always accounted for 100 percent of the exports to the United States of pipe fittings from Brazil, both before and after the issuance of the order.

On February 8, 1999, we granted an extension to all parties to the deadline for filing rebuttal comments. We received rebuttal comments from Tupy and from CIPFC on February 11 and 12, 1999, respectively.

Both Tupy and CIPFC claim that Tupy was, and remains, the only producer of malleable cast iron pipe fittings from Brazil. Therefore, Tupy accounted for significantly more than 50 percent of the value of total exports of the subject merchandise over the five calendar years preceding the initiation of the sunset review and the response of Tupy constituted an adequate response to the notice of initiation. Thus, because the Department received adequate responses from both domestic and foreign interested parties, we are conducting a full (240 day) review in accordance with section 351.218(e)(2)(i) of the *Sunset Regulations.*

The Department determined that the sunset review of the antidumping duty order on malleable cast iron pipe fittings from Brazil is extraordinarily complicated. In accordance with section 751(c)(6)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on May 3, 1999, the Department extended the time limit for completion of the preliminary results of this review until not later than July 23, 1999, in accordance with section 751(c)(5)(B) of the Act.[3]

## Determination

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the weighted-averaged dumping margins determined in the original investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order and shall provide to the International Trade Commission (''the Commission'') the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's preliminary determinations concerning continuation or recurrence of dumping and magnitude of the margin likely to prevail are discussed below. In addition, parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin likely to prevail are addressed within the respective sections below.

## Continuation or Recurrence of Dumping

### *Party Comments*

In its substantive response, CIPFC argued that revocation of the antidumping duty order would likely result in the continuation or resumption of dumping of malleable cast iron pipe fittings from Brazil.[4] CIPFC asserted that, since the imposition of the antidumping duty order in 1986, Tupy has continued dumping at margins well over a *de minimis* level. As support for this assertion, CIPFC argued that the Department's revision of Tupy's margin in the sole administrative review of this order, from 5.64 percent to 34.64 percent is evidence that there is likelihood of continuation or recurrence of dumping as Tupy has continued dumping with the discipline of an order in place.[5]

With respect to whether imports of the subject merchandise have either fallen dramatically or ceased following the imposition of the antidumping duty order, CIPFC argued that import volumes dropped significantly after the order was put into place. CIPFC contended that, in 1984, prior to the imposition of the order, imports of the subject merchandise totaled 3,274,000 pounds. In 1985, imports decreased significantly, to 476,000 pounds, and then rose slightly in 1986 and 1987 to 816,000 pounds and 762,000 pounds, respectively.[6] According to CIPFC, these data represent total imports of malleable cast iron pipe fittings from Brazil, but, since Tupy is the only known Brazilian exporter of the subject merchandise, it is reasonable to assume that these numbers represent Tupy's exports to the United States during those calendar years.

CIPFC also argued that import volumes in subsequent years gradually began to rise, although never managing to come close to the peak volume of 1984. In 1991, the total volume of imports of the subject merchandise was 721,385 pounds. This volume subsequently increased in 1992, 1993, and 1994 to a range between 1.3 million pounds in 1992 and 1.7 million pounds in 1994.[7] CIPFC asserted that, following the 1995 administrative review in which the Department found that Tupy was dumping at a rate of 34.64 percent, imports of the subject merchandise from Brazil (and, accordingly, Tupy's exports of the subject merchandise) fell dramatically to 818 pounds and have only now begun to start again.

CIPFC concluded by arguing that the data, showing a decline in import volumes of malleable cast iron pipe fittings from Brazil accompanied by the continued existence of dumping margins after the order, provide a strong indication that Tupy will continue or resume dumping if the order is revoked.[8] Therefore, CIPFC asserted that the Department should determine that there is a likelihood of continuation or recurrence of dumping if the order is revoked.

Tupy, in its substantive response of February 4, 1999, argued that the likely effects of revocation of the order on pipe fittings from Brazil would not be a continuation or recurrence of dumping by Tupy. Accordingly, because there is no other Brazilian producer and exporter of pipe fittings, Tupy asserted

[2] CIPFC's current members are Grinnell Corporation and Ward Manufacturing. The Committee previously consisted of five members, including Grinnell and Ward. The other three members have since gone out of business. CIPFC's members represent ''virtually'' all domestic production of malleable cast iron pipe fittings, other than grooved.

[3] *See Malleable Cast Iron Pipe Fittings From Brazil and Thailand: Extension of Time Limit for Preliminary Results of Five-Year Reviews,* 64 FR 23598 (May 3, 1999).

[4] *See* CIPFC substantive response of February 3, 1999, page 6.

[5] *See* CIPFC substantive response of February 3, 1999, page 8.

[6] *See* Table 1 in CIPFC's substantive response of February 3, 1999, page 9.

[7] *See* Table 2 of CIPFC substantive response, page 10.

[8] *See* CIPFC substantive response, page 10.

that there is no other reason to expect that pipe fittings from Brazil will be dumped in the United States in the event the order is revoked.[9]

Tupy explained in its substantive response that following the imposition of the incorrect and prohibitive best information available (BIA) rate of 34.64 percent in the administrative review, Tupy ceased exports of the subject merchandise to the United States in favor of other markets and other product lines. Tupy also asserted that it has recently begun to resume exports of pipe fittings to the United States. Tupy claims that it has no intention of dumping because it can now compete in the United States without dumping.

In its rebuttal response of February 11, 1999, CIPFC argued that Tupy is still interested in the U.S. market and that Tupy's statement that it has no intention of dumping is nothing more than an unsubstantiated, self-serving statement and should be disregarded as such.[10] According to CIPFC, Tupy has presented no credible basis for the Department to find that revocation of the antidumping duty order is not likely to lead to continuation or recurrence of dumping.[11]

Tupy did not address the issue of whether dumping was likely to continue were the order to be revoked in its rebuttal comments.

*Department's Determination*

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3 of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3.a of the *Sunset Policy Bulletin*).

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, the existence of dumping margins after the order, or the cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the order were revoked. If imports cease after the order is issued, it is reasonable to assume that the exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping. Since deposit rates above *de minimis* remain in effect for exports of malleable cast iron pipe fittings from Brazil, evidence suggests that exporters cannot sell in the U.S. market without dumping.

With respect to whether imports of the subject merchandise ceased following the imposition of the original antidumping duty order, the Department preliminarily finds that imports of the subject merchandise to the United States declined dramatically from a high point of 3,274,437 pounds (1485.28 metric tons) in 1984 to 761,050 pounds (345.21 metric tons), in 1987. Imports increased dramatically in 1988, exceeding 3 million pounds (1400 metric tons) and then fell again. However, following the 1995 issuance of the final results of the sole administrative review conducted by the Department, imports subsequently ceased and only in 1998 began to resume. Since Tupy is the only Brazilian producer of malleable cast iron pipe fittings, as stated in the substantive responses of both parties, it is reasonable to assume that these numbers accurately reflect Tupy's exports to the United States. Therefore, since dumping margins have continued over the life of the order, the Department preliminarily determines that dumping is likely to continue if the order were revoked.

**Magnitude of the Margin**

*Party Comments*

In its February 3, 1999, substantive response, CIPFC argued that the Department should determine that the margin likely to prevail if the antidumping duty order were to be revoked is the more recent rate of 34.64 percent. According to CIPFC, the more recently calculated margin of 34.64 percent is more representative of Tupy's likely behavior if the Department revokes the order than the original rate of 5.64 percent.[12]

CIPFC argued that, since the imposition of the antidumping duty order in 1986, Tupy has been attempting to increase its share of the U.S. market for malleable pipe fittings. According to CIPFC, in 1986 Tupy accounted for approximately 0.67 percent of the U.S. market or 0.8 million pounds. CIPFC also argues that, by 1994, when the Department found a margin of 34.64 percent, Tupy had exported 1.75 million pounds or approximately twice the volume of its exports in 1986. Thus, according to the CIPFC, Tupy had been trying to gain a greater percentage of market share in what CIPFC termed a mature low-growth or no-growth market.[13]

Additionally, CIPFC argued that Tupy attempted to secure the 5.64 percent rate of the original investigation by not participating in the administrative review and forcing the Department to use BIA in determining the margin. Since the Department's normal procedure is to limit the BIA rate to the highest rate determined in the original investigation and since Tupy was the only company investigated, CIPFC asserted that Tupy believed that it could secure the 5.64 percent rate when it did not participate in the administrative review. Therefore, CIPFC contended that the use of the 5.64 percent rate in the context of this sunset review would permit Tupy to benefit from the very behavior that the Department sought to sanction in 1995. Therefore, the CIPFC concluded, the Department should find that a dumping margin of 34.64 percent is a more accurate rate than the original rate, that it better reflects Tupy's likely dumping in the event of revocation, and that, therefore, it is the legally correct rate to provide to the Commission.[14]

In its substantive response of February 4, 1999, Tupy argued that, pursuant to the *Sunset Policy Bulletin*, the correct margin to be applied to Tupy in the event of revocation of the antidumping duty order is the rate that was determined in the original investigation. Tupy asserted that the Department may not choose the higher margin from the final results of review issued in 1995 simply because that rate was determined more recently. Tupy

[9] *See* Tupy substantive response of February 4, 1999, page 4.

[10] *See* CIPFC rebuttal response of February 11, 1999, page 3, to Tupy's substantive response of February 4, 1999.

[11] *See* CIPFC rebuttal response of February 11, 1999, page 4.

[12] *See* CIPFC substantive response of February 3, 1999, page 11.

[13] *See* CIPFC substantive response of February 3, 1999, page 12.

[14] *See* CIPFC substantive response of February 3, 1999, page 13–14.

also argued that the record of this case does not justify the higher rate because Tupy asserts that it has not attempted to increase market share since the imposition of the order. Tupy argued, therefore, that the Department should follow its standard practice of determining that the margin likely to prevail if the order were revoked would be the margin from the original investigation, 5.64 percent.

In its rebuttal, CIPFC argued that, since U.S. imports from Brazil increased while at the same time Tupy's margin also increased, it is reasonable to infer that Tupy was attempting to increase its market share between 1986 and 1995.[15] Thus, CIPFC asserted that Tupy increased exports by dumping in the mid-1980s and then, following the imposition of the order, decreased its imports to the United States substantially. CIPFC argued that, in the early 1990s, Tupy again attempted to gain market share and began increasing its exports to the United States by dumping at higher margins only to cease exporting when the Department determined that there was a new, higher dumping margin. Therefore, CIPFC asserted that the margin of dumping that will prevail if the order is revoked will be the higher margin of 34.64 percent.

In its rebuttal comments Tupy continued to argue that the Department should use the 5.64 percent margin from the original investigation. Tupy asserted that this is consistent with the Department's policy and practice. Citing to the final results of the expedited sunset review on the antidumping duty order on roller chain from Japan, Tupy asserted that, in order for the Department to consider a margin other than one determined in an original investigation, the domestic parties have the burden of affirmatively demonstrating that higher, more recent margins reflect a consistent pattern of behavior by respondents to obtain or increase market share. Tupy asserted the CIPFC has not met this burden. Further, Tupy asserted that it has never held a commercially significant share of the U.S. market. Tupy disputed the statistics concerning market share provided by CIPFC but argued nonetheless that, even if CIPFC's statistics were used, Tupy's share of the U.S. market was its highest in 1984 at 2.3 percent and that its market share was 1.18 percent and 1.28 percent in 1993 and 1994, respectively. Tupy asserted that the slight increase of 0.67 percent in its 1993 and 1994 market share over its 1986 market share hardly warrants selecting the 34.64 percent BIA rate.

*Department's Determination*

In the *Sunset Policy Bulletin,* the Department stated that, consistent with the SAA and House Report, the Department normally will provide to the Commission a margin from the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place.[16] Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations.

In its substantive response, CIPFC urged the Department to determine that the magnitude of the margin likely to prevail if the order were revoked is 34.64 percent, which is the rate that was determined in the sole administrative review and the one that is currently in effect. CIPFC argued, in both its substantive response and in its rebuttal, that the Department may choose a higher, more recent margin. Specifically, the *Sunset Policy Bulletin,* at section II.B.2 states that a company may choose to increase dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order. Therefore, the Department may, in response to an argument from an interested party, provide to the Commission a more recently calculated margin for a particular company where, for that particular company, dumping margins increased after the issuance of the order, even if the increase was a result of the use of BIA.

As discussed in Final Results of Expedited Sunset Review: Stainless Steel Plate From Sweden, 63 FR 67658 (December 8, 1998), the Department intended to establish a policy of using the margin from the original investigation as a starting point, thus providing interested parties the opportunity and incentive to present data which would support a different estimate. Additionally, in *Barium Chloride From the People's Republic of China,* 64 FR 5633, 5635 (February 4, 1999), the Department determined that where there is an increase in imports corresponding to the increase in the dumping margin, the Department may determine that the higher rate is more representative of the behavior of the company without the discipline of an order in place.

In the instant case, however, the Department finds that annual import volumes for the subject merchandise have fluctuated during the life of the order and no consistent pattern of behavior by Tupy can be discerned. From 1986, the year of the imposition of the order, through the period prior to the conclusion of the 1993–94 administrative review, the Department finds no pattern of consistently increasing imports of subject merchandise associated with increasing dumping margins. Imports fluctuated during this period, increasing and decreasing during a period when the deposit rate was constant. Imports of subject merchandise during this period were both above and below pre-order levels. In addition, estimates provided by Tupy concerning its U.S. market share during this period also indicate that there were fluctuations in its share of the U.S. market.

Given the fluctuations over the life of the order, the Department finds no reason to believe that Tupy attempted to increase its U.S. market share through the increased dumping of subject merchandise. Because of this, the Department preliminarily finds that the use of a more recently calculated margin in its report to the Commission would be inappropriate. Therefore, we determine that the margins calculated in the original investigation best reflect the behavior of producers/exporters without the discipline of the order and we find that the margins calculated in the original investigation are probative of the behavior of Brazilian producers/exporters of the malleable cast iron pipe fittings if the order were revoked. As such, if these results are adopted for the Department's final determination, we will report to the Commission the rate established for Tupy (as well as for all other producers/exporters of the subject merchandise) in the original investigation as contained in the Preliminary Results of Review section of this notice.

**Preliminary Results of Review**

As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The magnitude of the margin that is likely to prevail is 5.64 percent.

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on September 22, 1999. Interested parties may submit case briefs no later than September 13, 1999, in accordance with 19 CFR

[15] *See* CIPFC rebuttal response of February 11, 1999, page 6.

[16] *See* section II.B.1 of the *Sunset Policy Bulletin.*

351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than September 20, 1999. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than November 30, 1999.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 23, 1999.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 99–19446 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[C–333–401]**

## Preliminary Results of Full Sunset Review: Cotton Shop Towels From Peru

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

**ACTION:** Notice of preliminary results of full Sunset Review: Cotton shop towels from Peru.

**SUMMARY:** On January 4, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the suspended countervailing duty investigation on cotton shop towels from Peru (64 FR 364) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate filed on behalf of the domestic industry and adequate substantive comments filed on behalf of both the domestic industry and respondent interested parties, the Department is conducting a full review. As a result of this review, the Department preliminarily finds that termination of the suspended countervailing duty investigation would not likely lead to continuation or recurrence of a countervailable subsidy.

**FOR FURTHER INFORMATION CONTACT:** Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

**EFFECTIVE DATE:** July 29, 1999.

### Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) (*''Sunset Regulations''*) and in 19 CFR Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (*''Sunset Policy Bulletin''*).

### Scope

The merchandise subject to this suspended countervailing duty investigation is cotton shop towels from Peru. Shop towels are absorbent industrial wiping cloths made from a loosely woven fabric. Shop towels are currently classifiable under item numbers 6307.10.2005 and 6307.10.2015 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description remains dispositive.

### History of the Order

On June 21, 1984, the Department issued an affirmative preliminary determination in the countervailing duty investigation on cotton shop towels from Peru (49 FR 26273). The Department preliminarily found a net bounty or grant of 44 percent *ad valorem* based on the certificate of tax rebate (CERTEX) and non-traditional export fund (FENT).

On September 12, 1984, the Department suspended the countervailing duty investigation on the basis of an agreement between the Department and Fabrica de Tejidos La Union Limitada, S. A. (''La Union'') and Santa Cecilia Compania Textil, S.A. (''Santa Cecilia'') to cease exports of the subject merchandise to the United States (49 FR 35835). No final determination was issued in this case and the Department has not conducted an administrative review.

Beginning in 1989, the Department began publishing notices of intent to terminate the suspended investigation. However, on the basis of objections by Milliken & Company (''Milliken''), the Department has not terminated the suspended investigation.[1]

### Background

On January 4, 1999, the Department initiated a sunset review of the suspended countervailing duty investigation on cotton shop towels from Peru (64 FR 364), pursuant to section 751(c) of the Act. The Department received an Entry of Appearance from Milliken on January 19, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations.*

The Department received complete substantive responses from the Government of Peru, the Comite Textil—Sociedad Nacional de Industrias (''Comite Textil'') and from Milliken on February 10, 1999, within the deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i).[2]

In its substantive response, Milliken claimed interested party status under section 19 U.S.C. 1677(9)(C), as a domestic producer of shop towels. Further, Milliken stated that it was the sole petitioner in the original investigation of shop towels from Peru and had participated as a domestic producer interested party in the proceeding since 1984.

In its substantive response, the Comite Textil stated that it is a Peruvian trade association whose members are textile manufacturers, producers, and exporters. The Comite Textil claimed interested party status under section 771(9) of the Act. Moreover, two of the Comite Textil's members, La Union and Santa Cecilia, are the two Peruvian

[1] *See Cotton Shop Towels from Peru; Intent to Terminate Suspended Investigation,* 54 FR 38262 (September 15, 1989); *Cotton Shop Towels from Peru; Determination Not to Terminate Suspended Investigation,* 54 FR 43977 (October 30, 1989); *Cotton Shop Towels from Peru; Intent to Terminate Suspended Investigation,* 55 FR 35921 (September 4, 1990); *Cotton Shop Towels from Peru; Determination Not to Terminate Investigation,* 55 FR 43994 (October 29, 1990); *Cotton Shop Towels from Peru; Intent to Terminate Suspended Investigation,* 57 FR 39391 (August 31, 1992); *Cotton Shop Towels from Peru; Determination Not to Terminate Suspended Investigation,* 57 FR 52614 (November 4, 1992); *Cotton Shop Towels from Peru; Intent to Terminate Suspended Investigation,* 59 FR 45261 (September 1, 1994); *Cotton Shop Towels from Peru; Intent to Terminate Suspended Investigation,* 61 FR 40408 (August 2, 1996); *Cotton Shop Towels from Peru; Intent to Terminate Suspended Investigation,* 61 FR 41128 (August 7, 1996); *Cotton Shop Towels from Peru; Determination Not to Terminate Suspended Investigation,* 61 FR 47885 (September 11, 1996).

[2] On February 3, 1999, the Department received and granted a request from the Government of Peru for a five working-day extension of the deadline for filing substantive responses in this sunset review. This extension was granted for all participants eligible to file substantive comments in this review. The deadline for filing rebuttals to the substantive comments therefore became February 10, 1999.

companies that signed the suspension agreement. In addition, the Government of Peru claimed interested party status under section 771(9)(B) of the Act, as a government of the country where subject merchandise is produced and from which it is exported. The Peruvian government stated that it has, in the past, submitted responses to the Department with regard to this suspended countervailing duty investigation.

Because the responses of the Comite Textil and the Peruvian government constituted an adequate response to the notice of initiation, the Department is conducting a full (240 day) review in accordance with section 351.218(e)(2) of the *Sunset Regulations*.

On February 19, 1999, the Department received rebuttal comments from both Milliken and the Comite Textil.[3]

The Department determined that the sunset review of the suspended countervailing duty investigation on cotton shop towels from Peru is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on April 26, 1999, the Department extended the time limit for completion of the preliminary results of this review until not later than July 23, 1999, in accordance with section 751(c)(5)(B) of the Act.[4]

## Determination

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether termination of the suspended countervailing duty investigation would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission (''the Commission'') the net countervailable subsidy likely to prevail if the suspended investigation is terminated. In addition, consistent with section 752(a)(6), the Department shall provide the Commission information concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement.

The Department's preliminary determinations concerning continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail if the suspended investigation is terminated, and nature of the subsidy are discussed below. In addition, parties' comments with respect to each of these issues are addressed within the respective sections.

## Continuation or Recurrence of a Countervailable Subsidy

*Parties' Comments*

In its substantive response, Milliken argued that termination of the suspended investigation on cotton shop towels from Peru would likely result in the recurrence of a countervailable subsidy on the subject merchandise from Peru (*see* Substantive Response of Milliken, February 10, 1999, at 3). Milliken maintained that, to the best of its knowledge, there is no evidence that the programs in question (the CERTEX and FENT programs) have been suspended or terminated beyond the partial termination announced by the Peruvian Ambassador in the original proceedings (*see* Substantive Response of Milliken, February 10, 1999, at 5).[5]

Additionally, Milliken maintained that the cessation of imports into the U.S. of cotton shop towels from Peru indicates that the Peruvian exporters cannot export to the U.S. without the benefit of countervailable subsidies (*see* Substantive Response of Milliken, February 10, 1999, at 5). According to Milliken, the most recent information reflects the continued non-existence of imports into the United States of cotton shop towels from Peru.

Milliken argued, therefore, that on the basis of the principles set out in the *Sunset Policy Bulletin* and the SAA, there is a clear case for a determination of likelihood of continuation or recurrence of a countervailable subsidy.

The Comite Textil argued in its substantive response that the subsidy programs at issue—indeed all countervailable subsidy programs—have been eliminated by the Government of Peru and there is neither need nor justification for the suspension agreement (*see* Substantive Response of the Comite Textil, February 10, 1999, at 3). The Comite Textil stated that support for the statement that all countervailable subsidies have been eliminated was presented during the 1994 verification conducted in Peru by the Department in the administrative review of *Cotton Yarn from Peru* (C–333–002), a countervailing duty order that was subsequently revoked on August 9, 1995 (*see* Substantive Response of the Comite Textil, February 10, 1999, at 2). The Comite Textil stated that Legislative Decree No. 622, published November 30, 1990, eliminated the CERTEX program. The Comite Textil further stated that a directive from the Central Reserve Bank of Peru to all other banks (Circular No. 032–91–EF/90, dated September 13, 1991) eliminated all FENT lines of credit as of January 1, 1992, and thereby ended the FENT program. The Comite Textil and the Peruvian government included in their substantive responses a copy of the decree, with translation of relevant excerpts and circular (*see* Substantive Response of the Comite Textil, February 10, 1999, the Declaration of the Ambassador of Peru, and attachments 1–3).

Furthermore, the Comite Textil stated that independent confirmation of the elimination of these programs was part of a larger permanent change in Peruvian Government policy can be found in the 1994 report prepared by the World Bank. The full report of the World Bank's 1994 independent audit of two Peruvian loans was provided in the substantive response. Finally, the Comite Textil provided a copy of Peru's Constitution, adopted December 29, 1993, and stated that the Constitution establishes the strict policy of commercial openness and free competition as a critical part of the economic framework of the country.

*Parties' Rebuttal Comments*

In its rebuttal comments, Milliken argued that although the respondents asserted that the CERTEX and FENT programs have been eliminated, they did not submit specific evidence that all subsidy programs from which Peruvian exporters of shop towels can potentially benefit have been eliminated or that Peruvian shop towel manufacturers are not eligible for such programs. Milliken asserted that this is important because

[3] On February 11, 1999, the Department received and granted a request from the Comite Textil for a five working-day extension of the deadline for filing rebuttal comments in this sunset review. This extension was granted for all participants eligible to file rebuttal comments in this review. The deadline for filing rebuttals to the substantive comments therefore became February 19, 1999.

[4] *See Sugar From the European Community: Extension of Time Limit for Preliminary Results of Five-Year Review*, 64 FR 3683 (January 25, 1999).

[5] During the original investigation, the Peruvian Ambassador to the United States informed the Department that on June 17, 1984, the Peruvian government promulgated Supreme Decree No. 251–84-EFC eliminating cotton shop towel exports to the U.S. from eligibility for the CERTEX and FENT programs (*see* 49 FR 26273 at 26275).

the Department has found that a number of other Peruvian programs confer countervailable subsidies in other countervailing duty investigations. Specifically, Milliken referred to the granting of tax incentives for investments outside the Department of Lima or the Province of Callao under the 1982 Industrial Law, as well as an employment benefit for decentralized companies under Article 8 of Decree 22836.[6] Additionally, Milliken stated that the Government of Peru acknowledged the existence of an export insurance program (SECREX) in its July 28, 1994, response to Supplementary Questionnaire in the countervailing duty proceeding on cotton yarn from Peru.

In their rebuttal comments, the Comite Textil stated that its substantive response included clear-cut documentary evidence of the complete repeal of the countervailable subsidy programs identified in the suspended investigation of cotton shop towels from Peru. Further, the Comite Textile asserted that the February 10, 1999, Declaration of Ambassador Ricardo Luna (also attached to its substantive response) makes clear that the Peruvian Government's commitment to nonintervention in its free market economy and rejection of subsidy programs has continued without interruption for nearly a decade to the present. Finally, the Comite Textile stated that these principles, which are embedded in the Constitution, are also integral to Peru's international undertakings with the International Monetary Fund on economic and fiscal policy and the domestic adoption of the Agreement establishing the World Trade Organization and the Multilateral Agreements contained in the Final Act of the Uruguay Round of the GATT.

*Department's Determination*

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section III.A.2 of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that termination of a suspended countervailing duty investigation is likely to lead to continuation or recurrence of a countervailable subsidy where (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated (*see* section III.A.3.a of the *Sunset Policy Bulletin*). Exceptions to this policy are provided where a company has a long record of not using a program (*see* section III.A.3.b of the *Sunset Policy Bulletin*).

In this review, the Government of Peru and the Comite Textile asserted that the two programs preliminarily found in the original investigation to confer subsidies have both been completely eliminated. As noted in the *Sunset Policy Bulletin,* where a foreign government has eliminated a subsidy program, the Department will consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the program. As noted above, the respondents submitted copies of the legislative decree and directive supporting their assertion that these programs have been terminated. We note that Milliken did not argue that these programs have not been terminated or that these programs could easily be reinstated. Given the evidence submitted by the respondents, we preliminarily determine that both the CERTEX and FENT programs have been eliminated and cannot easily be reinstated.

Referring to section 752(b)(2) of the Act, the *Sunset Policy Bulletin* provides that if the Department determines that good cause is shown, the Department will consider programs determined to provide countervailable subsidies in other investigations or reviews, but only to the extent that such programs (a) can potentially be used by the exporters or producers subject to the sunset review and (b) did not exist at the time that the suspension agreement was accepted (*see* section III.C.1). Additionally, the *Sunset Policy Bulletin* provides that if the Department determines that good cause is shown, the Department will also consider programs newly alleged to provide countervailable subsidies, but only to the extent that the Department makes an affirmative countervailing duty determination with respect to such programs and with respect to the exporters or producers subject to the sunset review (*see* section III.C.2). Both sections specify that the burden is on interested parties to provide information or evidence that would warrant consideration of the subsidy program in question. As noted above, Milliken merely stated that the Department has found in other countervailing duty investigations that a number of other Peruvian programs confer countervailable subsidies.

With respect to the tax incentive for investments outside the Department of Lima or the Province of Callao under the 1982 Industrial Law, we note that this program existed at the time the suspension agreement was accepted. Further, we note that both signatories to the suspension agreement, La Union and Santa Cecilia have Lima, Peru addresses which would appear to make them ineligible for this program.[7]

With respect to the employment benefit for decentralized companies under Article 8 of Decree 22836, we note that such program was also in effect at the time the suspension agreement was accepted.[8] Additionally, the Lima, Peru addresses of the suspension agreement signatories appear to make them ineligible for this program.

Finally, with respect to the SECREX program, Milliken did not provide any information other than to state that the Government of Peru had acknowledged the existence of the program.

On the basis of the above analysis, we preliminarily find that termination of the suspended investigation is not likely to result in the continuation or recurrence of a countervailable subsidy.

**Net Countervailable Subsidy**

*Parties' Comments*

In its substantive response, Milliken argued that based on an application of the principles expressed in the *Sunset Policy Bulletin,* the Department should provide to the Commission a net countervailable subsidy rate of 44 percent ad valorem, the country-wide rate of bounty or grant determined in the original preliminary determination. Milliken stated that this represents the only calculation of the net countervailable subsidy and, since the Department has conducted no administrative reviews since the

[6] Milliken cites to *Deformed Steel Concrete Reinforcing Bar from Peru,* 50 FR 48819, and *Certain Textile Mill Products and Apparel from Peru,* 50 FR 9871.

[7] *See Cotton Shop Towels From Peru; Suspension of Countervailing Duty Determination,* 49 FR 35835 (September 12, 1984).

[8] The program was determined to provide an estimated bounty or grant of 0.008 percent *ad valorem* during 1983 in *Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders; Certain Textile Mill Products and Apparel From Peru; and Rescission of Initiation of Investigations With Respect to Hand-Made Alpaca Apparel and Hand-Made Carpets and Tapestries,* 50 FR 987, 9876 (March 12, 1985).

preliminary determination, the *Sunset Policy Bulletin* dictates that the Department should not make any adjustments to this rate. Moreover, Milliken argued that since the Peruvian Government modified the CERTEX and FENT programs to eliminate exports to the United States from eligibility, rather than the programs in their entirety, no adjustment should be made.

In its substantive response, the Comite Textil stated that the net countervailable subsidy that would prevail if the suspended investigation were terminated would be zero, bcause, as discussed above, there are no countervailable programs in place.

*Department's Determination*

Because we preliminarily determine that a countervailable subsidy is not likely to continue or recur were the suspended investigation to be terminated, there is no net countervailable subsidy to report to the Commission.

**Nature of the Subsidy**

*Parties' Comments*

Neither party addressed this issue.

*Department's Position*

Because we preliminarily determine that a countervailable subsidy is not likely to continue or recur were the suspended investigation to be terminated, there is no nature of the subsidy to report to the Commission.

**Preliminary Results of Review**

As a result of this review, the Department preliminarily finds that termination of the suspended countervailing duty investigation would not be likely to lead to continuation or recurrence of a countervailable subsidy. As a result of this determination, the Department, pursuant to section 751(d)(2) of the Act, preliminarily intends to terminate the suspended countervailing duty investigation on cotton shop towels from Peru. Pursuant to section 751(c)(6)(A)(iv) of the Act, this termination would be effective January 1, 2000.

Consistent with section 351.218(f)(2)(i) of the *Sunset Regulations* we intend to verify the factual information relied on in making this determination because we preliminarily determine that termination of the suspended investigation is not likely to lead to continuation or recurrence of a countervailable subsidy and our preliminary results are not based on countervailing duty rates determined in the investigation or subsequent reviews.

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on September 20, 1999. Interested parties may submit case briefs no later than September 13, 1999, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than September 16, 1999. The Department will issue a notice of final results of this *Sunset Review,* which will include the results of its analysis of issues raised in any such comments, no later than November 30, 1999.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 23, 1999.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 99–19444 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

## Export Trade Certificate of Review

**ACTION:** Notice of application to amend certificate.

**SUMMARY:** The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

**Request for Public Comments**

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 84–10A12.''

Northwest Fruit Exporters' (''NFE'') original Certificate was issued on June 11, 1984 (49 FR 24581, June 14, 1984) and previously amended on May 2, 1988 (53 FR 16306, May 6, 1988); September 21, 1988 (53 FR 37628, September 27, 1988); September 20, 1989 (54 FR 39454, September 26, 1989); November 19, 1992 (57 FR 55510, November 25, 1992); August 16, 1994 (59 FR 43093, August 22, 1994); November 4, 1996 (61 FR 57850, November 8, 1996); October 22, 1997 (62 FR 55783, October 28, 1997); and November 2, 1998 (63 FR 60304, November 9, 1998). A summary of the application for an amendment follows.

**Summary of the Application**

*Applicant:* Northwest Fruit Exporters, 105 South 18th Street, #227, Yakima, Washington 98901.

*Contact:* James R. Archer, Manager, Telephone: (509) 576–8004.

*Application No.:* 84–10A12.

*Date Deemed Submitted:* July 22, 1999.

*Proposed Amendment:* Northwest Fruit Exporters seeks to amend its Certificate to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of § 325.2(l) of the Regulations (15 CFR

325.2(l)): Chief Orchards L.L.C., Yakima, Washington; J.C. Watson Co., Parma, Idaho; Jenks Bro. Cold Storage, Inc., Royal City, Washington; Naumes, Inc., Chelan, Washington; The Apple House, Brewster, Washington; Valicoff Fruit Company, Inc., Wapato, Washington; and Washington Cherry Growers, Wenatchee, Washington (controlling entities: Blue Bird, Inc. and Dovex Fruit Company); and

2. Delete the following companies as ''Members'' of the Certificate: Crisp'n Spicy Growers, Inc., Pateros, Washington; D & G Packing Inc., Plymouth, Washington; Fox Orchards, Mattawa, Washington; Nickell Orchards, Pateros, Washington; and Rolling Hills Orchards, Emmett, Idaho.

Dated: July 23, 1999.

**Morton Schnabel,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 99–19399 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–DR–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 071999B]**

## American Fisheries Act Reports

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before September 27, 1999.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at LEngelme@doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patsy Bearden, NMFS-Alaska Region, PO Box 21668, Juneau, AK 99802,(907) 586–7465.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The American Fisheries Act (AFA), signed into law in October 1998, established a complex system that allocates the pollock catch in the Bering Sea and Aleutian Islands management area to entities composed of groups of specific fishing vessels and processors. Under the AFA, groups of vessels delivering to a specific shoreside processor may form a cooperative and receive a direct allocation of pollock catch to be exclusively harvested by that cooperative. At the same time, the AFA restricts the ability of pollock fishing vessels and processors from expanding their level of participation in other (non-pollock) fisheries. To implement the provisions of the AFA, NMFS will need to monitor the catch of these various entities, including newly established fishery cooperatives, for inseason management of directed fisheries and for managing catch limits by AFA-qualified vessels in other fisheries. Timely reports will be necessary for NMFS to determine catch and bycatch taken by AFA-qualified vessels.

The new reports proposed by NMFS include a Shoreside Electronic Delivery Report that is the equivalent of existing Alaska Department of Fish and Game (ADF&G) fish ticket reports. A report would be submitted for each delivery on a daily basis. As an alternative to this new electronic report, processors would have the option to fax ADF&G fish tickets to NMFS. A daily report of pollock catch by vessel also would be required from each of up to eight shoreside fishery cooperatives.

The AFA also lists the 20 catcher/processors and three motherships that may participate in the pollock fisheries, and requires that all AFA-listed catcher/processors carry two observers and weigh all groundfish catch on scales approved by NMFS. The Council has recommended that NMFS extend these observer and scale requirements to the three AFA-listed motherships. The Council also recommended that NMFS require that AFA-listed catcher/processors and motherships provide observer sampling stations. These observer coverage, scale, and sampling station requirements would be identical to existing requirements for catcher/processors participating in the Community Development Quota (CDQ) fisheries. Nine of the 23 AFA-listed catcher/processors and motherships are not currently equipped with NMFS-approved scales and observer sampling stations and would be required to install scales and observer sampling stations to comply with the AFA. The other 14 vessels participate in the CDQ fisheries and, as a consequence, their facilities already meet the new standards established in the AFA. The information collection requirements associated with scales and weighing catch at-sea in the CDQ program have been approved by the OMB under control number 0648–0330. The information collection requirements associated with observer sampling stations have been approved under OMB control number 0648–0269. These requirements include requesting an annual scale and observer sampling station inspection, maintaining scale and observer sampling station approval documents on board the vessel, conducting a daily at-sea scale test, producing a scale audit trail when requested and producing and maintaining printed output from the scale.

### II. Method of Collection

A. *Shoreside Electronic Delivery Reports.* Shoreside electronic delivery reports would be submitted electronically by each shoreside processor via modem or Internet connection using software provided by NMFS. These daily reports would be in lieu of existing daily production logbooks and weekly production reports which currently must be faxed to NMFS or submitted electronically.

B. *Shoreside Pollock Catch Report.* Each of up to eight shoreside catcher vessel cooperatives would be required to submit daily pollock catch reports to NMFS over the Internet using a NMFS Home Page established for this purpose that will provide a Web-based reporting form. As an alternative for cooperatives lacking Internet access, reports could be sent to NMFS via fax. The regulations establishing the inshore pollock co-op program will require each catcher vessel cooperative to appoint a designated representative or cooperative manager who will report cooperative activity to NMFS. NMFS anticipates that cooperative managers will operate out of shore-based offices and will therefore have the capability to report cooperative activity to NMFS through normal phone lines and Internet accounts. Consequently, this catcher vessel co-op reporting requirement does not contain an at-sea reporting requirement.

C. *Scale and observer sampling station requirements for AFA-listed Catcher/Processors and Motherships.* All 23 AFA-listed catcher/processors and motherships will be required to submit a written request for scale and observer sampling station inspection annually. Scales must be tested daily

when in use. Test results are maintained on the vessel and not reported to NMFS. The total weight of each haul or set must be printed out daily and maintained on board the vessel for inspection by the observer.

### III. Data

*OMB Number:* None

*Form Number:* None

*Type of Review:* Regular submission

*Affected public:* Business or other for-profit

*Estimated Number of Respondents:* 39 (8 shoreside processors, 8 catcher vessel cooperatives, 20 catcher/processors and 3 motherships)

*Estimated Time Per Response:* 30 minutes for a daily catch report from a cooperative; 5 minutes for electronically submitting or faxing a delivery report or fish ticket; 2 minutes for a scale inspection request; 1 minute to retain an annual scale inspection report; 45 minutes for an at-sea scale test report; 5 minutes per day for a printed record of haul weight; 3 minutes to retain a scale audit trail print-out; and 2 hours for requesting an observer sampling station inspection and maintaining the inspection report.

*Estimated Total Annual Burden Hours:* 7,775

*Estimated Total Annual Cost to Public:* $6,368

### IV. Request for Comments

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

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 20, 1999.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of Chief Information Officer.*

[FR Doc. 99–19426 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 072699B]**

## Commercial Harvesters and Recreational Party and Charter Boats Sociocultural and Economic Data Collection Pilot Study

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before September 27, 1999.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at LEngelme@doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John Witzig, Chief, Fishery Statistics Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, 978–281–9232.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

This is a pilot study sponsored by the Atlantic Coast Cooperative Statistics Program (ACCSP)and conducted by the National Marine Fisheries Service. This study is designed to develop sociocultural and economic information systems for commercial and recreational fisheries. Three specific arenas will be addressed during this pilot study. One is to identify and address potential problems with the mechanics of implementing the system. These include all data gathering, entry, and storage activities as well as the ability to link the data to all other ACCSP data. The second is to carry out a field test of the survey instrument across the different cultural and socioeconomic contexts in which the data gathering system must eventually be implemented. Field testing questions and instruments is standard procedure in preparing for any survey research. The third arena is to verify the economic model. Initial data gathering in two specific fisheries, summer flounder and blue crab, will be carried out and the data used for test runs of several standard economic models.

### II. Method of Collection

The study will collect social, cultural, and economic data from commercial and recreational party/charter fishing vessels' owners, captains and crew via face-to-face interviews. Time series of this information will be collected over a three-year period from the same people. Subsequent interviews with respondents will use telephone interviews.

### III. Data

*OMB Number:* None

*Form Number:* None

*Type of Review:* Regular submission

*Affected public:* Businesses and other for-profit, individuals (fishing boat owners, captains, and crew members)

*Estimated Number of Respondents:* 1,743 (343 vessels owners/captains and approximately 1,400 crew members)

*Estimated Time Per Response:* 1 hour for owners, 30 minutes for crew members

*Estimated Total Annual Burden Hours:* 1,386

*Estimated Total Annual Cost to Public:* $0

### IV. Request for Comments

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

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 21, 1999.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of Chief Information Officer.*

[FR Doc. 99–19430 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–22–F

## CONSUMER PRODUCT SAFETY COMMISSION

## Proposed Collection; Comment Request—Testing and Recordkeeping Requirements for Carpets and Rugs

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval, through November 30, 2002, of information collection requirements for manufacturers and importers of carpets and rugs. The collection of information is in regulations implementing the Standard for the Surface Flammability of Carpets and Rugs (16 CFR Part 1630) and the Standard for the Surface Flammability of Small Carpets and Rugs (16 CFR Part 1631). These regulations establish requirements for testing and recordkeeping for manufacturers and importers who furnish guaranties for products subject to the carpet flammability standards. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget.

**DATES:** The Office of the Secretary must receive comments not later than September 27, 1999.

**ADDRESSES:** Written comments should be captioned ''Carpets and Rugs; Paperwork Reduction Act,'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

**FOR FURTHER INFORMATION CONTACT:** For information about the proposed collection of information call or write Linda L. Glatz, Management and Program Analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; (301) 504–0416, Ext. 2226.

**SUPPLEMENTARY INFORMATION:**

### A. The Standards

Carpets and rugs that have one dimension greater than six feet, a surface area greater than 24 square feet, and are manufactured for sale in or imported into the United States are subject to the Standard for the Surface Flammability of Carpets and Rugs (16 CFR Part 1630). Carpets and rugs that have no dimension greater than six feet and a surface area not greater than 24 square feet are subject to the Standard for the Surface Flammability of Small Carpets and Rugs (16 CFR Part 1631).

Both of these standards were issued under the Flammable Fabrics Act (FFA) (15 U.S.C. 1191 *et seq.*). Both standards require that products subject to their provisions must pass a flammability test that measures resistance to a small, timed ignition source. Small carpets and rugs that do not pass the flammability test comply with the standard for small carpets and rugs if they are permanently labeled with the statement that they fail the standard and should not be used near sources of ignition.

Section 8 of the FFA (15 U.S.C. 1197) provides that a person who receives a guaranty in good faith that a product complies with an applicable flammability standard is not subject to criminal prosecution for a violation of the FFA resulting from the sale of any product covered by the guaranty. Section 8 of the FFA requires that a guaranty must be based on ''reasonable and representative'' tests. Many manufacturers and importers of carpets and rugs issue guaranties that the products they produce or import comply with the applicable standard. Regulations implementing the carpet flammability standards prescribe requirements for testing and recordkeeping by firms that issue guaranties. See 16 CFR Part 1630, Subpart B, and 16 CFR Part 1631, Subpart B. The Commission uses the information compiled and maintained by firms that issue these guaranties to help protect the public from risks of injury or death associated with carpet fires. More specifically, the information helps the Commission arrange corrective actions if any products covered by a guaranty fail to comply with the applicable standard in a manner that creates a substantial risk of injury or death to the public. The Commission also uses this information to determine whether the requisite testing was performed to support the guaranties.

The Office of Management and Budget (OMB) approved the collection of information in the regulations under control number 3041–0017. OMB's most recent extension of approval expires on November 30, 1999. The Commission now proposes to request an extension of approval without change for the collection of information in the regulations.

### B. Estimated Burden

The Commission staff estimates that the enforcement rules result in an industry expenditure of a total of 63,840 hours for testing and recordkeeping. However, the Commission is unable to estimate the total dollar cost incurred by the industry. The Commission staff estimates that 120 firms are subject to the information collection requirements because the firms have elected to issue a guaranty of compliance with the FFA. The number of tests that a firm issuing a guaranty of compliance would be required to perform each year varies, depending upon the number of carpet styles and the annual volume of production. The staff estimates that the average firm issuing a continuing guaranty under the FFA is required to conduct a maximum of 200 tests per year. The actual number of tests required by a given firm may vary from 1 to 200, depending upon the number of carpet styles and the annual production volume. For example, if a firm manufactures 100,000 linear yards of carpet each year, and has obtained consistently passing test results, only one test per year is required. The time required to conduct each test is estimated by the staff to be 2½ hours plus the time required to establish and maintain the test record.

The estimated annual cost of the information and collection requirements to the Federal government is approximately $15,000. This sum includes three staff months and travel costs expended for examination of the records required to be maintained.

### C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: July 22, 1999.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 99–19343 Filed 7–28–99; 8:45 am]

BILLING CODE 6355–01–P

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Notice of Intent To Prepare an Environmental Impact Statement for El Rancho Road Bridge Replacement Project, Vandenberg Air Force Base, California

In accordance with the National Environmental Policy Act of 1969, the United States Air Force (USAF) is issuing this notice to advise the public that the USAF intends to prepare an Environmental Impact Statement (EIS) to assess potential environmental impacts of the proposed actions and possible alternatives for the El Rancho Road Bridge Replacement Project at Vandenberg Air Force Base, California. The proposed action is to construct a causeway bridge on El Rancho Road that will span the entire San Antonio Creek floodplain. Identified alternatives are to build a system of elevated culverts spanning the entire stream and bridge area, or to take no action and continue regular debris and sedimentation clearing in the affected area.

A scoping meeting is planned in Lompoc, California for the purpose of identifying environmental concerns that need to be addressed in the EIS. Notice of the time and location of the meeting will be made available to the community using the local news media. The schedule for the scoping meeting is as follows:

| Date | Location | Time |
|---|---|---|
| 18 Aug 99 ..... | Lompoc City Council ..... | 6:30 p.m. |

The purpose of this meeting is to identify the environmental issues and concerns that should be analyzed in developing the EIS. Public input and comments are solicited concerning the environmental aspects of the proposed program. To assure the USAF will have sufficient time to fully consider public inputs on issues, written comments should be mailed to ensure receipt no later than September 1, 1999.

Please direct written comments or request for further information concerning El Rancho Road Bridge Replacement Project to: James L. Johnston, 30 CES/CEV, 806 13th Street, Suite 116, Vandenberg AFB, CA 93437–5242, (805) 605–0633.

**Janet A. Long,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 99–19414 Filed 7–28–99; 8:45 am]

BILLING CODE 5001–05–P

## DEPARTMENT OF DEFENSE

### Department of the Army

### Inland Waterways Users Board

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice (Request for nominations).

**SUMMARY:** Section 302 of Public Law (PL) 99–662 established the Inland Waterways Users Board. The Board is an independent Federal advisory committee. Its 11 members are appointed by the Secretary of the Army. This notice is to solicit nominations for four (4) appointments or reappointments to two-year terms that will begin January 1, 2000 .

**ADDRESSES:** Office of the Assistant Secretary of the Army (Civil Works), Department of the Army, Washington, DC 20310–0103. Attention: Inland Waterways Users Board Nominations Committee.

**FOR FURTHER INFORMATION CONTACT:** Dr. Joseph W. Westphal, Assistant Secretary of the Army (Civil Works), (703) 697–8986.

**SUPPLEMENTARY INFORMATION:** The selection, service, and appointment of Board members are covered by provisions of Section 302 of PL 99–662. The substance of those provisions is as follows:

**a. Selection**

Members are to be selected from the spectrum of commercial carriers and shippers using the inland and intracoastal waterways, to represent geographical regions, and to be representative of waterborne commerce as determined by commodity ton-miles statistics.

**b. Service**

The board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterways construction and rehabilitation priorities and spending levels for commercial navigation improvements, and report its recommendations annually to the Secretary and Congress.

**c. Appointment**

The operation of the Board and appointment of its members are subject to the Federal Advisory Committee Act (Pub. L. 92–463, as amended) and departmental implementing regulations. Members serve without compensation but their expenses due to Board activities are reimbursable. The considerations specified in section 302 for the selection of the Board members, and certain terms used therein, have been interpreted, supplemented, or otherwise clarified as follows:

*(1) Carriers and Shippers*

The law uses the terms ''primary users and shippers.'' Primary users has been interpreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers has been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Individuals are appointed to the Board, but they must be either a carrier or shipper, or represent a firm that is a carrier or shipper. For that purpose a trade or regional association is neither a shipper or primary user.

*(2) Geographical Representation*

The law specifies ''various'' regions. For the purpose of selecting Board members, the waterways subjected to fuel taxes and described in Pub. L. 95–502, as amended, have been aggregated into six regions. They are (1) the Upper Mississippi River and its tributaries above the mouth of the Ohio; (2) the Lower Mississippi River and its tributaries below the mouth of the Ohio and above Baton Rouge; (3) the Ohio River and its tributaries; (4) the Gulf Intracoastal Waterway in Louisiana and Texas; (5) the Gulf Intracoastal Waterway east of New Orleans and associated fuel-taxed waterways including the Tennessee-Tombigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake Rivers System and Upper Willamette. The intent is that each region shall be represented by at least one Board member, with that representation determined by the regional concentration of the individual's traffic on the waterways.

*(3) Commodity Representation*

Waterway commerce has been aggregated into six commodity categories based on ''inland'' ton-miles shown in Waterborne Commerce of the

United States. These categories are (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum, Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemicals and Allied Products; and (6) All other. A consideration in the selection of Board members will be that the commodities carried or shipped by those individuals or their firms will be reasonably representative of the above commodity categories.

**d. Nomination**

Reflecting preceding selection criteria, the current representation by the four (4) Board members whose terms expire December 31, 1999, is one member representing region 1, two members representing region 2, and one member representing region 3. Also, these Board members represent two shippers and two carriers.

Two (2) of the four members whose terms expire December 31, 1999, are eligible for reappointment. Nominations to replace Board members whose terms expire December 31, 1999, may be made by individuals, firms or associations. Nominations will:

(1) state the region to be represented;

(2) state whether the nominee is representing carriers, shippers or both;

(3) provide information on the nominee's personal qualifications;

(4) include the commercial operations of the carrier and/or shipper with whom the nominee is affiliated. This commercial operations information will show the actual or estimated ton-miles of each commodity carried or shipped on the inland waterways system in a recent year (or years) using the waterway regions and commodity categories previously listed.

Nominations received in response to last year's **Federal Register** notice, published on July 16, 1998, have been retained for consideration. Renomination is not required but may be desirable.

**e. Deadline for Nominations**

All nominations must be received at the address shown above no later than August 31, 1998.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 99–19456 Filed 7–28–99; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Notice of Intent To Grant an Exclusive or Partially Exclusive License to BONTEX

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** In compliance with 37 CFR 404 *et seq.*, the Department of the Army hereby gives notice of its intent to grant to BONTEX, a corporation having its principle place of business at One BONTEX Drive, Buena Vista, VA 24416–0751, an exclusive or partially exclusive license relative to an ARL patented elastomeric compound U.S. patent no. 5,264,290). Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any.

**FOR FURTHER INFORMATION CONTACT:** Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–CS–TT/Bldg. 433, Aberdeen Proving Ground, Maryland 21005–5425, Telephone: (410) 278–5028.

**SUPPLEMENTARY INFORMATION:** None.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 99–19455 Filed 7–28–99; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Notice of Intent To Grant an Exclusive or Partially Exclusive License to M.A. Hanna Company

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** In compliance with 37 CFR *et seq.*, the Department of the Army hereby gives notice of its intent to grant to M.A. Hanna Company, a corporation having its principle place of business at 200 Public Square, Suite 36–5000, Cleveland, OH 44114, an exclusive or partially exclusive license relative to an ARL patented elastomeric company (U.S. patents no. 4,843,114 and 5,264, 290). Anyone wishing to object to the granting of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any.

**FOR FURTHER INFORMATION CONTACT:** Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–CS–TT/Bldg. 433, Aberdeen Proving Ground, Maryland 21005–5425, Telephone: (410) 278–5028.

**SUPPLEMENTARY INFORMATION:** None.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 99–19454 Filed 7–28–99; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**ACTION:** Submission for OMB Review; Comment Request; Notice.

**SUMMARY:** The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before August 30, 1999.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5)

Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 23, 1999.

**William E. Burrow,**

*Leader, Information Management Group, Office of the Chief Information Officer.*

## Office of Postsecondary Education

*Type of Review:* New.

*Title:* Distance Education Demonstration Program Annual Evaluation.

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions; individuals or households; businesses or other for-profit.

*Reporting and Recordkeeping Hour Burden:*

Responses: 13,515

Burden Hours: 1,485

*Abstract:* The Distance Education Demonstration Program is a new program designed to test the quality and viability of expanded distance education programs that are currently restricted by provisions of the Higher Education Act (HEA). The HEA requires the Department to report to Congress annually on the results and specifies the areas which must be addressed.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *vivian*__reese@ed.gov, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joe Schubart at 202–708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–19349 Filed 7–28–99; 8:45 am]

BILLING CODE 4000–01–P

# DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[IC99–716A–000, FERC–716A]**

## Proposed Information Collection and Request for Comment

July 23, 1999.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of proposed information collection and request for comments.

**SUMMARY:** In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

**DATES:** Consideration will be given to comments submitted on or before September 27, 1999.

**ADDRESSES:** Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street N.E., Washington, D.C. 20426.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at mike.miller@ferc.fed.us.

**SUPPLEMENTARY INFORMATION:**

*Abstract:* The information collected under the requirements of FERC–716A ''Application for Transmission Services Under Section 211 of the Federal Power Act'' (OMB No. 1902–0168) is used by the Commission to implement the statutory provisions of the Section 211 of the Federal Power Act (FPA), 16 U.S.C. 824j as amended by the Energy Policy Act of 1992 (Pub. L. 102–486) 106 Stat. 2776. Under Section 211, the Commission may order transmission services if it finds that such action would be in the public interest and would not unreasonably impair the continued reliability of systems affected by the order. Section 211 allows any electric utility, Federal power marketing agency or any other person generating electric energy for sale or resale to apply for an order requiring a transmitting utility to provide transmission services to the applicant. The applicant is required to provide a form of notice suitable for publication in the **Federal Register**, and notify the affected parties. The Commission uses the information to carry out its responsibilities under Part II of the Federal Power Act. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 36.

*Action:* The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

*Burden Statement:* Public reporting burden for this collection is estimated as:

| Number of respondents annually (1) | Number of responses per respondent (2) | Average burden hours per response (3) | Total annual burden hours (1)×(2)×(3) |
|---|---|---|---|
| 10 | 1 | 2.5 | 25 |

Estimated cost burden to respondents: 25 hours/2,080 hours per year × $109,889 per year=$1,321. The cost per respondent is equal to $132.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information;

including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

**Linwood A. Watson,Jr.,**

*Acting Secretary.*

[FR Doc. 99–19380 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[IC99–716–000, FERC–716]**

## Proposed Information Collection and Request for Comments

July 23, 1999.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of proposed information collection and request for comments.

**SUMMARY:** In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comments on the specific aspects of the information collection described below.

**DATES:** Consideration will be given to comments submitted on or before September 27, 1999.

**ADDRESSES:** Copies of the proposed collection of information can be obtained and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE, Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425 and by e-mail at mike.miller@ferc.fed.us.

**SUPPLEMENTARY INFORMATION:**

*Abstract:* The information collected under the requirements of FERC–716 (OMB No. 1902–0170) ''Good Faith Request for Transmission Service and Response by Transmitting Utility under Sections 211(a) and 213)(a) of the Federal Power Act'' (Policy Statement) is used by the Commission to implement the statutory provisions of Sections 211 and 213 of the Federal Power Act (FPA) as amended and added by the Energy Policy Act of 1992. The information is not filed with the Commission, however, the request and response may be analyzed as part of a Section 211 proceeding. This collection of information covers the information that must be contained in the request and the response. The Energy Policy Act of 1992 amended Section 211 of the FPA and expanded the Commission's authority to order transmission service. Under the revised Section 211, the Commission may order transmission services if it finds that such action would be in the public interest, would not unreasonably impair the continued reliability of electric systems affected by the order, and would meet the requirements of amended section 211 of the FPA.

*Action:* The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

*Burden Statement:* Public reporting burden for this collection is estimated as:

| Number of respondents annually (1) | Number of responses per respondent (2) | Average burden hours per response (3) | Total annual burden hours (1)×(2)×(3) |
|---|---|---|---|
| 10 | 1 | 100 | 1,000 |

Estimated total cost burden to respondents: 1,000 hours/2,080 hours per year×$109,889 per year=$52,832. The cost per respondent is equal to $2,642.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are cost incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.*, permitting electronic submission of responses.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–19381 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EI99–62–002]**

## Aquila Energy Marketing Corporation v. Niagara Mohawk Power Corporation, Niagara Mohawk Energy Marketing Corporation; Filing

July 23, 1999.

Take notice that on July 20, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing its Second Compliance Report in the

above-referenced docket. Niagara Mohawk states that this filing was submitted to comply with the Commission's June 18, 1999 Order, 87 FERC ¶ 61,328 (1999), in the above-referenced docket.

Niagara Mohawk states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 5, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance.)

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–19378 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP96–152–016]**

## Kansas Pipeline Company; Revised Tariff Filing

July 23, 1999.

Take notice that on July 21, 1999, Kansas Pipeline Company (Applicant) tendered for filing, revisions and corrections to its FERC Gas Tariff, Original Volume No. 1. The tariff sheets and their effective dates are listed in Appendix A to Applicant's filing.

Applicant states that the corrected tariff includes changes directed by the Commission's June 18, 1999, order in the above-captioned docket (87 FERC ¶ 61,329 (1999)) and corrections to Applicant's July 1, 1999 compliance filing made pursuant to the Commission's April 2, 1999, order in this proceeding (87 FERC ¶ 61,020 (1999)). Applicant requests waiver of Section 154.201, 18 CFR 154.201, of the Commission's Regulations which requires that a marked version of tariff changes be submitted with a tariff filing. Applicant further sates that a copy of this filing is available for public inspection during regular business hours at Applicant's offices located at 8325 Lenexa Drive, Lenexa, Kansas, 66214. Applicant indicates that copies of this filing are being served on all parties to the proceeding in Docket No. CP96–152.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations before August 2, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public reference Room. This application may be viewed on the Commission's website at http://ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). For questions regarding this filing, contact Michael A. Stosser at (202) 785–6262.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

**Appendix A—Tariff Sheets Submitted With July 21, 1999, Compliance Filing by Kansas Pipeline Company in Docket No. CP96–152–016**

*Effective May 11, 1998*

Substitute Original Sheet No. 16
Substitute Original Sheet No. 16A
Substitute Original Sheet No. 21
Substitute Original Sheet No. 22
Substitute Original Sheet No. 22B
Substitute Original Sheet No. 28
Substitute Original Sheet No. 29
Substitute Original Sheet No. 30
Substitute Original Sheet No. 31
Substitute Original Sheet No. 31A
Substitute Original Sheet No. 31B
Substitute Original Sheet No. 31C
Substitute Original Sheet Nos. 267 Through 279 (Reserved)

*Effective June 1, 1998*

Second Substitute Sheet No. 16A
Second Substitute Sheet No. 22B
Second Substitute Sheet No. 22C

*Effective July 1, 1998*

Third Substitute Original Sheet No. 22B
Third Substitute Original Sheet No. 22C

*Effective August 1, 1998*

Fourth Substitute Original Sheet No. 22B
Fourth Substitute Original Sheet No. 22C

*Effective September 1, 1998*

Fifth Substitute Original Sheet No. 22B
Fifth Substitute Original Sheet No. 22C

*Effective October 1, 1998*

Sixth Substitute Original Sheet No. 22B
Sixth Substitute Original Sheet No. 22C

*Effective November 1, 1998*

Seventh Sub Original Sheet No. 22B
Seventh Sub Original Sheet No. 22C
Second Sub First Revised Sheet No. 28
Second Sub First Revised Sheet No. 30
Second Substitute Original Sheet No. 31A
Second Substitute Original Sheet No. 31B
Second Substitute Original Sheet No. 31C

*Effective December 1, 1998*

Eighth Substitute Original Sheet No. 22B
Eighth Substitute Original Sheet No. 22C

*Effective January 1, 1999*

Ninth Substitute Original Sheet No. 22B
Ninth Substitute Original Sheet No. 22C

*Effective February 1, 1999*

Tenth Substitute Original Sheet No. 22B
Tenth Substitute Original Sheet No. 22C

*Effective March 1, 1998*

Eleventh Substitute Original Sheet No. 22B
Eleventh Substitute Original Sheet No. 22C

*Effective April 1, 1999*

Substitute Third Revised Sheet No. 15
Substitute Third Revised Sheet No. 21
Twelfth Sub Original Sheet No. 22B
Twelfth Sub Original Sheet No. 22C
Substitute Second Revised Sheet No. 26
Substitute Second Revised Sheet No. 28
Substitute Second Revised Sheet No. 30
Third Substitute Original Sheet No. 31A
Third Substitute Original Sheet No. 31B
Third Substitute Original Sheet No. 31C

*Effective May 1, 1999*

Thirteenth Sub Original Sheet No. 22B
Thirteenth Sub Original Sheet No. 22C

*Effective June 1, 1999*

Fourteenth Sub Original Sheet No. 22B
Fourteenth Sub Original Sheet No. 22C

*Tariff Sheets Withdrawn by July 21, 1999 Filing*

Third Revised Sheet No. 15
First Revised Sheet No. 16
Third Revised Sheet No. 21

[FR Doc. 99–19379 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP99–591–000]**

## National Fuel Gas Supply Corporation; Request Under Blanket Authorization

July 23, 1999.

Take notice that on July 22, 1999, National Fuel Gas supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP99–591–000 a request

pursuant to Sections 157.205, 157.208 and 157.214 of the Commission's Regulations (18 CFR 157.205, 157,208 and 157.214) under the Natural Gas Act (NGA) for authorization to increase the storage capacity at the Galbraith Storage Field, located in Jefferson County, Pennsylvania and to raise the maximum allowable operating pressure (MAOP) of Line G–24(S) under National Fuel's blanket certificate issued in Docket No. CP83–4–000, pursuant to Section 7 of the NGA, all as more fully set forth in the application which 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/htm (call 202–208–2222 for assistance).

National Fuel requests authorization to increase the maximum storage capacity of the Galbraith Storage Field from 1,620,000 Mcf to 2,620,000 Mcf, and to increase the maximum storage pressure from 620 psig (surface) to 910 psig (surface). National Field is needed to support storage services to be offered to shippers using National Fuel's facilities. National Fuel asserts that the increase in capacity and pressure at the Galbraith Storage Field will not require the construction of any additional facilities.

National Fuel also requests authorization to increase the NAOP on Line G–24(S) from 620 psig to 910 psig. It is stated that Line G–24(S) is the lateral used to fill and withdraw gas from Galbraith Storage Field. National Fuel explains that it is seeking this authorization because Line G–24(S) was replaced pursuant to Commission authorization in Docket No. CP86–629–000, and pursuant to that order further Commission authorization is required to increase the MAOP of Line G–24(S).

Any questions regarding the application may be directed to David W. Rietz at (716) 857–7949.

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 NGA (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 NGA.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–19377 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 2216–000]**

## New York Power Authority; Public Notice; Public Information Meetings

July 23, 1999.

The Federal Energy Regulatory Commission (Commission) will hold two public information meetings to familiarize the public with the Commission's hydropower licensing program. The Commission staff will give an overview of the Commission and its licensing and post-licensing procedures. There will be an opportunity for questions and answers. A significant number of hydroelectric projects' licenses will expire between 2000 and 2010, including the New York Power Authority's Robert Moses Niagara Project (Project No. 2216), located in Niagara County, New York. The license for the Robert Moses Niagara Project expires in August 2007.

Interested persons are invited to attend either or both sessions scheduled as follows:

**Thursday, August 12, 1999**

1:00 to 3:30 p.m., Niagara County Community College, Building E, Room E140, 3111 Saunders Settlement Road, Sanborn, NY 14132

**Thursday, August 12, 1999**

6:30 to 9:00 p.m., Niagara University, Dunlevy Hall, Room 127, 3100 Lewiston Road, Niagara University, NY 14109

Please direct any questions regarding these meetings either to Theresa Gibson, Commission staff, Outreach Support Coordinator, (202) 219–2793 or Assemblyman Robert A. Daly, 138th District, Niagara Falls Office, 1700 Pine Avenue, Niagara Falls, NY 14301, (716) 282–6062.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–19376 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 477–000–OR]**

## Portland General Electric Company; Scoping Meetings Pursuant to the National Environmental Policy Act of 1969 for an Applicant Prepared Environmental Assessment

July 23, 1999.

Pursuant to the Energy Policy Act of 1992, the Portland General Electric Company (PGE) has been using a third party contractor, alternative process, to prepare an Environmental Impact Statement to file along with a relicensing application, with the Federal Energy Regulatory Commission (Commission) for the Bull Run Project, Project No. 477. The license for the project expires on November 16, 2004. PGE will continue with the alternative process but now intends to file an Applicant Prepared Environmental Assessment (APEA) in connection with an application to surrender its license for the project.

In October 1997, state and federal agencies, local interests, and nongovernmental organizations, undertook a collaborative effort for the relicensing of the Bull Run Project. The process involved identification of environmental issues associated with the relicensing of the Bull Run Project, including public meetings in March 1999, to solicit comments on the Initial Consultation Document. In September 1998, PGE requested use of an alternative procedure, involving a third-party contractor, in filing an application for a new license for the Bull Run Project. On December 10, 1998, the Commission approved the use of an alternative licensing procedure in the preparation of the Bull Run relicensing application.

In May 1999, PGE decided to pursue a surrender of its operating license and to decommission the Bull Run Project. PGE obtained support from the parties involved in the collaborative effort to pursue the APEA procedure for the decommissioning of the Bull Run Project. As part of the APEA procedure, PGE with the Commission has prepared a Scoping Document I (SDI), which provides information on the scoping process, APEA schedule, background information, environmental issues, and proposed project alternatives.

The purpose of this notice is to: (1) advise all parties as to the proposed scope of the environmental analysis, including cumulative effects, and to seek additional information pertinent to

this analysis; and (2) advise all parties of their opportunity for comment.

**Scoping Process**

The purpose of the scoping process is to identify significant issues related to the proposed action and to determine what issues should be addressed in the document to be prepared pursuant to the National Environmental Policy Act of 1969 (NEPA). The SDI will be circulated to enable appropriate federal, state, and local resource agencies, Indian tribes, NGOs, and other interested parties to participate in the scoping process. SDI provides a brief description of the proposed action, project alternatives, the geographic and temporal scope of a cumulative effects analysis, and a list of issues.

**Scoping Meetings**

PGE and FERC staff will conduct two scoping meetings. All interested individuals, organizations, and agencies are invited to attend and assist in identifying the scope of environmental issues that should be analyzed in the APEA.

The agency/public scoping meeting will be held on Wednesday September 1, 1999, from 9:00 am until noon, at Two World Trade Center, Bridge Level Conference Rooms A and B, 121 SW Salmon Street, Portland, Oregon. The public scoping meeting will be held on Wednesday September 1, 1999, from 7:00 p.m. until 9:00 p.m. at U.S. Forest Service Mount Hood National Forest Headquarters Office, First Floor Conference Room, 16400 Champion Way, Sandy, Oregon. For more details, interested parties should contact Julie Keil, PGE, (503) 464–8864 before the meeting date.

**Objectives**

At the scoping meetings, PGE and FERC staff will: (1) summarize the environmental issues identified for analysis in the APEA; (2) solicit from the meeting participants all available information, especially quantified data, on the resources at issue, and (3) encourage statements from experts and the public on issues that should be analyzed in the APEA. Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist in defining and clarifying the issues to be addressed.

**Meeting Procedures**

The meeting will be conducted according to the procedures used at Commission scoping meetings. Because this meeting will be a NEPA scoping meeting, the Commission will not conduct another scoping meeting when the surrender application and APEA are filed with the Commission in Spring 2000.

The meetings will be recorded by a stenographer or audio tape and become a part of the formal record of the Commission proceeding on the Bull Run Project. Individuals presenting statements at the meetings will be asked to identify themselves for the record. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session. Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within their allotted time, may submit written statements for inclusion in the public record no later than August 30, 1999.

All filings should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, and should clearly show the following captions on the first page, Bull Run Project, FERC No. 477. A copy of each filing should also be sent to Julie Keil, Portland General Electric Company, 121 SW Salmon Street, 3WTC–BRHL, Portland, OR 97204.

Based on all written comments, a Scoping Document II (SDII) may be issued. SDII will include a revised list of issues, based on the scoping sessions.

For further information regarding the APEA scoping process, please contact Jim Hastreiter, Federal Energy Regulatory Commission, 101 SW Main St., Suite 905 Portland, OR, 97204 at (503) 944–6760, or Julie Keil, Portland General Electric Company, at (503) 464–8864.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–19382 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 23, 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.:* 11783–000.

c. *Date Filed:* June 28, 1999.

d. *Applicant:* Universal Electric Power Commission.

e. *Name of Project:* Fulton Lock and Dam 3 Hydroelectric Project.

f. *Location:* On the Tombigbee River in Itawamba County, Mississippi. The project would utilize the Corp of Engineers' Fulton Lock and Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Hector M. Pérez, hector.perez@ferc.fed.us, 202–219–2843, or Robert Bell, robert.bell@ferc.fed.us, (202) 210–2806.

j. *Deadline for Filing Motions to Intervene, Protest and Comments:* 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 interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener 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. The project would consist of the following facilities: (1) a 300-foot-long and 72-inch-diameter steel penstocks at the outlet works; (2) a powerhouse with a turbine generator unit with an installed capacity of 1.125 megawatts; (3) a tailrace consisting of an exhaust apron; (4) 14.7-kV, 300-foot-long transmission lines; and (5) other appurtenances.

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. The application may be viewed on http://www.ferc.fed.us/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—Public notice of the filing of the initial preliminary

permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

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, .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, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–19383 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 23, 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.:* 11782–000.

c. *Date Filed:* June 28, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Paint Creek Dam Hydroelectric Project.

f. *Location:* On Paint Creek, Highland County, Ohio. The project would utilize the U.S. Army Corps of Engineers' Paint Creek Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Héctor M. Pérez, hector.perez@ferc.fed.us, 202–219–2843, or Robert Bell, robert.bell@ferc.fed.us, 202–219–2806.

j. *Deadline for Filing Motions to Intervene, Protest and Comments:* 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 required all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener 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. The project would use the U.S. Army Corps of Engineer's Paint Creek Dam and would consist of the following facilities: (1) two new 80-foot-long, 96-inch-diameter penstocks at the outlet works; (3) a new powerhouse containing 2 generating units having a total installed capacity of 2.14 MW; (4) a new Tailrace; (5) a new 500-foot-long, 14.7-KV transmission line; and (6) other appurtenances.

The project would have an annual generation of 13,100 MWh and project power would be sold to a local utility.

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. The application may be viewed on http://www.ferc.fed.us/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—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

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, .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, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–19384 Filed 7–28–99; 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, Protests, and Comments

July 23, 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.:* 11773–000.

c. *Date Filed:* June 28, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Beltzville Lake Dam Hydroelectric Project.

f. *Location:* On Pohopoco Creek, Carbon County, Pennsylvania. the project would utilize the U.S. Army Corps of Engineers' Beltzville Lake Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Héctor M. Pérez, hector.perez@ferc.fed.us, 202–219–2843, or Robert Bell, robert.bell@ferc.fed.us, 202–219–2806.

j. *Deadline for Filing Motions to Intervene, Protest and Comments:* 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 interveners filing documents with the Commission to serve a copy of that document on each person in official service list for the project. Further, if an intervener 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. The project would use the U.S. Army Corps of Engineer's Beltzville Lake Dam would consist of the following facilities: (1) a new 100-foot-long, 84-inch-diameter penstock at the outlet works; (2) a new powerhouse containing one generating unit with an installed capacity of 1.77 MW; (3) a new tailrace; (4) a new one-mile-long, 14.7-KV transmission line; and (5) other appurtenances.

The project would have an annual generation of 11,000 Mwh and project power would be sold to a local utility.

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. The application may be viewed on http://www.ferc.fed.us/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—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

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, .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, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–19385 Filed 7–28–99; 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, Protests, and Comments

July 23, 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.:* 11772–000.

c. *Date Filed:* June 28, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Blue Marsh Lake Dam Hydroelectric Project.

f. *Location:* On the Tulpehocken Creek, Berks County, Pennsylvania. The project would. utilize the U.S. Army Corps of Engineers' Blue Marsh Lake Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Héctor M. Pérez, hector.perez@ferc.fed.us, 202–219–2843, or Robert Bell, robert.bell@ferc.fed.us, 202–219–2806.

j. *Deadline for Filing Motions to Intervene, Protests and Comments:* 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 interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener 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. The project would use the U.S. Army Corps of Engineers' Blue Marsh Lake Dam and would consist of the following facilities: (1) new 200-foot-long, 96-inch-diameter penstock at the outlet works; (2) a new powerhouse containing one generating unit with an installed capacity of 430 kW; (3) a new tailrace; (4) a new 0.25-mile-long, 14.7-KV transmission line; and (5) other appurtenances.

The project would have an annual generation of 2,600 Mwh and the project power would be sold to a local utility.

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. The application may be viewed on http://www.ferc.fed.us/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—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

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, .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'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–19386 Filed 7–28–99; 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, Protests, and Comments

July 23, 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.:* 11771–000.

c. *Date Filed:* June 28, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project;* Delaware Dam Hydroelectric Project.

f. *Location:* On the Olentangy River, Delaware County, Ohio. The project would utilize the U.S. Army Corps of Engineer's Delaware Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Héctor M. Pérez, hector,perez@ferc.fed.us, 202–219–2843, or Robert Bell, robert.bell@ferc.fed.us, 202–219–2806.

j. *Deadline for Filing Motions To Intervene, Protest and Comments:* 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 interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener 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. The project would use the U.S. Corps of Engineer's Delaware Dam and would consist of; (1) a 100-foot-long, 9-inch-diameter penstock at the outlet works; (2) a powerhouse having one generating unit with an installed capacity of 760 kW; (3) a new tailrace; (4) a new 300-foot-long, 14.7-KV transmission line; and (5) other appurtenances.

The project would have an annual generation of 4,660 Mwh and the project power would be sold to a local utility.

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. The application may be viewed on http://www.ferc.fed.us/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—public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

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, .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, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–19387 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Temporary Variance Request and Soliciting Comments, Motions To Intervene, and Protests

July 23, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for Temporary Variance.

b. *Project No.:* 2716–033.

c. *Date Filed:* July 19, 1999.

d. *Applicant:* Virginia Electric Power Company.

e. *Name of Project:* Bath County Project.

f. *Location:* On Back Creek, in Bath County, Virginia. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Sara S. Bell, Bath County Pumped Storage Station, HRC–01, Box 280, Warm Springs, VA 24484–9714, (540) 279–3068.

i. *FERC Contact:* Robert Fletcher, robert.fletcher@ferc.fed.us, 202–219–1206.

j. *Deadline for Filing Comments, Motions to Intervene and Protest:* 14 days from the issuance date of this notice. Please include the project number (2716–033) on any comments or motions filed. All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

k. *Description of Application:* On June 15, 1999, the Commission approved a short-term variance (which will expire on August 12, 1999) to reduce the minimum flow requirements of article 42 to conserve the conservation pool at the project. The licensee continues to consult with the various resource agencies. The current situation is similar to that which existed last year for the project whereby the conservation pool was depleted, then the minimum flow was reduced. The license proposes to begin reducing flow releases proportional to the depleted volume of the conservation pool. Normal operating discharges will resume once the conservation pool is refilled.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing 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.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–19388 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project Nos. 2364–000; 2365–000]**

## Madison Paper Industries Maine; Madison Paper Industies' Request To use Alternative Procedures in Filing Hydroelectric License Applications

July 23, 1999.

By letter dated July 12, 1999, Madison Paper Industries (Madison), asked for Commission approved to use an alternative procedures in a filing application for the 9-megawatt (MW) Anson Project, No. 2365, and the 17-MW Abenaki Project, No. 2364.[1] Madison has demonstrated that it made a reasonable effort to contact the resource agencies, Indian tribes, non-governmental organizations (NGOs), and others who may be affected by their proposal, and has submitted a communication protocol governing how participants in the proposed process communicate with each other. Madison believes there is a consensus on using the alternative process, and it appears that the use of an alternative procedure may be appropriate in this case.

The purpose of this notice is to invited comments on Madison's request to use the alternative procedure, as required by section 4.34(i)(5) of the Commission's regulations. Additional notices seeking comments on specific project proposals, interventions and protests, and recommended terms and conditions will be issued at a later date.

The alternative procedure combines the prefiling consultation process with the environmental review process and allows the applicant to file an Applicant-Prepared Environmental Assessment (APEA) in lieu of Exhibit E of the license applications. This differs from the traditional process, in which the applicant consults with agencies, Indian tribes, and NGOs during preparation of the application for the license and before filing it, but the Commission staff performs the environmental review after the application is filed. The alternative procedure is intended to simplify and expedite the licensing process by combining the prefiling consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants. The alternative procedure can be tailored to the project under consideration.

### Alternative Process and the Anson and Abenaki Projects

Madison intends on preparing an APEA for the projects to: consolidate and streamline the licensing process; provide for the early identification of environmental impacts; take into account cumulative project impacts and evaluate alternatives for addressing those impacts; and promote early, comprehensive settlement discussions.

On February 12, 1999, Madison distributed an Initial Stage Consultation Document for the projects to state and federal resource agencies, Indian tribes, and NGOs. Madison scheduled a meeting for all interested parties on Feburary 24 and 25, 1999, respectively. During spring 1999, Madison developed and consulted on survey plans for ambient water quality, benthic macroinvertebrates, and fisheries. These surveys are being conducted during summer and early fall, 1999. Public

[1] The projects are located on the Kennebec River in the towns of Anson and Madison, Somerset County, Maine. The Anson impoundment encompasses about 7 miles of the Kennebec River and 0.5 mile of the Carrabassett River. The Abenaki impoundment encompasses about 0.5 mile of the Kennebec River immediately below the Anson Project.

scoping meetings and a site visit are planned for Fall 1999, when additional study requests will be requested. The applications, including the applicant-prepared EA, would be filed with the Commission before May 1, 2002, the expiration date of Madison's current licenses. Each application would include a common multi-project APEA, adapted, as necessary, to the individual application.

**Comments**

Interested parties have 30 days from the date of this notice to file with the Commission, any comments on Madison's proposal to use the altenative procedures to file applications for the Anson and Abenaki Projects.

**Filing Requirements**

The comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street, NE, Washington, DC 20426.

All comments filings must bear the heading ''Comments on the Alternative Procedure,'' and include the names and numbers of the projects:

Abenaki Hydro Project, No. 2364
Anson Hydro Project, No. 2365

For further information, please contact Nan Allen of the Federal Energy Regulatory Commission at 202–219–2938, or E-mail at Nan.Allen@ferc.fed.us.

**Lindwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–19389 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Amendment to License and Soliciting Comments, Motions To Intervene, and Protests

July 23, 1999.

Take notice that the following application to amend the project license has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Amendment to License.

b. *Project Name:* Catawba-Wateree Project.

c. *Project No.:* FERC Project No. 2232–393.

d. *Date Filed:* May 28, 1999.

e. *Applicant:* Duke Energy Corporation.

f. *Location:* Counties and lakes affected in North Carolina: *Counties:* Alexander, Burke, Caldwell, Catawba, Gaston, Iredell, Lincoln, McDowell, and Mecklenburg. *Lakes:* James, Rhodiss, Hickory, Lookout Shoals, Norman, and Mountain Island. Counties and Lakes affected in South Carolina: *Counties:* Chester, Fairfield, Kershaw, Lancaster, and York. *Lakes:* Wylie, Fishing Creek, Great Falls, Rocky Creek, and Wateree.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. E.M. Oakley, Duke Energy Corporation, P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006, (704) 382–5778.

i. *FERC Contact:* Brian Romanek, brian.romanek@ferc.fed.us, (202) 219–3076.

j. *Deadline for filing motions to intervene, protest and comments:* September 7, 1999.

k. *Description of the filing:* Pursuant to Commission's Order Approving and Modifying Shoreline Management Plan for the Catawba-Wateree Hydroelectric Project, the licensee filed, for Commission approval, revised Shoreline Management Plan (SMP) Maps on September 30, 1998 (based, in part, on results of a Shallow Water Fish Habitat Study). Subsequently, the licensee requested additional time to conduct field verification of the maps and additional consultation with the resource agencies and other interested parties to refine and modify these maps. On May 28, 1999, the licensee filed the updated version of the Shoreline Management Plan maps and associated information.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–19390 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Application Accepted for Filing and Soliciting Comments, Motions, To Intervene, and Protests

July 24, 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.:* 1786–000.

c. *Date Filed:* July 2, 1999.

d. *Applicant:* Unversal Electric Power Corporation.

e. *Name of Project:* Independence Dam Hydroelectric Project.

f. *Location:* On the Maumee River near the tows of Defiance and Independence, in Defiance, County, Ohio. The dam is owned by the Ohio Department of Natural Resources.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Gregory 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. This application is not ready for environmental analysis at this time.

l. The project would consist of the following facilities: (1) the existing 10-foot-high Independence Dam; (2) an existing 545-acre reservoir with a water surface elevation of 660 feet msl; (3) five new 12-foot-long, 32-inch-diameter penstocks; (4) a new powerhouse on the downstream side of the dam housing five turbine generating units with a total installed capacity of 1.03 MW; (5) a new tailrace discharge apron; (6) a new 600-foot-long, 14.7 kV transmission line; and (7) other appurtenances. The dam is owned by the Ohio Department of Natural Resources.

Applicant estimates that the average annual generation would be 6,300 MWh and that the cost of the studies under the permit would be $800,000.

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, DC 20426, or by http://www.ferc.fed.us/online/rims.htm (call 208–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. Individual desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which as already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

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, .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 to 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 fling refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–19391 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Application Accepted for Filing and Soliciting Motions To Intervene and Protests

July 23, 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–11736–000.

c. *Date filed:* April 26, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Red River Lock and Dam No. 3 Hydro Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Red River Lock and Dam No. 3 on the Red River, near the Town of Colfax, Natchitoches and Grant Parishes, Louisiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio, 44301, (330) 535–7115.

i. *FERC Contact:* Ed Lee (202) 219–2809 or E-mail address at Ed.Lee@FERC.fed.us.

j. *Deadline for filing 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 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' Red River Lock and Dam No. 3, and would consist of the following facilities: (1) six new steel penstocks, each about 100-foot-long and 10.5-foot-in-diameter; (2) a new powerhouse to be constructed on the downstream side of the dam having an installed capacity of 49,000 kilowatts; (3) a new 500-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed average annual generation is estimated to be 300 gigawatthours. The cost of the studies under the permit will not exceed $5,000,000.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2–A, Washington, D.C. 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. 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—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

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, .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, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–19392 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6409–9]**

## Agency Information Collection Activities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): National Emission Standards for Hazardous Air Pollutants for the Printing and Publishing Industry, EPA ICR No. 1739.02, and OMB Control Number 2060–0335, expiration date July 31, 1999. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before September 27, 1999.

**ADDRESSES:** U.S. Environmental Protection Agency, 401 M Street SW, Mail code 2224A, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Ginger Gotliffe at (202) 564–7072, fax (202) 564–0009, or e-mail (*gotliffe.ginger@epamail.epa.gov*).

**SUPPLEMENTARY INFORMATION:**

*Affected entities:* Entities potentially affected by this action are those owners or operators of publication rotogravure, product and packaging rotogravure, or wide-web flexographic printing presses who are covered by 40 CFR part 63, subpart KK. The compliance date for an owner or operator of an existing affected source subject to the provisions of this subpart is May 30, 1999. The compliance date for an owner or operator of a new affected source subject to the provisions of this subpart is immediately upon start up of the affected source or May 30, 1996, whichever is later.

*Title:* MACT Subpart KK, National Emission Standards for Hazardous Air Pollutants for the Printing and Publishing Industry; OMB No. 2060–0335.

*Abstract:* Owners or operators of the affected facilities described make the following one-time only reports of start of construction, anticipated and actual startup dates, and physical or operational changes to existing facilities. Respondents using control devices other than incinerators or

solvent recovery systems must submit a request for approval of the control device to EPA. The General Provisions also require that an affected source with an initial startup date before the effective date of the relevant standard under Part 63 submit a one-time initial notification. This notification must be submitted one year before the compliance deadline. For sources constructed or reconstructed after the effective date of the relevant standard, the General Provisions require that the source submit an application for approval of construction or reconstruction. The application is required to contain information on the air pollution control device that will be used for each potential HAP emission point. The information in the initial notification and the application for construction or reconstruction will enable enforcement personnel to identify the sources subject to the standards and to identify those sources that are already in compliance.

The General Provisions also require that affected sources submit a notification of compliance status. This notification must be signed by a responsible company official who certifies its accuracy and certifies that the source has complied with the relevant standards. Performance test results also are included in the compliance status report. The notification of compliance status must be submitted within 60 days after the compliance date for the affected source.

In addition, affected sources demonstrating compliance through the operation of continuous monitoring systems (CMS) are required by the General Provisions to conduct a performance evaluation of the CMS. A report of the performance evaluation results is required to be submitted to EPA. Respondents operating a control device who do not operate a continuous emissions monitoring system must monitor incinerator temperatures as well as a parameter representing the performance of the capture system. Excess emissions and CMS performance reports documenting excess emissions and parameter monitoring exceedances are also required to be submitted to the Agency semiannually.

Respondents operating solvent recovery systems who do not operate a continuous emissions monitoring system must conduct monthly material balances and keep records of these material balances as well as organic HAP and volatile matter usage. Respondents complying with the regulation through the use of low HAP materials , or through the use of a control device in combination with low HAP materials must keep records of monthly HAP use, materials use, and solids contents of materials applied. HAP use reports are required annually by sources using the provisions of the rule to establish area source status.

The General Provisions require owners or operators that comply by means of control devices to develop startup, shutdown, and malfunction plans, documenting procedures that will be followed in the case of these events. Startup, shutdown and malfunction reports also are required to be submitted, demonstrating the actions taken by an owner or operator in the event of a startup, shutdown, or malfunction. When actions taken are consistent with the plan, reports are required semiannually. When actions taken are inconsistent with the plan, reports must be submitted within two working days.

All reports and records must comply with the General Provisions for 40 CFR part 63. All records must be maintained by the affected source for a period of 5 years. The information collected will be used by the Administrator to determine that all sources subject to the NESHAP are achieving the standards.

All requests, applications, and reports are submitted to the respondent's State agency, if it has an approved title V permit program implementation authority. Otherwise, this information is submitted to the appropriate Regional Office of the Environmental Protection Agency (EPA) as indicated in section 63.13 of the General Provisions.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The EPA would like to solicit comments to:

(i) 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;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g.; permitting electronic submission of responses.

*Burden statement:* The average annual burden hours for each respondent is as follows: Performance testing, notification and reporting is 282 hours, CMS testing and installing is 500 hours, CMS maintenance, records, and reporting is 398 hours, and all other reporting and recordkeeping is 325 hours. There are 180 affected facilities. Because the performance testing and CMS testing and installation may be a one time occurrence and because the ''other recordkeeping'' category includes hours that would only be used if the facility is not using a CMS, the hours are not totaled into one value. The average total annual cost for reporting for the first three years is $9186.00 per facility. Total annualized capital/startup costs for monitoring equipment purchases to comply with this rule are estimated at $20,000 per respondent using CMS. Costs for operation and maintenance of this equipment are estimated at $9,000 per year per respondent for the first three years after promulgation.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposed of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: July 22, 1999.

**Elliott Gilberg,**

*Division Director, CCSMD, OC.*

[FR Doc. 99–19438 Filed 7–28–99; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6409–5]**

## Accidental Release Prevention Requirements: Risk Management Programs Under Section 112(r)(7) of the Clean Air Act as Amended; Confidential Business Information

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of intent to disclose information.

**SUMMARY:** The purpose of this document is to inform submitters of risk management plans (RMPs) containing information claimed or designated as confidential business information (CBI) that EPA will be distributing RMPs, including the confidential information they may contain, to another federal agency, the Chemical Safety and Hazard Investigation Board (the ''Chemical Safety Board'' (CSB) or ''Board''), according to the requirements of 40 CFR 2.209(c).

**DATES:** RMPs, including the CBI they may contain, will be distributed to the CSB 10 days after publication of this document in the **Federal Register**.

**ADDRESSES:** Comments or questions on this document should be mailed or submitted to the address noted in the following **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Dorothy McManus, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency, 401 M St. SW (5104), Washington, DC 20460, (202) 260–8606.

**SUPPLEMENTARY INFORMATION:** Section 112(r) of the Clean Air Act (CAA) establishes a program for the prevention and mitigation of accidental releases of extremely hazardous substances at chemical plants and other stationary sources. As required by section 112(r)(7)(B), EPA has issued regulations (40 CFR part 68) requiring sources with more than a threshold quantity of extremely hazardous substances listed by EPA to develop and implement a risk management program and submit a RMP describing that program to the Agency. Under section 112(r)(7)(B)(iii), all RMPs must also be submitted to the Chemical Safety and Hazard Investigation Board. The Board is an independent federal agency established under section 112(r)(6) of the CAA to investigate serious accidental releases of extremely hazardous substances and to take other specified actions regarding the prevention of accidental releases.

EPA established procedures for claiming, substantiating, and protecting CBI in submitted RMPs in Accidental Release Prevention Requirements; Risk Management Programs Under Clean Air Act Section 112(r)(7), Amendments; Final Rule (see 64 FR 964, January 6, 1999). Further, EPA stated in the preamble of that rule that any information claimed or designated as CBI in RMPs will be provided to the CSB in accordance with EPA's existing CBI regulations at 40 CFR 2.209(c), Disclosure to other Federal agencies (see 64 FR 964, January 6, 1999). Under that provision, ''EPA may disclose business information to another Federal agency if—(1) EPA receives a written request for disclosures of the information from a duly authorized officer or employee of the other agency * * * (2) The request * * * sets forth the official purpose for which the information is needed; and (3) When the information has been claimed as confidential or has been determined to be confidential, the responsible EPA office provides notice to each affected business of the type of information to be disclosed and to whom it is to be disclosed. At the discretion of the office, such notice may be given by notice published in the **Federal Register** at least 10 days prior to disclosure * * *''

EPA and the CSB entered into a Memorandum of Understanding (MOU) in March of this year. The MOU notes that CSB has responsibilities under section 112(r)(6) of the CAA with respect to risk management plans (RMPs) submitted pursuant to EPA's regulations implementing section 112(r)(7) of the CAA. In order to fulfill its responsibilities, the CSB needs to have access to all submitted RMPs, including any information contained in RMPs that is claimed or designated as CBI. In accordance with the terms of 40 CFR 2.209(c), the CSB in the MOU indicated its need for access to all RMPs, including any CBI in RMPs. In the MOU, EPA indicated it would notify RMP submitters via a **Federal Register** document that it will provide the CSB with access to all RMPs, including any CBI in RMPs. In addition, with respect to submitted RMPs, EPA will advise the CSB of any unresolved business confidentiality claims and any determinations that information is entitled to confidential treatment. Further, the CSB will protect from disclosure any information in RMPs that is subject to an unresolved business confidentiality claim or that has been designated by EPA as CBI.

Given the foregoing, this **Federal Register** document serves to notify owners or operators of sources covered by the risk management program that all submitted RMPs, including any CBI in RMPs, will be disclosed by EPA to the CSB.

**Jim Makris,**

*Director, Chemical Emergency Preparedness and Prevention Office.*

[FR Doc. 99–19436 Filed 7–28–99; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[PF–884; FRL–6095–6]**

## Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

**DATES:** Comments, identified by docket control number PF–884, must be received on or before August 30, 1999.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–884 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Thomas Harris, Insecticide-Rodenticide Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–9423; and e-mail address: harris.thomas@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS | Examples of potentially affected entities |
|---|---|---|
| Industry | 111 | Crop production |
| | 112 | Animal production |
| | 311 | Food manufacturing |
| | 32532 | Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also

be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–884. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–884 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by E-mail to: ''*opp-docket@epa.gov*,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number PF–884. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI 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. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the rule or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

## List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 23, 1999.

**Donald R. Stubbs,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

## Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical

residues or an explanation of why no such method is needed.

**Novartis Crop Protection, Inc.**

1. EPA has received a request from Novartis Crop Protection, Inc., PO Box 18300, Greensboro, NC 27419 referencing pesticide petitions PP 8F3592, 7F3500, 4E4419 and 5F4508, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR 180.449 by establishing permanent tolerances for residues of abamectin (avermectin $B_1$) and its delta 8,9-isomers in or on the agricultural commodities cattle, fat at 0.015 parts per million(ppm); cattle, meat byproducts at 0.02 ppm; cattle, meat at 0.02 ppm; citrus, dried pulp at 0.10 ppm; citrus, oil at 0.10 ppm; citrus, whole fruit at 0.02 ppm; cottonseed at 0.005 ppm; cotton gin by-products at 0.15 ppm; hops, dried at 0.20 ppm; milk at 0.005 ppm; and potatoes at 0.005 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The subject tolerances, except for cotton gin by-products, were established as time-limited tolerances with an expiration date of September 1, 1999 (62 FR 13833–13839, March 24, 1997) (FRL–5597–7). Three issues identified in the referenced **Federal Register** document were the cause of the subject tolerances only being extended as time-limited tolerances. The three issues (cotton gin by-product residue data, review of the Monte Carlo dietary risk assessment, indoor residential risk assessment) are now resolved. The present petition proposes that these time-limited tolerances be converted to permanent tolerances.

*A. Residue Chemistry*

1. *Plant metabolism*. The metabolism of abamectin in plants and animals is adequately understood and the residues of concern include the parent insecticide, abamectin or avermectin $B_1$ (which is a mixture of a minimum of 80% avermectin $B_{1a}$ and a maximum of 20% avermectin $B_{1b}$) and the delta 8,9-isomer of the $B_{1a}$ and of the $B_{1b}$ components of the parent insecticide. Under photolytic conditions in the laboratory and in the field, abamectin undergoes isomerization around the 8,9-double bond to produce small amounts of the delta-8,9 isomer. The photo-oxidative half-life of the delta-8,9 isomer is 4.5 hours and that of avermectin $B_{1a}$ is 6.5 hours.

2. *Analytical method*. The analytical method involves homogenization, filtration, partition and cleanup with analysis by high performance liquid chromatography fluorescence detection. The methods are sufficiently sensitive to detect residues at or above the tolerances proposed. All methods have undergone independent laboratory validation as required by PR Notice 88–5.

3. *Magnitude of residues*. Data to support the new and proposed conversion of the present time-limited tolerances to full tolerances with no expiration date have been previously submitted under Pesticide Petitions PP 7F3500, 8F3592, 4E4419, 5F4508, 5E4566, and Food Additive Petition 8H5550.

*B. Toxicological Profile*

1. *Acute toxicity*. The database includes the following studies: A rat acute oral study with a $LD_{50}$ of 4.4 to 11.8 milligrams/kilogram (mg/kg) (males) and 10.9 to 14.9 mg/kg (females). An acute oral toxicity in the CF-1 mouse with the delta 8,9-isomer has $LD_{50}$ greater than 80 mg/kg. A rabbit acute dermal study with a $LD_{50} > 2,000$ mg/kg. A rat acute inhalation study with a $LC_{50} > 5.73$ milligrams/liter (mg/L). A primary eye irritation study in rabbits which showed irritation. A primary dermal irritation study in rabbits which showed no irritation. A primary dermal sensitization study in guinea pigs which showed no skin sensitization potential. An acute oral toxicity study in monkeys with a no observed adverse effects level (NOAEL) of 1.0 mg/kg based upon emesis at 2.0 mg/kg.

2. *Genotoxicty*. The Ames assays conducted with and without metabolic activation were both negative. The V-79 mammalian cell mutagenesis assays conducted with and without metabolic activation did not produce mutations. In an alkaline elution/rat hepatocyte assay, abamectin was found to induce single strand DNA breaks without significant toxicity in rat hepatocytes treated in vitro at doses greater than 0.2 mM. This *in vitro* dose of 0.2 mM is biologically unobtainable *in vivo*, due to the toxicity of the compound. However, at these potentially lethal doses, *in vivo* treatment did not induce DNA single strand breaks in hepatocytes. In the mouse bone marrow assay, abamectin was not found to induce chromosomal damage. There are also many studies and a great deal of clinical and follow-up experience with regard to ivermectin, a closely similar human and animal drug.

3. *Reproductive and developmental toxicity*. The following reproductive and developmental tixocity studies were conducted:

i. A 2–generation study in rats with a NOAEL of 0.12 mg/kg/day in pups based upon retinal folds, decreased body weight, and mortality. The NOAELs for systemic and reproductive toxicity were 0.4 mg/kg/day. In the 2–generation reproduction study in rats with the delta 8,9-isomer, the NOAEL was 0.4 mg/kg/day and the lowest observed adverse effect level (LOAEL) was greater than 0.4 mg/kg/day (the highest dose tested).

ii. An oral teratology study in the CF-1 mouse with a maternal NOAEL of 0.05 mg/kg/day based upon decreased body weights and tremors. The fetal NOAEL was 0.20 mg/kg/day based upon cleft palates. An oral teratology study with the delta 8,9-isomer in CF-1 mice with a maternal NOAEL of 0.10 mg/kg/day based upon decreased body weights. The fetal NOAEL was 0.06 mg/kg/day based upon cleft palate. An oral teratology study in rabbits with a maternal NOAEL of 1.0 mg/kg/day based upon decreased body weights and tremors. The fetal NOAEL was 1.0 mg/kg/day based upon clubbed feet. An oral teratology study in rats with a maternal and fetal NOAEL at 1.6 mg/kg/day, the highest dose tested. An oral teratology study with the delta 8,9-isomer with a maternal NOAEL in CF-1 mice that expressed P-glycoprotein greater than 1.5 mg/kg/day, the highest and only dose tested. No cleft palates were observed in fetuses that expressed normal levels of P-glycoprotein, but fetuses with low or no levels of P-glycoprotein had increased incidence of cleft palates.

4. *Subchronic toxicity*. A rat 8–week feeding study with a NOAEL of 1.4 mg/kg/day based upon tremors. A rat 14–week oral toxicity study with a NOAEL of 0.4 mg/kg/day, the highest dose tested. A dog 12–week feeding study with a NOAEL of 0.5 mg/kg/day based upon mydriasis. A dog 18–week oral study with a NOAEL of 0.25 mg/kg/day based upon mortality. A CD-1 mouse 84–day feeding study with a NOAEL of 4 mg/kg/day based upon decreased body weights.

5. *Chronic toxicity*. A rat 53–week oncogenicity feeding study, negative for oncogenicity, with a NOAEL of 1.5 mg/kg/day based upon tremors. A CD-1 mouse 94–week oncogenicity feeding study, negative for oncogenicity, with a NOAEL of 4 mg/kg/day based upon decreased body weights. A dog 53–week chronic feeding study, negative for oncogenicity, with a NOAEL of 0.25 mg/kg/day based upon mydriasis.

6. *Animal metabolism*. Rats were given oral doses of 0.14 or 1.4 milligrams/kilogram of bodyweight (mg/kg bw) per day of abamectin or 1.4 mg/kg bw per day of the delta-8,9 isomer. Over 7 days, the percentages excreted in urine were 0.3–1% of the administered dose of abamectin and 0.4% of the dose of the isomer. The animals eliminated 69–82% of the dose of abamectin and 94% of the dose of isomer in feces. In rats, goats and cattle, unchanged parent compound accounted for up to 50% of the total radioactive residues in tissues. The 24-hydroxymethyl derivative of abamectin was found in rats, goats and cattle treated with the compound and in rats treated with the delta-8,9 isomer, and the 3′-*O*-demethyl derivative was found in rats and cattle administered abamectin and in rats administered the isomer.

7. *Metabolite toxicology*. There are no metabolites of concern based on a differential metabolism between plants and animals. The potential hazard of the 24-hydroxymethyl or the 3′-*O*-demethyl animal metabolites was evaluated in thorough toxicology studies with abamectin, photolytic break-down product, the delta 8,9-isomer.

8. *Endocrine disruption*.There is no evidence that abamectin is an endocrine disrupter. Evaluation of the rat multigenerational study demonstrated no effect on the time to mating or on the mating and fertility indices, suggesting no effects on the estrous cycle, on mating behavior, or on male or female fertility at doses up to 0.4 mg/kg/day, the highest dose tested. Furthermore, the range finding study demonstrated no adverse effect on female fertility at doses up to 1.5 mg/kg/day, the highest dose tested. Similarly, chronic and subchronic toxicity studies in mice, rats, and dogs did not demonstrate any evidence of toxicity to the male or female reproductive tract, or to the thyroid or pituitary (based upon organ weights and gross and histopathologic examination). In the developmental studies, the pattern of toxicity observed does not seem suggestive of any endocrine effect. Finally, experience with ivermectin in breeding animals, including sperm evaluations in multiple species, shows no adverse effects suggestive of endocrine disruption.

*C. Aggregate Exposure*

1. *Dietary exposure*—i. *Food*. The acute dietary Reference Dose (aRfD) is 0.0025 mg/kg/day from a 1–year dog study. The NOAEL is 0.25 mg/kg/day, and the LOAEL is 0.50 mg/kg/day based on mydriasis (pupil dilation) which was observed after 1 week of dosing. An uncertainty factor of 100 to account for interspecies extrapolation (10x) and intraspecies variability (10x) was recommended. EPA has also retained the 10X safety factor for infants and children resulting in an aRfD of 0.00025 mg/kg for appropriate populations. EPA has determined that the studies conducted with the CF-1 mouse are not relevant to human safety assessment. A Monte Carlo acute dietary exposure analysis predicted the percent population adjusted dose (PAD) used for the general population is 35% at the 99.9 percentile. Children 1–6 years old constitute the sub-population with the highest predicted exposure. The predicted percent PAD utilization for this subgroup is 70% for 99.9% of the individuals.

EPA has established the RfD for abamectin at 0.0012 mg/kg/day from a 2–generation reproduction study in rats. The developmental NOAEL is 0.12 mg/kg/day, and the developmental LOAEL is 0.40 mg/kg/day based on decreased pup body weight and viability during lactation, and increased incidence of retinal rosettes in F2b weanlings. An uncertainty factor of 100 to account for interspecies extrapolation (10x) and intraspecies variability (10x) was recommended. EPA has also retained the 10X safety factor for infants and children resulting in an aRfD of 0.00012 mg/kg/day for appropriate populations dietary exposure analysis for abamectin in the most exposed population (non-nursing infants <1 year old) shows the percent PAD utilization to be only 19%. For average U.S. populations (48 states), dietary exposure for abamectin shows a minimal utilization of 7% of the PAD.

ii. Drinking water. EPA modeling data (Generic expected environmental concentration/Screening concentration In Ground Water indicated worst case estimated environmental concentrations (EEC) of 0.485 micrograms/liter (µg/L) avermectin for acute and 0.239 µg/L for chronic exposure, both in surface water from the same use of abamectin on strawberries (the maximum use rate on the label). Refined modeling data Pesticide Root Zone Model-Exposure Analysis Modeling System (PRZM--EXAM) indicate a worst case EEC of 0.88 µg/L for acute and 0.57 µg/L for chronic, both calculated for an abamectin use on strawberries grown on black plastic mulch. EPA noted and Novartis agrees that the certainty of the concentrations estimated for strawberries is low, due to uncertainty on the amount of runoff from plant beds covered in plastic mulch and uncertainty on the amount of degradation of abamectin on black plastic compared to soil.

EPA and Novartis believe the estimates of abamectin exposure in water derived from the PRZM-EXAMS model are significantly overstated for several reasons. The PRZM-EXAMS model was designed to estimate exposure from ecological risk assessments and thus uses a scenario of a body of water approximating the size of a 1 hectare (2.5 acres) pond. This tends to overstate drinking water exposure levels for the following reasons. First, surface water source drinking water generally comes from bodies of water that are substantially larger than a 1 hectare (2.5 acres) pond. Second, the modeled scenario also assumes that essentially the whole basin receives an application of the pesticide. Yet in virtually all cases, basins large enough to support a drinking water facility will contain a substantial fraction of the area which does not receive pesticide. Third, there is often at least some flow (in a river) or turnover (in a reservoir or lake) of the water so the persistence of the pesticide near the drinking water facility is usually overestimated. Fourth, even assuming a reservoir is directly adjacent to an agricultural field, the agricultural field may not be used to grow a crop on which the pesticide in question is registered for use. Fifth, the PRZM-EXAMS modeled scenario does not take into account reductions in residue loading due to applications of less than the maximum application rate or no treatment of the crop at all (percent crop treated data). Although there is a high degree of uncertainty to this analysis, these are the best available estimates of concentrations of abamectin in drinking water. Although the peak EEC of 0.88 µg/L slightly exceeds the acute drinking water level of concern, 0.76 µg/L, considering the uncertain nature of the modeling estimate, EPA does not expect aggregate acute exposure to avermectin will pose an unacceptable risk to human health.

2. *Non-dietary exposure*. Avermectin's registered residential uses include indoor crack/crevice and outdoor application to lawns. For lawn uses, EPA conducted a risk assessment for adult applicators and postapplication exposure to avermectin using the EPA's Draft SOPs for Residential Exposure Assessments. The highest predicted exposure, oral hand to mouth for children, resulted in a calculated margin of exposure of 14,000. For children's postapplication exposure to avermectin from indoor crack/crevice products, valid exposure studies demonstrate there is no exposure and therefore no risk for indoor residential

scenarios. Chronic exposures for the residential uses are not expected. Short- and intermediate-term risk for the registered uses do not exceed EPA's level of concern.

*D. Cumulative Effects*

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The EPA stated in an FR notice published on April 7, 1999 (64 FR 16843–16850) (FRL–6070–6) that it does not have, at this time, available data to determine whether avermectin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment.

*E. Safety Determination*

1. *U.S. population*. Using the exposure assumptions described above and based on the completeness and reliability of the toxicity data base, Novartis has calculated aggregate exposure levels for this chemical. The calculations show that chronic exposure is below 100 percent of the RfD and the predicted acute exposure is below 100% of the acute RfD for all subpopulations. Novartis concludes that there is a reasonable certainty that no harm will result from aggregate exposure to abamectin residues.

2. *Infants and children*. The FQPA authorizes the employment of an additional safety factor of up to 10X to guard against the possibility of prenatal or postnatal toxicity, or to account for an incomplete data base on toxicity or exposure. EPA has chosen to retain the FQPA 10X safety factor for abamectin based on several reasons including evidence of neurotoxicity, susceptibility of neo-natal rat pups, similarity to ivermectin, lack of a developmental neurotoxicity study, and concern for exposure to infants and children.

It is the opinion of Novartis that a 3X safety factor is more appropriate for abamectin at this time. EPA has evaluated abamectin repeatedly since its introduction in 1985 and has found repeatedly that the level of dietary exposure is sufficiently low to provide ample margins of safety to guard against any potential adverse effects of abamectin. In addition, valid exposure studies demonstrate there is no exposure via indoor applications of abamectin products. Novartis states that the database for abamectin is complete and that the developmental neurotoxicity study is a new and not yet initially required study. Additionally, there is much more information regarding human risk potential than is the case with most pesticides, because of the widespread animal-drug and human-drug uses of ivermectin, the closely related analog of abamectin.

It is the opinion of Novartis that the use of a full 10X safety factor to address risks to infants and children is not necessary. The established chronic endpoint for abamectin in the neonatal rat is overly conservative. Similar endpoints for ivermectin are not used by the Food and Drug Administration to support the allowable daily intake for ivermectin residues in food from treated animals. No evidence of toxicity was observed in neonatal rhesus monkeys after 14 days of repeated administration of 0.1 mg/kg/day (highest dose tested) and in juvenile rhesus monkeys after repeated administration of 1.0 mg/kg/day (highest dose tested). The comparative data on abamectin and ivermectin in primates also clearly demonstrate the dose response for exposure to either compound is much less steep than that seen in the neonatal rat. Single doses as high as 24 mg/kg of either abamectin or ivermectin in rhesus monkeys did not result in mortality; however, this dose was more than two times the $LD_{50}$ in the adult rat and more than 20 times the $LD_{50}$ in the neonatal rat. The absence of a steep dose-response curve in primates provides a further margin of safety regarding the probability of toxicity occurring in infants or children exposed to avermectin compounds. The significant human clinical experience and widespread animal drug uses of ivermectin without systemically toxic, developmental, or postnatal effects supports the safety of abamectin to infants and children.

*F. International Tolerances*

The Codex residue definition for MRLs is consistent with that of the United States. Codex MRLs for abamectin include cattle fat 0.1 mg/kg; cattle kidney 0.05 mg/kg; cattle liver 0.1 mg/kg; citrus fruits 0.01 mg/kg; cottonseed 0.01 mg/kg; hops, dry 0.1 mg/kg; cattle milk 0.005 mg/kg; goat milk at 0.005 mg/kg; and potato 0.01 mg/kg.

[FR Doc. 99–19440 Filed 7–28–99; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6409–8]**

## Proposed Modifications to the Policy on Compliance Incentives for Small Businesses and Request for Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for public comment on proposed revisions.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to modify the *Policy on Compliance Incentives for Small Businesses* to expand the options allowed under the Policy for discovering violations and to establish a time period for disclosure. This Policy is intended to promote environmental compliance among small businesses by providing incentives for voluntary discovery, disclosure, and prompt correction of violations. The Policy accomplishes this in two ways: by setting forth guidelines for the Agency to reduce or waive penalties for small businesses that come forward to disclose and make good faith efforts to correct violations, and by deferring to States, Tribes, and local governments that offer these incentives.

**DATES:** Comments must be received on or before September 27, 1999.

**ADDRESSES:** Mail written comments to the Enforcement and Compliance Docket and Information Center (2201A), Docket Number EC–P–1999–009, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. In person, deliver comments to Enforcement and Compliance Docket Information Center, U.S. Environmental Protection Agency, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW, Washington, DC. Copies of the existing Policy and Fact sheet are available at that location as well. Persons interested in reviewing these materials must make advance arrangements to do so by calling 202–564–2614. Comments may also be faxed to 202–501–1011 or submitted electronically to: *docket.oeca@epa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Ginger Gotliffe, Office of Compliance, telephone 202–564–7072; fax (202) 564–0009; e-mail: gotliffe.ginger@epa.gov.

**SUPPLEMENTARY INFORMATION:** Five years ago, EPA reorganized its compliance programs. This reorganization was undertaken by Administrator Browner with a goal of making EPA's enforcement and compliance programs more effective in protecting public

health and the environment. The reorganization also improved and enhanced our abilities to reach out to small business sectors with information to help them comply. At this five year anniversary, EPA has been conducting outreach efforts to obtain feedback on compliance and enforcement activities issues, on ways to further improve public health and the environment through compliance efforts, and on the actions the Agency has taken over the past five years. Recently, EPA held two national conferences entitled ''Protecting Public Health and the Environment through Innovative Approaches to Compliance.'' As part of this effort, the Office of Enforcement and Compliance Assurance (OECA) also published a **Federal Register** document soliciting comments on how EPA can further protect and improve public health and the environment through new compliance and enforcement approaches (see 64 FR 10144, March 2, 1999). Conference summaries and a copy of the **Federal Register** document are available at OECA's website at *http://www.epa.gov/oeca/polguid/oeca5sum.html*. From outreach efforts such as the conferences held earlier this year and from meetings and conference calls with interested stakeholder groups specifically concerning small business issues such as the Small Business Policy, OECA received feedback that improvements to the Policy could be made. In response to that feedback, OECA has been looking at ways to improve the Policy, and is now proposing modifications to the Small Business Policy and requesting additional comments on the Policy.

Under the Policy, EPA will waive or mitigate civil penalties whenever a small business makes a good faith effort to comply with environmental requirements by discovering violations, promptly disclosing the violations, and correcting them. Assuming the facility meets all the criteria in the policy, including those on violation history, corrections period, and lack of harm, EPA will waive 100% of the civil penalty. Moreover, EPA will defer to State and Tribal actions that are consistent with the criteria set forth in this Policy.

These proposed changes would modify the Final Policy issued in June 1996. See 61 FR 27984, June 3, 1996. The Agency would like comments from the public on the following proposed changes and on any other issues concerning the Policy.

*1. Expand Options for Discovery of Violations.* One proposed change is to allow small businesses to obtain penalty relief by using any means of voluntary discovery as well as on-site compliance assistance or environmental audits. Voluntary discovery could include compliance management systems (CMS), pollution prevention assessments, participation in mentoring programs, training classes, use of on-line compliance assistance centers, and use of checklists. The Agency wants to encourage participation in those programs or activities that could increase compliance, improve efficiency, and reduce pollution. These programs and activities need not be associated with environmental regulatory agencies, but may be associated with trade associations, professional associations, universities, and the like. EPA will consider application of this Policy to violations discovered through activities required in ''partnership'' programs on a project-by-project basis.

There are a variety of activities and sources of information that a small business can use to learn more about the regulatory requirements. EPA and the States provide various forms of compliance assistance. Some State assistance programs are run as confidential services to the small business community. If a small business wishes to obtain a corrections period after receiving compliance assistance from a confidential program, the business must promptly disclose the violations to the appropriate regulatory agency and comply with the other provisions of this Policy.

2. *Penalty Reduction.* Penalties are made up of two components: gravity and economic benefit. The gravity component mitigation typically involves the nature of the violations, the duration of the violations, the environmental or public health impacts of the violations, good faith efforts by the small business to promptly remedy the violation, and the facility's overall record of compliance with environmental requirements. Under this Policy, the Agency will grant 100% mitigation of (completely eliminate) the gravity component of the penalty for violations found through any method provided all the other criteria in the policy are met. The Agency believes the incentive of 100% gravity mitigation should encourage small businesses to disclose violations and correct them within the specified time period.

The Policy provides that EPA may seek the economic benefit portion of the penalty if a small business has obtained a significant economic benefit from the violations, for example, if a business significantly reduced its expenses by not purchasing and installing an emission control device to meet its regulatory requirements. Prompt disclosure and correction of violations discovered often results in no economic benefit having been accrued. To date, the vast majority of the disclosures under the Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations Policy (Audit Policy) and all of the disclosures under the Small Business Policy have not necessitated recovery of economic benefit. The Audit Policy is another EPA policy that provides penalty mitigation for discovering, disclosing, and correcting violations. The main differences between it and the Small Business Policy are that the Audit policy may be used by businesses of any size, it provides two different levels of penalty mitigation based upon how the violation was discovered, and the correction period is shorter.

3. *Clarify and Lengthen the Disclosure Period.* Another proposed change is to require that the business fully disclose a violation within 21 calendar days regardless of how the violation was discovered. Currently, the Policy requires ''prompt disclosure'' for compliance assistance discovery and 10 day disclosure for discoveries made through an environmental audit. This modification will clarify the definition of discovery period. It is critical for EPA to get timely reporting of violations in order that it might have a clear notice of the violations and the opportunity to respond if necessary, as well as an accurate picture of a given facility's compliance record. Lengthening the disclosure period will give small businesses more opportunity to make use of the policy and will be consistent with the proposed modification to the Audit Policy. That modification was a result of the Audit Policy evaluation that showed that the 10-day period was unduly restrictive.

4. *Implementation of the Policy.* The Policy has also been modified in format and language to provide the information in a more understandable manner. To increase the usefulness of the Policy, EPA will provide a fact sheet, contacts list, and other information about the Policy at the EPA web site (*http://www.epa.gov/oeca/polguid*), at the Compliance Assistance Centers web sites (all 9 Centers available through *http://www.epa.gov/oeca/mfcac.html*), through EPA Headquarters and Regional contacts and as part of targeted compliance assistance activities and initiatives.

Enhanced implementation of the Policy also involves improved procedures and coordination within EPA. EPA Headquarters and Regional staff working on the Audit Policy as

well as this Small Business Policy are coordinating on issues and procedures to insure national consistency and to improve the timeliness of the Agency's review of each disclosure. EPA will commit to responding to a small business within 60 days of disclosure of a violation.

To date the Small Business Policy has not been used very much. As reported to Congress approximately 150 small entities applied for penalty relief under EPA disclosure policies. Many of these small entities (which include small businesses as defined under this Policy) used the Audit Policy. EPA knows through conversations with State officials that there are many small businesses using State disclosure policies for violations discovered under State regulations. To increase the usage of the Policy once it is finalized, EPA is planning a marketing effort for the Policy. Public comments on effective marketing techniques for small business sectors are encouraged.

5. *Compliance Incentives Issues and Comments.* EPA recently announced the results of its evaluation of the effectiveness of the Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations Policy (Audit Policy) of December 1995, and solicited public comments on proposed changes (see 64 FR 26745, May 17, 1999). To the extent that results from that evaluation and comments to that **Federal Register** document address small business issues with compliance incentives policies such as the Small Business Policy, the Agency will consider that information. Small entities (those businesses that meet the definition of small entity under SBREFA) have used the Audit Policy, so comments about their usage of a compliance incentive policy would be pertinent.

As part of the Agency's evaluations of the two policies and given the similarities between the two Policies, EPA asks for comments in this Notice on the advisability of combining the Audit Policy with the Small Business Policy. In particular, the Agency is interested in whether small businesses would be more likely to audit and self-disclose violations (or seek compliance assistance) if the two policies were merged. EPA is particularly interested in hearing the comments of small businesses on this point.

Dated: July 20, 1999.

**Elaine Stanley,**

*Director, Office of Compliance, Office of Enforcement and Compliance Assurance.*

## Policy on Compliance Incentives for Small Businesses

### *A. Introduction and Purpose*

The Policy on Compliance Incentives for Small Businesses is intended to promote environmental compliance among small businesses by providing incentives for them to make use of compliance assistance programs, environmental audits, compliance management systems (CMS), or to participate in any activities that may increase the business's understanding of the environmental requirements with which they must comply. The Policy accomplishes this in two ways: by waiving or mitigating civil penalties, and by deferring to States and local governments who offer these incentives consistent with the criteria established in this Policy.

EPA will waive or mitigate civil penalties, whenever a small business makes a good faith effort to comply with environmental requirements by:

(1) Discovering a violation,

(2) Disclosing the violation, and

(3) Correcting the violation within the proper timeframe.

To use the Policy, the facility must meet criteria on violation history, corrections period, lack of harm, and criminal conduct.

### *B. Background*

This Policy implements section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996, signed into law by the President on March 29, 1996.

### *C. Applicability*

This Policy applies to facilities owned by small businesses as defined here. A small business is a person, corporation, partnership, or other entity who employs 100 or fewer individuals (across all facilities and operations owned by the entity).[1] Facilities that are operated by municipalities or other local governments may be covered under the Small Communities Policy (see http://es.epa.gov/oeca/polguid/polguid1.html).

This Policy supersedes the previous version of the policy which became effective on June 10, 1996. To the extent that this Policy may differ from the terms of applicable enforcement response policies (including penalty policies) under media-specific programs, this document supersedes those policies.

### *D. How Small Businesses Can Qualify for Penalty Mitigation*

EPA will eliminate or mitigate civil penalties against small businesses based on the following criteria:

1. Discovery Is Voluntary

The small business discovers a violation on their own before an EPA or State inspection. Violations might be discovered after receiving compliance assistance, conducting an environmental audit or participating in mentoring programs. Other activities that may be useful in discovering violations include establishing compliance management systems (CMS), using compliance checklists, reading materials on complying with environmental requirements, using compliance assistance center web sites, and attending training classes.

The violation must be identified voluntarily, and not through a legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order, or consent agreement. These include emissions violations detected through a continuous emissions monitor (or alternative monitor established in a permit), violations of National Pollutant Discharge Elimination System (NPDES) discharge limits detected through required sampling or monitoring; or violations discovered through a compliance audit required to be performed by terms of a consent order or settlement order.

2. Disclosure Period Is Met

a. The small business must fully disclose a specific violation in writing to EPA or the State within 21 days after it has discovered that the violation has occurred, or may have occurred. Prompt disclosure is evidence of the regulated entity's good faith in wanting to achieve or return to compliance as soon as possible. The time at which discovery that a violation may have occurred begins when any officer, director, employee or agent of the facility becomes aware of any facts that constitute a possible violation. Where there is some doubt about whether a violation has occurred, the recommended course is for the facility to disclose and allow the regulatory authorities to make a definitive determination. This will insure that the

[1] The number of employees should be considered as full-time equivalents on an annual basis, including contract employees. Full-time equivalents means 2,000 hours per year of employment. For example, see 40 CFR 372.3.

facility meets the disclosure period requirement.

b. The disclosure of the violation must occur before the violation was otherwise discovered by, or reported to EPA, the appropriate state or local regulatory agency. See section F.1 of the Policy below. Good faith also requires that a small business cooperate with EPA and provide such information requested by EPA to determine applicability of this Policy.

c. If a small business wishes to obtain a corrections period after receiving compliance assistance from a confidential assistance program, the business must disclose the violations to the appropriate regulatory agency within 21 days of discovery.

3. This is the small business's first violation of this requirement in three years. This Policy applies unless the business has:

a. Previously been subject to a warning letter, notice of violation, field citation, citizen suit, or any other enforcement action by a government agency for a violation of the same requirement within the past three years.

b. Used this Policy for a violation of the same or a similar requirement within the past three years.

c. Been subject to two or more enforcement actions for violations of environmental requirements in the past five years, even if this is the first violation of this particular requirement.

4. The business corrects the violation within the corrections period set forth below.

Small businesses are expected to remedy the violations within the shortest practicable period of time. Correcting the violation includes remediating any environmental harm associated with the violation, as well as implementing procedures to prevent a recurrence of the violation.

a. For any violation that cannot be corrected within 90 days of detection, the small business should submit a written schedule, or the agency should issue a compliance order with a schedule, as appropriate. The corrections are to be completed not more than 180 days following the date that the violation was detected.

b. If the small business intends to correct the violation by implementing pollution prevention measures, they may take an additional period of 180 days, *i.e.*, up to a period of one year from the date the violation is detected, only if necessary.

5. The Policy does not apply if:

a. The violation has caused actual serious harm to public health, safety, or the environment;

b. The violation is one that may present an imminent and substantial endangerment to public health or the environment; or

c. The violation involves criminal conduct. Businesses wishing to pursue penalty mitigation for a violation that does involve criminal conduct should refer to the Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations Policy of December 1995 (60 FR 66706, 12/22/95).

*E. Penalty Mitigation Guidelines That EPA Will Follow*

EPA will exercise its enforcement discretion to eliminate or mitigate civil penalties as follows.

1. EPA will waive the civil penalty if a small business satisfies all of the criteria in section D. If, however a small business has obtained a significant economic benefit from the violation(s), EPA will waive 100% of the gravity component of the penalty, but may seek the full amount of the significant economic benefit associated with the violations.[2] EPA anticipates that such a significant economic benefit will occur infrequently. However, EPA retains this discretion to ensure that small businesses that comply with public health protections are not put at a serious marketplace disadvantage by those who have not complied.

2. If a small business does not fit within the guideline immediately above, this Policy does not provide any special penalty mitigation. However, if a small business has otherwise made a good faith effort to comply, EPA has discretion, pursuant to its applicable enforcement response or penalty policies, to waive or mitigate civil penalties.[3]

3. Further, these policies allow for mitigation of the penalty where there is a documented inability to pay all or a portion of the penalty, thereby allowing the small business to continue operations and to finance compliance. See Guidance on Determining a Violator's Ability to Pay a Civil Penalty of December 1986. Penalties also may be mitigated pursuant to the Final EPA Supplemental Environmental Projects Policy of May 1998 (63 FR 24796, 5/5/98) and Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations Policy of December 1995 (60 FR 66706, 12/22/95).

4. This Policy sets forth how the Agency expects to exercise its enforcement discretion in deciding on an appropriate enforcement response and determining an appropriate civil penalty for violations by small businesses. It states the Agency's views as to the proper allocation of enforcement resources. This Policy is not final agency action and is intended as guidance. It does not create any rights, duties, obligations, or defenses, implied or otherwise, in any third parties.

*F. Enforcement*

To ensure that this Policy enhances and does not compromise public health and the environment, the following conditions apply:

1. Violations detected through inspections, field citations, reported to a federal, state or local agency by a member of the public or a ''whistleblower'' employee, identified in notices of citizen suits, previously reported to an agency, or required to be reported to an agency by applicable regulations or permits, remain subject to enforcement.

2. A business is subject to all applicable enforcement response policies (which may include discretion whether or not to take formal enforcement action) for all violations that were not remedied within the corrections period. The penalty in such action may include the time period before and during the correction period.

*G. Applicability to States and Tribes*

EPA recognizes that states and tribes are partners in enforcement and compliance assurance. Therefore, EPA will defer to state and tribal actions in delegated or approved programs that are consistent with the criteria set forth in this Policy. Whenever a State agency or Tribe provides a correction period to a small business pursuant to this Policy or a similar policy, the agency should notify the appropriate EPA Region. This notification will enable EPA to apply this Policy in coordination with similar state policies. Similarly, EPA will notify the appropriate State agency whenever EPA applies this policy and requests that such States defer to EPA's action under the Policy. Regional contacts will be listed at the EPA web page with this Policy.

*H. Public Accountability*

Within three years of the effective date of this Policy, EPA will compile data on the use of this Policy in promoting compliance among small businesses. EPA will make this data available to the public.

[2] The ''gravity component'' of the penalty includes everything except the economic benefit amount.

[3] For example, in some media specific penalty policies, the penalty calculation is reduced to account for good faith efforts to comply.

[FR Doc. 99–19437 Filed 7–28–99; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 22, 1999.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before September 27, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1-A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0740.

*Title:* Section 95.1015 Disclosure Policies.

*Form Number:* N/A.

*Type of Review:* Extension of existing collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 3.

*Estimated Time Per Response:* 1 hour.

*Total Annual Burden:* 3 hours.

*Total Annual Cost:* 0.

*Needs and Uses:* This collection of information is made necessary by the amendments of the Commission's Rules regarding the Low Power Radio and Automated Maritime Telecommunications System (AMTS) operations in the 216–217 MHz band. The reporting requirement is necessary to ensure that televisions stations that may be affected by harmful interference from AMTS operations are notified. The information will be used by Commission staff and affected television stations in order to be aware of the location of potential harmful interference from AMTS operations.

*OMB Control Number:* 3060–XXXX.

*Title:* Annual DTV Report.

*Form Number:* FCC 317.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 45.

*Estimated time per response:* 2.5 hours (2 hour respondent; 0.5 hours contract attorney).

*Frequency of Response:* Reporting, annually.

*Total annual burden:* 90.

*Total annual costs:* $4,500.

*Needs and Uses:* On November 19, 1998, the Commission adopted a Report and Order in MM Docket No. 97–247 in the matter of Fees for Ancillary or Supplementary Use of Digital Television Spectrum Pursuant to Section 336(e)(1) of the Telecommunications Act of 1996. This Report and Order established a program for assessing and collecting fees for the provision of ancillary or supplementary services by commercial digital television licensees. Licensees are required to report whether they provided ancillary or supplementary services, which services were provided, the services provided which are subject to a fee, gross revenues received from all feeable ancillary and supplementary services, and the amount of bitstream used to provide ancillary or supplementary service. The Commission has developed an FCC 317 to collect this data annually from commercial digital television licensees. Licensees providing services subject to a fee will additionally be required annually to file FCC Form 159 (3060–0589) in remittance of the fee. Each licensee will be required to retain the records supporting the calculation of the fees due for three years from the date of remittance of fees. The data is used by FCC staff to ensure that DTV licensees comply with the requirements of Section 336(e) of the Communication's Act.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 99–19330 Filed 7–28–99; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

July 22, 1999.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before September 27, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les

Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0219.

*Title:* Section 90.49(b) Communications standby facilities ''Special eligibility showing''.

*Form Number:* N/A.

*Type of Review:* Extension of existing collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 200.

*Estimated Time Per Response:* 0.75 hours.

*Total Annual Burden:* 150 hours.

*Total Annual Cost:* None.

*Needs and Uses:* The reporting requirement contained in Section 90.49(b) is necessary to ensure that a communications common carrier requesting private radio service frequencies to be used as a standby facility for carrying safety-related communications when normal common carrier circuits are inoperative due to circumstances beyond the control of the carrier are necessary for the protection of life and property. This information is collected only once, upon initial application for a license.

*OMB Control Number:* 3060–0435.

*Title:* Section 80.361 Frequencies for Narrow-Band Direct-Printing (NB–DP) and data transmissions.

*Form Number:* N/A.

*Type of Review:* Extension of existing collection.

*Respondents:* Individuals, business or other for-profit.

*Number of Respondents:* 2.

*Estimated Time Per Response:* 2 hours.

*Total Annual Burden:* 4 hours.

*Total Annual Cost:* None.

*Needs and Uses:* The reporting requirement contained in Section 80.361 is necessary to require applicants to submit a showing of need to obtain new or additional narrow-band direct-printing (NB-DP) frequencies. Applicants for new or additional NB-DP frequencies are required to show the schedule of service of each currently licensed or proposed series of NB-DP frequencies and to show a need for additional frequencies based on at least a 40% usage of existing NB-DP frequencies. The information is used to determine whether an application for a NB-DP frequency should be granted. If the collection of this information was not conducted, the FCC would have no information available regarding the use of NP-DP frequencies by public coast stations, and, therefore would be handicapped in determining whether the frequencies were being hoarded and not put into use by public coast stations.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 99–19331 Filed 7–28–99; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice to all Interested Parties of the Termination of Certain Receiverships by the FDIC in the Third and Fourth Quarters of 1999

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the FDIC, for itself or as successor in interest to the Resolution Trust Corporation, in its capacity as Receiver for the Institutions set forth below (the Receiver) intends to terminate these receiverships during the third and fourth calendar quarters of 1999.

**FOR FURTHER INFORMATION CONTACT:** Division of Resolutions and Receiverships, Terminations Section, 1–800–568–9161.

**SUPPLEMENTARY INFORMATION:**

| Financial institution number and name | | City | State |
|---|---|---|---|
| 1215 | Investors Federal Savings Bank | Richmond | VA. |
| 1269 | Southern Federal Savings Association of Georgia | Atlanta | GA. |
| 1286 | John Hanson Federal Savings Bank | Beltsville | MD. |
| 1302 | Second National Federal Savings Association | Salisbury | MD. |
| 2170 | First Federal Savings Association of Raleigh | Raleigh | NC. |
| 2195 | TrustBank Federal Savings Bank | Tysons Corner | VA. |
| 4251 | Continental Bank | Dallas | TX. |
| 4358 | The First National Bank of Toms River | Toms River | NJ. |
| 4460 | First Security Bank of Anaconda | Anaconda | MT. |
| 4553 | Heritage Bank for Savings | Holyoke | MA. |
| 4562 | 1st National Bank of Vermont | Bradford | VT. |
| 4610 | Bank of Hartford | Hartford | CT. |
| 6938 | University Federal Savings Association | Houston | TX. |
| 6940 | Pacific Savings Bank | Costa Mesa | CA. |
| 6998 | Platte Valley Savings, a Federal Savings and Loan Association | Gering | NE. |
| 7018 | American Savings of Colorado, a Federal Savings and Loan Association | Colorado Springs | CO. |
| 7118 | Gibralter Savings Bank, F.S.B. | Seattle | WA. |
| 7203 | Midwest Savings Association, F.A. | Minneapolis | MN. |
| 7282 | Horizon Savings Bank, F.S.B. | Wilmette | IL. |
| 7917 | Investors Savings Bank, F.S.B. | Richmond | VA. |
| 7980 | Second National Federal Savings Bank | Salisbury | MD. |
| 8227 | Horizon Federal Savings Bank | Wilmette | IL. |

The liquidation of the assets of these receiverships is expected to be completed no later than December 31, 1999. To the extent permitted by available funds and in accordance with law, the Receiver for these institutions will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of such receiverships will serve no useful purpose. Consequently, notice is given that the receiverships will be terminated, as soon as practicable but no sooner than thirty (30) days after the date this Notice is published.

If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date this Notice is published to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention:

Terminations Department, 1910 Pacific Avenue, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: July 23, 1999.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 99–19329 Filed 7–28–99; 8:45 am]

BILLING CODE 6714–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. App. 1718 and 46 CFR 515).

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.

**Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants**

Brighten Freight, Inc., 800 S. Hindry Avenue, Suite A–1, Inglewood, CA 90301, Officer: Frank Fon-Yu Liu, President (Qualifying Individual)

Certified Express, 333 S. 6th Street, Las Vegas, NV 89101, Officers: Timothy O. Hannon, Assistant Secretary (Qualifying Individual), Patrick Mak, Director

China United Transport, Inc., 2063 South Atlantic Blvd., Suite 2–B, Monterey Park, CA 91754, Officers: Xuexiang Li, President (Qualifying Individual), Jie Gu, Treasurer

Everstrong, Inc., 22 Smith Street, 2/F, Jersey City, NJ 07306, Officer: Shulin Chen, President (Qualifying Individual)

Exim Services, Inc., 13836 Bora Bora Way, Suite B112, Marina Del Rey, CA 90292, Officer: Mary Patricia Yust, President (Qualifying Individual)

International Freight Consolidators, Inc., 1160 N.W. 21st Terrace, Miami, FL 33127, Officer: John Collins, President (Qualifying Individual)

Han Kyu Lim DBA Important Cargo Express Co., 1681 Grandview Drive, S. San Francisco, CA 94080, Officer: Han Kyu Lim, President (Qualifying Individual)

Navigation Network, Inc., 5620 Tchoupitoulas Street, New Orleans, LA 70115, Officer: Jack Fong, President (Qualifying Individual)

NZS Worldwide, Inc., 1250 35th Avenue, San Francisco, CA 94122, Officers: Nikolay V. Snigorenko, Chief Executive Officer (Qualifying Individual), Zinaida S. Snigorenko, Chief Financial Officer

Takase Add System, Inc., 2420 W. Carson Street, Suite 200, Torrance, CA 90501, Officers: Motonubu Akiyama, Director (Qualifying Individual), Tadashi Hirashima, Chairman of the Board

TDC International Express, Inc., 2118 Sunny Ridge Place, Fullerton, CA 92833, Officers: Susan Cha, President (Qualifying Individual), Benson Mao, Vice President Sales and Marketing

Transtainer Costa Rica Corp. 3550 NW 33 Street, Miami, FL 33142, Officers: Jose M. Wolf, President (Qualifying Individual), Manuel Sola III, Secretary

Trident Transport International, Inc., 215 W. Diehl Road, Naperville, IL 60563, Officers: Richard Turek, Vice President (Qualifying Individual), Robert H. Henry, Secretary and Director

Value-Plus Express, Inc., 118 W. Hazel Street, Suite #C, Inglewood, CA 90302, Officer: Man Heup Kim, President (Qualifying Individual)

Dated: July 23, 1999.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 99–19326 Filed 7–28–99; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

**[Docket No. 99–11]**

### Notice of Investigation

Notice is given that the Commission, on July 21, 1999, served an Order of Investigation and Hearing on Expeditors International of Washington, Inc. (''Expeditors''), a licensed, tariffed and bonded non-vessel-operating common carrier. The Order institutes a formal investigation to determine whether Expeditors violated sections 10(a)(1) and (b)(1) of the Shipping Act of 1984, 46 U.S.C. App. Sections 1709(a)(1) and (b)(1), by misdescribing the commodity on numerous shipments from Hong Kong between January 1, 1997 through December 1, 1998, and assessing and collecting rates different from its applicable tariff. Moreover, should violations be found, the proceeding will determine whether to impose civil penalties, suspend Expeditors' tariff, suspend or revoke its license, and issue a cease and desist order. The full text of the Order may be viewed on the Commission's home page at www.fmc.gov, or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW, Washington, DC. Any person may file a petition for leave to intervene in accordance with 46 CFR 502.72.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 99–19327 Filed 7–28–99; 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 August 12, 1999.

**A. Federal Reserve Bank of Atlanta** (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

*1. Marshall Truman Reynolds*, Huntington, West Virginia; to acquire voting shares of FBT Bancorp, Baton Rouge, Louisiana, and thereby indirectly acquire voting shares of Fidelity Bank & Trust Company, Baton Rouge, Louisiana.

Board of Governors of the Federal Reserve System, July 23, 1999.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 99–19341 Filed 7–28–99; 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 (12 U.S.C. 1843). 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 August 23, 1999.

**A. Federal Reserve Bank of Boston** (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

*1. Norway Bancorp, MHC*, Norway, Maine, and Norway Bancorp, Inc., Norway, Maine; to become bank holding companies by acquiring 100 percent of the voting shares of Norway Savings Bank, Norway, Maine.

**B. Federal Reserve Bank of New York** (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

*1. Boiling Springs, MHC, and Boiling Springs Bancorp*, both of Rutherford, New Jersey; to become bank holding companies by acquiring 100 percent of the voting shares of Boiling Springs Savings Bank, Rutherford, New Jersey.

**C. Federal Reserve Bank of Richmond** (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

*1. BCC Bankshares, Inc.*, Phenix, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Charlotte County, Phenix, Virginia.

**D. Federal Reserve Bank of Atlanta** (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

*1. First Security Group, Inc.*, Dalton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Dalton Whitfield Bank, Dalton, Georgia (in organization).

*2. FLAG Financial Corporation*, LaGrange, Georgia; to merge with Abbeville Capital Corporation, Abbeville, South Carolina, and thereby indirectly acquire Bank of Abbeville, Abbeville, South Carolina.

Board of Governors of the Federal Reserve System, July 23, 1999.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 99–19342 Filed 7–28–99; 8:45 am]

BILLING CODE 6210–01–F

## GENERAL SERVICES ADMINISTRATION

### Notice of Availability (NOA); Final Environmental Impact Statement (FEIS) for the Proposed Disposal of the Volunteer Army Ammunition Plant (VAAP); Chattanooga, TN

Pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR parts 1500–1508), as implemented by General Services Administration (GSA), this Notice of Availability (NOA) for FEIS is announced. The proposed action is the disposal of all of real property associated with this government owned facility. The property consists of about 6,500 acres of land including buildings, industrial facilities and equipment, roadways, utilities, specialized facilities, easements, rights of way, and natural undeveloped land.

The FEIS addresses impacts of two alternatives considered: Disposal and No-Action (Continued Federal Ownership). The FEIS examined the short and long-term impacts to both natural environment and impacts to the surrounding community. The Disposal Alternative is further refined into a series of land use scenarios. These were developed with the input from the local community and through the scoping process. GSA has addressed comments on the Draft EIS in the FEIS.

The FEIS release date is July 30, 1999. After a 30-day period for final comment, GSA will issue a Record of Decision (ROD). The decision on the proposed Disposal will be made 30 days after the release of the FEIS. GSA anticipates this decision will be rendered on August 30, 1999.

GSA solicits final comments in writing at the following address: Mr. Phil Youngberg, Regional Environmental Officer (4PT), General Services Administration (GSA), 401 West Peachtree Street, NW, Suite 3015, Atlanta, GA 30365; Fax: Mr. Phil Youngberg at 404–331–4540.

Dated: July 23, 1999.

**Phil Youngberg,**

*Regional Environmental Officer (4PT).*

[FR Doc. 99–19423 Filed 7–28–99; 8:45 am]

BILLING CODE 6820–23–M

## GENERAL SERVICES ADMINISTRATION

**[GSA Bulletin FPMR H–75]**

### Utilization and Disposal

To: Heads of Federal agencies
Subject: Reporting requirements for firearms

1. *What is the purpose of this bulletin?* This bulletin announces detailed reporting requirements for firearms.

2. *When does this bulletin expire?* This bulletin will remain in effect until specifically cancelled.

3. *What is the background?* The Federal Property Management Regulations (FPMR) were amended at 41 CFR 101–43.4801(c) to add new reporting requirements for firearms. The purpose of this bulletin is to alert Federal agencies of the need to provide certain descriptive information when submitting excess property reports of firearms to GSA.

4. *How should firearms be reported?* Each firearm will be reported as a single item per report to include serial number, make and model.

5. *Who should you contact for further information?* Martha Caswell, Director, Personal Property Management Policy Division (MTP), Office of Governmentwide Policy, General Services Administration, Washington, DC 20405; telephone, (202) 501–3846; e-mail, martha.caswell@gsa.gov.

Dated: July 23, 1999.

**Joan Steyaert,**

*Acting Associate Administrator, Office of Governmentwide Policy.*

[FR Doc. 99–19367 Filed 7–28–99; 8:45 am]

BILLING CODE 6820–34–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 00012]**

### Grants for Education Programs in Occupational Safety and Health To Prepare Health Services Researchers; Availability of Funds for Fiscal Year 2000

#### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for training grants in occupational safety and health. This program addresses the ''Healthy People 2000'' priority area of Occupational Safety and Health. The purpose of this program is to train health services researchers in the field of occupational safety and health.

#### B. Eligible Applicants

Any public or private educational or training agency or institution that has demonstrated competency in the occupational safety and health field and/or health services research and is located in a State, the District of Columbia, or U.S. Territory, is eligible to apply for a training grant.

For existing Educational Resource Centers (ERC) or Training Project Grants (TPG) that will be requesting supplemental funding, it is imperative to include the present grant number, so it may be processed as a supplement.

**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 $500,000 is expected to be available in FY 2000 to fund three awards. It is expected that the average award will be $ 165,000, ranging from $150,000 to $200,000. It is expected that the awards will begin on July 1, 2000 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

#### D. Program Requirements

The following are intended to serve as applicant requirements:

1. Programs should train researchers to examine the impact of the organization, financing, and management of preventive, clinical, and rehabilitative occupational health services and indemnity policies on the delivery, quality, cost, access to, and outcomes of such services.

2. Programs should establish training that comprises the following two components: (a) Health services research curricula and expertise; (b) occupational health and safety training, research curricula and expertise. Programs could be established through the following approaches: (i.) Programs within a University Department including these two components; (ii) linkages between programs addressing these two components, either within the University (linking separate Departments) or between Universities.

3. Applicants should address the need for preparing health services researchers in this field. Justification should be provided supporting the degree levels requested.

4. A plan should be provided outlining collaborative relationships between Departments and/or Universities, addressing institutional roles, goals and objectives, proposed curriculum, faculty and policies and administrative measures to establish appropriate coordination.

5. A program for education and research training in occupational health services research should be established. Programs may be at the Masters, Doctoral and Post-doctoral levels. Doctoral programs presently will be given higher priority to address the dearth of senior researchers evaluating occupational health services.

Curricula and research training plans must be structured and clearly identified for each level of training as well as the number of full and part time students proposed.

6. Course work should contain, as a minimum, training in (a) health services research methodologies, such as: epidemiology, biostatistics, health economics, frameworks for analysis (e.g., decision sciences, benefit-cost and cost-effectiveness analyses), health policy, program evaluation, performance measurement, survey design and implementation and, data systems for health services research; and, (b) occupational safety and health topic areas, such as: organization, finance and management of occupational health services, workers' compensation/disability systems administration and policy, occupational health prevention services (industrial hygiene, safety and ergonomics, occupational health and safety policy, labor economics), industrial relations, and data systems in occupational safety and health. Required core and elective courses should be outlined. Flexibility in structuring curricula is acceptable, e.g., specific tracks may be established focusing on select program area emphases, such as, economic analysis or performance measurement.

7. A plan should be provided to incorporate research experience (as principal or co-investigators) in original occupational health services research for students at all degree levels. The plan should also document ongoing funded research and faculty publications and how the school intends to expand and strengthen existing research efforts. The plan should also include items such as strategies for obtaining student and faculty funding.

8. Programs are strongly encouraged to incorporate collaborative relationships with external agencies and institutions that can serve as resources for the program, to coordinate research with public and private policy needs, and to provide sources of data for research. Some examples of potential collaborating organizations include the following: State agencies managing workers' compensation and State workers' compensation funds, private insurance carriers in health care, disability insurance and workers' compensation; managed care organizations; large employers; and, private health research institutes and foundations.

9. The Program Director should be a full-time faculty member and have education and experience in training health services researchers and/or occupational safety and health professionals. If the Program Director is from a Health Services research background, a Co-Director should be designated with an Occupational Health and Safety background. The Director should have currently funded research grants in occupational safety and health and/or health services research. He/she should be responsible for the coordination of the program across Departments or Universities.

10. Key faculty and research advisors should be full-time faculty with documented expertise and education in their appropriate fields. Qualifications include having current research grants in the field of health services research and/or research in the field of occupational safety and health. Research advisors should have recent research experience in health services research, preferably addressing occupational health services.

11. The applicant should develop a plan for student recruitment, including entrance requirements.

12. The applicant should develop a plan for evaluation of the program, including placement of graduates and tracking of graduates.

13. An Advisory Committee should be established representing stakeholders for occupational health services, including, labor, industry, and government.

**E. Application Content**

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 15 single-spaced pages per program, printed on one side, with one-inch margins, and unreduced font.

**Note:** Please consult the detailed Recommended Outline for Preparation of Competing New/Supplemental Training Grant Applications to prepare Health Services Researchers provided in the application kit. (CDC 2.145 A).

**F. Submission and Deadline**

*1. Letter of Intent*

Although not a prerequisite of application (optional), a non-binding letter of intent-to-apply is requested from potential applicants. The letter should identify the announcement number, name and address of principal investigator, brief description of the program proposed, and the names of the participating institutions. The letter of intent does not influence review or funding decisions, but it will enable CDC to determine the level of interest in the announcement and to plan the review more efficiently. Please submit on or before September 24, 1999, the letter of intent to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

*2. Application*

Submit the original and two copies of CDC 2.145 A (OMB Number 0920–00261) Forms are in the application kit. On or before November 30, 1999, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement. Please be reminded that for existing ERC or TPG that will be requesting supplemental funding, it is imperative to include the present grant number, so it may be processed as a supplement.

*Deadline:* Applications should 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 should 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.

**G. Evaluation Criteria**

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Evidence of a plan to satisfy the need for training in the area outlined by the application, including projected enrollment, recruitment and job opportunities. Indicators of need may include measures utilized by the Program such as previous record of training and placement of graduates. Indicate the potential contribution of the project toward meeting the need for this specialized training.

2. Extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve the program requirements.

3. Evidence of a plan describing the academic and research training the program proposes. This should include goals, elements of the program, research faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

4. Extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve degree, course descriptions, course sequence, additional related courses open to students, time devoted to lecture, and clinical and research experience addressing the relationship with didactic programs in the educational process.

5. The extent to which the program effort is capable of supporting the number and type of students proposed.

6. Extent to which the program has initiated collaborative relationships with external agencies and institutions to expand and strengthen its research capabilities by providing student and faculty research opportunities.

7. Evidence of previous record of training in health services research and occupational safety and health, including placement of graduates and employment history.

8. The extent to which the program documents methods in use or proposed methods for evaluating the effectiveness of the training, including the use of feedback mechanisms from graduates and employers, placement of graduates in research positions, research accomplishments of graduates and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

9. Competence, experience and training of the Program Director, faculty and advisors in relation to the type and scope of research training and education involved.

10. Degree of institutional commitment to Program goals.

11. Adequacy of the academic and physical environment in which the training will be conducted, including access to appropriate occupational health research resources.

12. The extent to which the budget is reasonable, adequately justified, and consistent with the intended use of the grant funds.

13. Evidence of a plan for establishment of an Advisory Committee, including meeting times, roles and responsibilities.

**H. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with original plus two copies of:

1. Progress reports (annual).

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial status report and performance report, no more than 90 days after the end of the project period.

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. For a complete description of each, see Attachment I in the application kit.

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2000

AR–12 Lobbying Restrictions

### I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 21(a) of the Occupational Safety and Health Act [29 U.S.C. 670 (a)]. The Catalog of Federal Domestic Assistance number is 93.263.

### J. Where To Obtain Additional Information

You may obtain Program Announcement 00012 from the CDC home page address on the Internet, <*http://www.cdc.gov*>. To receive additional written information and to request an application kit, call 1–888–GRANTS (1–888–472–6874).

You will be asked to leave your name and address and will be instructed to identify the announcement number of interest.

If you have questions after reviewing the contents of all documents, business management technical assistance may be obtained from: Sonia Phelix, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00012, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2724, Email address: svp1@cdc.gov.

For program technical assistance, contact: Bernadine Kuchinski, Occupational Health Consultant, Office of Extramural Coordination and Special Projects, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, N.E., Mailstop D–40, Atlanta, Georgia 30341, telephone (404) 639–3342, Email address: bbk@cdc.gov.

Dated: July 23, 1999.

**Diane D. Porter,**

*Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 99–19358 Filed 7–28–99; 8:45 am]

BILLING CODE 4163–19–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

## Advisory Committee for Energy-Related Epidemiologic Research, Subcommittee for Management Review of the Chernobyl Studies: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

*Name:* Advisory Committee for Energy-Related Epidemiologic Research (ACERER), Subcommittee for Management Review of the Chernobyl Studies.

*Time and Date:* 9 a.m.–5 p.m., August 12, 1999.

*Place:* Washington Court Hotel, 525 New Jersey Avenue, NW, Washington, D.C. 20001, telephone: (202) 628–2100, fax: (202) 879–7918.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 30 people.

*Purpose:* This subcommittee is charged with providing guidance to the scientific reviewers and staff, and reporting back to the full ACERER on the charge from the Department and Congress to assess the management, goals, and objectives of the National Cancer Institute (NCI) Chernobyl studies.

*Matters To Be Discussed:* Agenda items will include: a review of the National Cancer Institute's Management of Radiation Studies Hearing of September 16, 1998; a discussion of the approach to a site visit; and a review of the time line.

Agenda items are subject to change as priorities dictate.

The notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

*For More Information Contact:* Michael J. Sage, Deputy Director, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 4770 Buford Highway, NE, (F–28), Atlanta, Georgia 30341–3724, M/S F35 telephone 770/488–7300, fax 770/488–7310.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 26, 1999.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 99–19495 Filed 7–28–99; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

## Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

*Name:* Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee (INEEL).

*Times and Dates:* 8:30 a.m.–5 p.m., September 14, 1999; 8 a.m.–5:15 p.m., September 15, 1999.

*Place:* Boise State University, Boise State Student Union Building, 1910 University Drive, Boise, Idaho 83725–1335, telephone 208/426–1677, fax 208/426–5222.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

*Background:* Under a Memorandum of Understanding (MOU) signed in December 1990 with the Department of Energy (DOE) and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS has delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

*Purpose:* This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction, and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

*Matters To Be Discussed:* Agenda items include a presentation from ATSDR on the preliminary public health assessment progress, and an update on the progress of current activities from the National Institute for Occupational Safety and Health. Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Arthur J. Robinson, Jr., Radiation Studies

Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F–35, Atlanta, Georgia 30341–3724, telephone 770/488–7040, fax 770/488–7044.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: July 21, 1999.

**John C. Burckhardt,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 99–19357 Filed 7–28–99; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4529–N–01]**

## Proposed Information Collection: Comment Request; Applicant/Recipient Disclosure/Update Report—HUD 2880

**AGENCY:** Office of the General Counsel, 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 pubic comments on the subject proposal.

**DATES:** *Comments due date:* September 27, 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: Patricia A. Wash, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 10245, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Aaron Santa Anna, Assistant General Counsel, Ethics Law Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 2158, Washington, DC 20410 telephone (202–708–3815) (this is not a toll-free number) for copies of the proposed form 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 affecting 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 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 through the use of appropriate automated collection techniques or other offers of information technology, e.g., permitting electronic submission of response.

This Notice also lists the following information:

*Title of Proposal:* Applicant/recipient disclosure/Update Report

*OMB Control Number, if applicable:* 2510–0011

*Description of the need for the information and proposed use:* Section 102 of the HUD Reform Act of 1989 requires the Department to ensure greater accountability and integrity in the provision of assistance administered by the Department. One feature of the statute requires certain disclosure by applicants seeking assistance from HUD. The disclosure includes the financial interests of persons involved in the activities, the sources of funds to be made available for the activities, and the proposed uses of the funds.

Each applicant who submits an application for assistance, within the jurisdiction of the Department, to HUD, to a State, or to a unit of general local government for a specific project or activity, must disclose this information whenever the dollar threshold is met ($200,000 during the Fiscal Year in which the application is submitted). This information must be kept updated during the application review process and while the assistance is being provided.

*Agency form numbers, if applicable:* HUD–2880.

*Members of affected public:* Applicants for HUD competitive assistance.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:*

| Number of disclosures (including updates) | Burden hours | Frequency of response | Total burden hours |
|---|---|---|---|
| 16,900 | 2.0 | 1.2 | 40,560 |

*Status of the proposed information collection:* Reinstatement, revision.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 23, 1999.

**Gail W. Laster,**

*General Counsel.*

[FR Doc. 99–19345 Filed 7–28–99; 8:45 am]

BILLING CODE 4210–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4441–N–40]**

## Submission for OMB Review: Community Urban County/New York Towns Qualification/Requalification Process

**AGENCY:** Office of the Assistant Secretary for Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The urban county/New York towns qualification/requalification process obtains information each year that establishes the participating population that is used by HUD in calculating the final grant allocation of CDBG funds for all entitlement (which includes metro cities and urban counties) and State CDBG grantees for the next fiscal year.

**DATES:** *Comments Due Date:* August 30, 1999.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget,

Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 22, 1999.

**David S. Cristy,**

*Director, IRM Policy and Management Division.*

*Title of Proposal:* Community Development Block Grant Urban County/New York Towns Qualification/Requalification Process.

*Office:* Community Planning and Development.

*OMB Approval Number:* 2506–XXXX.

*Description of the Need for the Information and Its Proposed Use:* The urban county/New York towns qualification/requalification process obtains information each year that establishes the participating population that is used by HUD in calculating the final grant allocations of CDBG funds for all entitlement (which includes metro cities and urban counties) and State CDBG grantees for the next fiscal year.

*Form Number:* None.

*Respondents:* State, Local or Tribal Government.

*Frequency of Submission:* Recordkeeping Report Annually.

*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Recordkeeping Report Annually | 53 | | 1 | | 57 | | 3,305 |

*Total Estimated Burden Hours:* 3,305.

*Status:* Existing Collection.

*Contact:* Deirdre Maguire-Zinni, HUD, (202) 708–1577; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 99–19344 Filed 7–28–99; 8:45 am]

BILLING CODE 4210–01–M

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[CO–018–1620–00]**

## Closure of Public lands; Colorado

**AGENCY:** Bureau of Land Management, Dept. of the Interior.

**ACTION:** Closure order.

**SUMMARY:** Notice is hereby given that specific land administered by the BLM in the North Sand Hills Special Recreation Management Area will be closed to motorized use. This notice is in accordance with 43 CFR 8364.1 Closure and Restriction Orders and the Federal Land Policy and Management Act of 1976. The closure is necessary to prevent further resource damage to Government Creek.

**DATES:** This closure is effective July 22, 1999 and shall remain in effect unless revised, revoked or amended by the Authorized Officer.

**ADDRESSES:** Details of the closure and a map of the affected area can be obtained from the Field Office Manager, Kremmling Field Office, 1116 Park Ave., P.O. Box 68, Kremmling, CO 80459.

**FOR FURTHER INFORMATION CONTACT:** Field Office Manager at the above address, or call (970) 724–3437.

**SUPPLEMENTARY INFORMATION:** The public lands affected by this closure are located:

North Sand Hills Special Recreation Management Area

**Sixth Principal Meridian, Colorado**

T. 11N., R. 79W.,
Sec. 35, NW¼ three routes crossing Government Creek

This closure does not apply to emergency, law enforcement, and federal or other government vehicles while being used for official or emergency purposes, or to any vehicle whose use is expressly authorized or otherwise officially approved by BLM. A copy of this **Federal Register** notice and a map showing the closure area is posted in the Kremmling Field Office. Violation of this order is punishable by fine and/or imprisonment at defined by 18 USC 3571.

Dated: July 22, 1999.

**Linda M. Gross,**

*Field Office Manager.*

[FR Doc. 99–19409 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–JB–M

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[MT–070–99–1990–00)]**

## Immediate Closure of Area to the Discharge of all Weapons, Including Firearms and Bow and Arrow, In and Around Prairie Dog Towns Along the East Side of Beartooth Road Which Parallels the East Side of Holter Lake, Located 31 Miles Northeast of Helena, MT

**AGENCY:** Butte Field Office, Bureau of Land Management, DOI.

**ACTION:** Notice of closure.

**SUMMARY:** Notice is hereby given that effective immediately all public lands administered by the Bureau of Land Management (BLM) that contain populations of prairie dogs along the Beartooth Road on the east side of Holter Lake are closed to the discharge of weapons in portions of:

**Principal Meridian, Montana**

T. 14 N., R. 3 W.,
Sec. 15, NW¼.

This closure is yearlong and will remain in effect until further notice.

The reason for the closure is to provide protection for the black-tailed prairie dog, a BLM-sensitive species. Shooting prairie dogs is a popular recreational activity and probably contributes to the species' sensitive status. People with firearms have been observed in the vicinity of the Beartooth Road prairie dog town.

This action is taken under the authority of 43 CFR part 8364 and is in support of BLM Manual Policy (6840.02B) to ensure that actions authorized on BLM-administered lands do not contribute to the need to list any other Special Status Species under the provisions of the Endangered Species Act. On March 25, 1999, the U.S. Fish and Wildlife Service (USFWS) published a 90-day notice finding that substantial information indicates that listing the black-tailed prairie dog may be warranted (64 FR 144424). The USFWS is currently reviewing the status of the black-tailed prairie dog to determine if it should be listed as a threatened species.

**FOR FURTHER INFORMATION CONTACT:** Wildlife Biologist Bill Dean at the BLM Butte Field Office, 106 North Parkmont, Butte, Montana 59701, or telephone 406–494–5059.

Dated: July 20, 1999.

**Merle Good,**

*Butte Field Manager.*

[FR Doc. 99–19402 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–DN–P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[UT–030–99–1610–00]**

### Proposed Management Plan/Final Environmental Impact Statement; Grand Staircase-Escalante National Monument, Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with Section 102 of the National Environmental Policy Act of 1969 (NEPA), section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA), and 43 CFR part 1610, the Proposed Management Plan and Final Environmental Impact Statement (FEIS) has been prepared for Grand Staircase-Escalante National Monument (GSENM), Utah. This notice announces the availability of the Proposed Management Plan, which may be protested for a 30 day period to the Director of the Bureau of Land Management (BLM). The Proposed Management Plan provides decisions for management of approximately 1,870,765 acres of public lands in Kane and Garfield Counties in south-central Utah. The Proposed Management Plan: (a) Draws upon elements of each of the five alternatives analyzed in the Draft Management Plan/Draft EIS to formulate the Proposed Management Plan, (b) reflects consideration given to public comments on, and corrections to, the Draft Management Plan/Draft EIS, as well as rewording for clarification, and (c) incorporates a refined environmental impact analysis section. The FEIS is also being made available for 30 days prior to making any decision in accordance with 40 CFR 1506.10(a)(2).

**FOR FURTHER INFORMATION CONTACT:** Chris Killingsworth, Planning Coordinator, Bureau of Land Management, Grand Staircase-Escalante National Monument, 335 South Main Street, Suite 010, Cedar City, Utah 84720, telephone 435–865–5100.

**ADDRESSES:** Protests must be addressed to the Director (WO–210), Bureau of Land Management, Attn: Ms. Brenda Williams, Protests Coordinator, 1849 C Street, NW., Department of the Interior, Washington, DC 20240, within 30 days after the date of publication of the notice for the Proposed Management Plan.

**DATES:** The Proposed Management Plan may be protested. The protest period will commence with the date of publication of a Notice of Filing by the Environmental Protection Agency, which is expected to be on July 30, 1999. Protests must be submitted in writing and must be postmarked on or before August 30, 1999.

**SUPPLEMENTARY INFORMATION:** The Proposed Management Plan presents objectives and decisions for managing public lands for the following resource categories or uses: Geology; Paleontology; Archaeology; History; Soils and Biological Soil Crusts; Vegetation and Vegetation Management; Riparian; Special Status Plant Species; Fish and Wildlife; Special Status Animal Species; Water; Air Quality; Recreational Facilities, Activities, and Uses; Rights-of-Way; Commercial Uses (Filming, Outfitter and Guides, Vending); Forestry Products; Valid Existing Rights; Livestock Grazing; Water Related Developments; Wildfire Management; Wildlife Services; Visual Resource Management; and Wild and Scenic Rivers. The BLM has concluded that 223 miles of river segments would be recommended as suitable for Congressional designation under the Wild and Scenic Rivers Act. This Proposed Management Plan promotes opportunities for community based partnerships and collaborative processes for successful and effective management of public lands into the future.

The Draft Management Plan/Draft EIS was released for public review and comment in November of 1998 and was followed by a four month comment period. The draft management plan/draft EIS analyzed five alternative management strategies for public lands in GSENM, Utah.

The Monument Planning Office received over 6,500 comment letters on the draft management plan/draft EIS from local, State and Federal governments, interest groups, and the public at large. Since the release of the draft management plan/draft EIS, public meetings, workshops, mailings, and briefings have been conducted to solicit comments, new information, and ideas for the Proposed Management Plan.

The Proposed Management Plan responds to public comments received on the draft management plan/draft EIS. The Proposed Management Plan also corrects errors in the draft management plan/draft EIS identified through the public comment process and internal BLM review. The Proposed Management Plan and associated analysis presents a refined and modified version of the Preferred Alternative and the accompanying impact analysis contained in the draft management plan/draft EIS. The Proposed Management Plan can be used in conjunction with the draft management plan/draft EIS to facilitate review of the initial five alternatives. The description of the affected environment and detailed descriptions of the alternatives contained in the draft management plan/draft EIS, as well as some of the appendices, are referenced but not reproduced in the Proposed Management Plan.

Copies of the Proposed Management Plan are available from GSENM Planning Office, 335 South Main Street, Suite 010, Cedar City, Utah, 84720, 435–865–5100. Public reading copies will be available for review at all government-document depository libraries, and at the following BLM locations: Office of Public Affairs, Main Interior Building, 18th and C Streets N.W., Washington, DC 20240; Information Access Center (4th Floor), Utah BLM State Office, 324 S. State Street, Salt Lake City, Utah, 84111; Cedar City District Office, 176 East DL Sargent Drive, Cedar City, Utah 84720; Kanab Field Office, 318 North First East, Kanab, Utah 84741; and GSENM Field Office, Escalante, Utah

84726. Background information and reference materials used in developing the Proposed Management Plan are available for review, upon request, in Cedar City at the GSENM Planning Office.

Written protests on the Proposed Management Plan will be accepted for 30 days following the date the Environmental Protection Agency published the Notice of Filing of this document in the **Federal Register**. It is anticipated that the filing date will be on July 30, 1999, thus ending the public review/protest period on August 30, 1999, and the Governor's 60-day consistency review on September 28, 1999. Any part of this Proposed Management Plan may be protested by parties who participated in the planning process. Protests must pertain to issues that were identified in the draft management plan/draft EIS or through the public comment process.

Protests must be addressed to the BLM Director at the address listed under **ADDRESSES.** The protest must be specific and contain the following information (43 CFR 1610.5–2):

—The name, mailing address, telephone number and interest of the person filing the protest;

—A statement of the issue(s) being protested;

—A statement of the part(s) of the proposed amendment being protested, and a citing of pages, paragraphs, maps, etc., of the Proposed Management Plan, where practical.;

—A copy of all documents addressing the issue(s) that were submitted by the protestor during the planning process or an indication of the date the issue or issues were discussed for the record; and

—A concise statement explaining why the proposed decision is believed to be in error.

At the end of the 30-day protest period, the 30-day NEPA administrative period, and the 60-day Governor's review period a Record of Decision will be issued approving the Plan. Approval will be withheld on any portion of the plan under protest until final action has been completed on such protest.

Dated: July 23, 1999.

**Willie R. Taylor,**

*Director, Office of Environmental Policy and Compliance.*

[FR Doc. 99–19332 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–DQ–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–921–41–1310; WYW115103]**

### Proposed Reinstatement of Terminated Oil and Gas Lease

July 19, 1999.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW1115103 for lands in Crook County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirments for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW115103 effective March 1, 1999, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Pamela. J. Lewis,**

*Chief, Leasable Minerals Section.*

[FR Doc. 99–19335 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–22–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK–932–1410–01; AA–81880]**

### Order Providing for Opening of Land Subject to Section 24 of the Federal Power Act; Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This order opens, subject to the provisions of Section 24 of the Federal Power Act, approximately 61 acres of public land reserved for the Federal Energy Regulatory Commission (FERC) Connelly Lake Hydroelectric Project No. 11715–000 (formerly known as the Upper Chilkoot Hydroelectric Project No. 11319–001). This action will permit conveyance of the land to the State of Alaska, if such land is otherwise available.

**EFFECTIVE DATE:** July 29, 1999.

**FOR FURTHER INFORMATION CONTACT:** Robbie J. Havens, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5049.

**SUPPLEMENTARY INFORMATION:** By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1994), and pursuant to the determination by the FERC in DVAK–153–000, it is ordered as follows:

Subject to valid existing rights, existing withdrawals, or other segregations of record, and the requirements of applicable law, at 8:00 a.m., on July 29, 1999, the following described public land is hereby opened to allow for conveyance of the land to the State of Alaska, subject to the provisions of Section 24 of the Federal Power Act:

The FERC Power Project No. 11715 (Connelly Lake Hydroelectric Project (AA–81880)) located within secs. 22, 26, 27, 34, 35, and 36, T. 28 S., R. 57 E., and secs. 4, 5, 9, 10, 14, 15, 22, 23, 25, and 26, T. 29 S., R. 58 E., Copper River Meridian. The area affected by this order contains approximately 61 acres.

The State of Alaska application for selection made under Section 6(b) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1994), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1994), becomes effective without further action by the State upon publication of this order in the **Federal Register**, if such land is otherwise available.

The land described herein will continue to be subject to the provisions of the FERC Power Project No. 11715, pursuant to the authority set forth in Section 24 of the Federal Power Act, as amended, 16 U.S.C. 818 (1994).

Dated: July 15, 1999.

**Susan J. Lavin,**

*Acting Supervisor, Lands and Minerals Group, Division of Lands, Minerals, and Resources.*

[FR Doc. 99–19410 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–JA–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK–932–1410–00; AA–58199, F–85667]**

### Public Land Order No. 7403; Partial Revocation of Air Navigation Site No. 102 and Modification of Public Land Order No. 5184, as Amended; Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order revokes a Departmental order insofar as it affects 36.75 acres of public land withdrawn for Air Navigation Site No. 102 at Medfra, Alaska. The land is no longer needed for the purpose for which it was withdrawn. This action also allows the conveyance of the land to the State of Alaska, if such land is otherwise available. This action also modifies a public land order insofar as it affects one acre of the land to open it for disposal under the Federal Land Policy and Management Act of 1976. Any land described herein that is not conveyed will continue to be subject to the terms and conditions of Public Land Order No. 5184, as amended, and any other withdrawal or segregation of record.

**EFFECTIVE DATE:** July 29, 1999.

**FOR FURTHER INFORMATION CONTACT:** Robbie J. Havens, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5049.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), and by Section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1994), it is ordered as follows:

1. The Departmental Order dated January 24, 1936, which withdrew public lands for Air Navigation Site 102, is hereby revoked insofar as it affects the following described land at Medfra:

**Kateel River Meridian, Alaska**

T. 27 S., R. 22 E., U.S. Survey No. 10551, lots 1 and 2.

The area described contains 36.75 acres.

2. The State of Alaska application for selection made under Section 6(b) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1994), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1994), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available.

3. Public Land Order No. 5184, as amended, is hereby modified to allow for sale under Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (1994), insofar as it affects U.S. Survey 10551, lot 2. Except as provided, this order does not otherwise change any provisions of Public Land Order No. 5184.

4. Any land not conveyed will continue to be subject to the terms and conditions of Public Land Order No. 5184, as amended, and any other withdrawal or segregation of record.

Dated: July 15, 1999.

**John Berry,**

*Assistant Secretary of the Interior.*

[FR Doc. 99–19336 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–JA–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[CO–935–1430–01; COC–28608, COC–38740]**

## Public Land Order No. 7404; Opening of Land Under Section 24 of the Federal Power Act and Partial Revocation of Power Site Reserve No. 426; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order opens, subject to the provisions of Section 24 of the Federal Power Act, 42.99 acres of National Forest System land withdrawn by the Federal Energy Regulatory Commission Power Project No. 2829, and an Executive order which established Bureau of Land Management Power Site Reserve No. 426. This action will permit consummation of a pending Forest Service land exchange and retain the waterpower rights to the United States. This order also partially revokes the Executive order which established Power Site Reserve No. 426 as to 2,146.18 acres of National Forest System lands which are no longer needed for waterpower purposes. All of the lands have been and will continue to be open to mineral leasing and, under the provisions of the Mining Claims Rights Restoration Act of 1955, to mining.

**EFFECTIVE DATE:** August 30, 1999.

**FOR FURTHER INFORMATION CONTACT:** Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

By virtue of the authority vested in the Secretary of the Interior by the act of June 20, 1920, Section 24, as amended, 16 U.S.C. 818 (1994), and pursuant to the determination of the Federal Energy Regulatory Commission in DVCO–551–000, it is ordered as follows:

1. At 9 a.m. on August 30, 1999, the following described National Forest System lands withdrawn by Federal Energy Regulatory Commission Power Project No. 2829, and the Executive Order dated March 21, 1914, which established Power Site Reserve No. 426, will be opened to disposal subject to the provisions of Section 24 of the Federal Power Act as specified by the Federal Energy Regulatory Commission determination DVCO–551–000, and subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

**Sixth Principal Meridian**

Roosevelt National Forest

T. 5 N., R. 71 W.,
Sec. 2, lot 9.

The area described contains 42.99 acres in Mineral County.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

2. Executive Order dated March 21, 1914, which established Power Site Reserve No. 416, is hereby revoked insofar as it affects the following described National Forest System lands:

**Sixth Principal Meridian**

Roosevelt National Forest

T. 5 N., R. 71 W.,
Sec. 10, NE¼SE¼;
Sec. 11, lots 3 and 4, N½SE¼, and SW¼;
Sec. 12, N½NE¼, SW¼NE¼, S½NW¼, and NW¼SW¼;
Sec. 15, NW¼NE¼, NE¼NW¼, and S½NW¼;
Sec. 19, lots 2 and 3, E½NE¼, SW¼NE¼, SE¼NW¼, and NE¼SW¼;
Sec. 20, NW¼NE¼ and NW¼;
Sec. 21, NW¼NE¼ and N½NW¼.
T. 5 N., R. 72 W.,
Sec. 22, SE¼SW¼ and S½SE¼;
Sec. 23, lots 5 to 8, inclusive, and S½SW¼;
Sec. 24. lot 2, SE¼NE¼, and N½S½;
Sec. 27, NW¼NE¼ and N½NW¼;
Sec. 28, N½NE and NE¼NW¼.

The areas described aggregate 2,164.18 acres in Larimer County.

3. At 9 a.m. on August 30, 1999, the lands described in paragraph 2 shall be opened to such forms of disposition as may by law be made of National Forest System lands subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: July 15, 1999.

**John Berry,**

*Assistant Secretary of the Interior.*

[FR Doc. 99–19408 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–JB–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[UT–942–1430–01; UTU 75302]**

### Public Land Order No. 7402; Transfer of Jurisdiction, Arches National Park Expansion; Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order transfers jurisdiction of 3,140 acres of public land from the Bureau of Land Management to the National Park Service for the expansion of Arches National Park. This transfer of jurisdiction is directed by the Arches National Park Expansion Act of 1998 (Pub. L. 105–329).

**EFFECTIVE DATE:** July 29, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mary von Koch, BLM Moab Field Office, 82 East Dogwood Avenue, Moab, Utah 84532, 435–259–2128.

By virtue of the authority vested in the Secretary of the Interior by Public Law 105–329, it is ordered as follows:

1. Subject to valid existing rights, jurisdiction of the following described public land, depicted on the map entitled ''Boundary Map, Arches National Park, Lost Spring Canyon Addition'', numbered 138/60,000–B, and dated April 1997, is hereby transferred to the National Park Service for the expansion of Arches National Park:

**Salt Lake Meridian**

Those lands, within the indicated lots and aliquot parts, lying below the 4600-foot contour line, except as noted:

T. 23 S., R. 21 E.,
Sec. 13, E½SW¼ and W½SE¼;
Sec. 23, SE¼SE¼NE¼;
Sec. 24, W½NE¼, SE¼NE¼, E½NE¼NW¼, S½NW¼, and S½.
T. 23 S., R. 22 E.,
Sec. 18, lots 1, 2, and 3, lots 5 to 8, inclusive, NE¼SW¼, N½SE¼SW¼, and W½NW¼SE¼;
Sec. 19, lots 1 to 8, inclusive, SW¼NE¼NW¼, NW¼SE¼NW¼, S½SE¼NW¼, NE¼SW¼, SE¼SW¼, SW¼NW¼SE¼, SW¼SE¼, and E½SE¼SE¼;
Sec. 20, N½NE¼, NE¼SW¼NE¼, NW¼SE¼NE¼, and W½, deviating on the east from the 4600-foot contour line;
Sec. 30, lots 1 to 8, inclusive, E½W½, and E½.

Those lands, within the indicated aliquot parts, lying below the 4800-foot contour line:

T. 23 S., R. 22 E.,
Sec. 20, SE¼;
Sec. 21, N½N½NW¼, S½N½SW¼, SW¼SW¼, and W½SE¼SW¼;
Sec. 28, NW¼NE¼, N½NW¼, N½S½NW¼, and N½NW¼SW¼;
Sec. 29.

The area described contains approximately 3,140 acres in Grand County.

2. The following described State land is adjacent to Arches National Park:

**Salt Lake Meridian**

T. 23 S., R. 22 E.,
Sec. 16.

The area described contains 640 acres in Grand County.

In the event the land described above returns to Federal ownership, jurisdiction of the land would automatically be transferred to the National Park Service, upon acquisition, for expansion of Arches National Park.

3. Future use of the land described in Paragraph 1 and the land described in Paragraph 2, if acquired by the United States, shall be in accordance with and subject to the provisions of Public Law 92–155, as amended by Public Law 105–329.

Dated: July 15, 1999.

**John Berry,**

*Assistant Secretary of the Interior.*

[FR Doc. 99–19337 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–DQ–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–921–1430–01; WYW 83356–04]**

### Public Land Order No. 7405; Partial Revocation of Secretarial Orders dated February 2, 1924, and April 30, 1938, Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order partially revokes two Secretarial orders insofar as they affect 40 acres of public land withdrawn for stock driveway purposes. The land is no longer needed for the purpose for which it was withdrawn, and the revocation is needed to permit disposal of the land through exchange. This action will open the land to surface entry unless closed by overlapping withdrawals or temporary segregations of record. The land has been and will remain open to mineral leasing.

**EFFECTIVE DATE:** August 30, 1999.

**FOR FURTHER INFORMATION CONTACT:** Janet Booth, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6124.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Orders of February 2, 1924, and April 30, 1938, which withdrew public land for Stock Driveway No. 128 (Wyoming 13), are hereby revoked insofar as they affect the following described land:

**Sixth Principal Meridian**

T. 43 N., R. 86 W.,
Sec. 21, NE¼NE¼.
The area described contains 40 acres in Washakie County.

2. At 9 a.m. on August 30, 1999, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on August 30, 1999, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: July 15, 1999.

**John Berry,**

*Assistant Secretary of the Interior.*

[FR Doc. 99–19333 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–22–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK–050–09–1430–01; AA–58926, AA–58927]**

### Lease of Public Land; Paxson Lake, AK

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** This notice of realty action involves a proposal for two non-competitive 5 year renewable commercial leases to Roger Butler, Standing Bear Guide Service. The leases are intended to resolve the unintentional occupancy trespass involving two existing commercial recreational facilities related to guiding and outfitting activities on public land.

**DATES:** Comments and an application must be received on or before September 13, 1999.

**ADDRESSES:** Comments and an application must be submitted to the Glennallen District Management Team, P.O. Box 147, Glennallen, Alaska 99588–0147.

**FOR FURTHER INFORMATION CONTACT:** David Mushovic (907) 822–3217.

**SUPPLEMENTARY INFORMATION:** The two one acre sites examined and found suitable for leasing under the provision of Sec. 302 of the Federal Land Policy

and Management Act of 1976, and 43 CFR part 2920, are described as within:

Sec. 26, T. 22 S., R. 11 E., Fairbanks Meridian.
Sec. 23, T. 13 N., 3 W., Copper River Meridian.

An application will only be accepted from Roger Butler, who owns Standing Bear Guide Service, and all existing improvements. The comments and application must include a reference to this notice. Fair market rental as determined by appraisal will be collected for the use of these lands, and reasonable administrative and monitoring costs for processing the lease. A final determination will be made after completion of an environmental assessment.

Dated: July 21, 1999.

**David Mushovic,**

*Realty Specialist.*

[FR Doc. 99–19359 Filed 7–28; 8:45 am]

BILLING CODE 4310–JA–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WO–250–24–1A]**

### Use Authorizations; Special Recreation Permits, Other Than on Developed Recreation Sites; Proposed Adjustment in Fees

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public notice-specific fee adjustment for competitive and organized group activities or events, special recreation permits.

**SUMMARY:** The Bureau of Land Management (BLM) hereby gives notice it is adjusting certain special recreation permit fees for various recreation activities on BLM administered Public Lands and related waters. BLM is adjusting the minimum fee for competitive and organized group activities or events.

Effective October 1, 1999, fee adjustments will be made automatically every 3 years using 1984 as the base year. These fees will be calculated and adjusted based on the change in the Implicit Price Deflator Index (IPDI). The fees will be rounded up to the nearest $1.00. This notice establishes the special recreation permit minimum fee for both competitive and organized group activities or events at $4.00 per person per day. Notice of the fee increase in the future will be announced in conjunction with the BLM and Forest Service minimum annual commercial fee and per site reservation fee. The next adjustment is scheduled for March 1, 2002. The intended effect is to ensure fees cover administrative costs of permit issuance, a fair return to the U.S. government for use of the public lands, and approach free market value in certain cases.

The IPDI is published every February as a part of the ''Economic Report of the President'' to Congress. The IPDI is also cited monthly in the ''Survey of Current Business,'' a periodical available in most regional, university, and local government depository libraries.

**EFFECTIVE DATE:** October 1, 1999.

**ADDRESSES:** Inquires or suggestions should be directed to—Director (100), Room 5660, Main Interior Building, Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Lee V. Larson, National Recreation Group, (202) 452–5168.

**SUPPLEMENTARY INFORMATION:** In 1984 (49 FR 5300 and 49 FR 34332), the Bureau of Land Management announced its final regulations and policy concerning special recreation permits for individuals or organizations conducting commercial, competitive, and other uses. BLM established the minimum fee for competitive events at $2.00 per user day or 3% of gross receipts, whichever is greater, and group activities or events, other uses, at $1.50 per user day. These flat fees have not changed since the 1984 **Federal Register**. The above **Federal Register** notices and 43 CFR 8372.4(a)(1) states ''Fees for Special Recreation Permits shall be established and maintained by the Director, Bureau of Land Management, and may be adjusted from time to time to reflect changes in costs. The fee schedule shall be incorporated in the Manual of the Bureau of Land Management, published periodically in the **Federal Register** and otherwise made generally available to the public.'' Since 1984, inflation has devalued these fixed fee amounts. Therefore, it is necessary to adjust the minimum competitive and organized group activities and event fees and provide a mechanism for the fees to be self-adjusting based on inflation.

**Tom Fry,**

*Director, Bureau of Land Management.*

[FR Doc. 99–19457 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–84–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[UTU 78501]**

### Proposed Withdrawal and Opportunity for Public Meeting; Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Department of the Interior, Central Utah Project Completion Act Office, proposes to withdraw 2,795 acres of National Forest System lands, for a period of 20 years to protect the Diamond Fork System, Bonneville Unit of the Central Utah Project. This notice closes the lands for up to 2 years from location and entry under the United States mining laws. The lands will remain open to all other uses which may be made of National Forest System lands.

**DATES:** Comments should be received on or before October 27, 1999.

**ADDRESSES:** Comments should be sent to the Program Director, CUP Completion Act Office, 302 East 1860 South, Provo, Utah 84606–7317.

**FOR FURTHER INFORMATION CONTACT:** Reed Murray, CUP Completion Act Office, 801–379–1237.

**SUPPLEMENTARY INFORMATION:** On July 13, 1999, a petition was approved allowing the Department of the Interior, Central Utah Project Completion Act Office, to file an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

**Salt Lake Meridian**

*Uinta National Forest*

T. 8 S., R. 5 E.,
Sec. 1;
Sec. 2, lots 1, 2, 7, and 8;
Sec. 12, E½SE¼;
Sec. 14, S½SE¼;
Sec. 20, E½NE¼SE¼ and SE¼SE¼;
Sec. 21, S½NE¼, E½SW¼NW¼, SE¼NW¼, SW¼, N½SE¼, and SW¼SE¼;
Sec. 22, NE¼, NE¼NW¼, S½NW¼, N½SW¼, and N½SE¼;
Sec. 28, NW¼NW¼;
Sec. 29, NE¼, SE¼NW¼, and S½;
Sec. 33, SW¼NW¼.

The areas described aggregate approximately 2,795 acres in Utah County.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing, by the date specified above, to

the Program Director, CUP Completion Act Office.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Program Director, CUP Completion Act Office, within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: July 22, 1999.

**Roger Zortman,**

*Deputy State Director, Division of Operations.*

[FR Doc. 99–19403 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–RK–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Boundary Revision, Proposed Land Exchange, and Opportunity for Public Comment, Mission San Jose y San Miguel de Aguayo Unit, San Antonio Missions National Historical Park

**DATES:** The effective date of this Order shall be the date of the **Federal Register** publication in which this Order appears.

**SUMMARY:** Title II, section 201 of the Act of November 10, 1978, Public Law 95–629, 92 Stat. 3636, codified as amended at 16 U.S.C. 410ee (1994), authorizes the Secretary of the Interior, after advising the Committee on Energy and Natural Resources of the United States Senate and the Committee on Natural Resources of the United States House of Representatives, in writing, to make minor revisions to the boundaries of San Antonio Missions National Historical Park (hereinafter SAAN) when necessary by publication of a revised drawing or other boundary description in the **Federal Register**. That statute also authorizes the Secretary of the Interior to acquire by donation, purchase with donated or appropriated funds, or exchange, lands and interests therein constituting the area generally described as Mission San Jose y San Miguel de Aguayo and such lands and interests therein which the Secretary determines are necessary or desirable to provide for public access to, and interpretation and protection of, Mission San Jose y San Miguel de Aguayo.

The boundary revision would add to the park boundary a 0.02-acre parcel of land known as SAAN Tract 102–18, owned by L & H Packing Co. of San Antonio, Texas. The National Park Service then proposes to exchange a 0.02-acre parcel of land known as SAAN Tract 102–19, which is located outside the park boundaries for said SAAN Tract 102–18. The boundary revision and exchange are required to provide safe access to the Mission San Jose y San Miguel de Aguayo Unit of SAAN by enlarging the view area for vehicular and pedestrian traffic at the intersection on New Napier Avenue and San Jose Drive.

Appraisals have been completed and approved on all the tracts involved in the exchange. Both parties have determined that the lands and interests therein to be exchanged are of equal value.

Tract 102–18 and Tract 102–19 are depicted on SAAN land acquisition status map segment 102, drawing number 472/80,026–D, prepared by Land Resources Program Center, Intermountain Region. This map is on file and available for inspection in the office of the National Park Service, Land Resources Program Center, Intermountain Region and the Office of the Superintendent, San Antonio Missions National Historical Park.

Notice is hereby given that the boundary of the San Antonio Missions National Historical Park has been revised pursuant to the above cited statute, to include the lands depicted as Tract 102–18 on said map having drawing number 472/80,026–D.

**COMMENTS AND FURTHER INFORMATION:** The comment period on the proposed exchange ends 45 days from the date of this publication. Information may be obtained from or comments pertaining to this exchange should be addressed to the Superintendent, San Antonio Missions National Historical Park, 2202 Roosevelt Avenue, San Antonio, Texas 78210–4919.

Dated: June 7, 1999.

**John E. Cook,**

*Regional Director, Intermountain Region, National Park Service.*

[FR Doc. 99–19449 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Glacier Bay National Park, Alaska; Dungeness Crab Commercial Fishery Interim Compensation Program for Processors

**AGENCY:** National Park Service, Interior.

**ACTION:** Glacier Bay National Park application procedures for the Dungeness crab commercial fishery interim compensation program for processors.

**SUMMARY:** Section 123(c) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 (''the Act''), as amended by Section 501 of the 1999 Emergency Supplemental Appropriations Act, Pub. L. 106–31 (05/21/99), authorizes compensation for fish processors, fishing vessel crew members, communities, and others negatively affected by congressionally-directed restrictions on commercial fishing in the marine waters of Glacier Bay National Park. The National Park Service (NPS) and the State of Alaska recently announced a framework for completing the compensation program within the next 2 years. The closure of designated wilderness areas to commercial fishing (implemented by NPS on June 15, 1999) and the pending closure of Glacier Bay proper to commercial fishing for Dungeness crab (September 30, 1999) will adversely affect some Dungeness crab fishermen and processors this year, before the compensation program can be completed. NPS is a currently compensating qualifying Dungeness crab commercial fishermen under a specific compensation program authorized by Section (b) of the Act (See 64 FR 32888 [June 18, 1999.]) To address 1999 economic impacts to Dungeness crab processors, NPS, with concurrence of the State of Alaska, intends to provide interim compensation to those processors who meet qualifying criteria similar to those described for commercial fishermen under Section (b) of the Act. An interim compensation payment will be made to Dungeness crab processors who have purchased Dungeness crab harvested from either the Beardslee Island or Dundas Bay wilderness areas in the park for at least six years during the period 1987–1998. This interim payment is intended to mitigate 1999 income losses for qualifying Dungeness crab processors until the compensation program under Section (c) of the Act—and appropriate eligibility criteria, priorities and levels of compensation for

processors—can be developed and implemented. This **Federal Register** notice serves to provide application instructions for licensed Dungeness crab buyer/processors who believe they qualify for interim compensation. Applications must be provided to the Superintendent, Glacier Bay National Park and Preserve, on or before October 1, 1999.

**DATES:** Applications for the Dungeness crab commercial fishery processor interim compensation program will be accepted on or before October 1, 1999.

**ADDRESSES:** Applications for the Dungeness crab commercial fishery processor interim compensation program should be submitted to the Superintendent, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826. A delivery address is located at 1 Park Road, in Gustavus.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the Dungeness crab commercial fishery compensation program, please contact Tomie Lee, Glacier Bay National Park and Preserve, P. O. Box 140, Gustavus, Alaska 99826. Phone: (907) 697–2230.

**SUPPLEMENTARY INFORMATION:** The Act, as amended, requires Dungeness crab fishermen to provide certain information sufficient to determine their eligibility for compensation. NPS will require similar corroborating documentation from Dungeness crab buyers/processors making application to NPS for 1999 interim compensation as described in this notice. Dungeness crab processors must provide the following information to the Superintendent: (1) Full name, mailing address, and a contact phone number. (2) A sworn and notarized personal affidavit from the owner of the processing business attesting to the applicant's history of buying Dungeness crab harvested from either the Beardslee Island or Dundas Bay wilderness areas of the park as a licensed buyer/processor for at least 6 of 12 years during the period of 1987 through 1998. (3) A copy of the business's current State of Alaska license for buying/processing Dungeness crab. (4) Any available corroborating information—including documentation of Dungeness crab landed/purchased from the Alaska Department of Fish and Game shellfish statistical units that include wilderness areas in the Beardslee Islands or Dundas Bay and/or sworn and notarized affidavits of witnesses—that can assist in a determination of eligibility for compensation. The Superintendent, with the concurrence of the State of Alaska, will make a written determination on eligibility for compensation based on the documentation provided by the applicant. The Superintendent, with the concurrence of the State of Alaska, will also make a written determination on the amount of 1999 interim compensation to be paid to an eligible applicant. NPS intends to complete payment of interim compensation to processors meeting the above eligibility criteria by December 1, 1999. Receipt of compensation for 1999 losses will not prejudice any opportunity the applicant may have to seek any additional compensation that may be provided for in the Act, as amended.

If an application for compensation is denied, the Superintendent will provide the applicant the reasons for the denial in writing. Denial of interim compensation as a Dungeness crab processor will not affect consideration for future compensation for processors under the Act, as amended.

Dated: July 20, 1999.

**Paul R. Anderson,**

*Acting Regional Director, Alaska.*

[FR Doc. 99–19450 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–70–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## Notice of Draft Principles of Agreement Regarding the Disposition of Culturally Unidentifiable Human Remains—Extended Date for Comments

**AGENCY:** National Park Service

**ACTION:** Notice

Section 8 (c)(5) of the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3006 (c)(5)) requires the Review Committee to recommend specific actions for developing a process for the disposition of culturally unidentifiable Native American human remains. The Review Committee has developed the following draft principles of agreement for comment and discussion. The document is intended for wide circulation to elicit comments from Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and national scientific and museum organizations.

Anyone interested in commenting on the review committee's draft principles of agreement should send written comments to:

The NAGPRA Review Committee
c/o Departmental Consulting Archeologist
National Park Service (2275)
1849 C St. NW. (NC340)
Washington DC, 20240

Comments received by **September 3, 1999** will be considered by the committee at its next scheduled meeting. For additional information, please contact Dr. C. Timothy McKeown at (202) 343-4101.

**Note**: We will not accept any comments in electronic form.

Dated: July 23, 1999.

**Veletta Canouts,**

*Acting Departmental Consulting Archeologist,*

*Deputy Manager, Archeology and Ethnography Program.*

**DRAFT PRINCIPLES OF AGREEMENT**

At its June 25-27, 1998 meeting, the NAGPRA Review Committee examined the legislative history of NAGPRA and discussed both the law's intent and how to proceed with one of the Committee's most pressing tasks-- making recommendations on the disposition of culturally unidentifiable human remains. One result was a set of principles. Working from these, the Review Committee offers the following draft principles of agreement as a next step for discussion. The Committee wishes to underscore the preliminary nature of these principles and their placement as a beginning point for consideration of this topic.

**A. Intent of NAGPRA.**

1. The legislative intent of NAGPRA is stated by the statute's title, the ''Native American Graves Protection and Repatriation Act''.

2. Specifically, the statute mandates:

a. The disposition of all Native American human remains and cultural items excavated on Federal lands after November 16, 1990,

b. The repatriation of culturally affiliated human remains and associated funerary objects in Federal agency and museum collections,

c. The development of regulations for the disposition of unclaimed remains and objects (under 25 U.S.C. 3002) and culturally unidentified human remains in Federal agency and museum collections (under 25 U.S.C. 3006).

3. The legal standing of funerary objects associated with culturally unidentifiable human remains is not addressed by NAGPRA and is beyond the Review Committee's charge.

4. While the statute does not always specify disposition, it is implicit that:

a. The process be primarily in the hands of Native people (as the nearest next of kin),

b. Repatriation is the most reasonable and consistent choice.

5. Additionally, a fundamental tension exists within the statute

between the legitimate and long denied need to return control over ancestral remains and funerary objects to Native people, and the legitimate public interest in the educational, historical and scientific information conveyed by those remains and objects. (25 U.S.C. 3002 (c); 25 U.S.C. 3005 (b))

**B. Culturally Unidentifiable Human Remains.**

1. Federal agencies and museums must make a decision as to whether all Native American human remains are related to lineal descendants, culturally affiliated with a present day Federally recognized Indian tribe, or are culturally unidentifiable. This determination must be made through a good faith evaluation of all relevant, available documentation and consultation with any appropriate Indian tribe.

2. A determination that human remains are culturally unidentifiable may change as additional information becomes available.

3. Human remains can be identified as ''culturally unidentifiable'' for different reasons. At present, four categories are recognized:

a. Those which are culturally affiliated, but with a non-Federally recognized Native American group.

b. Those which represent a defined past population, but for which no present day Indian tribe exists.

c. Those for which some evidence exists, but insufficient for a Federal agency or museum to make a determination of cultural affiliation.

d. Those for which no information exists.

**C. Guidelines for the disposition of culturally unidentifiable human remains.**

1. Four principles must serve as the foundation for any regulations on the disposition of culturally unidentifiable human remains. They must be:

a. *Respectful*. Culturally unidentifiable human remains are no less deserving of respect than those for which culturally affiliation can be established. While the Review Committee is aware that the term 'culturally unidentifiable' is inherently offensive to many Native people, it is the term used in the statute.

b. *Equitable*. Regulations must be perceived as fair and within the intent of the statute.

c. *Doable*. Regulations must propose a process that is possible for Federal agencies, museums, and claimants and worth the effort to implement.

d. *Enforceable*. There is no point in making regulations that can not or will not be enforced.

2. Since human remains may be determined to be culturally unidentifiable for different reasons, there will be more than one appropriate disposition/repatriation solution. Examples:

a. Human remains that are, technically, culturally unidentifiable because the appropriate claimant is not federally recognized [section B(3)(a.) above], may be repatriated once federal recognition has been granted, or if the claimant works with another culturally affiliated, federally recognized Indian tribe (example—the Titicut site / Mashpee case).

b. Human remains for which there is little or no information [section B(3)(c. and d.) above] should be speedily repatriated since they have little educational, historical or scientific value.

3. Documentation.

a. Since documentation is required (25 U.S.C. 3003 (b)(2)), it is appropriate that it be conducted in accordance with defined standards.

b. Documentation should be proportional to the importance of the information conveyed. For example, remains from a defined past population for which no present-day Indian tribe exists [section B(3)(b.) above] are of far greater educational, historical and scientific importance than those for which there is little or no information [section B(3)(c) and (d) above].

c. Appropriate documentation includes non-invasive techniques such as measurement, description and photography.

d. Invasive testing is not required for statutory documentation. Such testing may be performed if agreed upon by the parties in consultation.

e. Documentation prepared for compliance with the statute is a public record.

**D. Models for the disposition of culturally unidentifiable human remains.**

1. Joint recommendations by institutions, Federal agencies, or states and appropriate claimants. The Review Committee has recommended the repatriation of culturally unidentifiable human remains in those cases where:

a. All the relevant parties have agreed in writing,

b. Statutory requirements have been met,

c. The guidelines listed above have been followed.

These cases have included institutions (University of Nebraska, Lincoln), units of the National Park Service (Carlsbad Caverns NP and Guadalupe Mountains NM), and states (Minnesota and Iowa).

2. Regional consultations

Historical and cultural factors, and therefore issues concerning the definition and disposition of culturally unidentifiable human remains, vary significantly across the United States. For example, issues in the Southeast, where most Indian tribes were forcibly removed during the 19th century, are very different from those in the Southwest where many Indian tribes remain on their ancestral lands. Similarly, issues in the Northeast and California differ significantly from those in the Great Plains. Therefore, it is reasonable to look for regional solutions that best fit regional circumstances.

The Review Committee recommends a process in which the Federal agencies, institutions and Indian tribes within a region consult together and propose the most appropriate disposition solutions for that region.

As with joint recommendations, any proposed regional disposition must meet both statutory requirements and the guidelines listed above.

[FR Doc. 99–19452 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–70–F

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## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains from Kansas in the Possession of the Department of Anthropology, University of Tennessee, Knoxville, TN

**AGENCY:** National Park Service

**ACTION:** Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the Department of Anthropology, University of Tennessee, Knoxville, TN.

A detailed assessment of the human remains was made by Department of Anthropology professional staff in consultation with representatives of the Pawnee Indian Tribe of Oklahoma.

At an unknown date, human remains representing two individuals were recovered from the Kansas Monument site (14RP1), Republic County, KS by person(s) unknown. At an unknown date, these human remains were donated to the Department of Anthropology by person(s) unknown. No known individuals were identified. No associated funerary objects are present.

Based on material culture and village organization, the Kansas Monument site has been identified as an historic Pawnee cemetery and village (c. 1820-1830s AD). Based on this information,

these human remains are believed to be affiliated with the Pawnee Indian Tribe of Oklahoma.

Based on the above mentioned information, officials of the University of Tennessee have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the University of Tennessee have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Pawnee Indian Tribe of Oklahoma.

This notice has been sent to officials of the Pawnee Indian Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Jan Simek, Department of Anthropology, University of Tennessee, Knoxville, TN 37996-0720; telephone: (423) 974-4408, before August 30, 1999. Repatriation of the human remains to the Pawnee Indian Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: July 21, 1999.

**Francis P. McManamon,**

*Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.*

[FR Doc. 99–19451 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–70–F

## DEPARTMENT OF JUSTICE

### Loging of Consent Decree Under the Asbestos NESHAP

Under 28 CFR 50.7, notice is hereby given that on July 16, 1999, a proposed Consent Decree in *United States* v. *American Asbestos Control Company, Inc.*, Civil Action No. 4:99 CV 597, was lodged with the United States District Court for the Northern District of Ohio.

In this action, the United States sought penalties and injunctive relief for claims under the asbestos National Emissions Standard for hazardous Air pollutants (''NESHAP''), 40 CFR Part 61, Subpart M, promulgated under section 112 of the Clean Air Act (''Act''), 42 U.S.C. 7412, for inspection, notice, and work practice violations. The claim arose in connection with American Asbestos Control Company's asbestos renovation projects at WCI Inc.'s steelmaking facilities located in Warren, Ohio, and at North Star Steel, located in Youngstown, Ohio. Under the Consent Decree, American Asbestos Control Company will pay a civil penalty of $50,000 in two equal installments, will comply with the Asbestos NESHAP, and will undertake other injunctive actions, including appointing an Asbestos Program Manager, designating a liaison designee, training all supervisors, inspectors, and workers, and ensuring that a thorough inspection has occurred at a facility or part of a facility prior to commencement of any asbestos demolition and/or renovation activity.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *American Asbestos Control Company, Inc.*, D.J. Ref. No. 90–5–2–1–06168.

The Consent Decress may be examined at the Office of the United States Attorney, 208 Fed. Bldg., 2 S. Main St., Akron, Ohio, 44308, at the Region 5 Office of the United States environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604–3590, and at the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. A copy of the Consent Decree may be obtained in person or by mail from the consent Decree Library, 1120 G Street, NW 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the above-referenced case and enclose a check in the amount of $5.50 ($.25 per page reproduction costs) payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 99–19412 Filed 7–28–99; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Extension of Public Comment Period Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that the Department of Justice, in response to a request from an interested party, has decided to extend the public comment period on the proposed consent decree in *United States* v. *Horsehead Industries, Inc.*, Civil Action No. CV. 98–654, which was lodged on June 10, 1999, with the United States District Court for the Middle District of Pennsylvania. Notice of initiation of a 30-day comment period was published in the **Federal Register** on June 23, 1999. *See* 64 F.R. 33910. The Department of Justice will receive comments relating to the consent decree until August 25, 1999. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Horsehead Industries, Inc.*, D.J. Ref. 90–11–2–271M.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 99–19411 Filed 7–28–99; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities: Comment Request

**ACTION:** Notice of Information Collection Under Review; Joint Employment Verification Pilot (JEVP).

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until September 27, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of previously approved collection.

(2) *Title of the Form/Collection:* Joint Employment Verification Pilot (JEVP).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–963. SAVE Program, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. The information collection will be used by the Immigration and Naturalization Service and the Social Security Administration to verify employment authorization for all new employees regardless of citizenship for those companies participating in the Joint Employment Verification Pilot.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,000 responses at 3.5 hours per response and 400,000 responses (queries) at 5 minutes (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 36,700 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room, 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: July 23, 1999.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 99–19328 Filed 7–28–99; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF JUSTICE

### National Institute of Justice

**[OJP(NIJ)–1241]**

**RIN 1121–ZB75**

### Announcement of the Availability of the National Institute of Justice Solicitation for Forensic DNA Research and Development

**AGENCY:** Office of Justice Programs, National Institute of Justice, Justice.

**ACTION:** Notice of solicitation.

**SUMMARY:** Announcement of the availability of the National Institute of Justice ''Solicitation for Forensic DNA Research & Development.''

**DATES:** Proposals must be received by 4 p.m. (EST) on August 30, 1999.

**ADDRESSES:** National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the solicitation, please call NCJRS at 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center at 1–800–421–6770.

**SUPPLEMENTARY INFORMATION:**

#### Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

#### Background

The intent of this solicitation is to stimulate all areas of research or development that can enhance or increase the capacity, capability, applicability, and/or reliability of DNA for forensic uses. Proposals that build or improve upon existing technologies, methods, or approaches as well as proposals based on new or novel technologies, methods, or approaches are encouraged to meet the goal of maximizing the value of DNA evidence to the criminal justice system.

In order to most effectively and efficiently use DNA to its maximum value for the criminal justice system, the forensic DNA community, now comprised of more than 150 public and private crime laboratories, will need faster, less costly, and fundamentally reliable technical tools and innovations that can be appropriately validated, quality-controlled, and quality-assured for forensic use.

Research demonstrating the reliability of existing, impending or future methods is also encouraged. Emphasis is placed on developing methods or technologies that address the needs of databasing for CODIS application and/or methods that can be used for the analysis of crime scene samples, which are often limited in quality and quantity.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Solicitation for Forensic DNA Research & Development'' (refer to document No. SL000369). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htmınij.

**Jeremy Travis,**

*Director, National Institute of Justice.*

[FR Doc. 99–19459 Filed 7–28–99; 8:45 am]

BILLING CODE 4410–18–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Job Training Partnership Act and Workforce Investment Act; Migrant and Seasonal Farmworker Employment Training Advisory Committee: Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) as amended, notice is hereby given of the scheduled meeting of the Migrant and Seasonal Farmworker Employment and Training Advisory Committee.

*Time and Date:* The meeting will begin at 1 p.m. on August 26, 1999, and continue until approximately 4:30 p.m., and will reconvene at 9 a.m. on August 27, 1999, and adjourn at close of business that day. Time is reserved from 1:30 to 3 p.m. on August 26, 1999 for participation and presentations by members of the public.

*Place:* August 26, 1999-Holiday Inn on the Hill, 415 New Jersey Avenue NW, Federal Ballroom North, Washington, DC. August 27, 1999-U.S. Department of Labor, 200 Constitution Avenue NW, Frances Perkins Building, Conference Room 4, C5521, Washington, DC 20210.

*Status:* The meeting will be open to the public. Persons with disabilities, who need special accommodations should contact the telephone number provided below no less than ten days before the meeting.

*Matters to be Considered:* The agenda will focus on the following topics:

Brief report of meeting of January 7 and 8 1999
Public Comment Session
Advisory Committee Discussion on Membership
Division of Seasonal Farmworker Program Report and Update
Workforce Investment Act Implementation
Election of Committee Chairperson

*For Further Information Contact:* Alicia Fernandez-Mott, Chief, Division of Migrant and Seasonal Farmworker Programs, Office of National Programs, Employment and Training Administration, Room N–4641, 200 Constitution Ave., NW, Washington, DC 20210. Telephone: (202) 219–5500.

Signed at Washington, DC, this 22nd day of July, 1999.

**Anna W. Goddard,**

*Director, Office of National Programs, Employment and Training Administration.*

[FR Doc. 99–19398 Filed 7–28–99; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

## Mine Safety and Health Administration

## Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

### 1. Canyon Fuel Company, LLC

[Docket No. M–1999–049–C]

Canyon Fuel Company, LLC, PO Box 1029, Wellington, Utah 84542 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Dugout Canyon Mine (I.D. No. 42–01890) located in Carbon County, Utah. The petitioner proposes to use belt air to ventilate faces in areas of the mine where two entry mining system is not used. The petitioner proposes to install a low-level carbon monoxide monitoring system as an early warning fire detection system in all belt entries used as intake air courses. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

### 2. Coal Miners, Inc.

[Docket No. M–1999–050–C]

Coal Miners, Inc., 999 Barrett Cemetery Road, Equality, Illinois 62934 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Eagle Valley Mine (I.D. No. 11–02846) located in Gallatin County, Illinois. The petitioner requests a modification of the mandatory standard to permit the use of air coursed through belt haulage entries to ventilate active working places. The petitioner proposes to install a low-level carbon monoxide detection system as an early warning fire detection system in the supply road with branches extended to the beltline at certain locations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

### 3. Meadow Branch Mining Corporation

[Docket No. M–1999–051–C]

Meadow Branch Mining Corporation, PO Box 2560, Wise, Virginia 24293 has filed a petition to modify the application of 30 CFR 75.1710–1 (canopies or cabs; self-propelled diesel-powered and electric face equipment; installation requirements) to its Low Splint No. 1 Mine (I.D. No. 44–06883) located in Wise County, Virginia. The petitioner proposes to operate electric face equipment without canopies in coal seam heights of 37 to 43 inches. The petitioner states that: (i) Mining conditions cause the canopies to come in contact with the roof, damaging the canopy and destroying roof support; (ii) canopies restrict the visibility of the equipment operators, creating a hazard in the operation of the equipment and for the people crawling and walking on the section; and (iii) the relief requested would not result in a diminution of safety to the miners.

### 4. West Ridge Resources, Inc.

[Docket No. M–1999–052–C]

West Ridge Resources, Inc., PO Box 902, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.1101–8 (water sprinkler system; arrangement of sprinklers) to its West Ridge Mine (I.D. No. 42–02233) located in Carbon County, Utah. The petitioner requests a variance from the mandatory standard to permit a different arrangement of water sprinkler systems than established by the standard. The petitioner proposes to: (i) Use a single overhead pipe system with ½-inch orifice automatic sprinklers located on 10-foot centers rather than every 8 feet, to cover 50 feet of fire-resistant belt or 150 feet of non-fire resistant belt with actuation temperatures between 200 and 230 degrees Fahrenheit and with water pressure equal to or greater than 10 psi; and (ii) have the automatic sprinklers located not more than 10 feet apart so that the discharge of water will extend over the belt drive, belt take-up, electrical control, and gear reducing unit. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard and will not result in a diminution of safety to the miners.

### 5. West Ridge Resources, Inc.

[Docket No. M–1999–053–C]

West Ridge Resources, Inc., PO Box 902, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its West Ridge Mine (I.D. No. 42–02233) located in Carbon County, Utah. The petitioner proposes to use a nominal voltage of longwall power circuits not to exceed 2,400 volts to supply power to the permissible longwall mining equipment. The petitioner has listed in this petition specific terms and conditions for using its proposed alternative method. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as would the mandatory standard and will not result in a diminution of safety to the miners.

### 6. Consolidation Coal Company

[Docket No. M–1999–054–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its Rend Lake Mine (I.D. No. 11–00601) located in Jefferson County, Illinois. The petitioner requests a modification of the mandatory standard so that individual service brakes would not be required on all grader wheels of the diesel grader. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

### 7. Consolidation Coal Company

[Docket No. M–1999–055–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(4) (weekly examination) to its Shoemaker Mine (I.D. No. 46–01436) located in Marshall County, West Virginia. Due to deteriorating roof and rib conditions, the petitioner proposes to establish check points to examine the affected area instead of traveling the area in its entirety. The petitioner states that: (i) A weekly examination would be made for methane and a smoke tube would be used to verify direction of air flow; (ii) the persons making examinations and tests would place his/her initials, the date and time in a record book provided on the surface and made available for inspection for interested parties; and (iii) checks points and all approaches to the check points would be maintained in safe condition. The petitioner asserts that the proposed alternative method would provide at least the same

measure of protection as the mandatory standard.

**8. Monterey Coal Company**

[Docket No. M–1999–056–C]

Monterey Coal Company, 14300 Brushy Mound Road, Carlinville, Illinois 62626 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its No. 1 Mine (I.D. No. 11–00726) located in Macoupin County, Illinois. The petitioner requests a modification of the mandatory standard for its grader. The petitioner states that to add brakes on the grader would result in loss of machine control for the operators and the weight, size, and location of the front brakes would subject repair personnel to injury. As an alternative method, the petition proposes to lower the blade to stop and control the grader. The petitioner asserts that its alternative method will provide no less than the same measure of protection provided by the mandatory standard.

**9. Canyon Fuel Company, LLC**

[Docket No. M–1999–057–C]

Canyon Fuel Company, 397 South 800 West, Salina, Utah 84654 has filed a petition to modify the application of 30 CFR 75.360(b)(9) (preshift examination) to its SUFCO Mine (I.D. No. 42–00089) located in Sevier County, Utah. The petitioner proposes to install an Atmospheric Monitoring System (AMS) that would continuously monitor the electrical installations for carbon monoxide and methane instead of conducting a preshift examination. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

**10. Knott County Mining Company**

[Docket No. M–1999–058–C]

Knott County Mining Company, P.O. Box 2805, Pikeville, Kentucky 41502 has filed a petition to modify the application of 30 CFR 75.900 (low-and medium-voltage circuits serving current equipment; circuit breakers) to its Panther Lick Mine (I.D. No. 15–16808) located in Knott County, Kentucky. The petitioner requests a modification of the mandatory standard to permit use of contactors for undervoltage protection as an alternative to using circuit breakers. The petitioner has outlined in this petition specific procedures, including personnel training, that would be implemented when using the proposed alternative method. The petitioner asserts that safety of miners would not be compromised and that proposed alternative method would provide at least the same measure of protection as the mandatory standard.

**11. Independence Coal Company, Inc.**

[Docket No. M–1999–059–C]

Independence Coal Company, Inc., HC 78, Box 1800, Madison, West Virginia 25130 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Cedar Grove Mine No. 1 (I.D. No. 46–08603) located in Boone County, West Virginia. The petitioner proposes to use 4,160 volts to supply power to the permissible longwall face equipment, using specific terms and conditions listed in this petition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

**12. Peabody Coal Company**

[Docket No. M–1999–060–C]

Peabody Coal Company, 1951 Barrett Court, PO Box 1990, Henderson, Kentucky 42430 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its Marissa Mine (I.D. No. 11–02440) located in Washington County, Illinois. The petitioner proposes to: (i) Use its grader underground with rear wheel brakes only; (ii) limit the diesel grader speed to a maximum of 10 miles per hour; and (iii) train grader operators to drop the grader blade in the event the brakes fail instead of using front wheel brakes on the grader. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

**13. Performance Coal Company**

[Docket No. M–1999–061–C]

Performance Coal Company, PO Box 69, Naoma, West Virginia 25140 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Upper Big Branch Mine-South (I.D. No. 46–08436) located in Raleigh County, West Virginia. The petitioner proposes to use a nominal voltage of power circuits not to exceed 2,400 volts to supply power to high-voltage continuous miner located inby the last open crosscut or within 150 feet from pillar workings. The petitioner has listed in this petition specific terms and conditions for using its proposed alternative method. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

**Request for Comments**

Persons interested in these petitions are encouraged to submit comments via e-mail to ''comments@msha.gov,'' or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 30, 1999. Copies of these petitions are available for inspection at that address.

Dated: July 22, 1999.

**Carol J. Jones,**

*Acting Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 99–19404 Filed 7–28–99; 8:45 am]

BILLING CODE 4510–43–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

September 13, 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:** Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

**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, Census Bureau (N1–29–99–5, 3 items, 1 temporary item). Electronic copies of documents created using electronic mail and word processing associated with annual reports and update reports of prisoners under sentence of death. Recordkeeping copies of the annual and update reports, which list the prisoner's name, state, sex, race, date of birth, marital status, educational level, the capital offense for which the prisoner was convicted, date of conviction, date of sentence, and inmate status, are proposed for permanent retention.

2. Department of Defense, Office of the Inspector General (N1–509–99–5, 6 items, 6 temporary items). Congressional staff briefings and subject files relating to the President's Council on Integrity and Efficiency. Records consist of briefings of Congressional staff by agency staff and correspondence with the President's Council and its committees regarding meetings, including meeting notices and agenda items. Also included are electronic copies of documents created using electronic mail and word processing.

3. Department of Energy, Agency-wide (N1–434–98–15, 4 items, 4 temporary items). Department of Energy, Agency-wide (N1–434–98–15, 4 items, 4 temporary items). Mail delivery locator records and telecommunications master files and data bases that supplement or replace telecommunications operational files, which were previously approved for disposal. Also included are electronic copies of these records created using electronic mail and word processing.

4. Department of Justice, Office of Legal Counsel (N1–60–98–9, 4 items, 1 temporary item). Correspondence related to the appointment, service, and separation of volunteer hearing officers for conscientious objector cases under the Selective Service Acts of 1940 and 1948. Docket cards, abstracts, and indices are proposed for permanent retention.

5. Department of Justice, Agency-wide (N1–60–99–2, 3 items, 1 temporary item). Time and summary sheets submitted by Department lawyers from March to August 1969. Budget submissions, 1939 to 1949, and the correspondence of the Assistant Attorney General for the Land and Natural Resources Division for the period 1963–1973 are proposed for permanent retention.

6. Department of Justice, Immigration and Naturalization Service (N1–85–99–5, 3 items, 3 temporary items). Electronic copies of documents created using electronic mail and word processing that are included in Forensic Document Laboratory Case Files. This schedule also increases the retention period for the recordkeeping copies of these files, which were previously approved for disposal.

7. Department of the Treasury, Internal Revenue Service (N1–58–99–5, 3 items, 3 temporary items). IRS Tax Form 8863, Education Credits (Hope and Lifetime Learning Credits) filed with individual tax return forms.

8. General Services Administration, Public Building Service (N1–121–99–1, 1 item, 1 temporary item). Miscellaneous design and construction files consisting of correspondence, payments of claims, cost estimates, and preliminary planning records dating from 1974 to 1976.

9. Panama Canal Commission, Agency-wide (N1–185–98–2, 5 items, 5 temporary items). Expenditure accounting records used to determine rates for marine and longshore services, fire protection services, transportation, utilities, and health and education services. Also included are records documenting the payment of disability benefits.

10. Panama Canal Commission, Agency-wide (N1–185–99–1, 14 items, 14 temporary items). Electronic systems and related paper records used to control, track, and monitor electronic files created by the agency's mainframe computer system. Included are records pertaining to such matters as the labeling of tapes, tape storage locations, and the formatting of computer-generated reports.

11. Panama Canal Commission, Office of the Inspector General (N1–185–99–3, 4 items, 4 temporary items). Investigations of fraud, abuse, and violations of laws or regulations, external and internal agency audits, and records relating to allegations and complaints.

Dated: July 22, 1999.

**Michael J. Kurtz,**

*Assistant Archivist for Record Services—Washington, DC.*

[FR Doc. 99–19397 Filed 7–28–99; 8:45 am]

BILLING CODE 7515–01–P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Information Security Oversight Office; National Industrial Security Program Policy Advisory Committee: Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.2) and implementing regulation 41 CFR 101.7, announcement is made for the following committee meeting:

*Name of Committee:* National Industrial Security Program Policy Advisory Committee (NISPPAC).

*Date of meeting:* Wednesday, August 25, 1999.

*Time of Meeting:* 10:00 am to noon.

*Place of Meeting:* National Archives and Records Administration, 700 Pennsylvania Avenue, NW, Room 105, Washington, DC 20408.

*Purpose:* To discuss National Industrial Security Program policy matters.

This meeting will be open to the public. However, due to space limitations and access procedures, the names and telephone numbers of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than August 18, 1999. ISOO will provide additional instructions for gaining access to the location of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Steven Garfinkel, Director, Information Security Oversight Office, National Archives Building, 700 Pennsylvania Avenue, NW, Room 100, Washington, DC 20408, telephone (202) 219–5250.

Dated: July 23, 1999.

**Mary Ann Hadyka,**

*Committee Management Officer.*

[FR Doc. 99–19394 Filed 7–28–99; 8:45 am]

BILLING CODE 7510–01–P

## NATIONAL CREDIT UNION ADMINISTRATION

### Central Liquidity Facility

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Notice with request for comments.

**SUMMARY:** NCUA's Central Liquidity Facility (CLF) has in place form documents that reflect the repayment, security, and credit reporting (RSCR) terms applicable to all CLF liquidity loans. The NCUA Board is updating and revising these terms and forms and, in addition, issuing two new forms. These modifications are intended to ensure that CLF will efficiently meet the liquidity needs of credit unions through Year 2000 and beyond. NCUA regulations require publishing any modifications to these terms and forms in the **Federal Register**. Also, the NCUA is requesting comments on the collection of information burden imposed by these modifications in compliance with the Paperwork Reduction Act of 1995.

**DATES:** Comments must be received on or before August 18, 1999.

**FOR FURTHER INFORMATION CONTACT:** Herbert S. Yolles, President, CLF, at the above address or telephone (703) 518–6360 or Frank S. Kressman, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

**SUPPLEMENTARY INFORMATION:** The CLF is a mixed-ownership government corporation within the NCUA. It is managed by the NCUA Board and is owned by its member credit unions. CLF's purpose is to improve the general stability of credit unions by meeting their liquidity needs. CLF recognizes that credit unions' liquidity needs may increase dramatically and temporarily as a result of Year 2000 circumstances. Accordingly, CLF has revised the RSCR terms governing all CLF liquidity loans and has taken measures to ensure that all credit unions have full access to CLF services. These actions will help ensure that CLF will be able to meet increased liquidity demand related to Year 2000.

The Request for Funds Form and the Liquidity Need Loan Application have been newly created to reflect revisions to the RSCR terms. The CLF Agent Member Application Form, Agent Member RSCR Agreement and Agent Group Representative RSCR Agreement have been revised to reflect revisions to the RSCR terms. These five documents are published for notice and comment. A brief summary of the purposes of these documents follows and the full text of each can be found in Appendix ''A'' below. The Request for Funds Form serves as the official request for a liquidity loan from the CLF. It is submitted by a corporate credit union that is an agent member of the CLF (Agent Member) or an agent group representative (Agent Group Representative), as those terms are defined in part 725. This form provides information necessary to process a liquidity loan including the identity of the natural person credit union borrower, the loan amount and the purpose for the loan. The Liquidity Need Loan Application contains the terms and conditions of the relationship between an Agent Member, its natural person credit union member, and its Agent Group Representative in the context of requesting liquidity loans. The CLF Agent Member Application Form is to be used by corporate credit unions that wish to apply for Agent Member status. The Agent Member RSCR Agreement contains the terms and conditions of the relationship between an Agent Member and the CLF in the context of transacting CLF liquidity loans. The Agent Group Representative RSCR Agreement contains the terms and conditions of the relationship between an Agent Group Representative and the CLF in the context of transacting CLF liquidity loans.

### Regulatory Procedures

*Paperwork Reduction Act*

The NCUA Board has determined that the requirements of the above documents constitute a collection of information under the Paperwork Reduction Act (PRA). NCUA has submitted these documents to OMB with a request for emergency clearance and expedited review within 20 days. If approved, regularly applicable PRA public notice requirements will be inapplicable and OMB will issue OMB Control Numbers valid for not more than 180 days.

The NCUA Board estimates that it will take an average of ¼ hour to comply with the requirements of the Request for Funds Form. The NCUA Board also estimates that 40 credit unions will use this form 3 times each for a total estimated annual collection burden of approximately 30 hours.

The NCUA Board estimates that it will take an average of ¼ hour to comply with the requirements of the Liquidity Need Loan Application. The NCUA Board also estimates that 7,000 credit unions will use this form 1 time each for a total estimated annual collection burden of approximately 1,750 hours.

The NCUA Board estimates that it will take an average of 1 hour to comply with the requirements of the CLF Agent Member Application Form. The NCUA Board also estimates that 5 credit unions will use this form 1 time each for a total estimated annual collection burden of approximately 5 hours.

The NCUA Board estimates that it will take an average of 1 hour to comply with the requirements of the Agent Member RSCR Agreement. The NCUA Board also estimates that 5 credit unions will use this form 1 time each for a total estimated annual collection burden of approximately 5 hours.

The NCUA Board estimates that it will take an average of 1 hour to comply with the requirements of the Agent Group Representative RSCR Agreement. The NCUA Board also estimates that 1 credit union will use this form 1 time for a total estimated annual collection burden of approximately 1 hour. The estimated aggregate annual collection burden for all of the above forms is 1,791 hours.

The Paperwork Reduction Act of 1995 and OMB regulations require that the public be provided an opportunity to comment on information collection requirements, including an agency's estimate of the burden of the collection of information. The NCUA Board invites comment on: (1) Whether the collection of information is necessary; (2) the accuracy of NCUA's estimate of the burden of collecting the information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collection of information. Comments should be sent to: OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, DC 20503; Attention: Alex T. Hunt, Desk Officer for NCUA. Please send NCUA a copy of any comments you submit to OMB to: Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

By the National Credit Union Administration Board on July 22, 1999.

**Becky Baker,**

*Secretary of the Board.*

BILLING CODE 7535–01–P

Appendix A

(For Internal Use Only)
Application Number: _____
Date/Time Received: _____
Received By: _____

OMB

# NATIONAL CREDIT UNION CENTRAL LIQUIDITY FACILITY AGENT REQUEST FOR FUNDS

1. Complete the appropriate borrower information (see form instructions on page two):

1-A) Request submitted by Agent Group Member: _____ (name of CLF Agent) Approved By: _____ (authorized representative signature of Member of Agent group) (date)

Through Agent Group Representative (AGR): _____ (name of AGR) Approved By: _____ (authorized representative signature of AGR) (date)

Or:

1-B) Request submitted by Agent Member directly to the CLF _____ (name of CLF Agent) Approved By: _____ (authorized representative signature of Agent Member) (date)

1-C) Application date: _____ (date submitted to CLF)

2. Complete the following liquidity-need loan information table (attach additional tables as necessary):

**Underlying Liquidity-Need Loan(s) To Natural Person Credit Union Members Serving As The Basis For The Request For Funds**

| A | B | C | D | E | F | G | H | I | J | K | L | M | N |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Loan # | Name of Natural Person Credit Union Member | ID #: Charter, Insurance, or Other | Liquidity Loan Need Type (A, B or C) | Amount of Existing Loan Being Converted to an Agent Loan ($) | Amount of Any New Agent Loan ($) | Total Amount of Funds Requested (E+F) | Est. Collateral Amt. ($000) | Collateral: Securities-A Shares-B Loans-C Other-D Blanket-E | Have you perfected a security interest (Y/N)? | Date Funds Needed | Maturity Date of Loan | Term of Loan (days) | *Liquidity Need Loan Application* Date |
| 1 | | | | | | | | | | | | | |
| 2 | | | | | | | | | | | | | |
| 3 | | | | | | | | | | | | | |
| 4 | | | | | | | | | | | | | |
| 5 | | | | | | | | | | | | | |
| 6 | | | | | | | | | | | | | |
| 7 | | | | | | | | | | | | | |
| 8 | | | | | | | | | | | | | |
| 9 | | | | | | | | | | | | | |
| 10 | | | | | | | | | | | | | |
| | | | | | | **Total Funds** | | | | | | | |

3. Complete the appropriate funds delivery information:

| **Money Transfer Instructions For Approved Advance**: | Routing & Transit # (ABA) | Depository Institution's Name | Account Number |
|---|---|---|---|
| A) Standard delivery instructions for Agent Group Representative | | | |
| B) Delivery instructions for CLF Agent | | | |

OMB

# *NATIONAL CREDIT UNION CENTRAL LIQUIDITY FACILITY AGENT REQUEST FOR FUNDS*

## FORM INSTRUCTIONS:

AGENT MEMBER INSTRUCTIONS:

1. Provide the name of the CLF Agent (corporate credit union) that is requesting funding for a loan and have an authorized representative of the institution sign/date the form on the applicable "approved by" line. Use line 1-A if you are a member of an Agent group or 1-B otherwise. If you are submitting the request directly to CLF, complete the date information on line 1-C.
2. Complete the Agent loan information table (column descriptions below). You may batch the underlying loans (the liquidity-need loans to natural person credit union members that serve as the basis for the request) into one request-for-funds amount. You may submit an extended form by attachment when the number of underlying loans exceeds the 10 lines provided in this table. Please ensure that attached extended forms contain the same detailed information and presentation format as this table.

| Column | Instructions For Completion of Liquidity Loan(s) Information Table |
|---|---|
| A | Number given to the respective underlying loan making up the total request for funds. |
| B | Provide the name of the natural person credit union member requesting the liquidity loan from the CLF Agent. |
| C | Provide the Federal charter number, the insurance number (or other identifier if non-federally insured) of the natural person credit union member requesting the liquidity loan from the CLF Agent. |
| D | Provide the type of liquidity need as set forth in 12 U.S.C. §302 (1) and 12 C.F.R. §725.2 (i) with the letter code of A, B or C. "A" relates to a short-term adjustment credit; "B" relates to a seasonal credit ; and "C" relates to protracted adjustment credit available in the event of unusual or emergency circumstances of a longer term nature. |
| E | If applicable, provide the amount of existing loan(s) previously funded by the corporate that is being converted to funding from an Agent loan or Agent Group loan. |
| F | If applicable, provide the amount of any new liquidity-need loan to be funded by an Agent or Agent Group loan. |
| G | Provide the total amount of funds requested (add the amounts of column E and F). |
| H | Provide the par/book amount of collateral supporting the Agent loan (leave blank if using a blanket lien). |
| I | Provide the specific type(s) of collateral pledged by the natural person credit union member to the Agent member to secure the liquidity-need loan. Use any of the letter codes that apply. A= investment securities; B= member shares at the corporate; C= natural person credit union loans to members; D= other assets; and, E= blanket lien on the assets. |
| J | Indicate, with a Yes or No, whether you have perfected a security interest in the collateral. |
| K | Provide the date that the funds are needed (the advance date). |
| L | Provide the maturity date of the requested Agent or Agent Group loan (the date the funds will be repaid to CLF). |
| M | Indicate the exact number of days the Agent or Agent Group loan is outstanding (the term of the advance). |
| N | Provide the date of the signed *Liquidity Need Loan Application* (completed by the natural person credit union member) on file with the CLF Agent. This form must be signed and in full force and effect at the time a Facility advance is made. If a natural person credit union member rescinds this agreement the Facility may not advance funds to the Agent to be relent to that institution. |

3. Provide the CLF Agent's funds delivery information on line 3B.

Upon completion, deliver the Agent Request For Funds form to your Agent Group Representative (if applicable) or directly to the Central Liquidity Facility for further processing. If you are not submitting an Agent Request For Funds through an AGR, forward the signed original of each Agent Request For Funds form directly to the Facility and maintain a copy for your records.

AGENT GROUP REPRESENTATIVE INSTRUCTIONS:

1. Complete the information for lines 1-A and 1-C.
2. Check the liquidity-need loan information table on line 2 and the funds delivery information on line 3-B for completeness.
3. Complete the appropriate funds delivery information on line 3-A.

You may batch individual Agent Request For Funds forms from different CLF Agents into one request for funds amount but you must include the underlying Agent Request For Funds form(s) that serve as the basis for the AGR request with *your* application. Forward all Agent Request For Funds form(s) to the Central Liquidity Facility for final processing. Send a signed copy of each Agent Request For Funds form to the Agent member, maintain a copy for your records and forward the original to the Facility.

OMB Number_____

LIQUIDITY NEED LOAN APPLICATION
(Multi-Source Funding)

This Liquidity Need Loan Application is made this ___ day of _____, ____ , by _____ (Credit Union, we, us, or our) a (circle one): federal state-chartered credit union primarily serving natural persons. In support of this application, Credit Union represents and agrees as follows:

1. Credit Union is a member of _____, a corporate credit union (Corporate).

2. Credit Union has one or more written credit or loan agreements, promissory notes, and security agreements (collectively, Credit Agreements) with Corporate. From time to time, Credit Union may request an advance under a Credit Agreement to meet liquidity needs as that term is defined in Section 302(1) of the Federal Credit Union Act, 12 U.S.C. §1795a(1).

3. We understand that Corporate, either as a member of the National Credit Union Administration Central Liquidity Facility (CLF or Facility) or as a member of an Agent Group (also called, Group) that is a member of the CLF, may request a Facility advance from the CLF to fund an Agent loan to meet our liquidity needs. We understand that the terms Facility advance and Agent loan used in this application have the meanings provided in §725.2(c) of NCUA's regulations.

4. We understand and agree that Corporate, in its sole discretion, may access one or more sources of funding to provide a requested credit extension to meet our liquidity needs, including but not limited to, a Facility advance.

5. We agree to provide Corporate with any information needed to support a request for a Facility advance to fund an Agent loan to us.

6. If a Facility advance is made to fund a credit extension to us, we understand and agree that the requested credit extension will be an Agent loan. We also understand and agree that any such Agent loan will be subject to the repayment, security and credit reporting terms prescribed by the CLF for Agent loans and that all parties to the Facility advance have consented and agreed to be bound by these terms. A copy of these terms, to which we also consent and agree to be bound, is attached as Exhibit A to this application.

| _____ | _____ | _____ |
|---|---|---|
| Signature of Authorized Representative of Credit Union | Title | Date |

EXHIBIT A

Repayment, Security and Credit Reporting Terms Applicable to Facility Advances for an Agent Loan to a Natural Person Credit Union

**Definitions.** Terms used in this exhibit have the same meaning as used in the Liquidity Need Loan Application unless otherwise defined in this exhibit.

**Acknowledgment and Consent.** Credit Union agrees to be bound by the terms in this exhibit if an extension of credit under a Credit Agreement with Corporate is made in the form of an Agent loan for liquidity needs.

We also agree that the terms of this exhibit are supplemental to the provisions of the Credit Agreements. In the event of any inconsistency between the terms of the Credit Agreements and the terms in this exhibit, we agree the terms of this exhibit will control. Credit Union acknowledges that the terms of this exhibit may be changed by the National Credit Union Administration from time to time as provided in §§ 725.20 and 725.21 of NCUA's regulations. Any changes will apply to Facility Advances made after the effective date of the publication of the changes in the Federal Register as provided in §725.21 of NCUA's regulations.

**Confirmation.** In connection with each Agent loan, Corporate must send a confirmation of credit to the Credit Union. The confirmation must specify that the advance is made for liquidity needs and subject to the repayment, security and credit reporting terms prescribed by the CLF for Agent loans. The confirmation must also disclose all material terms of the Agent loan.

**Repayment Obligation.** In connection with each Agent loan and as specified in the confirmation, Credit Union agrees that we are obligated:

(1) to pay to Corporate on each principal repayment date an amount equal to the principal amount then due; and

(2) to pay to Corporate on each interest payment date an amount equal to unpaid interest from the date of the Agent loan through such interest payment date; and

(3) to pay to Corporate on the maturity date an amount equal to the unpaid balance of the amount of the Agent loan, if any, plus unpaid interest from the date of the advance through the maturity date; and

(4) if the principal amount due on any principal repayment date is not paid on or before such date, to pay Corporate, as may be provided in the Credit Agreement:

(A) reasonable expenses of collection, including the reasonable attorney's fees and expenses incurred, if any; plus
(B) late principal payment charges, if any; plus
(C) interest after such date through the maturity date on the unpaid balance of such principal amount at the interest rate specified in the confirmation, if any; and

(5) if the unpaid interest due on any interest payment date or the maturity date is not paid on or before such date, to pay Corporate, as may be provided in the Credit Agreement:

(A) reasonable expenses of collection, including the reasonable attorney's fees and expenses incurred, if any; plus
(B) a late interest payment charge, if any; and

(6) if the amount due on the maturity date is not paid on or before the maturity date, to pay Corporate, as may be provided in the Credit Agreement:

(A) reasonable expenses of collection, including the reasonable attorney's fees and expenses incurred, if any, and a late principal payment charge, if any; plus
(B) interest after the maturity date on the unpaid balance of the overdue principal amount at the rate specified in the confirmation.

**Security Obligation and Collateral.** As security for all repayment obligations to Corporate for Agent loans, the Credit Union has granted a first priority security interest in favor of Corporate in certain property, whenever acquired (Collateral), as described in and in accordance with the Credit Agreements. Credit Union acknowledges and agrees that the value of Collateral for all Agent loans will be at all times at least equal to 110% of the outstanding amount of such Agent loans. Corporate will have the right at any time to perfect any security interest granted in the Collateral. As security for all repayment obligations to CLF for Agent loans made to Credit Union, Corporate has granted a security interest in the Collateral in favor of CLF.

**Enforcement**. If Credit Union defaults under any Agent loan and at any time while a default continues, Corporate will have all the rights and remedies provided under the Credit Agreements and the Uniform Commercial Code, including acceleration.

**Credit Reporting Obligation.** Credit Union agrees to file such reports and provide such information as may be required by Corporate or CLF from time to time.

OMB Control #: _____ Expiration Date: _____

# INSTRUCTIONS FOR COMPLETING THE APPLICATION AND AGREEMENTS FOR AGENT MEMBERSHIP IN THE NCUA CENTRAL LIQUIDITY FACILITY

CLF-8700

## PART A

| Item No. | Instructions/Remarks |
|---|---|
| 4 | Enter your corporate credit union's charter number if federally chartered or National Credit Union Share Insurance Fund (NCUSIF) certificate number if federally insured. Leave blank if your credit union is neither federally chartered nor insured by the NCUSIF. |
| 5,6 | Enter the name and telephone number (including area code) of the individual to be contacted regarding Central Liquidity Facility (the Facility) matters. The individual named should be a person authorized to transact business with the Facility. |
| 7 | Enter the date this application is prepared. |
| 8 | Check the appropriate block to indicate insurance status of your corporate credit union. If member shares are insured by the NCUSIF, check block (a). If member shares are insured by a share insurance program other than NCUSIF, check block (b). If member shares in your credit union are uninsured, check block (c). |
| 9 | If block 8(b) is checked, enter the name of the share insurance program which insures your members' shares. |
| 10 | Enter the name and address and ABA routing number of the financial institution used by the corporate credit union as its depository and record corporate credit union's account number at that depository. |
| 11 | Using the list of member natural person credit unions which is furnished by the applicant, the Facility shall determine the amount of paid-in and unimpaired capital and surplus using an arithmetic average of the data from the two year ends prior to the date of application, for all such members who are not Regular members of the Facility. The amount of paid-in and unimpaired capital and surplus for each natural person credit union will be that amount reported to the National Credit Union Administration (NCUA) in the natural person credit union's filing of NCUA Form 5300-Call Report.<br><br>Where the above report has not been filed, the Facility will use other data obtained from the affected natural person credit union or its state supervisory authority.<br><br>The capital stock subscription for this corporate credit union or credit union group is equal to one half of one percentum of the average paid-in and unimpaired capital and surplus determined above. The amount of the required Facility stock subscription is determined by multiplying the average paid-in and unimpaired capital and surplus from above by .005 and rounding the resultant answer to the nearest whole dollar. For example, using $505,004,500 average Paid-in and Unimpaired Capital and surplus, the Facility capital stock subscription would be computed as follows:<br><br>$505,004,500<br>X .005<br>$2,525,022.50<br><br>($2,525,022.50 rounded to the nearest whole dollar equals $2,525,023.)<br><br>The amount of funds that must accompany this application when it is submitted to the Facility is computed by dividing the dollar amount of the stock subscription reported in item 11 by 2. In our foregoing example where the stock subscription was $$2,525,023, the credit union would be required to enclose with its application $1,262,511 ($2,525,023 ÷ 2). Checks should be made payable to the "Central Liquidity Facility". |

## PART B

Indicate by checking the appropriate box whether your corporate credit union is seeking Agent membership individually, or as part of a corporate credit union group. If you are joining as a part of a group, identify the group and the Agent Group Representative by name in item 2.

## PART C

The Facility is permitted to lend to credit unions primarily serving natural persons to meet liquidity needs as specified in the CLF ACT. To ensure that Facility loans are used only for those purposes permitted by the CLF Act, the Facility will need to have access to certain records of the Agent member and will require certain recordkeeping. This section contains a series of agreements that will provide the Facility with the necessary access to information.

## PART D

Any supporting documents submitted with this application are to be identified by schedule number beginning with 1 and numbered consecutively. All schedules should be listed in Part D.

Prior to submitting this application, the resolutions contained in Part D must be adopted by the board of directors.

## APPLICATION AND AGREEMENTS FOR AGENT MEMBERSHIP IN THE NATIONAL CREDIT UNION CENTRAL LIQUIDITY FACILITY

### PART A - GENERAL INFORMATION

Items 1 thru 10 are designed for computer data entry. Please do not use more than the allotted number of characters. (The number in parenthesis after each title block of each item is the total number of allowed characters including spaces for that item.)

1. _____ Credit Union Name (35)

4. _____ Charter/Insurance Certificate Number (5)

2. _____ Street Address (35)

5. _____ Contact Person (30)

3. _____ City (20) State (2) Zip Code (5)

6. _____ Telephone Number (10)

8. Insurance Status: a. ☐ Federally Insured b. ☐ State Program c. ☐ Uninsured

9. _____ Name of Share Insurance Program

[ ] NCUA Use Only

10. Local Depository Information

a. _____ Depository Name (35)

d. _____ ABA Routing Number (9)

b. _____ Street Address (35)

e. _____ Account Number (15)

c. _____ City (20) State (2) Zip Code (5)

11. Computation of six month arithmetic average of paid-in and unimpaired capital and surplus of member credit unions shall be accomplished by the Facility using the method described in the instructions. The Facility will inform the applicant of its required stock subscription at the time the applicant is approved as an Agent member.

### PART B - TYPE OF MEMBERSHIP DESIRED

☐ **Direct Agent Membership**

(1) The above named corporate credit union hereby applies for direct Agent membership in the NCUA Central Liquidity Facility (the "Facility").

(2) We hereby subscribe to capital stock in an amount equal to one-half of one percent of the paid-in and unimpaired capital and surplus of all natural person credit unions which are members of this corporate credit union and are not Regular members of the Facility. The amount of this capital stock subscription is based upon an arithmetic average of the paid-in and unimpaired capital and surplus over the six months preceding the date of this application. Upon approval of this application, we will remit to the Facility funds equal to one-half of this initial stock subscription.

☐ **Agent Group Membership**

(1) The above named corporate credit union hereby applies for Agent membership in the Facility as part of the below listed corporate credit union group:

_____
Corporate Credit Union Group Name

(2) We hereby subscribe to capital stock in an amount equal to one-half of one percent of the paid-in and unimpaired capital and surplus of all natural person credit unions which are members of this corporate credit union and are not Regular members of the Facility. The amount of this capital stock subscription is based upon an arithmetic average of the paid-in and unimpaired capital and surplus over the six months preceding the date of this application. Upon approval of this application, we will remit to the Facility funds equal to one-half of this initial stock subscription.

_____
Agent Group Representative Name

(3) We have informed the above named Agent Group Representative of our intent to seek Agent membership as part of it and have furnished the group with a listing of all the natural person credit unions that are members of this corporate credit union.

(4) We hereby subscribe to capital stock of the Facility in an amount equal to one-half of one percent of the paid-in and unimpaired capital and surplus of all natural person credit unions which are members of a corporate credit union belonging to the corporate credit union group and are not Regular members of the Facility or have access to the Facility through another Agent member. The amount of this capital stock subscription is based upon an arithmetic average of the paid-in and unimpaired capital and surplus over the six months preceding the date of this application. Upon approval of this application funds equal to one-half of this initial stock subscription shall be forwarded to the Facility by the agent group representative.

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OMB Control #: _____ Expiration date: _____

Revised 5/30/99

## PART C - AGENT MEMBERSHIP AGREEMENTS AND SUPPORTING DOCUMENTS

1. The above named corporate credit union hereby applies for Agent membership in the Central Liquidity Facility (the "Facility") as provided in Title III of the Federal Credit Union Act, and in consideration of the granting of Agent membership hereby agrees:

   a. To comply with the requirements of Title III of the Federal Credit Union Act and any regulations and reporting requirements which are prescribed for Agent members by the NCUA Board pursuant thereto.
   b. To permit such examinations as in the judgment of the NCUA Board may from time to time be deemed necessary.
   c. To permit the NCUA Board or its designee to have access to any information or report with respect to any examination made by or for any public regulatory authority, including any commission, board, or authority having supervisory responsibility over this corporate credit union, and furnish such additional information with respect thereto as the NCUA Board may require.
   d. To permit the NCUA Board or its designee to have access to all records and information concerning the affairs of this corporate credit union related to Facility activity and to furnish such information pertinent thereto that the Board may require.
   e. To cause to be made, on an annual basis, a third party independent audit of corporate credit union's books and records and provide the Facility with copies of such audit, if requested.
   f. To maintain records related to Facility activity in conformance with requirements prescribed by the NCUA Board from time to time.
   g. To hold in confidence all information furnished by the Facility and to disclose such information only when and to the extent authorized by the Facility.
   h. To hold in confidence all information furnished to the corporate credit union or credit union group in its role as an Agent of the Facility by any state regulatory authority or share insurance agent and to disclose such information only when and to the extent authorized by the Facility.

2. The following required supporting documents are attached.
   a. Copies of our financial and statistical reports for the most recent month-end, including but not limited to:
      1. Balance Sheet (The number and dollar amount of shares and loans to member credit unions must be disclosed separately from the number and dollar amounts of shares and loans to natural person credit unions.)
      2. Statement of Income and Expense
      3. Delinquent loan report showing the number and dollar amount of delinquent loans by delinquent categories (2 months to less than 6 months, 6 months to less than 12 months, 12 months and over, or such other categories as may be required by the state regulatory authority.)
   b. A listing of all those natural person credit unions that are members of this corporate credit union (or in the case of a credit union group, members of a corporate credit union belonging to the group), the charter/insurance number, the name and address of the natural person credit union.
   c. A copy of our credit union's charter and bylaws (not required for Federal credit unions).

OMB Control #: _____ Expiration Date: _____

## PART D - CERTIFICATIONS AND RESOLUTIONS

We, the undersigned, certify to the correctness of the information submitted. In support of this application we submit the Schedules described below:

**Schedule No.** **Title**

(Signature) Chief Elected Official

(Print or Type Officers Name)

(Signature) Treasurer

(Print or Type Treasure's Name)

## CERTIFICATIONS AND RESOLUTIONS

(Corporate Name of Credit Union)

(City) (State)

We certify that we are the duly elected and qualified president (chief elected official) and secretary of said credit union and that at a properly called regular or special meeting of its board of directors, at which a quorum was present, the following resolutions were passed and recorded in its minutes:

"Be it resolved that this credit union apply for Agent membership in the National Credit Union Central Liquidity Facility as provided in Title III of the Federal Credit Union Act."

"Be it further resolved that the president (chief elected official) and treasurer be authorized and directed to execute the APPLICATION AND AGREEMENTS FOR AGENT MEMBERSHIP IN THE NCUA CENTRAL LIQUIDITY FACILITY and any other papers and documents required in connection therewith and to pay all expenses and do all such things necessary or proper to secure and continue such membership."

"Be it further resolved that the president/chairman or vice president/vice chairman and treasurer or assistant treasurer (or their successors as authorized by resolution) are authorized to execute notes and applications for advances from the National Credit Union Central Liquidity Facility in such amounts as may be authorized from time to time by the board of directors of this credit union."

(Signature) Chief Elected Official

(Print or Type Officers Name)

(Signature) Secretary, Board of Directors

(Print or Type Secretary's Name)

(Note: **A WILLFULLY FALSE CERTIFICATION IS A CRIMINAL OFFENSE. U.S. CODE, TITLE 18, SEC. 1001.**)

## NCUA CENTRAL LIQUIDITY FACILITY REPAYMENT, SECURITY AND CREDIT REPORTING AGREEMENT
**(Agent Member)**

| (Corporate Credit Union Name) | Charter /Insurance Certificate Number |
|---|---|
| City | State |

### PARTIES

(1) **Effective date.** This agreement is between the National Credit Union Central Liquidity Facility (hereinafter "the Facility") and a corporate credit union which is an Agent member of the Facility (hereinafter "the Agent"). This agreement becomes effective when signed by the Agent and the Facility. This agreement shall remain in effect as long as the Agent is a member of the Facility or there is any unpaid repayment obligation created hereunder between the Agent and the Facility.

(2) **Facility rules and regulations, etc.** All advances of Facility funds to the Agent are subject to this agreement and to all applicable terms and conditions in the National Credit Union Central Liquidity Facility Act, rules and regulations prescribed by the NCUA Board on behalf of the Facility, and operating circulars issued by the Facility, including all amendments and supplements thereto. The Agent shall perform each of the obligations imposed on it by any such term or condition.

### REPAYMENT

(3) **Confirmation.** In connection with each advance of Facility funds to the Agent, the Facility shall issue a confirmation of credit (hereinafter the "confirmation") which shall be sent to the Agent. The confirmation may be issued before or after the date of the advance and shall be in such form and sent in such manner as may be determined by the Facility. The confirmation shall specify:

- (i) the date of the advance;
- (ii) the amount of the advance;
- (iii) the interest rate;
- (iv) the principal repayment date or dates, if any;
- (v) the principal amount due on each such principal repayment date (excluding interest);
- (vi) the interest payment date or dates, if any;
- (vii) the maturity date; and
- (viii) the pending and outstanding loans from the Agent to its member natural person credit unions which are the basis for the Facility advance (hereinafter "Agent loans"), including the principal amount or principal balance of each such loan, the name of the natural person credit union which has applied for or received the loan, and the type or types of liquidity needs that are being met by the loan (i.e., short-term adjustment credit, seasonal credit, or protracted adjustment credit.) [1]

The confirmation may also specify the method of payment that must be used by the Agent to pay the Facility on each principal payment date, each interest payment date, and the maturity date. A confirmation may be combined with other information, including other confirmations, in a listing or other form of communication. More than one advance of Facility funds may be included, with or without other funds, in a single transfer of funds from the Facility to the Agent. The principal repayment dates, the principal amount due on each such principal repayment date, and the interest payment dates may be specified in the confirmation by reference to other dates or amounts. [2]

(4) **Repayment obligation.** When the Agent receives an advance of Facility funds, a repayment obligation is created (herein a "repayment obligation created hereunder") whereby the Agent, for value received, agrees:

- (i) to pay to the Facility on each principal repayment date an amount equal to the principal amount due on such principal repayment date; and
- (ii) to pay the Facility on each interest payment date an amount equal to unpaid interest from the date of the advance through such interest payment date; and
- (iii) to pay the Facility on the maturity date an amount equal to the unpaid balance of the amount of the advance, if any, plus unpaid interest from the date of the advance through such maturity date; and
- (iv) if the principal amount due on any principal repayment date is not paid on or before such a date, to pay the Facility:
  - (a) reasonable expenses of collection, including the reasonable attorney's fees and expenses incurred, plus
  - (b) a late principal payment charge equal to 2% of such principal amount, plus
  - (c) interest after such date through the maturity date on the unpaid balance of such principal

[1] An advance of Facility funds may be based on a single pending or outstanding loan. A pending or outstanding loan becomes an "Agent loan", as that term is used herein, when the Agent receives a Facility advance which is based in full or in part on such loan. It ceases to be an Agent loan, as that term is used herein, when the repayment obligation created hereunder by the advance is paid in full to the Facility.

[2] For example, a confirmation may specify dates and amounts as follows: "principal repayment dates" are eight business days after each date on which the Agent receives one or more principal payments on Agent loans listed in the confirmation; the "principal amount due on each such principal payment date" is the aggregate amount of such principal payments received by the Agent on the Agent loans; and "interest payment dates" are twelve business days after the end of each calendar month.

amount at the interest rate specified on the confirmation, [3] and

(v) if the unpaid interest due on any interest payment date or the maturity date is not paid on or before such date, to pay the corporate credit union:

(a) reasonable expenses of collection, including the reasonable attorney's fees and expenses incurred, plus

(b) a late interest payment charge equal to 20% of such unpaid interest; and

vi. if the amount due on the maturity date is not paid on or before the maturity date, to pay the Facility

(a) reasonable expenses of collection, including the reasonable attorney's fees and expenses incurred, plus

(b) a late principal payment charge equal to 2% of the unpaid balance of the amount of the advance, as due on the maturity date, plus

(c) interest after the maturity date on the unpaid balance of the overdue principal amount at the overdue interest rate specified in this agreement.

As used herein, unless the context otherwise requires, the date and amount of the advance, the interest rate, the principal repayment dates, the principal amount due on each such principal repayment date, the interest payment dates, and the maturity date are the dates, amount and rate specified as such in the confirmation issued by the Facility in connection with the advance; the overdue principal amount used for determining interest after the maturity date is equal to the unpaid balance of the amount of the advance, as due on the maturity date, plus unpaid interest from the date of the advance through the maturity date plus the unpaid balance of any late principal and interest payment charges payable through the day after the maturity date; and the overdue interest rate is the higher of the following two rates, namely, the interest rate specified in the confirmation or the highest interest rate set by the Facility for Facility advances to any party on the maturity date. Interest from the date of the advance through the maturity date shall be determined hereunder as follows, using the interest rate specified in the confirmation: interest shall accrue each day on the unpaid balance of the amount of the advance, and the unpaid interest from the date of the advance through any date shall be equal to all accrued interest through such date less the portion of such accrued interest that has been paid prior to such date.[4]

The Agent may make a prepayment in any amount at any time. When the unpaid balance of the amount of the advance is reduced as a result of a prepayment, the principal amount due on the next succeeding principal repayment shall be reduced by an amount equal to the reduction in the unpaid balance of the amount of the advance. If any amount due on any interest payment date or the maturity date includes an amount that has previously been subjected to a late principal payment charge or a late interest payment charge under subparagraphs (4)(iv) or(4)(v) hereof, the amount used for computing any late interest payment charge or late principal payment charge on the amount due on such date shall exclude the amount that has previously been subjected to such a charge under subparagraphs (4)(iv) or(4)(v) hereof. The Facility may waive any part or all of the interest, late principal payment charge, late interest payment charge or overdue interest. Each payment on a repayment obligation created hereunder, including a prepayment thereon, shall be applied as follows to the amounts payable under the repayment obligation: if the payment is made on or before the maturity date, it shall be applied first to the unpaid balance of any late principal and interest payment charges payable through the time of the payment, then to any unpaid interest that was not paid when due, then to the unpaid balance of any principal amount that was not paid when due, then to any unpaid interest that is due at the time of the payment, then to the unpaid balance of any principal amount that is due at the time of the payment, then to the remaining unpaid balance of the amount of the advance, and then to the remaining unpaid interest; if the payment is made after the maturity date, it shall be applied first to unpaid interest on the overdue principal amount and then to the unpaid balance of the overdue principal amount. If the amounts owed to the Facility on all repayment obligations created hereunder become immediately due and payable under the terms of paragraph (11) hereof, the maturity date of each such repayment obligation, us used herein, is the earlier of the following two dates, namely

- the date such amounts became immediately due and payable, or
- the date specified as the maturity date in the confirmation issued by the Facility in connection with the advance that created the repayment obligation.

## RELENDING

(5) **Basis for Facility advance.** In connection with each advance of Facility funds to the Agent:

(i) The Agent's application for the Facility advance must be filed on a Facility-approved application form, or pursuant to any other method approved by the Facility, and must be based on the following:

(a) one or more applications to the Agent by its member natural person credit unions for pending loans to meet liquidity needs; or

(b) one or more outstanding loans previously made by the Agent to its member natural person credit unions to meet liquidity needs; or

[3] Under paragraph (11) of this agreement, the full amount owed to the Facility at maturity will become immediately due and payable, unless otherwise determined by the Facility, if the Agent fails to pay the amount due on any principal; repayment date or any interest payment date. In such case, the late payment charges and overdue interest rate specified in subparagraphs (4)(v) and (4)(vi) hereof would apply to the full amount owed to the Facility.

[4] The number of days used for computing accrued interest shall exclude the date of the advance and shall include the date through which the accrued interest is being computed.

(c) such other demonstrable liquidity needs as the NCUA Board may specify; or

(d) a combination of such applications, loans and other liquidity needs. [5]

Unless approved by the Facility, the Agent shall not file an application for a Facility advance based on any application, outstanding loan or liquidity need of any credit union which became a member natural person credit union of the Agent after February 23, 1980, until such credit union has been a member natural person credit union of the Agent for six months. The restriction in the preceding sentence does not apply to any credit union which was chartered within six months before becoming a natural person credit union of the Agent or which had access to the Facility either as a Regular member or through another Agent within six months before becoming a member natural person credit union of the Agent.

(ii) Each such application to the Agent by a member natural person credit union for a pending loan (hereinafter a "pending loan") must have been submitted to the Agent on a Facility-approved application form, or pursuant to any other method approved by the Facility, and must have been approved by the Agent, provided that the Agent's approval may be conditioned on the Facility's approval of the Agent's application to the Facility.

(iii) Each such outstanding loan previously made by the Agent to a member natural person credit union (hereinafter an "outstanding loan") must have been applied for on a Facility-approved application form, or pursuant to any other method approved by the Facility, and must have been approved by the Agent.

(iv) In determining whether to approve each such pending or outstanding loan, the Agent must have given due consideration to the creditworthiness of the member natural person credit union in accordance with the requirements prescribed in the regulations and operating circulars of the Facility.

(v) The aggregate principal amount of such pending loans plus the aggregate principal balance of such outstanding loans must be equal or exceed the amount of the Facility advance requested in the Agent's application to the Facility.

(vi) Except as otherwise approved by the Facility, the Agent's application for the Facility advance must contain the following information with respect to each pending or outstanding loan:

(a) the name of the member natural person credit union which has applied for or received the pending or outstanding loan;

(b) the type or types of liquidity needs that are being met by the pending or outstanding loan (i.e., short-term adjustment credit, seasonal credit, or protracted adjustment credit);

(c) the principal amount if the pending loan, or the principal balance of the outstanding loan;

(d) if a pending loan, the date or dates the pending loan is expected to be advanced to the member natural person credit union, and the amount that is expected to be advanced on each such date;[6]

(e) the interest rate on the pending loan or outstanding loan;

(f) the type of repayment requirement that applies to the pending or outstanding loan (i.e., fixed term or scheduled repayment), and the date and amount of each principal payment that is required to be paid to the Agent on the pending or outstanding loan;

(g) a description of any security interest which the Agent has granted in the pending or outstanding loan to any party other than the Facility, including the name of the party, the amount secured, the other types of assets, if any, that are also subject to the security interest, and a statement as to whether the security interest is perfected or unperfected; and

(h) such additional information as may be required by the Facility or in the Facility-approved application form.

The information required with respect to each such pending or outstanding loan may be combined with other information, including information relating to other loans, in copies of the Agent's records, in a listing, or in such other form as may be approved by the Facility.

(vii) Each such pending or outstanding loan must be subject to an agreement between the Agent and the member natural person credit union whereby the member natural person credit union agrees to the repayment, security and credit reporting terms prescribed by the Facility for Agent loans.[7]

(viii) If the amount of any advance on any such pending loan is not advanced to the member natural person credit union on or before the date the amount was expected to be advanced, as stated in the Agent's application for the Facility advance or in any subsequent report to the Facility, the Agent shall submit a report to the

[5] Each such pending or outstanding loan must be a "qualified liquidity loan" subject to the repayment, security and credit reporting terms prescribed by the Facility for Agent loans. See subparagraph (5)(vii) of this agreement.

[6] Ordinarily, a pending loan should be fully advanced to the member natural person credit union within ten (10) business days after the Agent receives the Facility advance.

[7] A copy of such terms is attached to this agreement. A pending or outstanding loan is subject to such terms if the credit union has signed or agreed to such terms and if the loan was made solely to meet liquidity needs and was specified by the Agent as a "qualified liquidity loan" at the time the loan was made. "Agent loans' are defined as subparagraph (3)(viii) of this agreement.

Facility not later than five business days after such date. The report shall state the reason the amount was not advanced on such date and shall specify the date the amount was advanced or is expected to be advanced. Within eight business days after the Agent receives any principal payment on an Agent loan, the Agent shall report such principal payment to the Facility. The report shall identify the Agent loan and shall show the date and amount of the principal payment.

(ix) The Agent shall promptly notify the Facility of any default on any Agent loan.

(x) All Agent loans shall have the status of general intangibles under the Uniform Commercial Code, and no promissory note or similar writing shall be signed or apply with respect to any such loan.[8]

(xi) Except as otherwise permitted by the Facility, the principal amounts owed to the Agent on all Agent loans shall, at all times, equal or exceed the principal amounts owed by the Agent to the Facility on all repayment obligations created hereunder. If the principal amounts owed to the Agent on Agent loans to any one natural person credit union at any time exceed 10% of the subscribed capital stock and surplus of the Facility, the security interests granted to the Agent as security for such Agent loans shall be perfected by the Agent to the extent necessary to maintain a perfected security interest in collateral having a value equal to or greater than such excess.

(6) **Records.** The Agent shall maintain a separate account or record for each member natural person credit union to which Agent loans have been made. The separate account or record shall identify each Agent loan and show all amounts advanced and repaid on such loan. If records maintained by the Facility for Agent loans are used by the Agent as its record of such loans, no additional account or record needs to be maintained by the Agent with respect to such loans.

(7) **Agent loan agreement.** The Agent shall comply with all terms and conditions imposed on the Agent in the repayment, security and credit reporting terms prescribed by the Facility for Agent loans.

## SECURITY

(8) **Collateral.** As security for all repayment obligations created hereunder, whenever created, the Agent grants a security interest in favor of the Facility in the following property, whenever acquired (hereinafter "the collateral"):

(i) All repayment obligations from member natural person credit unions to the Agent, whenever created, arising out of loans that constitute Agent loans to such credit unions; and

(ii) the security interests granted to the Agent by such credit unions as security for such repayment obligations.

(9) **Perfection.** The Facility shall have the right at any time to perfect the security interest granted hereunder with respect to any part or all of the collateral. Perfection shall be by filing in accordance with the filing requirements for general intangibles under the Uniform Commercial Code and other applicable laws. The Agent shall sign a financing statement and such other papers as may be appropriate for filing and shall pay all necessary filing fees. To the extent requested by the Facility, the Agent shall perfect the security interests granted to the Agent by natural person credit unions as security for Agent loans.

(10) **Transfer Restriction.** Except as approved or permitted by the Facility, the Agent shall not sell or otherwise transfer the collateral or grant a security interest in the collateral to any party other than the Facility. The Facility may subordinate or terminate its security interest in any part or all of the collateral subject to such terms and conditions as the Facility may impose.

(11) **Acceleration and default.** Except as otherwise determined by the Facility, the amounts owed to the Facility on all repayment obligations created hereunder shall become immediately due and payable to the Facility, without any demand or notice, upon:

(i) the failure of the Agent to perform any of its obligations under this agreement, including failure to pay the amount due on any principal repayment date, interest payment date or maturity date under any repayment obligation created hereunder; or

(ii) the failure of the Agent to pay any other obligation to the Facility when due; or

(iii) the failure of the Agent to comply with the terms of any undertaking, statement or representation made by the Agent to the Facility in any application, certification or other communication; or

(iv) the insolvency of, or appointment of a trustee or receiver for, the Agent; or

(v) an assignment for the benefit of creditors of the Agent, or

(vi) the closing or suspension or revocation of the charter of the Agent, or the taking possession of its business, by any governmental authority; or

(vii) the withdrawal of the Agent from membership in the Facility.

The occurrence of any of the events described in subparagraphs (11)(i) through (11)(vii) hereof shall constitute a default under this agreement. The term "insolvency" in subparagraph (11)(iv) hereof has the same meaning as in 12 CFR 700.1(j)(1). The facility may waive a default under this agreement and may reinstate the maturity date or any principal payment date, or interest payment date on any repayment

[8] Under subparagraph (5)(vii) of this agreement, the repayment, security and credit reporting terms prescribed by the Facility for Agent loans must apply to all Agent loans, and they do not constitute a "promissory note or similar writing", as those terms are used herein.

obligation created hereunder which becomes immediately due and payable as a result of any such default.

(12) **Enforcement**. Upon the occurrence of a default under this agreement, or at any time thereafter, the Facility shall have all the rights and remedies provided under the Uniform Commercial Code and under this agreement, including but not limited to any one or more of the following: the Facility may, in its own name, or in the name of the Agent.

(i) notify member natural person credit unions to make payments to the Facility on any one or more of the repayment obligations of such credit unions which constitute the collateral under this agreement;

(ii) collect the amounts due on any one or more of such repayments obligations of such credit unions by any available judicial procedure;

(iii) enforce the security interests granted by any such credit unions as security for such repayment obligations;

(iv) exercise all the rights and remedies of the Agent with respect to such security interests, including enforcement of such security interests by any available judicial procedure; and

(v) sell or otherwise dispose of any one or more of such repayment obligations of such credit unions, together with the security interests securing such repayment obligations, at public or private proceedings.

The proceeds of such repayment obligations of such credit unions, including the proceeds of the sale or other disposition thereof, shall be applied by the Facility first to the reasonable expenses of collecting such proceeds and of selling such repayment obligations of such credit unions, including the reasonable attorneys' fees and legal expenses incurred, and then to the payment of amounts due on all repayment obligations created hereunder. Any surplus then remaining shall be paid or returned to the Agent. If there is a deficiency, the Agent shall be liable for the deficiency. If the Facility is indebted to the Agent, the Facility shall have the right to set-off such indebtedness against all amounts due the Facility on all repayment obligations created hereunder, without regard to when such indebtedness may be due and payable.

## CREDIT REPORTING

(13) **Required reports**. The Agent shall file such reports and provide such information as may be required by the Facility from time to time.

## CONSTRUCTION, MODIFICATION AND MISCELLANEOUS

(14) **Governing law**. This agreement shall be construed under and governed by the law of the Commonwealth of Virginia, including the Uniform Commercial Code as adopted and amended from time to time by the Commonwealth of Virginia. All references to the Uniform Commercial Code in this agreement are to such Code as adopted and amended from time to time by the Commonwealth of Virginia. Unless the context of this agreement requires otherwise, the terms used in such Code shall have the same meaning when used in this agreement. Unless the Uniform Commercial Code or the context of this agreement requires otherwise, the terms defined in the rules and regulations prescribed by the NCUA Board on behalf of the Facility shall have the same meanings when used in this agreement.

(15) **Modification procedures**. This agreement may be modified from time to time by the NCUA Board. Any such modifications shall be published in the Federal Register and shall be mailed to the Agent at the address shown for the Agent in the records of the Facility. The modification shall become a part of this agreement as of the effective date specified in the Federal Register, provided that the effective date specified in the Federal register shall not be less than 30 days after the required publication and mailing unless

(i) the modification is limited to the reduction or elimination of any one or more of the obligations imposed on the Agent by any term or condition of this agreement, or

(ii) the NCUA Board makes a finding that an earlier effective date is necessary, and the finding is included in the require publication and mailing.

Written data, views or arguments concerning the modification may be submitted by the Agent to the Facility at any time up to five days before the effective date specified in the Federal Register. The modification shall apply to all advances of Facility funds after such effective date. All such modifications are a part of this agreement, including modifications that occurred prior to the signing of this agreement. Operating circulars issued by the Facility may include interpretive rules and statements of policy with respect to the terms and conditions of this agreement but may not modify any such terms or condition. Without modification of this agreement, the Facility may waive any part or all of any obligation imposed on the Agent by any term or condition of this agreement, and the Facility may reinstate any part of all of any such obligation previously waived by the Facility.

(16) **Filing Location**. Unless otherwise directed by the Facility, all applications, reports, notifications and other communications from the Agent to the Facility shall be filed with a Facility lending officer.

(17) **Disclaimer of agency relationship**. Except as specifically authorized by the Facility, no agency relationship exists between the Facility and the Agent, and the term "Agent" is not intended to imply any such relationship.

(18) **Agent compensation**. The Facility shall compensate the Agent for the services it performs for the Facility as a result of the obligations imposed on the Agent by this agreement. Compensation shall be determined and provided by the Facility in accordance with any rules and regulations prescribed by the NCUA Board on behalf of the Facility and in accordance with operating circulars issued by the Facility. Subject to such rules and regulations and operating circulars, the following factors shall be taken into account by the Facility in determining and providing compensation to the Agent:

(i) the additional expenses that are incurred by the Agent as a result of the obligations imposed on the Agent by this;,

(ii) the income that is earned by the Agent on Agent loans; and

(iii) such other factors, if any, as the NCUA Board may deem relevant.

(19) **Delegation restriction**. Except as authorized or permitted in this agreement by the Facility, the rights and obligations of the Agent under this agreement may not be transferred or delegated by the Agent. The Agent is permitted to use the data processing services of other parties to process the accounts and records that they are required to maintain under this agreement.

(20) **Severability**. This agreement shall be severable. The invalidity of any term of condition of this agreement shall not invalidate the remainder of this agreement, and each term and condition of this agreement shall be fully enforceable regardless of the validity of any other term or condition of this agreement.

***NATIONAL CREDIT UNION ADMINISTRATION CENTRAL LIQUIDITY FACILITY***

Accepted by:

(Signature)

Date Accepted:

Print or Type Corporate Credit Union Name

by*

(Signature) Chief Elected Official

(Print or Type Official's Name and Title)

*

(Signature) Treasurer

(Print or Type Treasurer's Name)

(Date of Execution of this Agreement)

*Must be signed by both the Chief Elected Official and the Treasurer

OMB Control #: Expiration Date:

## NCUA CENTRAL LIQUIDITY FACILITY REPAYMENT, SECURITY AND CREDIT REPORTING AGREEMENT
**(Agent Group Representative)**

| (Corporate Credit Union Name) | Charter /Insurance Certificate Number |
|---|---|
| City | State |

### PARTIES

(1) **Effective date; representative capacity** . This agreement is between the National Credit Union Central Liquidity Facility (hereinafter "the Facility") and a corporate credit union (hereinafter "the Agent Group Representative"). The Agent Group Representative is one of the corporate credit unions in a group of corporate credit unions (hereinafter "the Agent Group") which is a member of the Facility. The Agent Group Representative has been designated as the Agent Group Representative by the other corporate credit unions in the Agent Group. In their applications for membership in the Facility as part of the Agent Group, the corporate credit unions in the Agent Group have authorized the Agent Group Representative to transact business with the Facility on behalf of the Agent Group or any corporate credit union in the Agent Group. This agreement becomes effective when signed by the Agent Group Representative and the Facility. This agreement shall remain in effect as long as the Agent Group is a member of the Facility or there is any unpaid repayment obligation created hereunder between the Agent Group Representative and the Facility.

(2) **Facility rules and regulations, etc.** All advances of Facility funds to the Agent Group Representative are subject to this agreement and to all applicable terms and conditions in the National Credit Union Central Liquidity Facility Act, rules and regulations prescribed by the NCUA Board on behalf of the Facility, and operating circulars issued by the Facility, including all amendments and supplements thereto. The Agent Group Representative shall perform each of the obligations imposed on it by any such term or condition.

### REPAYMENT

(3) **Confirmation.** In connection with each advance of Facility funds to the Agent Group Representative, the Facility shall issue a confirmation of credit (hereinafter the "confirmation") which shall be sent to the Agent Group Representative. The confirmation may be issued before or after the date of the advance and shall be in such form and sent in such manner as may be determined by the Facility. The confirmation shall specify:

(i) the date of the advance;
(ii) the amount of the advance;
(iii) the interest rate;
(iv) the principal repayment date or dates, if any;
(v) the principal amount due on each such principal repayment date (excluding interest);
(vi) the interest payment date or dates, if any;
(vii) the maturity date;
(viii) the pending and outstanding loans from the corporate credit unions in the Agent Group to their member natural person credit unions which are the basis for the Facility advance (hereinafter "Agent loans"), including the principal amount or principal balance of each such loan the name of the natural person credit union which has applied for or received the loan, and the type or types of liquidity needs that are being met by the loan (i.e.. short-term adjustment , seasonal credit, or protracted adjustment credit); and
(ix) the loans from the Agent Group Representative to corporate credit unions in the Agent Group which are the basis for the Facility advance (hereinafter "Agent Group Representative Loans"), including the principal amount or principal balance of each such loan and the name of the corporate credit union to which the loan is made. [1]

The confirmation may also specify the method of payment that must be used by the Agent Group Representative to pay the Facility on each principal repayment date, each interest payment date, and the maturity date. A confirmation may be combined with other information, including other confirmations, in a listing or other form of communication. More than one advance of Facility funds may be included, with or without other funds, in a single transfer of funds from the Facility to the Agent Group Representative. The principal repayment dates, the principal amount due on each such principal repayment date, and the interest payment dates may be specified in the confirmation by reference to other dates or amounts. [2]

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[1] An advance of Facility funds may be based on a single pending or outstanding loan to a member natural person credit union and a single loan from the Agent Group Representative to a corporate credit union. A pending or outstanding loan to a member natural person credit union becomes an "Agent loan", and a loan from the Agent Group Representative to a corporate credit union becomes an "Agent Group Representative Loan", as those terms are used herein, when the Agent Group Representative receives a Facility advance which is based in full or in part on such loans. The loans cease to be an Agent loan and an Agent Group Representative loan, as those terms are used herein, when the repayment obligation created hereunder by the advance is paid in full to the Facility.

[2] For example, a confirmation may specify dates and amounts as follows: "principal repayment dates" are ten business days after each date on which any corporate credit union in the Agent Group receives one or more principal payments on Agent loans listed in the confirmation; the "principal amount due on each such principal payment date" is the aggregate amount of such principal payments received by the corporate credit union on the Agent loans; and "interest payment dates" are twelve business days after the end of each calendar month. As a further example, a confirmation may specify additional dates and amounts as follows: additional "principal repayment dates" are two business days after each date on which the Agent Group Representative receives one or more principal payments on Agent Group Representative loans listed in the confirmation; and the "principal amount due on each such [additional] principal repayment date" is the aggregate amount

(4) **Repayment obligation.** When the Agent Group Representative receives an advance of Facility funds, a repayment obligation is created (herein a "repayment obligation created hereunder") whereby the Agent Group Representative, for value received, agrees:

(i) to pay to the Facility on each principal repayment date an amount equal to the principal amount due on such principal repayment date; and

(ii) to pay the Facility on each interest payment date an amount equal to unpaid interest from the date of the advance through such interest payment date; and

(iii) to pay the Facility on the maturity date an amount equal to the unpaid balance of the amount of the advance, if any, plus unpaid interest from the date of the advance through maturity date; and

(iv) if the principal amount due on any principal repayment date is not paid on or before such a date, to pay the Facility -

(a) reasonable expenses of collection, including the reasonable attorney's fees and expenses incurred, plus

(b) a late principal payment charge equal to 2% of the principal amount, plus

(c) interest after such date through the maturity date on the unpaid balance of such principal amount at the interest rate specified on the confirmation, [3] and

(v) if the unpaid interest due on any interest payment date or the maturity date is not paid on or before such date, to pay the Facility:

(a) reasonable expenses of collection, including the reasonable attorney's fees and expenses incurred, plus

(b) a late interest payment charge equal to 20% of the unpaid interest, and

(vi) if the amount due on the maturity date is not paid on or before the maturity date, to pay the Facility -

(a) reasonable expenses of collection, including the reasonable attorney's fees and expenses incurred, plus

(b) a late principal payment charge equal to 2% of the unpaid balance of the amount of the advance, as due on the maturity date, plus

(c) interest after the maturity date on the unpaid balance of the overdue principal amount at the overdue interest rate specified in this agreement.

As used herein, unless the context otherwise requires, the date and amount of the advance, the interest rate, the principal repayment dates, the principal amount due on each such principal repayment date, the interest payment dates, and the maturity date are the dates, amount and rate specified as such in the confirmation issued by the Facility in connection with the advance; the overdue principal amount used for determining interest after the maturity date is equal to the unpaid balance of the amount of the advance, as due on the maturity date, plus unpaid interest from the date of the advance through the maturity date plus the unpaid balance of any late principal and interest payment charges payable through the day after the maturity date; and the overdue interest rate is the higher of the following two rates, namely, the interest rate specified in the confirmation or the highest interest rate set by the Facility for Facility advances to any party on the maturity date. Interest from the date of the advance through the maturity date shall be determined hereunder as follows, using the interest rate specified in the confirmation: interest shall accrue each day on the unpaid balance of the amount of the advance, and the unpaid interest from the date of the advance through any date shall be equal to all accrued interest through such date less the portion of such accrued interest that has been paid prior to such date.[4]

The Agent Group Representative may make a prepayment in any amount at any time. When the unpaid balance of the amount of the advance is reduced as a result of a prepayment, the principal amount due on the next succeeding principal repayment shall be reduced by an amount equal to the reduction in the unpaid balance of the amount of the advance. If any amount due on any interest payment date or the maturity date includes an amount that has previously been subjected to a late principal payment charge or a late interest payment charge under subparagraphs (4)(iv) or(4)(v) hereof, the amount used for computing any late interest payment charge or late principal payment charge on the amount due on such date shall exclude the amount that has previously been subjected to such a charge under subparagraphs (4)(iv) or(4)(v) hereof. The Facility may waive any part or all of the interest, late principal payment charge, late interest payment charge or overdue interest. Each payment on a repayment obligation created hereunder, including a prepayment thereon, shall be applied as follows to the amounts payable under the repayment obligation: if the payment is made on or before the maturity date, it shall be applied first to the unpaid balance of any late principal and interest payment charges payable through the time of the payment, then to any unpaid interest that was not paid when due, then to the unpaid balance of any principal amount that was not paid when due, then to any unpaid interest that is due at the time of the payment, then to the unpaid balance of any principal amount that is due at the time of the payment, then to the remaining unpaid balance of the amount of the advance, and then to the remaining unpaid

of such principal payments received by the Agent Group Representative on the Agent Group Representative loans.

[3] Under paragraph (11) of this agreement, the full amount owed to the Facility at maturity will become immediately due and payable, unless otherwise determined by the Facility, if the Agent Group Representative fails to pay the amount due on any principal; repayment date or any interest payment date. In such case, the late payment charges and overdue interest rate specified in subparagraphs (4)(v) and (4)(vi) hereof would apply to the full amount owed to the Facility.

[4] The number of days used for computing accrued interest shall exclude the date of the advance and shall include the date through which the accrued interest is being computed.

interest; if the payment is made after the maturity date, it shall be applied first to unpaid interest on the overdue principal amount and then to the unpaid balance of the overdue principal amount. If the amounts owed to the Facility on all repayment obligations created hereunder become immediately due and payable under the terms of paragraph (11) hereof, the maturity date of each such repayment obligation, us used herein, is the earlier of the following two dates, namely,

- the date such amounts become immediately due and payable, or
- the date specified as the maturity date in the confirmation issued by the Facility in connection with the advance that created the repayment obligation.

**RELENDING**

(5) **Basis for Facility advance.** In connection with each advance of Facility funds to the Agent Group Representative:

(i) The application of the Agent Group Representative for the Facility advance must be filed on a Facility-approved application form, or pursuant to any other method approved by the Facility, and must be based on the following:

(a) one or more applications to one or more corporate credit unions in the Agent Group by their member natural person credit unions for pending loans to meet liquidity needs; or

(b) one or more outstanding loans previously made by one or more corporate credit unions in the Agent Group to their member natural person credit unions to meet liquidity needs; or

(c) such other demonstrable liquidity needs as the NCUA Board may specify; or

(d) a combination of such applications, loans and other liquidity needs. [5]

(e) one or more loans from the Agent Group Representative to one or more corporate credit unions in the Agent Group, whether pending or outstanding, which are based on such applications, loans and other liquidity needs.[6]

Unless approved by the Facility, the Agent Group Representative shall not file an application for a Facility advance based on any application, outstanding loan or liquidity need of any credit union which became a member natural person credit union of a corporate credit union in the Agent Group after February 23, 1980, until such credit union has been a member natural person credit union of the Agent for six months. The restriction in the preceding sentence does not apply to any credit union which was chartered within six (6) months before becoming a natural person credit union of such corporate credit union or which has access to the Facility either as a Regular member or through an Agent member corporate credit union in the Agent Group within six (6) months before becoming a member natural person credit union of such corporate credit union.

(ii) Each such application by a member natural person credit union for a pending loan (hereinafter a "pending loan") must have been submitted to a corporate credit union in the Agent Group on a Facility-approved application form, or pursuant to any other method approved by the Facility, and must have been approved by the corporate credit union, provided that the approval of the corporate credit union may be conditioned on the Facility's approval of the application filed with the Facility by the Agent Group Representative.

(iii) Each such outstanding loan previously made to a member natural person credit union (hereinafter an "outstanding loan") must have been applied for on a Facility-approved application form, or pursuant to any other method approved by the Facility, and must have been approved by the corporate credit union in the Agent Group which made the loan.

(iv) In determining whether to approve each such pending or outstanding loan, the corporate credit union must have given due consideration to the creditworthiness of the member natural person credit union in accordance with the requirements prescribed in the regulations and operating circulars of the Facility.

(v) The aggregate principal amount of such pending loans plus the aggregate principal balance of such outstanding loans must be equal or exceed the amount of the Facility advance requested in the application of the Agent Group Representative to the Facility.

(vi) Except as otherwise approved by the Facility, the application of the Agent Group Representative for the Facility advance must contain the following information with respect to each pending or outstanding loan:

(a) the name of the member natural person credit union which has applied for or received the pending or outstanding loan;

(b) the type or types of liquidity needs that are being met by the pending or outstanding loan (i.e., short-term adjustment credit, seasonal credit, or protracted adjustment credit);

(c) the principal amount of the pending loan, or the principal balance of the outstanding loan;

(d) if a pending loan, the date or dates the pending loan is expected to be advanced to the member natural person credit union, and the amount

[5] Each such pending or outstanding loan must be a "qualified liquidity loan" subject to the repayment, security and credit reporting terms prescribed by the Facility for Agent loans. See subparagraph (5)(vii) of this agreement.

[6] Each such loan to a corporate credit union in the Agent Group must be a "qualified AGR loan" subject to the repayment, security and credit reporting terms prescribed by the Facility for Each such pending or outstanding loan must be a "qualified liquidity loan" subject to the repayment, security and credit reporting terms prescribed by the Facility for Agent loans. See subparagraph (5)(xii) of this agreement

that is expected to be advance on each such date;[7]

(e) the interest rate on the pending loan or outstanding loan;

(f) the type of repayment requirement that applies to the pending or outstanding loan (i.e., fixed term or scheduled repayment), and the date and amount of each principal payment that is required to be paid to the corporate credit union on the pending or outstanding loan;

(g) a description of any security interest which the central credit union has granted in the pending or outstanding loan to any party other than the Agent Group Representative, including the name of the party, the amount secured, the other types of assets, if any, that are also subject to the security interest, and a statement as to whether the security interest is perfected or unperfected; and

(h) such additional information as may be required by the Facility or in the Facility-approved application form.

The information required with respect to each such pending or outstanding loan may be combined with other information, including information relating to other loans, in copies of the Agent's records, in a listing, or in such other form as may be approved by the Facility.

(vii) Each such pending or outstanding loan must be subject to an agreement between the central credit union and the member natural person credit union whereby the member natural person credit union agrees to the repayment, security and credit reports terms prescribed by the Facility for Agent loans.[8]

(viii) If the amount of any advance on any such pending loan is not advance to the member natural person credit union on or before the date the amount was expected to be advanced, as stated in the application of the Agent Group Representative for the Facility advance or in any subsequent report to the Facility, the Agent Group Representative shall submit a report to the Facility not later than ten business days after such date. The report shall state the reason the amount was not advanced on such date and shall specify the date the amount was advanced or is expected to be advanced. Within ten business days after any corporate credit union in the Agent Group receives any principal payment on an Agent loan, the Agent Group Representative shall report such principal payment to the Facility. The report shall identify the Agent loan and shall show the date and amount of the principal payment.

(ix) Each such loan from the Agent Group Representative to a corporate credit union in the Agent Group must have been applied for on a Facility-approved application form, or pursuant to any other method approved by the Facility, and must have been approved by the Agent Group Representative, provided that the approval of the Agent Group Representative may be conditioned on the Facility's approval of the application of the Agent Group Representative to the Facility.

(x) The aggregate principal amount of such loans, if pending, plus the aggregate principal balance of such loans, if outstanding, from the Agent Group Representative to corporate credit unions in the Agent Group must equal or exceed the amount of the Facility advance requested in the application of the Agent Group Representative to the Facility.

(xi) Except as otherwise approved by the Facility, the application of the Agent Group Representative for the Facility advance must contain the following information with respect to each such loan from the Agent Group Representative to a corporate credit union in the Agent Group:

(a) the name of the corporate credit union to which the loan is made;

(b) the principal amount of the loan, if pending, or the principal balance of the loan, if outstanding;

(c) if, pending, the date or dates the loan is expected to be advanced to the corporate credit union, and the amount that will be advanced on each such date.[9]

(d) the interest rate on the loan;

(e) the type of repayment requirement that applies to the loan (i.e., fixed term or scheduled repayment), and the date and amount of each principal payment that is required to be paid to the Agent Group Representative on the loan;

(f) a description of any security interest which the Agent Group Representative has granted in the loan to any party other than the Facility, including the name of the party, the amount secured, the other types of assets, if any, that are also subject to the security interest, and a statement as to

[7] Ordinarily, a pending loan should be fully advanced to the member natural person credit union within ten business days after the Agent Group Representative receives the Facility advance.

[8] A copy of such terms is attached to this agreement. A pending or outstanding loan is subject to such terms if the credit union has signed or agreed to such terms and if the loan was made solely to meet liquidity needs and was specified by the Agent as a "qualified liquidity loan" at the time the loan was made. "Agent loans' are defined as subparagraph (3)(viii) of this agreement.

[9] Ordinarily, the loan should be fully advanced to the borrowing corporate credit union within ten business days after the Agent group Representative receives the Facility advance.

whether the security interest is perfected or unperfected; and

(g) such additional information as may be required by the Facility or in the Facility-approved application form.

The information required with respect to each such pending or outstanding loan may be combined with other information, including information relating to other loans, in copies of the Agent Group Representative's records, in a listing, or in such other form as may be approved by the Facility.

(xii) Each such loan from the Agent Group Representative to a corporate credit union in the Agent group must be subject to an agreement between the Agent Group Representative and the corporate credit union whereby the corporate credit union agrees to the repayment, security and credit reports terms prescribed by the Facility for the Agent Group Representative loans.[10]

(xiii) If the amount of any advance on any such pending loan is not advanced to the corporate credit union on or before the date the amount was expected to be advanced, as stated in the application of the Agent Group Representative for the Facility advance or in any subsequent report to the Facility, the Agent Group Representative shall submit a report to the Facility not later than five business days after such date. The report shall state the reason the amount was not advanced on such date and shall specify the date the amount was advanced or is expected to be advanced. Within two business days after the Agent Group Representative receives any principal payment on an Agent Group Representative loan, the Agent Group Representative shall report such principal payment to the Facility. The report shall identify the Agent Group Representative loan and shall show the date and amount of the principal payment.

(xiv) A report or notification to the Facility under subparagraphs (5)(viii) or (5)(xv) hereof may be delayed beyond the specified deadline if the reason for the delay is the failure of a corporate credit union in the Agent Group to report the necessary information to the Agent Group Representative at least two (2) business days before the specified deadline. If a report or notification is delayed because of such failure, it shall be submitted to the Facility within two (2) business days after the Agent Group Representative receives a report of the necessary information. The Agent Group Representative shall take such steps as may be reasonable necessary to obtain the information from the corporate credit union in time to submit the required reports and notifications to the Facility on or before the specified deadlines. The Agent Group Representative shall also take such steps as may be reasonable necessary to determine compliance by corporate credit unions in the Agent Group with the requirements of subparagraphs (5)(ii), (5)(iii), (5)(iv) and (5)(vii) hereof. In the absence of any knowledge indicating noncompliance, the Agent Group Representative may determine compliance by relying on statements, representations and other information in applications, certifications and other communications from such corporate credit unions.

(xv) The Agent Group Representative shall promptly notify the Facility or any default on any Agent loan or Agent Group Representative loan.

(xvi) All Agent loans shall have the status of general intangibles under the Uniform Commercial Code, and no promissory note or similar writing shall be signed or apply with respect to any such loan.[11]

(xvii) Except as otherwise permitted by the Facility, the principal amounts owed to each corporate credit union on Agent loans shall, at all times, equal or exceed the principal amounts owed by such corporate credit unions to the Agent Group Representative on Agent Group Representative loans, and the principal amounts owed to the Agent Group Representative on all Agent Group Representative loans shall at all times, equal or exceed the principal amounts owed by the Agent Group Representative to the Facility on all repayment obligations created hereunder. If the principal amounts owed to a corporate credit union on Agent loans to any one natural person credit union at any time exceeds 10% of the subscribed capital stock and surplus of the Facility, the Agent Group Representative shall request the corporate credit union to perfect security interests granted to the corporate credit union as security for such Agent loans. The security interests must be perfected to the extent necessary to maintain a perfected security interest in collateral having a value equal to or greater than such excess.

(6) **Records.** The Agent Group Representative shall maintain a separate account or record for each corporate credit union in the Agent Group to which Agent Group Representative loans have been made. The separate account or record shall identify each Agent Group Representative loan and show all amounts advanced and repaid on such loan. If records maintained by the Facility for Agent Group

[10] A copy of such terms is attached to this agreement. A loan is subject to such terms if the corporate credit union has signed or agreed to such terms and if the loan was based solely on qualified liquidity loans or eligible liquidity needs and was specified by the Agent Group Representative as a "qualified AGR loan" at the time the loan was made. "Agent Group Representative loans' are defined as subparagraph (3)(ix) of this agreement.

[11] Under subparagraph (5)(xii) of this agreement, the repayment, security and credit reporting terms prescribed by the Facility Group Representative loans, and they do not constitute a "promissory note or similar writing", as those terms are used herein.

Representative loans are used by the Agent Group Representative as its records of such loans, no additional account or record needs to be maintained by the Agent with respect to such loans.

(7) **Agent Group Representative agreement**. The Agent Group Representative shall comply with all terms and conditions imposed on the Agent Group Representative in the repayment, security and credit reporting terms prescribed by the Facility for Agent Group Representative loans.

SECURITY

(8) **Collateral.** To secure the repayment obligations created by an advance of funds pursuant to this agreement, the Agent Group Representative grants a security interest in favor of the Facility in the following property, whenever acquired (hereinafter "the collateral"):

(i) All repayment obligations from corporate credit unions in the Agent Group to the Agent Group Representative, whenever created, arising out of loans that constitute Agent Group Representative loans to such corporate credit unions;

(ii) the security interests granted to the Agent Group Representative by such corporate credit unions as security for such repayment obligations.

(9) **Perfection**. The Facility shall have the right at any time to perfect the security interest granted hereunder with respect to any part or all of the collateral. Perfection shall be by filing in accordance with the filing requirements for general intangibles under the Uniform Commercial Code and other applicable laws. The Agent Group Representative shall sign a financing statement and such other papers as may be appropriate for filing and shall pay all necessary filing fees. To the extent requested by the Facility, the Agent Group Representative shall perfect the security interests granted to the Agent Group Representative by corporate credit unions as security for Agent Group Representative loans.

(10) **Transfer Restriction**. Except as approved or permitted by the Facility, the Agent Group Representative shall not sell or otherwise transfer the collateral or grant a security interest in the collateral to any party other than the Facility. The Facility may subordinate or terminate its security interest in any part or all of the collateral subject to such terms and conditions as the Facility may impose.

(11) **Acceleration and default**. Except as otherwise determined by the Facility, the amounts owed to the Facility on all repayment obligations created hereunder shall become immediately due and payable to the Facility, without any demand or notice, upon:

(i) the failure of the Agent Group Representative to perform any of its obligations under this agreement, including failure to pay the amount due on any principal repayment date, interest payment date or maturity date under any repayment obligation created hereunder; or

(ii) the failure of the Agent Group Representative to pay any other obligation to the Facility when due; or

(iii) the failure of the Agent Group Representative to comply with the terms of any undertaking, statement or representation made by the Agent Group Representative to the Facility in any application, certification or other communication; or

(iv) the insolvency of, or appointment of a trustee or receiver for, the Agent Group Representative; or

(v) an assignment for the benefit of creditors of the Agent Group Representative, or

(vi) the closing or suspension or revocation of the charter of the Agent Group Representative, or the taking possession of its business, by any governmental authority; or

(vii) the withdrawal of the Agent Group Representative from membership in the Facility.

The occurrence of any of the events described in subparagraphs (11)(i) through (11)(vii) hereof shall constitute a default under this agreement. The term "insolvency" in subparagraph (11)(iv) hereof has the same meaning as in 12 CFR 700.1(j)(1). The Facility may waive a default under this agreement and may reinstate the maturity date or any principal payment date, or interest payment date on any repayment obligation created hereunder which becomes immediately due and payable as a result of any such default.

(12) **Enforcement**. Upon the occurrence of a default under this agreement, or at any time thereafter, the Facility shall have all the rights and remedies provided under the Uniform Commercial Code and under this agreement, including but not limited to any one or more of the following: the Facility may, in its own name, or in the name of the Agent Group Representative:

(i) notify corporate credit unions in the Agent group to make payments to the Facility on any one or more of the repayment obligations of such corporate credit unions which constitute the collateral under this agreement;

(ii) collect the amounts due on any one or more of such repayments obligations of such corporate credit unions by any available judicial procedure;

(iii) enforce the security interests granted by such corporate credit unions as security for such repayment obligations;

(iv) exercise all the rights and remedies of the Agent Group Representative with respect to such security interests, including enforcement of such security interests by any available judicial procedure; and

(v) sell or otherwise dispose of any one or more of such repayment obligations of such corporate credit unions, together with the security interests securing such repayment obligations, at public or private proceedings.

The proceeds of such repayment obligations of such corporate credit unions, including the proceeds of the sale or other disposition thereof, shall be applied by the Facility first to the reasonable expenses of collecting such proceeds and of selling such repayment obligations of such corporate credit unions, including the reasonable attorney's fees and legal expenses incurred, and then to the payment of amounts due on all repayment obligations created hereunder. Any surplus then

remaining shall be paid or returned to the Agent Group Representative. If there is a deficiency, the Agent Group Representative shall be liable for the deficiency. If the Facility is indebted to the Agent Group Representative, the Facility shall have the right to set-off such indebtedness against all amounts due the Facility on all repayment obligations created hereunder, without regard to when such indebtedness may be due and payable.

## CREDIT REPORTING

(13) **Required reports**. The Agent Group Representative shall file such reports and provide such information as may be required by the Facility from time to time.

## CONSTRUCTION, MODIFICATION AND MISCELLANEOUS

(14) **Governing law**. This agreement shall be construed under and governed by the law of the Commonwealth of Virginia, including the Uniform Commercial Code as adopted and amended from time to time by the Commonwealth of Virginia. All references to the Uniform Commercial Code in this agreement are to such Code as adopted and amended from time to time by the Commonwealth of Virginia. Unless the context of this agreement requires otherwise, the terms used in such Code shall have the same meaning when used in this agreement. Unless the Uniform Commercial Code or the context of this agreement requires otherwise, the terms defined in the rules and regulations prescribed by the NCUA Board on behalf of the Facility shall have the same meanings when used in this agreement.

(15) **Modification procedures**. Thus agreement may be modified from time to time by the NCUA Board. Any such modifications shall be published in the Federal Register and shall be mailed to the Agent at the address shown for the Agent Group Representative in the records of the Facility. The modification shall become a part of this agreement as of the effective date specified in the Federal Register, provided that the effective date specified in the Federal register shall not be less than 30 days after the required publication and mailing unless

(i) the modification is limited to the reduction or elimination of any one or more of the obligations imposed on the Agent Group Representative by any term or condition of this agreement, or

(ii) the NCUA Board makes a finding that an earlier effective date is necessary, and the finding is included in the require publication and mailing.

Written data, views or arguments concerning the modification may be submitted by the Agent Group Representative to the Facility at any time up to five days before the effective date specified in the Federal Register. The modification shall apply to all advances of Facility funds after such effective date. All such modifications are a part of this agreement, including modifications that occurred prior to the signing of this agreement. Operating circulars issued by the Facility may include interpretive rules and statements of policy with respect to the terms and conditions of this agreement but may not modify any such terms or condition. Without modification of this agreement, the Facility may waive any part or all of any obligation imposed on the Agent Group Representative by any term or condition of this agreement, and the Facility may reinstate any part of all of any such obligation previously waived by the Facility.

(16) **Filing Location**. Unless otherwise directed by the Facility, all applications, reports, notifications and other communications from the Agent Group Representative to the Facility shall be filed with a Facility lending officer.

(17) **Disclaimer of agency relationship**. Except as specifically authorized by the Facility, no agency relationship exists between the Facility and the Agent Group Representative, and the term "Agent" is not intended to imply any such relationship.

(18) **Agent compensation**. The Facility shall compensate the Agent Group Representative for the services it performs for the Facility as a result of the obligations imposed on the Agent Group Representative by this agreement. Compensation shall be determined and provided by the Facility in accordance with any rules and regulations prescribed by the NCUA Board on behalf of the Facility and in accordance with operating circulars issued by the Facility. Subject to such rules and regulations and operating circulars, the following factors shall be taken into account by the Facility in determining and providing compensation to the Agent Group Representative:

(i) the additional expenses that are incurred by the Agent Group Representative as a result of the obligations imposed on the Agent Group Representative by this agreement;

(ii) the income that is earned by the Agent Group Representative on Agent Group Representative loans;

(iii) such other factors, if any, as the NCUA Board may deem relevant.

(19) **Delegation restriction**. Except as authorized or permitted in this agreement by the Facility, the rights and obligations of the Agent Group Representative under this agreement may not be transferred or delegated by the Agent Group Representative. The Agent Group Representative is permitted to use the data processing services of other parties to process the accounts and records that they are required to maintain under this agreement.

(20) **Severability**. This agreement shall be severable. The invalidity of any term of condition of this agreement shall not invalidate the remainder of this agreement, and each term and condition of this agreement shall be fully enforceable regardless of the validity of any other term or condition of this agreement.

**NCUA CENTRAL LIQUIDITY FACILITY REPAYMENT, SECURITY AND CREDIT REPORTING AGREEMENT**
**(Agent Group Representative)**

| | |
|---|---|
| (Corporate Credit Union Name) | Charter /Insurance Certificate Number |
| City | State |

***NATIONAL CREDIT UNION ADMINISTRATION***
***CENTRAL LIQUIDITY FACILITY***

Accepted by:

(Signature)

Date Accepted:

Print or Type Corporate Credit Union Name

by*

(Signature) Chief Elected Official

(Print or Type Official's Name)

*

(Signature) Treasurer

(Print or Type Official's Name)

(Date of Execution of this Agreement)

*Must be signed by both the Chief Elected Official and the Treasurer

OMB Control #: Expiration Date:

CLF-8706
(Revised 5/25/99)

[FR Doc. 99–19355 Filed 7–28–99; 8:45 am]
BILLING CODE 7535–01–C

## NATIONAL LABOR RELATIONS BOARD

### Privacy Act of 1974; Publication of Revised System of Records Notice

**AGENCY:** National Labor Relations Board (NLRB).

**ACTION:** Revised publication of System of Records Notice NLRB–3, Biographical Data File—Presidential Appointees.

**SUMMARY:** The Privacy Act of 1974, as amended, requires that each agency publish a notice of a proposed new System of Records, as well as proposals to revise existing Systems of Records. This notice alters an existing Privacy Act System of Records Notice NLRB–3, Biographical Data File—Presidential Appointees, by deleting one routine use, amending the language of three routine uses, updating the addresses of system locations, and updating the citations referring to 29 CFR 102.117; as well as making several insignificant administrative language revisions.

All persons are advised that in the absence of submitted comments, views, or arguments considered by the NLRB as warranting modification of the notice as herewith to be published, it is the intention of the NLRB that the notice shall be effective upon expiration of the comment period without further action by this Agency.

**DATES:** The amended System of Records Notice will become effective without further notice 30 days from the date of the publication (August 27, 1999) unless comments are received on or before that date which result in a contrary determination.

**ADDRESSES:** All persons who desire to submit written comments, views, or arguments for consideration by the NLRB in connection with the proposed revised System of Records Notice shall file them with the Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Room 11600, Washington, DC 20570–0001.

Copies of all such communications will be available for examination by interested persons during normal business hours in the Office of the Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Room 11600, Washington, DC 20570–0001.

**FOR FURTHER INFORMATION CONTACT:** John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Room 11600, Washington, DC 20570–0001.

**SUPPLEMENTARY INFORMATION:** The following changes have been made to the existing NLRB System of Records Notice NLRB–3, Biographical Data File—Presidential Appointees:

1. Routine use 1 has been deleted because the specified ''need to know'' in it is authorized by 5 U.S.C. 552a(b)(1)(5).
2. The language of routine use 3 has been amended to specify that on disclosure to an inquiring congressional office, the subject individual must be a constituent about whom the records are maintained.
3. Routine use 4 has been amended by changing reference from ''Agency'' to ''NLRB'' for more specificity.
4. Routine use 5 has been amended to specify more exactly the information that may be disclosed to a court or an adjudicative body in the course of presenting evidence or argument including disclosure to opposing counsel or witnesses in the course of civil discovery.
5. The address of system location in NLRB–2 has been changed from ''NLRB, 1717 Pennsylvania Avenue, NW, Washington, DC 20570–0001'' to ''NLRB, 1099 14th Street, NW, Washington, DC 20570–001.''
6. Reference to 29 CFR 102.117 citations have been changed to read as follows for the paragraphs in Notifications Procedures, 29 CFR 102.117(f); Records Access Procedures, 29 CFR 102.117(g) and (h); and Contesting Records Procedures, 29 CFR 102.117(i).

A report of the proposal to revise this system of records was filed pursuant to 5 U.S.C. 552(r) with Congress and the Office of Management and Budget.

Dated: Washington, D.C., July 2, 1999.

**John J. Toner,**

*Executive Secretary.*

### NLRB–3

**SYSTEM NAME:**

Biographical Data File—Presidential Appointees.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Division of Information, NLRB, 1099 14th Street, NW, Washington, DC 20570–0001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Present and former Presidential appointees to NLRB positions.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records may include biographical sketches; news releases, news articles or speeches and other newsmaking activities; photographs, and related materials.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

29 U.S.C. 153(a) and (d), 54(a); 44 U.S.C. 3101.

**PURPOSE:**

These records document pertinent aspects of the personal and professional history of NLRB's most senior officials.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The records, or information contained therein may be disclosed to:

1. Individuals who need the information in connection with the processing of an appeal, grievance, or complaint.
2. The public, upon demonstrated interest.
3. A Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the records are maintained.
4. The Department of Justice for use in litigation when either (a) the NLRB or any component thereof, (b) any employee of the NLRB in his or her official capacity, (c) any employee of the NLRB in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States Government where the NLRB determines that litigation is likely to affect the NLRB or any of its components, is a party to litigation or has interest in such litigation, and the use of such records by the Department of Justice is deemed by the NLRB to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.
5. A court, a magistrate, administrative tribunal, or other adjudicatory body in the course of presenting evidence or argument, including disclosure to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings, when: (a) The NLRB or any component thereof; or (b) any employee of the NLRB in his or her official capacity; or (c) any employee of the NLRB in his or her individual capacity where the NLRB has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has interest in such litigation, and determines that such disclosure is relevant and necessary to the litigation and that the use of such

records is therefore deemed by the NLRB to be for a purpose that is compatible with the purpose for which the records were collected.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained on original sources or related papers in file folders.

**RETRIEVABLE:**

Alphabetically by name.

**SAFEGUARDS:**

Maintained in file cabinets within the Division of Information. During duty hours, cabinets are under the surveillance of office personnel charged with custody of the records, and after duty hours are behind locked doors.

**RETENTION AND DISPOSAL:**

Permanently retained.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Division of Information, NLRB, 1099 14th Street, NW, Washington, DC 20570–0001.

**NOTIFICATION PROCEDURE:**

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

**RECORD ACCESS PROCEDURES:**

An individual seeking to gain access to records in this system pertaining to him or her should contact the System Manager in accordance with the procedures set forth in 29 CFR 102.117(g) and (h).

**CONTESTING RECORD PROCEDURES:**

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(i).

**RECORD SOURCE CATEGORIES:**

Information in this system is submitted by the individual, written by Agency staff and approved by the individual, and obtained from general news sources.

[FR Doc. 99–19405 Filed 7–28–99; 8:45 am]

**BILLING CODE 7545–01–M**

## NATIONAL SCIENCE FOUNDATION

### Notice of Intent To Establish an Information Collection

**AGENCY:** National Science Foundation.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 64 FR 8144 (February 18, 1999), and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the qualify, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW, Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov.

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

**DATES:** Comments regarding this information collection are best assured of having their full effect if received on or before August 30, 1999. Copies of the submission(s) may be obtained by calling 703–306–1125 x 2017.

**FOR ADDITIONAL INFORMATION OR COMMENTS:** Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 306–1125 x 2017; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instruments from Ms. Plimpton.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Impact of the International Institute for Applied Systems Analysis Programs on Scientific Knowledge, Career Development of US Scientists, and US Institutional Capabilities for Research and Policy Development.

*OMB Number:* 3145–New.

*Type of Request:* Intent to seek approval to carry out a new information collection for one year.

*Abstract:* ''Outcomes and Impacts of Research Programs of the International Institute for Applied Systems Analysis (IIASA)''.

*Proposed Project:* The International Institute for Applied Systems Analysis (IIASA) in Laxenburg, Austria, is a non-governmental, multilateral research institution created in 1972. IIASA's most recent 10-year strategic plan, adopted in 1992, focuses on research in three thematic areas: (1) Global Environmental Change; (2) Global Economic and Technological Transitions; and (3) Systems Methods for the Analysis of Global Issues. Its core research programs are funded by annual contributions from member countries. Since 1989 the US contribution has been funded by a series of grants from the National Science Foundation's Division of International Programs (NSF/INT). NSF is seeking to identify (1) the impacts of IIASA's research programs on scientific knowledge and on the education and careers of US scientists, and (2) the impacts of the information and options resulting from IIASA's research on public and private policy-related institutions in the United States.

To achieve these objectives, data will be collected from senior US scientists who have conducted research at IIASA since the current strategic plan went into effect in 1992, and from US scientists who have been participants in IIASA's Young Summer Scientists

Program from 1992 through the time the data is collected. Respondents will be asked to respond to questions relevant to such factors as: (1) The impacts of their experience at IIASA on their future scientific work and career development; the impacts of IIASA's research on conceptual developments in their disciplines; and the impacts of the results of IIASA's research on US institutional capabilities for research and policy analysis.

*Use of the Information:* The information will be used by NSF to assess the extent to which the results of research that has been supported at IIASA involving US researchers are consistent with the specific outcome goals defined in the context of the NSF Strategic Plan approved by OMB and the Congress, as required by the General Performance and Results Act (GPRA) of 1993. Among NSF's five approved outcome goals, the three that are most relevant to its investments in research at IIASA are: Promoting discoveries at and across the frontier of science and engineering; facilitating connections between discoveries and their use in service to society; developing a diverse, globally oriented workforce of scientists and engineers.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 60 minutes per response.

*Respondents:* Individuals.

*Estimated Number of Responses per Form:* 125.

*Estimated Total Annual Burden of Respondents:* 125 hours, broken down by 125 respondents at 1 hour per response.

*Frequency of Responses:* One time.

Dated: July 26, 1999.

**Suzanne H. Plimpton,**

*Reports Clearance Officer.*

[FR Doc 99–19400 Filed 7–28–99; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

**[IA 99–019]**

## Richard A. Speciale; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

### I

Mr. Richard A. Speciale (Mr. Speciale) was formerly Director, and Radiation Safety Officer of Special Testing Laboratories, Inc. (Special Testing or Licensee). Special Testing is the holder of Byproduct Nuclear Material License No. 06–30361–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes possession and use of Troxler Electronics Laboratories, Campbell Pacific Nuclear, Humbolt Scientific, Seamen Nuclear, or Soiltest nuclear gauges. The license was issued on August 6, 1997, and is due to expire on August 31, 2007.

Mr. Speciale was also the Director of Testwell Craig Laboratories of Connecticut, Inc. (Testwell Craig), which previously held License No. 06–19720–01 authorizing possession and use of portable nuclear density gauges. This license was suspended on July 1, 1996, due to non-payment of fees.

### II

On October 14, 15, and 16, 1998, and November 9–10, 1998, an NRC Region I inspector, accompanied by an investigator from the NRC Office of Investigations, conducted an inspection/investigation at the Licensee's facility in Bethel, Connecticut. During the inspection/investigation, the NRC determined that: (1) Portable gauges containing NRC-licensed material were routinely used by some Licensee employees who had not received the required training; (2) some Licensee employees were using the gauges without being provided the required personnel dosimeters; and (3) leak tests of the gauges were not being performed at the required frequency.

During the October inspection/investigation, Mr. Speciale was interviewed by the inspector and investigator. In that interview, Mr. Speciale, when questioned concerning the scope of the Licensee's program, informed the NRC that the Licensee possessed four Troxler portable gauges that were used by three or four authorized users, including himself. He also stated that he did not believe any of his field technicians were operating gauges without training.

The NRC inspector and investigator returned to the facility on November 9–10, 1998, to complete the inspection/investigation, at which time the NRC was provided records indicating that nine individuals had received manufacturer's training on October 29, 1998, which was subsequent to the NRC's October 1998 visit. Mr. Speciale was questioned as to why nine individuals had received such training when he had previously stated that gauges were used by three or four users. Although Mr. Speciale initially maintained that only three individuals were using four gauges, he subsequently stated, and available records showed, that Speciale Testing possessed 13 gauges, and these gauges were used by as many as 14 individuals. Also, during the November inspection/investigation, seven gauge users stated that they used portable gauges without formal training for periods ranging from several weeks to four years prior to October 29, 1998. The NRC also learned, based on discussions with Mr. Speciale, that there were periods when gauge users were not provided personnel dosimeters. Further, three gauge users stated that they operated portable gauges without wearing ''film badges'' for periods ranging from one to several months prior to October 1998. When questioned as to why individuals were using gauges without training or personnel dosimeters, Mr. Speciale indicated that the required training and dosimeters were not previously provided due to financial considerations, even though he continued to direct the individuals to use the gauges.

During a subsequent interview with the OI investigator on November 19, 1998, Mr. Speciale admitted that he ''never stopped using nuclear gauges'' after the Testwell Craig license was suspended for non-payment of fees and before the Special Testing license was issued. He stated that he failed to do so because Testwell Craig had ''job commitments to finish.'' Thus, on numerous occasions between July 1, 1996, and August 6, 1997, Mr. Speciale continued to use these gauges without an NRC license.

As a result, prior to completion of the investigation, the NRC issued to Special Testing an Order Suspending License on December 23, 1998. The suspension order was rescinded on January 22, 1999, after Special Testing consented to issuance of a Confirmatory Order Modifying License that required, in part: (1) Mr. Speciale not be involved in NRC-licensed activities at Special Testing; and (2) Special Testing take corrective actions to prevent recurrence of the violations.

### III

The NRC's requirements in 10 CFR 30.10(a)(1) prohibit an individual from engaging in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission. In addition, 10 CFR 30.10(a)(2) prohibits an individual from deliberately submitting to the NRC information that the individual submitting the information knows to be incomplete or inaccurate in some respect material to

the NRC. 10 CFR 30.9 requires, in part, that information provided to the Commission by a licensee be complete and accurate in all material respects.

Based on the inspection/investigation, the NRC has concluded that Mr. Speciale violated 10 CFR 30.10. Specifically, Mr. Speciale violated 10 CFR 30.10(a)(1) in that he deliberately caused the Licensee to violate NRC requirements by: (1) Allowing untrained individuals to use gauges, contrary to License Condition 11.A of Special Testing's license; (2) not providing these individuals with the necessary dosimetry while they were using the gauges, contrary to License Condition 19 of Special Testing's license; (3) providing to the NRC inaccurate information concerning the number of gauges possessed and used by the Licensee and concerning the training of gauge users, contrary to 10 CFR 30.9; and (4) while in the position of Director of Testwell Craig, directing the use of gauges even though Testwell Craig's license had been suspended for nonpayment of fees and Special Testing's license had not yet been issued, contrary to Section III.A of the Order Suspending License issued to Testwell Craig. Mr. Speciale also violated 10 CFR 30.10(a)(2) by deliberately providing to the NRC inaccurate information concerning the number of gauges possessed and used by the Licensee and concerning the training of gauge users.

**IV**

Deliberately violating NRC requirements is of significant concern because the NRC must be able to rely on the integrity of Licensee employees to comply with NRC requirements. Directing untrained individuals to conduct NRC-licensed activities and not providing dosimetry is significant because misuse of gauges (which contain NRC-licensed material) could result in unnecessary radiation exposures to workers and members of the public. Moreover, deliberately providing false information to the NRC is significant because the Commission must be able to rely on its licensees to provide complete and accurate information. Given the above, it appears that Mr. Speciale is either unwilling or unable to comply with the Commission's requirements.

The NRC must be able to rely on the Licensee, and the Licensee employees, to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Speciale's action in deliberately violating Commission regulations, raises serious questions as to whether he can be relied upon to comply with NRC requirements and to provide or maintain complete and accurate information to the NRC, and raises questions about his trustworthiness and reliability.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Richard A. Speciale were permitted at this time to be involved in NRC-licensed activities. Therefore, the NRC has determined that the public health, safety and interest require that Richard A. Speciale be prohibited from any involvement in NRC-licensed activities for a period of five years. If Richard A. Speciale is currently involved in NRC-licensed activities, Mr. Speciale must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Speciale is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Speciale's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

**V**

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, *it is hereby ordered*, effective immediately, that:

1. Richard A. Speciale is prohibited from engaging in NRC licensed activities for five years from the date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Richard A. Speciale is currently involved in NRC-licensed activities, Mr. Speciale must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

3. For a period of one year after the five year period of prohibition has expired, Mr. Speciale shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Mr. Speciale shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Speciale of good cause.

**VI**

In accordance with 10 CFR 2.202, Richard A. Speciale must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Speciale or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, U.S. Nuclear Regulatory, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Speciale if the answer or hearing request is by a person other than Mr. Speciale. If a person other than Mr. Speciale requests a hearing, that person shall set forth with particularity the manner in which that person's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Speciale or a person whose interest is

adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(I), Mr. Speciale may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 21st day of July, 1999.

For the Nuclear Regulatory Commission.

**Malcolm R. Knapp,**

*Deputy Executive Director for Regulatory Effectiveness.*

[FR Doc. 99–19365 Filed 7–28–99; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Software Reliability Models for Digital Safety Critical Systems

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of workshop.

**SUMMARY:** The NRC has committed through its Strategic Plan to incorporate risk insights, conduct anticipatory research on issues of potential regulatory and safety significance, engage in cooperative research agreements, and provide timely information to our stakeholders. As part of this commitment, a workshop has been established to assess software models which could be used to determine the software reliability of digital systems. This research is conducted through a cooperative agreement between academia and the government. The objective of this workshop is to evaluate software reliability models and the associated software metrics to determine which would be most effective in determining the software reliability of digital safety systems.

*Date:* August 16–17, 1999—The workshop will begin at 8:30 a.m. and end at 6:00 p.m.

*Location:* Nuclear Regulatory Commission, White Flint II, 11545 Rockville Pike, Rockville, MD 20852.

*Contact:*

Registration—Sandra George, Phone: 301–405–6659; E-mail: *sgeorge@eng.umd.edu*

General—

Carol S. Smidts, Phone: 301–405–7314; E-mail: *csmidts@eng.umd.edu*

Ming Li, Phone: 301–405–1071; E-mail: *mli@eng.umd.edu*

Robert Brill, Phone: 301–415–6760; E-mail: *rwb2@nrc.gov*

*Attendance:* This workshop is free and open to the general public. All individuals planning to attend should pre-register with Ms. Sandra George by telephone or e-mail and provide their name, affiliation, phone number, and e-mail address.

*Program:* The workshop will be a mix of presentations and working group discussions. During the first day, the challenges of finding software reliability models for safety critical applications will be examined. A preliminary study identifying practical potential candidate models and their associated software metrics will be discussed by a panel of eminent researchers and practitioners in the fields of software engineering, software reliability engineering and software-based digital systems. During the second day, the panel will divide into working groups to evaluate each of the models and recommend the best models which could be used to evaluate the software reliability of digital systems. As part of this effort, the working groups will explore the need for any additional software metrics to strengthen the models chosen.

Dated in Rockville, Maryland this 23rd day of July, 1999.

For the Nuclear Regulatory Commission.

**John W. Craig,**

*Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.*

[FR Doc. 99–19364 Filed 7–28–99; 8:45 am]

BILLING CODE 7590–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–41643; SR–DTC–99–16]**

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Amendment to Proposed Rule Change Relating to Profile Modification Feature of the Direct Registration System

July 22, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 22, 1999, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') an amendment as described in Items, I, II, and III below, which items have been prepared primarily by DTC, to its proposed rule change SR–DTC–99–16.[2] Notice of the proposed rule change as originally filed was published in the **Federal Register** on June 23, 1999.[3] The Commission is publishing this notice of the amendment to solicit comments from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of DTC's amendment is to add a fourth option on how to resolve the impasse in the implementation of the Profile Modification System (''Profile'') feature of the Direct Registration System (''DRS'') and to clarify DTC's description of the Profile.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] DTC filed SR–DTC–99–16 on June 17, 1999.

[3] Securities Exchange Act Release No. 41535 (June 17, 1999), 64 FR 33539 [File No. SR–DTC–99–16] (notice relating to the profile modification feature of the DRS).

[4] The Commission has modified the text of the summaries prepared by DTC.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of this filing is to amend DTC's proposed rule change regarding the implementation of the Profile feature [5] of DRS. [6] The amendment adds a fourth option to the three options initially proposed as ways to resolve the impasse in implementing the Profile feature. The amendment also provides technical clarification of DTC's description of the Profile feature.

In its proposed rule change, DTC has requested the guidance of the Commission staff in resolving the impasse between members of the Securities Transfer Association (''STA'') and the Securities Industry Association (''SIA'') relating to the implementation of the Profile feature of DRS. Because there is no industry consensus on whether DRS should continue to operate as it does today or whether use of DRS should be restricted in some manner until the Profile feature is implemented, DTC initially proposed three options on making additional securities issues eligible for inclusion in DRS.[7]

Since publication of the proposed rule change, several ''DRS limited participants'' have indicated that they may be operationally able to implement the Profile feature by the proposed deadline of August 31, 1999, or shortly thereafter. In addition, the SIA has submitted a comment letter supporting the concept of permitting any ''DRS limited participant'' capable of using the Profile Feature by the August 31, 1999, deadline to be able to do so and to allow that ''DRS limited participant'' to make additional issues eligible.[8]

As a result of these developments, DTC is adding the following additional option on making new issues eligible for DRS:

(4) If a ''DRS limited participant'' is able to implement Profile by September 13, 1999, either through DTC's Participant Terminal System (''PTS'') or its Computer-to-Computer Facility (''CCF''), that ''DRS limited participant'' will be allowed to continue to make securities eligible for inclusion in DRS. Any ''DRS limited participant'' unable to implement Profile either through PTS or CCF by September 13, 1999, will not be allowed to make additional securities eligible for DRS until such time as it is able to implement Profile after January 15, 2000.

Due to the delay caused by the filing of this amendment, DTC is concerned about the shortened amount of time ''DRS limited participants'' will have to become operationally prepared to meet the August 31, 1999, deadline initially imposed in option (1) of the proposed rule change. Therefore, DTC is amending its proposed rule change so that the deadline in option (1) is September 13, 1999, and not August 31, 1999.[9]

DTC is also amending the proposed rule change to clarify its description of Profile. DTC is adding the following sentence to footnote 4 of Exhibit 1 (''completed notice of the proposed rule change for publication in the **Federal Register**'') to its proposed rule change: ''Profile was developed to incorporate the use of an electronic medallion guarantee.'' [10]

DTC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) [11] the requirements of the Act and the rules and regulations thereunder applicable to DTC because the proposed rule change is designed to further the perfection of the mechanism for the national system for the prompt and accurate clearance and settlement of securities transactions.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

DTC does not believe that the proposed rule change will impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No comments on the amendment to the proposed rule change were solicited by DTC. DTC will notify the Commission of any written comments it receives.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 the proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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 in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–99–16 and should be submitted by August 19, 1999.

[5] Profile is an electronic communication system through DTC which allows participants and DRS Limited Participants to send instructions to each other regarding the movement of DRS shares.

[6] Securities Exchange Act Release No. 35038 (December 1, 1994), 59 FR 643652 (concept release relating to the direct registration system); Securities Exchange Act Release No. 37931 (November 7, 1996), 61 FR 58600 (File No. SR–DTC–96–15) (order relating to the establishment of DRS).

[7] DTC's original three options included:

(1) if all ''DRS limited participants'' are not able to implement Profile by August 31, 1999, no additional securities issues would be made eligible after August 31, 1999, for inclusion in DRS until sometime in the first quarter of 2000 when all ''DRS limited participants'' are able to implement Profile using either PTS or CCF;

(2) securities issues would continue to be made eligible for inclusion in DRS in the manner in which they are currently made eligible for inclusion; or

(3) securities would continue to be made eligible for inclusion in DRS provided that each ''DRS limited participant'' could be the ''DRS limited participant'' for no more than two new issues per month. If all ''DRS limited participants'' are not able to implement Profile by using PTS or CCF by March 31, 2000, no additional securities issues would be made eligible for inclusion in DRS until such time as all ''DRS limited participants'' are ready to use Profile.

[8] Letter from Jerome Clair, Chair, SIA Operations Committee, and John Cirrito, Chair, Subcommittee on DRS, to Jonathan Katz, Secretary, Commission (July 14, 1999).

[9] DTC established a September 13, 1999, cutoff for all DTC systems changes due to Year 2000 concerns.

[10] See footnote 4 of Securities Exchange Act Release No. 41535 (June 7, 1999); 64 FR 33539 (File No. SR–DTC–99–16) (notice relating to the profile modification feature of the DRS).

[11] 15 U.S.C. 78q–1(b)(3)(F).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–19416 Filed 7–28–99; 8:45 am]

BILLING CODE 8070–01–M

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collection listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collection would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instrument by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. Public Understanding Measurement System—0960–NEW. SSA has contracted with the Gallup Organization to conduct surveys to gather data on the public's level of knowledge about Social Security programs. The 1998 Public Understanding Measurement System (PUMS) survey indicated that 45 percent of the population has a lack of understanding of the major Social Security program areas. The 1999 and future Public Understanding Measurement System (PUMS II) surveys will enable SSA to build upon the 1998 PUMS quantitative baseline measure of public understanding.

An annual survey will provide tracking data of public understanding of SSA programs against which the outcomes of SSA performance improvement efforts can be assessed. Eight quarterly targeted surveys will test the effectiveness of several specific communications and public information outreach efforts.

PUMS II is essential to SSA's goal of strengthening public understanding about Social Security programs. The relevant Agency goal contained in SSA's strategic plan is that by the year 2005, 90 percent of all American adults will be knowledgeable about Social Security programs in five broad areas: basic program facts; the financial value of programs to individuals; the economic and social impact of SSA programs; how the programs are financed today; and financing issues. The respondents will be randomly selected adults residing in the United States.

| | Annual survey | Quarterly surveys |
|---|---|---|
| Number of Respondents | 4,000 | 12,000. |
| Frequency of Response | 1 | 1. |
| Average Burden Per Response | 12 minutes | 12 minutes. |
| Estimated Annual Burden | 800 hours | 2,400 hours. |

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Supplemental Security Income Notice of Interim Assistance Reimbursement (two forms)—0960–0546. Please note that these forms were previously approved under 2 OMB numbers, form SSA–8125, 0960–0546 and SSA–L8125–F6, 0960–0563. However, because these forms are interrelated SSA is combining them under 0960–0546. Form SSA–8125 and SSA–L8125–F6, previously 0960–0563, collect interim assistance reimbursement (IAR) information from the States that provide such assistance. Form SSA–8125 is used in situations where IAR can be distributed directly to the recipient after the State has deducted the amount of assistance it provided. Form SSA–L8125–F6 is used in situations where a recipient entitled to underpayments has received IAR from a State and SSA will control the benefit through the installment process. The respondents are States that provide IAR to SSI claimants.

| | SSA–8125 | SSA–L8125–F6 |
|---|---|---|
| Number of Respondents | 50,000 | 50,000. |
| Frequency of Response | 1 | 1. |
| Average Burden Per Response | 10 minutes | 10 minutes. |
| Estimated Annual Burden | 8,333 hours | 8,333 hours. |

2. Request for Information—0960–0607. The information collected through this form letter will be used by SSA's Office of the Inspector General (OIG) to conduct periodic eligibility reviews of beneficiaries residing in foreign countries. The form is designed to replace the current time-consuming and expensive method of conducting these reviews by selecting sample cases and conducting in person interviews. The form will permit OIG to review all beneficiary residents of the foreign country under study, thereby narrowing the scope of the beneficiaries requiring

[12] 17 CFR 200.30–3(a)(12).

in person visits to those who do not respond or to those who provide questionable evidence. The respondents are Social Security beneficiaries residing in foreign countries.

*Number of Respondents:* 900.

*Frequency of Response:* 1.

*Average Burden Per Response:* 30 minutes.

*Estimated Annual Burden:* 450 hours.

(Please note that this information collection received emergency approval from OMB on July 19, 1999. Emergency consideration was requested due to the time constraints associated with the normal clearance process, which conflicted with OIG's mission of combating fraud waste and abuse of SSA programs. Notice of the emergency request was published in the **Federal Register** on June 21, 1999. SSA plans to conduct eligibility reviews of beneficiaries residing in foreign countries on a scheduled basis and is therefore continuing to seek normal clearance of this collection.)

3. Application for Parent's Insurance Benefits—0960–0012. The information collected on form SSA–7 is used by the Social Security Administration to determine entitlement of an individual to parent's insurance benefits. The respondents are parents who were dependents of the worker for at least one-half of their support.

*Number of Respondents:* 1,400.

*Frequency of Response:* 1.

*Average Burden Per Response:* 15 minutes.

*Estimated Annual Burden:* 350 hours.

(SSA Address)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235

(OMB Address)

Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, D.C. 20503

Dated: July 21, 1999.

**Frederick W. Brickenkamp,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 99–19101 Filed 7–28–99; 8:45 am]

BILLING CODE 4190–29–U

## DEPARTMENT OF STATE

**[Public Notice No. 3096]**

## Office of Defense Trade Controls; Notifications to the Congress of Proposed Export Licenses

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

**EFFECTIVE DATE:** As shown on each of the five (5) letters.

**FOR FURTHER INFORMATION CONTACT:** Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State ((703) 875–6644).

**SUPPLEMENTARY INFORMATION:** Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: July 16, 1999.

**Rose M. Biancaniello,**

*Chief, Arms Licensing Division, Office of Defense Trade Controls.*

BILLING CODE 4710–21–P

United States Department of State

*Washington, D.C. 20520*

JUN 30 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed Technical Assistance Agreement for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export for manufacture in the United Kingdom, technical information and defense services supporting the Joint United States/United Kingdom, Tracer/Future Scout Combat Support Armored Vehicle Program with a Directed Missile Countermeasure Device as a solution to guided missile threats.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 118-98

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

*Washington, D.C. 20520*

JUL 1 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of an A2100 commercial communications satellite to Japan for a launch from French Guiana.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 67-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

*Washington, D.C. 20520*

JUN 30 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to The Netherlands in support of the manufacture of F110 aircraft engine Flaps, Seals and Ejector Nozzles as part of the USG co-production program with European participating governments.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 65-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

*Washington, D.C. 20520*

JUN 30 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense equipment to be sold to Japan relating to the manufacture of the Tracking Adjunct System for use with the Hawk Missile System.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 48-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

*Washington, D.C. 20520*

JUL 13 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical information, defense services and defense articles to the United Kingdom, for the manufacture of various hydraulic products and controls for military aircraft, marine and defense system applications.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 49-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

[FR Doc. 99–19424 Filed 7–28–99; 8:45 am]
BILLING CODE 4710–21–C

## TENNESSEE VALLEY AUTHORITY

### Meeting of the Land Between the Lakes Advisory Committee

**AGENCY:** Tennessee Valley Authority (TVA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Land Between The Lakes Advisory Committee (LBLAC) will hold its second meeting to consider hearing public perspectives and consider various issues identified by Committee members. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

The meeting agenda includes the following:

(1) Approval of Agenda
(2) Review/Approve Meeting 1 Minutes
(3) Update on LBL Funding for FY00
(4) Presentations by invited Organizations
(5) 1999 Meeting Issues Clarification, Additions, and Process
(6) Issue Deliberation
- Original LBL Mission Statement
- Types and Scope of Visitor Facilities and Services
- Youth Station Lease

(7) Public Listening Session
(8) Chairman's Summary

The meeting is open to the public. Some organizational representatives will be invited to address the committee during agenda item #4. Other members of the public who wish to make oral public comments should register with the DFO, in writing, at least 24 hours in advance of the meeting or register at the meeting site at least 15 minutes prior to the meeting. A written copy of the statement must be submitted at the registration desk prior to the meeting. One hour will be allotted for the Public Listening Session; each speaker will have 5 minutes to address the Committee. Public Listening Session time is available on a first-come, first-served basis. Written comments are also invited and may be mailed to Ann W. Wright, LBL General Manager and Advisory Committee DFO, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211, or faxed to 270–924–2060.

**DATES:** The meeting will be held on August 18, 1999, from 8:30 a.m. to 5:30 p.m., CDT.

**ADDRESSES:** The meeting will be held at Paris Landing State Park in Buchanan, Tennessee, and will be open to the public.

**FOR FURTHER INFORMATION CONTACT:** Kathy Coursey, LBLAC Administrative Officer, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211, 270/924/2272, kccoursey@tva.gov.

Dated: July 23, 1999.

**Ann W. Wright,**

*General Manager, TVA's Land Between The Lakes.*

[FR Doc. 99–19413 Filed 7–28–99; 8:45 am]

BILLING CODE 8120–08–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[USCG–1999–5952]**

### Chemical Transportation Advisory Committee; Charter Renewal

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of charter renewal.

**SUMMARY:** The Secretary of Transportation has renewed the charter for the Chemical Transportation Advisory Committee (CTAC) for 2 years from May 27, 1999 until May 27, 2001. CTAC is a Federal advisory committee under 5 U.S.C. App. 2. It advises the Coast Guard on safe transportation and handling of hazardous materials in bulk on U.S.-flag vessels and barges in U.S. ports and waterways.

**ADDRESSES:** You may request a copy of the charter by writing to Commandant (G–MSO–3), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling 202–267–1217; or by faxing 202–267–4570. This notice and the charter are available on the Internet at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** Commander Robert Corbin, Executive Director of CTAC, or Ms. Sara Ju, Assistant to the Executive Director, telephone 202–267–1217, fax 202–267–4570.

Dated: July 20, 1999.

**Joseph J. Angelo,**

*Director of Standards, Marine Safety and Environmental Protection.*

[FR Doc. 99–19373 Filed 7–28–99; 8:45 am]

BILLING CODE 4910–15–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[USCG–1998–4920]**

### Navigation Safety Advisory Council; Vacancies

**AGENCY:** Coast Guard, DOT.

**ACTION:** Request for applications; reopening of application period.

**SUMMARY:** The Coast Guard reopens the application period for membership on the Navigation Safety Advisory Council (NAVSAC). NAVSAC advises the Coast Guard on the prevention of vessel collisions, rammings, and groundings; Inland Rules of the road; International Rules of the Road; navigation regulations and equipment; routing measures; marine information; diving safety; and aids to navigation systems.

**DATES:** Application forms and any supporting information must reach us on or before August 15, 1999.

**ADDRESSES:** You may request an application form by writing to Commandant (G–MW), U.S. Coast Guard, 2100 Second St. SW, Washington, DC 20593–0001; or by calling 202–267–6164; by faxing 202–267–4700; or by e-mail *Jshort@comdt.uscg.mil*. Send your application form to the same address. This notice and the application form are available on the Internet at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** Ms. Margie Hegy, Executive Director of NAVSAC at (202) 267–0415, fax (202) 267–4700.

**SUPPLEMENTARY INFORMATION:** On January 5, 1999, we published a request in the **Federal Register** (64 FR 562) for applications for membership in the Navigation Safety Advisory Council (NAVSAC). The application period closed on February 28, 1999. We are reopening the application period until August 15, 1999. If you applied in response to the January 5 notice, you do not need to send another application form.

NAVSAC is a Federal advisory council under 5 U.S.C. App. 2. It advises the Secretary of Transportation, via the Commandant of the Coast Guard, on the prevention of vessel collisions, rammings, and groundings; Inland Rules of the road; International Rules of the road; navigation regulations and equipment; routing measures; marine information; diving safety; and aids to navigation systems.

NAVSAC meets at least twice a year at various locations in the continental United States. It may also meet for extraordinary purposes. Its committees and working groups may meet to consider specific problems as required.

We will consider applications for eight positions that expired or become vacant on June 30, 1999. To be eligible, you should have expertise in the above mentioned subject areas. To assure balanced representation of subject matter expertise, members are chosen, insofar as practical, from the following groups: (1) Recognized experts and leaders in organizations having an active interest in the Rules of the Road

and vessel and port safety; (2) representatives of owners and operators of vessels, professional mariners, recreational boaters, and the recreational boating industry; (3) individuals with an interest in maritime law; and (4) Federal and State officials with responsibility for vessel and port safety.

Each member serves for a term of 3 years. A few members may serve consecutive terms. All members serve without compensation from the Federal Government, although travel reimbursement and per diem may be provided.

In support of the policy of the Department of Transportation on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

If you are selected, we may require you to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: July 19, 1999.

**R.C. North,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.*

[FR Doc. 99–19374 Filed 7–28–99; 8:45 am]

BILLING CODE 4910–15–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activity Under OMB Review

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 12, 1999, (FR 64, page 12399).

**DATES:** Comments must be submitted on or before August 30, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**FOR FURTHER INFORMATION CONTACT:** Judy Street on (202) 267–9895.

**SUPPLEMENTARY INFORMATION:**

### Federal Aviation Administration (FAA)

*Title:* Exemptions for Air Taxi and Commuter Air Carrier Operations.

*Type of Request:* Extension of a currently approved collection.

*OMB Control Number:* 2120–0633.

*Form(s)* N/A.

*Affected Public:* The respondents are an estimated 1559 air taxi operators and commuter air carriers.

*Abstract:* This collection is used to expedite the FAA's issuance of operating authority for small charter air carriers, and protect the competitive interests of these carriers and relieve the safety concerns of the traveling public with regard to the operations of these carriers. Under 14 CFR, Part 298 both air taxi operators and commuters are required to register with DOT and provide proof of liability insurance for all of the aircraft used by the operator.

*Estimated Annual Burden Hours:* 793 burden hours annually.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, N.W., Washington, DC 20503, Attention: FAA Desk Officer.

### Comments Are Invited On

Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 23, 1999.

**Patricia W. Carter,**

*Acting Manager, Standards and Information Division, APF–100.*

[FR Doc. 99–19372 Filed 7–28–99; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Jefferson, Cleveland, Lincoln, Bradley, and Drew Counties, Arkansas

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the Arkansas Counties of Jefferson, Cleveland, Lincoln, Bradley, and Drew.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Romero, Environmental Specialist, Federal Highway Administration, 3128 Federal Office Building, Little Rock, Arkansas 72201–3298, telephone: (501) 324–5625; or Dale Loe, Consultant Coordinator, Assistant Chief Engineer for Design, Arkansas State Highway and Transportation Department, P.O. Box 2261, Little Rock, Arkansas 72203, telephone: (501) 569–2301.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Arkansas State Highway and Transportation Department, will prepare an environmental impact statement (EIS) on a proposal to construct a four-lane, divided, fully controlled access highway facility located on new alignment. Several alternatives and locations will be considered, including the ''no-action'' alternative in which roads are constructed in accordance with the Statewide Transportation Improvement Plan, with the exception of the proposed facility. The approximate length of the project is 50 miles.

The proposed transportation facility, also known as the ''Southeast Arkansas I–69 Connector'', would improve regional travel, safety, intermodal connectivity, and economic development by providing a north-south interstate-quality highway connecting Interstates 30 and 40 in Little Rock, Arkansas via U.S. 65 (Future Interstate Route I–530), to the proposed I–69 near the Monticello and Warren, Arkansas vicinity. The I–69 corridor is identified as a ''high priority corridor'' on the National Highway System that would provide a NAFTA transportation corridor of national significance from Sarnia, Ontario, Canada through Port Huron, Michigan and Indianapolis, Indiana to Memphis, Tennessee and would continue southward to Houston, Texas and end at the border with Mexico.

The northern terminus of the project will connect to the U.S. 65 (Future I–530) Bypass near Pine Bluff, Arkansas and the southern terminus will have an interim connection to U.S. 278 in the Monticello and Warren, Arkansas vicinity. The proposed connector was identified in Section 1211(h) of the Transportation Equity Act for the 21st Century (TEA–21), as amended.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, state, and local agencies and to private organizations and citizens who have previously expressed or are known to have an interest in this project. A series of public meetings will be held within the study area beginning in the fall of 1999, with on-going public involvement activities. The draft Environmental Impact Statement (EIS) will be available for public and agency review and comment prior to a formal public hearing. Public notice will be given of the time and place for all meetings and hearings.

To ensure that the full range of issues related to this project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action.)

Issued on: July 20, 1999.

**Elizabeth Romero,**

*Environmental Specialist, FHWA, Little Rock, Arkansas.*

[FR Doc. 99–19338 Filed 7–28–99 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety regulations. The individual petition is described below including, the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**Burlington Northern Sante Fe Railway**

[Docket Number FRA–1999–5895]

Burlington Northern Sante Fe Railway (BNSF) seeks a permanent waiver of compliance from certain provisions of the Safety Appliances Standards, 49 CFR part 231, and Power Brakes and Drawbars regulations, 49 CFR part 232, concerning RoadRailer® train operations over their railroad system. Specifically, BNSF requests relief from the requirements of: 49 CFR part 231, which specifies the number, location and dimensional specifications for handholds, ladders, sill steps, uncoupling levers, and handbrakes; and § 232.2, which regulates drawbar height.

The RoadRailer® units, by design, cannot be subjected to traditional switching or classification procedures, since they do not have the required safety appliance arrangement and their coupler assembly will only couple to another RoadRailer® unit or to a special designed adapter vehicle. In consideration of the unique way RoadRailer® units are assembled, there is no necessity for a person to ride on this equipment. Furthermore, this vehicle has a spring based parking brake (which has replaced the conventional manually operated handbrake) that operates automatically in conjunction with the train air brake system, so there is no need for an individual to mount the vehicle to apply a handbrake. The spring activates the parking brake when air pressure is reduced below a pre-determined value and remains applied until air pressure is restored. The drawbar height is not within the prescribed limits of 31½ to 34½ inches.

BNSF states that they will provide adequate training and familiarization for their operating personnel and emphasize the fact that employees must not attempt to mount or dismount RoadRailer trailers because there are no safety appliances. BNSF would also advise the FRA of any incidents or in-service problems with the RoadRailer equipment. BNSF would restrict the trains to 125 RoadRailer units, excluding the adapter unit, with a maximum of 4800 trailing tons. The adapter unit, CouplerMate, will be used between the hauling locomotive and the first RoadRailer unit in the train. BNSF would only haul hazardous materials listed in Table 2 of 49 CFR 172.504, in RoadRailer vehicles. Brake cylinder piston travel limits for the Mark V RoadRailer equipment would be 1¼ to 3½ inches at initial terminal, with 3⅝ inches being an ineffective brake.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–1999–5895) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street SW, Washington, DC. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at http://dms.dot.gov.

Issued in Washington, DC, on July 22, 1999.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 99–19407 Filed 7–28–99; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

*Docket No.* FRA–1999–5517.

*Applicant:* Fox Valley and Western Limited, Mr. Glenn J. Kerbs, Vice President, engineering, 3000 Minnesota Avenue, Stevens Point, Wisconsin 54481.

The Fox Valley and Western Limited seeks approval of the proposed

discontinuance and removal of the signal system at Bridge U–104, milepost 112.10, Denmark Subdivision, near Green Bay, Wisconsin, associated with the installation of shore control panels on each side of the bridge, for train crew operation.

The reason given for the proposed changes is that the track has minimal usage and the changes will eliminate the need for train crews to call an operator to open and close the bridge.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at http://dms.dot.gov.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on July 22, 1999.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 99–19406 Filed 7–28–99; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Discretionary Cooperative Agreements To Support Innovative Programs To Increase Booster Seat and Seat Belt Use Among Children

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Amendment of agency announcement published June 30, 1999, Volume 64, No. 125, and correction published July 8, 1999 Volume 64, No. 130.

**SUMMARY:** The date for receipt of applications (July 30, 1999, as stated in the July 8, 1999 correction) is hereby extended to 2:00 p.m. E.S.T. on August 13, 1999. Applications must be received by that time and date. Applications postmarked, but not received, by that time and date will not be accepted for evaluation.

Dated: July 23, 1999.

**James L. Nichols,**

*Acting Associate Administrator for Traffic Safety Programs.*

[FR Doc. 99–19375 Filed 7–28–99; 8:45 am]

BILLING CODE 4910–59–M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–98–4683; Notice 02]**

**RIN 2127–AH35**

### Final Theft Data; Motor Vehicle Theft Prevention Standard

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Publication of final theft data.

**SUMMARY:** This document publishes the final data on thefts of model year (MY) 1997 passenger motor vehicles that occurred in calendar year (CY) 1997. The final 1997 theft data indicate a decrease in the vehicle theft rate when compared to the theft rate experienced in CY/MY 1996. The final theft rate for MY 1997 passenger vehicles stolen in calendar year 1997 (3.05 thefts per thousand vehicles produced) decreased by 7 percent from the theft rate for CY/MY 1996 vehicles (3.28 thefts per thousand vehicles produced). Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data and publish the information for review and comment. The data were calculated for informational purposes only.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2739.

**SUPPLEMENTARY INFORMATION:** NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR part 541. The standard specifies performance requirements for inscribing and affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data and publish the data for review and comment. To fulfill this statutory mandate, NHTSA has published theft data annually beginning with MYs 1983/84. Continuing to fulfill the section 33104(b)(4) mandate, this document reports the final theft data for CY 1997, the most recent calendar year for which data are available.

In calculating the 1997 theft rates, NHTSA followed the same procedures it used in calculating the MY 1996 theft rates. (For 1996 theft data calculations, see 63 FR 36478, July 6, 1998.) As in all previous reports, NHTSA's data were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a government system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

The 1997 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 1997 vehicles of that line stolen during calendar year 1997 by the total number of vehicles in that line manufactured for MY 1997, as reported to the Environmental Protection Agency (EPA).

The final 1997 theft data show a decrease in the vehicle theft rate when compared to the theft rate experienced in CY/MY 1996. The final theft rate for MY 1997 passenger vehicles stolen in CY 1997 decreased to 3.05 thefts per thousand vehicles produced, a decrease

of 7 percent from the rate of 3.28 thefts per thousand vehicles experienced by MY 1996 vehicles in CY 1996. For MY 1997 vehicles, out of a total of 205 vehicle lines, 66 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991. (See 59 FR 12400, March 16, 1994.) Of the 66 vehicle lines with a theft rate higher than 3.5826, 56 are passenger car lines, 9 are multipurpose passenger vehicle lines, and one is a light-duty truck line.

On Monday, February 17, 1999, NHTSA published the preliminary theft rates for CY 1997 passenger motor vehicles in the **Federal Register** (64 FR 7945). The agency tentatively ranked each of the MY 1997 vehicle lines in descending order of theft rate. The public was requested to comment on the accuracy of the data and to provide final production figures for individual vehicle lines. The agency received written comments from Mercedes-Benz of North America (Mercedes) and Ford Motor Company (Ford). The agency used all written comments to make the necessary adjustments to its data. As a result of the adjustments, some of the final theft rates and rankings of vehicle lines changed from those published in the February 1999 notice.

Mercedes informed the agency that the production volume for the Mercedes 129 vehicle line (SL-Class) was erroneously listed. After further analysis of the production volumes, it was confirmed with Mercedes that the production volume listed by the agency was not in error. Therefore, the production volume and the theft rate for this line will remain unchanged. Mercedes also informed the agency that the production volume for the Mercedes 202 (C-Class) was incorrect. After further review of the final production volumes Mercedes reported to the EPA, it was confirmed that the production volume submitted by Mercedes in its initial comment was incorrect. As a result of Mercedes comments to the docket, the production volume for the 202 (C-Class) has been corrected and the final theft list has been revised accordingly.

Further reanalysis of the theft rate data revealed that the listing did not include the Ford F150 Pickup truck or the Mercury Mountaineer. NHTSA is correcting the final theft data to include the production volumes for the Ford F150 Pickup truck and the Mountaineer. As a result of these corrections, the Ford F150, previously not listed, is now ranked No. 125 with a theft rate of 2.0269. Additionally, the Mercury Mountaineer, previously not listed, is now ranked No. 108 with a theft rate of 2.2910.

The following list represents NHTSA's final calculation of theft rates for all 1997 passenger motor vehicle lines. This list is intended to inform the public of calendar year 1997 motor vehicle thefts of model year 1997 vehicles and does not have any affect on the obligations of regulated parties under 49 U.S.C. Chapter 331, Theft Prevention.

THEFT RATES OF MODEL YEAR 1997 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1997

| Manufacturer | Make/model (line) | Thefts 1997 | Production (Mfr's) 1997 | 1997 theft rate (per 1,000 vehicles produced) |
|---|---|---|---|---|
| 1. SUZUKI | SWIFT | 16 | 1,724 | 9.2807 |
| 2. HONDA | ACURA INTEGRA | 277 | 30,046 | 9.2192 |
| 3. CHRYSLER CORP | PLYMOUTH NEON | 749 | 82,880 | 9.0372 |
| 4. MITSUBISHI | MIRAGE | 497 | 58,218 | 8.5369 |
| 5. CHRYSLER CORP | DODGE NEON | 926 | 115,456 | 8.0204 |
| 6. TOYOTA | SUPRA | 13 | 1,629 | 7.9804 |
| 7. HYUNDAI | TIBURON | 37 | 4,758 | 7.7764 |
| 8. SUZUKI | ESTEEM | 55 | 7,116 | 7.7291 |
| 9. MITSUBISHI | MONTERO SPORT | 202 | 26,592 | 7.5963 |
| 10. BMW | 8 | 6 | 791 | 7.5853 |
| 11. TOYOTA | LEXUS SC | 41 | 5,570 | 7.3609 |
| 12. CHRYSLER CORP | DODGE STRATUS | 711 | 97,227 | 7.3128 |
| 13. NISSAN | MAXIMA | 949 | 131,602 | 7.2111 |
| 14. CHRYSLER CORP | STRATUS [1] | 3 | 429 | 6.9930 |
| 15. MITSUBISHI | MONTERO | 82 | 12,249 | 6.6944 |
| 16. CHRYSLER CORP | INTREPID [1] | 4 | 616 | 6.4935 |
| 17. NISSAN | STANZA ALTIMA | 1,157 | 179,501 | 6.4456 |
| 18. CHRYSLER CORP | PLYMOUTH BREEZE | 423 | 70,699 | 5.9831 |
| 19. MITSUBISHI | 3000GT | 38 | 6,399 | 5.9384 |
| 20. GENERAL MOTORS | GEO METRO | 374 | 64,933 | 5.7598 |
| 21. MITSUBISHI | ECLIPSE | 439 | 77,556 | 5.6604 |
| 22. MITSUBISHI | GALANT | 282 | 50,259 | 5.6109 |
| 23. TOYOTA | TERCEL | 277 | 49,527 | 5.5929 |
| 24. CHRYSLER CORP | NEW YORKER/LHS | 203 | 36,622 | 5.5431 |
| 25. FORD MOTOR CO | MERCURY MYSTIQUE | 126 | 23,321 | 5.4029 |
| 26. FORD MOTOR CO | MERCURY TRACER | 354 | 65,867 | 5.3745 |
| 27. SUBARU | SVX | 2 | 384 | 5.2083 |
| 28. MERCEDES BENZ | 140 (S–CLASS) | 85 | 16,348 | 5.1994 |
| 29. CHRYSLER CORP | DODGE INTREPID | 775 | 151,603 | 5.1120 |
| 30. MERCEDES BENZ | 129 (SL–CLASS) | 36 | 7,172 | 5.0195 |
| 31. CHRYSLER CORP | SEBRING CONVERTIBLE | 280 | 56,004 | 4.9996 |
| 32 HYUNDAI | SONATA | 90 | 18,035 | 4.9903 |
| 33 HONDA | ACURA SLX | 5 | 1,003 | 4.9850 |
| 34 SUZUKI | SIDEKICK | 110 | 22,312 | 4.9301 |
| 35 TOYOTA | COROLLA | 1,091 | 222,055 | 4.9132 |
| 36 GENERAL MOTORS | CHEVROLET CAMARO | 270 | 55,037 | 4.9058 |
| 37 FORD MOTOR CO | MUSTANG | 490 | 100,259 | 4.8873 |
| 38 HYUNDAI | ACCENT | 174 | 37,755 | 4.6087 |
| 39 NISSAN | PATHFINDER | 382 | 83,550 | 4.5721 |

THEFT RATES OF MODEL YEAR 1997 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1997—Continued

| | Manufacturer | Make/model (line) | Thefts 1997 | Production (Mfr's) 1997 | 1997 theft rate (per 1,000 vehicles produced) |
|---|---|---|---|---|---|
| 40 | GENERAL MOTORS | GEO PRIZM | 285 | 62,800 | 4.5382 |
| 41 | BMW | M3 | 35 | 7,976 | 4.3882 |
| 42 | CHRYSLER CORP | CIRRUS | 121 | 28,008 | 4.3202 |
| 43 | CHRYSLER CORP | JEEP GRAND CHEROKEE | 1,122 | 259,946 | 4.3163 |
| 44 | GENERAL MOTORS | PONTIAC FIREBIRD/FORMULA | 133 | 30,819 | 4.3155 |
| 45 | FORD MOTOR CO | ASPIRE | 161 | 37,398 | 4.3050 |
| 46 | ASTON MARTIN | DB7 | 1 | 234 | 4.2735 |
| 47 | ISUZU | HOMBRE PICKUP TRUCK | 52 | 12,177 | 4.2703 |
| 48 | HONDA | ACCORD | 1,604 | 375,973 | 4.2663 |
| 49 | CHRYSLER CORP | SEBRING COUPE | 140 | 33,163 | 4.2216 |
| 50 | SUZUKI | X–90 | 9 | 2,182 | 4.1247 |
| 51 | NISSAN | 240SX | 15 | 3,655 | 4.1040 |
| 52 | FORD MOTOR CO | CONTOUR | 327 | 79,945 | 4.0903 |
| 53 | NISSAN | SENTRA/200SX | 628 | 154,689 | 4.0598 |
| 54 | GENERAL MOTORS | OLDSMOBILE ACHIEVA | 201 | 49,879 | 4.0298 |
| 55 | CHRYSLER CORP | NEON[1] | 3 | 751 | 3.9947 |
| 56 | TOYOTA | 4-RUNNER | 512 | 128,659 | 3.9795 |
| 57 | HYUNDAI | ELANTRA | 178 | 44,936 | 3.9612 |
| 58 | GENERAL MOTORS | PONTIAC GRAND AM | 834 | 211,009 | 3.9524 |
| 59 | FORD MOTOR CO | ESCORT | 1,264 | 323,413 | 3.9083 |
| 60 | MAZDA | 626/MX–6 | 320 | 82,223 | 3.8919 |
| 61 | GENERAL MOTORS | GMC JIMMY S–15 | 284 | 73,493 | 3.8643 |
| 62 | HONDA | DEL SOL | 25 | 6,719 | 3.7208 |
| 63 | FORD MOTOR CO | PROBE | 62 | 16,823 | 3.6854 |
| 64 | GENERAL MOTORS | BUICK SKYLARK | 212 | 57,716 | 3.6732 |
| 65 | CHRYSLER CORP | EAGLE TALON | 36 | 9,827 | 3.6634 |
| 66 | ISUZU | RODEO | 190 | 52,937 | 3.5892 |
| 67 | CHRYSLER CORP | EAGLE VISION | 21 | 5,888 | 3.5666 |
| 68 | GENERAL MOTORS | CHEVROLET CORVETTE | 32 | 9,072 | 3.5273 |
| 69 | MAZDA | MILLENIA | 58 | 17,130 | 3.3859 |
| 70 | MITSUBISHI | DIAMANTE | 95 | 28,208 | 3.3678 |
| 71 | NISSAN | INFINITI I30 | 92 | 27,606 | 3.3326 |
| 72 | FORD MOTOR CO | TAURUS | 1,322 | 398,720 | 3.3156 |
| 73 | NISSAN | INFINITI QX4 | 54 | 16,558 | 3.2613 |
| 74 | ISUZU | TROOPER | 34 | 10,616 | 3.2027 |
| 75 | FORD MOTOR CO | LINCOLN TOWN CAR | 328 | 104,969 | 3.1247 |
| 76 | CHRYSLER CORP | DODGE AVENGER | 101 | 32,698 | 3.0889 |
| 77 | GENERAL MOTORS | CHEVROLET CAVALIER | 969 | 316,265 | 3.0639 |
| 78 | TOYOTA | TACOMA PICKUP TRUCK | 333 | 109,056 | 3.0535 |
| 79 | CHRYSLER CORP | JEEP WRANGLER | 382 | 125,276 | 3.0493 |
| 80 | KIA | SEPHIA | 130 | 42,709 | 3.0439 |
| 81 | FORD MOTOR CO | MERCURY SABLE | 340 | 114,227 | 2.9765 |
| 82 | MAZDA | MX–5 MIATA | 55 | 18,536 | 2.9672 |
| 83 | GENERAL MOTORS | CHEVROLET BLAZER S10/T10 | 624 | 212,327 | 2.9389 |
| 84 | FORD MOTOR CO | LINCOLN MARK VIII | 48 | 16,339 | 2.9378 |
| 85 | HONDA | PRELUDE | 48 | 16,584 | 2.8944 |
| 86 | GENERAL MOTORS | PONTIAC SUNFIRE | 305 | 105,493 | 2.8912 |
| 87 | GENERAL MOTORS | CADILLAC DEVILLE | 274 | 95,151 | 2.8796 |
| 88 | VOLVO | 960 | 52 | 18,140 | 2.8666 |
| 89 | PORSCHE | 911 | 18 | 6,289 | 2.8621 |
| 90 | HONDA | PASSPORT | 62 | 21,693 | 2.8581 |
| 91 | HONDA | CIVIC | 933 | 335,167 | 2.7837 |
| 92 | MAZDA | PROTEGE | 159 | 57,153 | 2.7820 |
| 93 | FORD MOTOR CO | EXPLORER | 1,105 | 398,992 | 2.7695 |
| 94 | FORD MOTOR CO | WINDSTAR VAN | 98 | 36,315 | 2.6986 |
| 95 | JAGUAR | XJ6 | 21 | 7,899 | 2.6586 |
| 96 | VOLKSWAGEN | GOLF/GTI | 59 | 22,684 | 2.6010 |
| 97 | ACURA | TL | 55 | 21,441 | 2.5652 |
| 98 | TOYOTA | CAMRY | 935 | 365,752 | 2.5564 |
| 99 | GENERAL MOTORS | PONTIAC BONNEVILLE | 186 | 74,182 | 2.5073 |
| 100 | TOYOTA | PASEO | 8 | 3,194 | 2.5047 |
| 101 | TOYOTA | PREVIA VAN | 12 | 4,840 | 2.4793 |
| 102 | CHRYSLER CORP | PLYMOUTH PROWLER | 1 | 404 | 2.4752 |
| 103 | BMW | 7 | 43 | 17,788 | 2.4174 |
| 104 | FORD MOTOR CO | THUNDERBIRD | 178 | 73,812 | 2.4115 |
| 105 | GENERAL MOTORS | OLDSMOBILE CUTLASS SUPREME | 127 | 53,434 | 2.3768 |
| 106 | TOYOTA | LEXUS ES | 138 | 59,344 | 2.3254 |
| 107 | GENERAL MOTORS | CHEVROLET LUMINA/MONTE CARLO | 696 | 304,270 | 2.2874 |
| 108 | FORD MOTOR CO | MERCURY MOUNTAINEER | 149 | 65,322 | 2.2810 |

THEFT RATES OF MODEL YEAR 1997 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1997—Continued

| | Manufacturer | Make/model (line) | Thefts 1997 | Production (Mfr's) 1997 | 1997 theft rate (per 1,000 vehicles produced) |
|---|---|---|---|---|---|
| 109 | MERCEDES BENZ | 210 (E-CLASS) | 114 | 50,101 | 2.2754 |
| 110 | VOLKSWAGEN | PASSAT | 261 | 1,437 | 2.2733 |
| 111 | VOLKSWAGEN | JETTA | 208 | 91,809 | 2.2656 |
| 112 | NISSAN | PICKUP TRUCK | 286 | 130,665 | 2.1888 |
| 113 | BMW | 3 | 93 | 42,643 | 2.1809 |
| 114 | HONDA | ACURA CL | 98 | 44,955 | 2.1800 |
| 115 | CHRYSLER CORP | PLYMOUTH VOYAGER | 325 | 149,874 | 2.1685 |
| 116 | GENERAL MOTORS | GMC SAFARI VAN | 683 | 1,673 | 2.1469 |
| 117 | GENERAL MOTORS | CHEVROLET ASTRO VAN | 213 | 100,116 | 2.1275 |
| 118 | NISSAN | INFINITI J30 | 23 | 10,817 | 2.1263 |
| 119 | TOYOTA | LEXUS LS | 381 | 7,900 | 2.1229 |
| 120 | GENERAL MOTORS | GMC SONOMA PICKUP TRUCK | 823 | 8,759 | 2.1156 |
| 121 | JAGUAR | XJR | 1 | 473 | 2.1142 |
| 122 | TOYOTA | RAV4 | 154 | 73,321 | 2.1004 |
| 123 | BMW | 5 | 86 | 41,665 | 2.0641 |
| 124 | TOYOTA | T100 PICKUP TRUCK | 62 | 30,389 | 2.0402 |
| 125 | FORD MOTOR CO | F–150 PICKUP TRUCK | 1,265 | 624,093 | 2.0269 |
| 126 | TOYOTA | CELICA | 26 | 12,901 | 2.0153 |
| 127 | GENERAL MOTORS | GEO TRACKER | 49 | 24,400 | 2.0082 |
| 128 | GENERAL MOTORS | OLDSMOBILE BRAVADA | 54 | 27,722 | 1.9479 |
| 129 | CHRYSLER CORP | CONCORDE | 99 | 51,119 | 1.9367 |
| 130 | CHRYSLER CORP | DODGE CARAVAN | 559 | 290,007 | 1.9275 |
| 131 | GENERAL MOTORS | PONTIAC GRAND PRIX | 275 | 144,767 | 1.8996 |
| 132 | KIA | SPORTAGE | 44 | 23,500 | 1.8723 |
| 133 | JAGUAR | XK8 | 15 | 8,242 | 1.8199 |
| 134 | TOYOTA | AVALON | 132 | 73,991 | 1.7840 |
| 135 | GENERAL MOTORS | CADILLAC ELDORADO | 34 | 19,307 | 1.7610 |
| 136 | GENERAL MOTORS | BUICK RIVIERA | 31 | 18,175 | 1.7056 |
| 137 | VOLVO | 850 | 72 | 42,596 | 1.6903 |
| 138 | SAAB | 9000 | 9 | 5,449 | 1.6517 |
| 139 | PORSCHE | BOXSTER CONVERTIBLE | 9 | 5,459 | 1.6487 |
| 140 | BMW | Z3 | 34 | 20,636 | 1.6476 |
| 141 | CHRYSLER CORP | JEEP CHEROKEE | 141 | 86,303 | 1.6338 |
| 142 | FORD MOTOR CO | RANGER PICKUP TRUCK | 478 | 296,746 | 1.6108 |
| 143 | VOLKSWAGEN | CABRIO | 15 | 9,473 | 1.5834 |
| 144 | GENERAL MOTORS | CHEVROLET S–10 PICKUP TRUCK | 298 | 190,835 | 1.5616 |
| 145 | AUDI | A6 | 12 | 7,736 | 1.5512 |
| 146 | MERCEDES BENZ | 202 (C–CLASS) | 44 | 28,388 | 1.5500 |
| 147 | CHRYSLER CORP | DODGE DAKOTA PICKUP TRUCK | 195 | 128,661 | 1.5156 |
| 148 | FORD MOTOR CO | AEROSTAR VAN | 78 | 53,721 | 1.4519 |
| 149 | NISSAN | INFINITI Q45 | 18 | 12,398 | 1.4518 |
| 150 | MAZDA | MPV | 19 | 13,302 | 1.4284 |
| 151 | FORD MOTOR CO | MERCURY COUGAR | 50 | 35,273 | 1.4175 |
| 152 | MAZDA | B SERIES PICKUP TRUCK | 50 | 35,496 | 1.4086 |
| 153 | NISSAN | QUEST | 73 | 52,071 | 1.4019 |
| 154 | GENERAL MOTORS | CADILLAC SEVILLE | 52 | 37,187 | 1.3983 |
| 155 | GENERAL MOTORS | CHEVROLET MALIBU | 136 | 100,661 | 1.3511 |
| 156 | FORD MOTOR CO | LINCOLN CONTINENTAL | 43 | 32,204 | 1.3352 |
| 157 | CHRYSLER CORP | TOWN & COUNTRY MPV | 103 | 78,662 | 1.3094 |
| 158 | GENERAL MOTORS | CADILLAC CATERA | 34 | 26,109 | 1.3022 |
| 159 | SUBARU | IMPREZA | 34 | 26,817 | 1.2679 |
| 160 | GENERAL MOTORS | SATURN SC | 84 | 66,456 | 1.2640 |
| 161 | GENERAL MOTORS | SATURN SL | 251 | 199,018 | 1.2612 |
| 162 | VOLKSWAGEN | EUROVAN | 2 | 1,602 | 1.2484 |
| 163 | SUBARU | LEGACY | 115 | 92,310 | 1.2458 |
| 164 | FORD MOTOR CO | MERCURY VILLAGER MPV | 64 | 61,417 | 1.0421 |
| 165 | GENERAL MOTORS | OLDSMOBILE EIGHTY-EIGHT | 68 | 65,879 | 1.0322 |
| 166 | GENERAL MOTORS | OLDSMOBILE AURORA | 26 | 25,579 | 1.0165 |
| 167 | GENERAL MOTORS | PONTIAC TRANS SPORT VAN | 47 | 47,627 | 0.9868 |
| 168 | AUDI | A4 | 16 | 16,400 | 0.9756 |
| 169 | FORD MOTOR CO | MERCURY GRAND MARQUIS | 124 | 127,973 | 0.9690 |
| 170 | SAAB | 900 | 22 | 23,152 | 0.9502 |
| 171 | HONDA | ACURA RL | 15 | 16,377 | 0.9159 |
| 172 | FORD MOTOR CO | CROWN VICTORIA | 107 | 123,814 | 0.8642 |
| 173 | AUDI | A8 | 2 | 2,377 | 0.8414 |
| 174 | GENERAL MOTORS | SATURN SW | 20 | 27,129 | 0.7372 |
| 175 | GENERAL MOTORS | BUICK LESABRE | 155 | 211,904 | 0.7315 |
| 176 | GENERAL MOTORS | OLDSMOBILE CUTLASS | 13 | 18,112 | 0.7178 |
| 177 | HONDA | ODYSSEY | 14 | 22,243 | 0.6294 |

THEFT RATES OF MODEL YEAR 1997 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1997—Continued

| | Manufacturer | Make/model (line) | Thefts 1997 | Production (Mfr's) 1997 | 1997 theft rate (per 1,000 vehicles produced) |
|---|---|---|---|---|---|
| 178 | ISUZU | OASIS | 1 | 1,602 | 0.6242 |
| 179 | HONDA | CR-V | 44 | 73,948 | 0.5950 |
| 180 | GENERAL MOTORS | OLDSMOBILE SILHOUETTE VAN | 12 | 20,927 | 0.5734 |
| 181 | GENERAL MOTORS | CHEVROLET VENTURE VAN | 38 | 71,649 | 0.5304 |
| 182 | GENERAL MOTORS | BUICK CENTURY | 27 | 53,706 | 0.5027 |
| 183 | GENERAL MOTORS | BUICK PARK AVENUE | 28 | 59,549 | 0.4702 |
| 184 | GENERAL MOTORS | BUICK REGAL | 7 | 21,828 | 0.3207 |
| 185 | AUDI | CABRIOLET | 0 | 1,201 | 0.0000 |
| 186 | CHRYSLER CORP | DODGE VIPER | 0 | 1,537 | 0.0000 |
| 187 | FERRARI | F355 | 0 | 622 | 0.0000 |
| 188 | FERRARI | 456 | 0 | 70 | 0.0000 |
| 189 | FERRARI | 550 | 0 | 94 | 0.0000 |
| 190 | GENERAL MOTORS | BUICK FUNERAL COACH/HEARSE | 0 | 546 | 0.0000 |
| 191 | GENERAL MOTORS | CADILLAC LIMOUSINE | 0 | 445 | 0.0000 |
| 192 | GENERAL MOTORS | SATURN EV1 | 0 | 2,000 | 0.0000 |
| 193 | HONDA | ACURA NSX | 0 | 322 | 0.0000 |
| 194 | JAGUAR | VANDEN PLAS | 0 | 2,536 | 0.0000 |
| 195 | LAMBORGHINI | DB132/DIABLO | 0 | 74 | 0.0000 |
| 196 | LOTUS | ESPRIT | 0 | 121 | 0.0000 |
| 197 | ROLLS-ROYCE | BENTLEY AZURE | 0 | 81 | 0.0000 |
| 198 | ROLLS-ROYCE | BENTLEY BROOKLANDS | 0 | 135 | 0.0000 |
| 199 | ROLLS-ROYCE | BENTLEY CONTINENTAL T | 0 | 40 | 0.0000 |
| 200 | ROLLS-ROYCE | BENTLEY TURBO R | 0 | 54 | 0.0000 |
| 201 | ROLLS-ROYCE | SILVER DAWN | 0 | 21 | 0.0000 |
| 202 | ROLLS-ROYCE | SILVER SPUR | 0 | 113 | 0.0000 |
| 203 | ROLLS-ROYCE | PARK WARD LIMOUSINE | 0 | 1 | 0.0000 |
| 204 | TOYOTA | LEXUS GS | 0 | 187 | 0.0000 |
| 205 | VECTOR AUTO | AVTECH SC/M12 | 0 | 4 | 0.0000 |

[1] These vehicles were manufactured for sale only in U.S. territories under the Chrysler nameplate.

Issued on: July 23, 1999.

**L. Robert Shelton,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 99–19448 Filed 7–28–99; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

July 21, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before August 30, 1999 to be assured of consideration.

**Departmental Offices/International Portfolio Investment Data Systems**

*OMB Number:* 1505–0149.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Reporting of International Capital and Foreign Currency Transactions and Positions, 31 CFR Part 128.

*Description:* 31 CFR Part 128 establishes general guidelines for reporting on United States claims on and liabilities to foreigners; on transactions in securities with foreigners; and on monetary reserves of the United States. It also establishes guidelines for reporting on the foreign currency transactions of U.S. persons. It includes a recordkeeping requirement, § 128.5.

*Respondents:* Business or other for-profit.

*Estimated Number of Recordkeepers:* 2,000.

*Estimated Burden Hours Per Recordkeeper:* 3 hours.

*Frequency of Response:* On occasion.

*Estimated Total Recordkeeping Burden:* 6,000 hours.

*Clearance Officer:* Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan,**

*Departmental Reports Management Officer.*

[FR Doc. 99–19339 Filed 7–28–99; 8:45 am]

BILLING CODE 4810–25–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

July 19, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

**DATES:** Written comments should be received on or before August 30, 1999 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0216.

*Form Number:* IRS Form 5713, Schedules A, B, and C.

*Type of Review:* Extension.

*Title:* International Boycott Report.

*Description:* Form 5713 and related Schedules A, B, and C are used by any entity that has operations in a ''boycotting'' country. If that entity cooperates with or participates in an international boycott it loses a portion of the foreign tax credit, or deferral of Foreign Sales Corporation (FSC) and Interest Charge-Domestic International Sales Corporation (IC–DISC) benefits. The IRS uses Form 5713 to determine if any of the above benefits should be lost. The information is also used as the basis for a report to the Congress.

*Respondents:* Business or other for-profit, Individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 3,875.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| Form | Recordkeeping | Learning about the law or the form | Preparing and sending the form to the IRS |
|---|---|---|---|
| 5713 | 21 hr., 31 min | 2 hr., 3 min | 3 hr., 26 min. |
| Sch. A (5713) | 3 hr., 7 min | 12 min | 16 min. |
| Sch. B (5713) | 3 hr., 21 min | 1 hr., 59 min | 2 hr., 8 min. |
| Sch. C (5713) | 4 hr., 32 min | 1 hr., 47 min | 1 hr., 56 min. |

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 100,178 hours.

*OMB Number:* 1545–1201.

*Regulation Project Number:* PS–52–88 (Final) (T.D. 8455).

*Type of Review:* Extension.

*Title:* Election to Expense Certain Depreciable Business Assets.

*Description:* The regulations provide rules on the election described in section 179(b)(4); the apportionment of the dollar limitation among component members of a controlled group; and the proper order for deducting the carryover of disallowed deduction. The recordkeeping and reporting is necessary to monitor compliance with the section 179 rules.

*Respondents:* Business or other for-profit, Individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 20,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 45 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 15,000 hours.

*OMB Number:* 1545–1295.

*Regulation Project Number:* CO–111–90 Final and Temporary.

*Type of Review:* Extension.

*Title:* Revision of Section 338 Consistency Regulations.

*Description:* The regulations require corporations that make elections under section 338 to provide certain information. The information is used to determine tax liability that results when elections are made and to facilitate collections of the tax.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 45.

*Estimated Burden Hours Per Respondent:* 34 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 25 hours.

*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan,**

*Departmental Reports Management Officer.*

[FR Doc. 99–19340 Filed 7–28–99; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

July 19, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before August 30, 1999 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–1309.

*Form Number:* IRS Form 1040PC.

*Type of Review:* Extension.

*Title:* U.S. Individual Income Tax Return 1040PC Format.

*Description:* Form 1040PC is a computer-generated tax return answer sheet format prepared by tax preparation software. Form 1040PC is an alternative method of filing Form 1040. It will offer direct deposit for taxpayers to have their refunds deposited into their personal savings or checking accounts by electronic funds transfer. It will also generate a pre-printed payment voucher for use when payment is due to the IRS.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 7,502,722.

*Estimated Burden Hours Per Respondent:* 15 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting Burden:* 1,875,681 hours.

*OMB Number:* 1545–1488.

*Regulation Project Number:* REG–209837–96 Final.

*Type of Review:* Extension.

*Title:* Requirements Respecting the Adoption or Change of Accounting Method; Extensions of Time To Make Elections.

*Description:* The regulations provide the standards the Commissioner will use to determine whether to grant an extension of time to make certain elections.

*Respondents:* Business or other for-profit, individuals or households, not-for-profit institutions, Farms.

*Estimated Number of Respondents:* 500.

*Estimated Burden Hours Per Respondent:* 10 hours.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 5,000 hours.

*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan,**

*Departmental Reports Management Officer.*

[FR Doc. 99–19401 Filed 7–28–99; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Proposed Collection; Electronic License Application Form

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the Office of Foreign Assets Control's Electronic License Application Form information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments should be received on or before September 27, 1999 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Dennis P. Wood, Chief, Compliance Programs Division, or William B. Hoffman, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Annex-2nd Floor, Washington, DC 20220.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information about the filings or procedures should be directed to Dennis P. Wood, Chief, Compliance Programs Division, (tel.: 202/622–2490), Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Annex-2nd Floor, Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:**

*Title:* Electronic Form for OFAC License Applications.

*OMB Number:* 1505–0170.

*Abstract:* Transactions prohibited pursuant to the Trading With The Enemy Act, 50 U.S.C. App. 1–44, and the International Emergency Economic Powers Act, 50 U.S.C. 1701, may be authorized by means of specific licenses issued by the Office of Foreign Assets control (OFAC). Such licenses are issued in response to applications submitted by persons or institutions whose property has been blocked or who wish to engage in transactions that would otherwise by prohibited. This form—which provides a standardized method for all applicants and is available in electron form on our website—was new upon OMB's initial approval in December 1998. Applicants are not required to use the form. However, its use greatly facilitates and speeds applicants' submissions and OFAC's processing of applications and obviates the need for applicants to write lengthy letters to OFAC, thus reducing the overall burden of the application process.

*Current Action:* Extension.

*Type of Review:* Extension.

*Affected Public:* Individuals/ businesses and other for-profit institutions/ banking institutions.

*Estimated Number of Respondents:* 2,751.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Annual Burden Hours:* 1,376.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 14, 1999.

**Dale A. Morgan,**

*Departmental Reports Management Officer, Department of the Treasury.*

[FR Doc. 99–19208 Filed 7–28–99; 8:45 am]

BILLING CODE 4810–25–P

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Proposed Collection; Cuba Travel Declaration

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the Office of Foreign Assets Control's Cuba Travel Declaration information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments should be received on or before September 27, 1999 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Dennis P. Wood, Chief, Compliance Programs Division, or William B. Hoffman, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Annex-2nd Floor, Washington, DC 20220.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information about the filings or procedures should be directed to Dennis P. Wood, Chief, Compliance Programs Division, (tel.: 202/622–2490), Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Annex-2nd Floor, Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:**

*Title:* Electronic Form for OFAC License Applications.

*OMB Number:* 1505–0118.

*Abstract:* Declarations are to be completed by persons traveling from the United States to Cuba. The declarations will provide the United States Government with information to be used in administering and enforcing economic sanctions imposed against Cuba pursuant to the Cuban Assets Control Regulations, 31 C.F.R. part 515.

*Current Action:* Extension.

*Type of Review:* Extension.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 70,000.

*Estimated Time Per Respondent:* 2.5 minutes.

*Estimated Annual Burden Hours:* 175,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the

agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 14, 1999.

**Dale A. Morgan,**

*Departmental Reports Management Officer, Department of the Treasury.*

[FR Doc. 99–19209 Filed 7–28–99; 8:45 am]

BILLING CODE 4810–25–P

## UNITED STATES INFORMATION AGENCY

### International Education and Cultural Activities—Open Grant Program

**AGENCY:** United States Information Agency (USIA).

**ACTION:** Notice—Request for proposals.

**SUMMARY:** The Office of Citizen Exchanges (E/P) of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. For applicants' information, on October 1, 1999, the Bureau will become part of the U.S. Department of State. The integration will not affect the content of this announcement or the nature of the program described. Public or private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop projects that link their international exchange interests with counterpart institutions/groups in ways supportive of the aims of the Bureau of Educational and Cultural Affairs. Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256, also known as the Fulbright Hays Act.

The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' Proposals for exchange projects that address issues of crucial importance to the United States and to proposed partner countries but that do not respond specifically to themes included below will also be considered. Programs and projects must conform with Bureau requirements and guidelines outlined in the Application Package. Bureau projects and programs are subject to the availability of funds.

Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Office of Citizen Exchanges or submitting their proposals. Once the RFP deadline has passed, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until after the Bureau program and project review process has been completed.

**ANNOUNCEMENT NAME AND NUMBER:** All communications concerning this announcement should refer to the Annual Open Grant Program. The announcement number is *E/P–00–1*. Please refer to title and number in all correspondence or telephone calls to the Office of Citizen Exchanges.

*Deadline for Proposals:* All copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m., Washington, D.C. time on Friday, October 15, 1999. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. This action is effective from the publication date of this notice through October 15, 1999, for projects where activities will begin between March 1, 2000 and December 31, 2000.

**FOR FURTHER INFORMATION CONTACT:** Interested organizations/institutions must contact the Office of Citizen Exchanges, E/PL, Room 216, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 619–5348, to request detailed application packets which include award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package via Internet: The Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before beginning to download.

**ADDRESSES:** Applicants must follow all instructions given in the Application Package and send only complete applications with 15 copies to: U.S. Information Agency (until October 1, 1999) or U.S. Department of State (effective October 1, 1999) REF: E/P–00–1 Annual Open Grant Competition Bureau of Educational and Cultural Affairs Office of Grants Management (E/XE) 301—4th Street, SW, Room 336, Washington, DC 20547.

Applicants must also submit to E/XE the ''Executive Summary'' and ''Narrative'' sections of each proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to U.S. embassies overseas for their review, with the goal of reducing the time it takes to get the respective Embassy's comments for the Bureau's grants review process.

#### Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, projects must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should account for advancement of this goal, in their program contents, to the full extent deemed feasible.

#### Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000( Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process

information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly. The Bureau therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years. Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

*Overview*

The Office of Citizen Exchanges works with U.S. private sector, non-profit organizations on cooperative international group projects that introduce American and foreign participants to each others' social, economic, and political structures, and international interests. The Office supports international projects in the United States or overseas involving leaders or potential leaders in the following fields and professions: urban planners, jurists, specialized journalists (specialists in economics, business, political analysis, international affairs), business professionals, NGO leaders, environmental specialists, parliamentarians, educators, economists, and other government officials.

*Guidelines*

Applicants should carefully note the following restrictions/recommendations for proposals in specific geographical areas:

**Central and Eastern Europe (CEE) and the newly Independent States (NIS)**

Requests for proposals involving the following countries will be announced in separate competitions: CEE—Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Slovak Republic, and Slovenia; NIS—Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkemenistan, Ukraine, and Uzbekistan. Proposals involving these regions will not be accepted under this competition.

**Western Europe (WEU)**

Proposals involving this region will not be accepted under this competition.

**East Asia and the Pacific (EA)**

*For all of EA:* We welcome proposals that track closely with the following suggestions and for the following countries:

*For China:* We welcome proposals (1) That strengthen the role of NGOs in Chinese society and PRC government cooperation with NGOs through an exchange of representatives from NGOs and public-sector organizations cutting across fields such as legal aid, consumerism, family issues, and environmental protection to examine the role of NGOs and public-private sector cooperation in the U.S.; and (2) the help China learn to keep the social costs of economic reform tolerable through an exchange involving officials from the PRC Ministry of Labor and Social Security, Ministry of Health, local re-employment centers, and other relevant health and social welfare professionals, working with U.S. public- and private sector representatives in those fields, to take a comprehensive look at the American social welfare system.

*For Indonesia:* We welcome proposals focused on democracy and human rights, especially in the specific areas of (1) Civil society/educational reform, working with reform-minded leaders in the Department of Education and Culture and with NGOs to support a major overhaul of national curricula and teaching practices, especially one that emphasizes civic education, and (2) rule of law/freedom of the press, working with a national NGO of independent journalists and/or legal aid institute to provide training in defending human rights and producing a more independent and honest judiciary.

*For Korea:* We welcome proposals that would (1) Assist NGO development, through teaching practical management and relevant administrative skills—increasing citizen participation and particularly the role of women in politics and (2) would promote the development of local autonomy by exposing those local government officials whose work will have lasting community impact to ideas and concepts about U.S. local government that they can actually use within the political, economic and social realities of Korea.

*For Hong Kong:* We welcome proposals that would promote democratic development in the Hong Kong Legislative Council via a two-way exchange on legislative practices and procedures between the Council's Secretariat staff and counterparts in the U.S. Congress or appropriate state legislatures.

*For Mongolia:* We welcome proposals that, through work with a Mongolian business organization or ad hoc consortium assembled by USIS Ulaanbaatar, would serve as the catalyst for the development of a private-sector, business-oriented, anti-corruption sector. Activities would demonstrate to the Mongolian people that, under the free-market system, the private sector in its own self-interest naturally takes the lead on anti-corruption issues and supports the rule of law in the marketplace and broader society.

*For Vietnam:* We welcome proposals that would (1) Assist in the critical institution-building effort towards the development of a comprehensive safety program for injury and disability prevention under the auspices of a new national safety board in Vietnam and (2) assist in the development of Vietnam's economic legal framework to support the implementation of the U.S.-Vietnam bilateral trade agreement.

*For Japan:* We welcome proposals that would foster greater cooperation between media and citizen action groups in Japan by developing cooperative strategies to improve coverage of NGO issues.

E/P contact for EA programs: Bill Dawson, 202/260–5485; E-Mail [WDawson@USIA.GOV]

**Western Hemispheric Affairs (WHA)**

The Office of Western Hemispheric Affairs includes the countries of Canada, Mexico, Central and South America, and the Caribbean. For all of WHA: We welcome proposals which contribute to strengthening democratic institution building, economic reform, environmental education, public administration, and municipal government for all countries in the region. For the countries mentioned below, some preference may be given to proposals that track closely the following suggestions:

*For Central America:* We welcome proposals in the field of environmental education. Deforestation and the results of Hurricane Mitch have raised public awareness of the need for environmental education throughout Central America.

Competitive proposals should involve participants in developing pilot environmental education programs in schools and/or with selected municipalities, capitalizing on the new interest of fledgling NGO environmental groups. For example, successful proposals might create regional ''Centers of Excellence'' that would serve all of Central America in fields such as disaster preparation/relief and local empowerment.

*For Mexico:* We welcome proposals for projects that would create opportunities for Mexican and U.S. public administration practitioners and academicians to work together. Project activities might focus on such local government issues as responding to the needs of the people it serves; interacting with other levels of government, implementing experimental ideas, and how city administrators communicate with each other. Participants should have opportunities to meet with academics, practitioners, and with NGOs dedicated to improving governance.

*For Argentina:* We welcome projects that examine capacity building in State (provincial) legislatures. Successful proposals should include two-way exchanges that would include Argentine regional legislators and staff members involved in training, consulting, or legislative information. A U.S. study tour should acquaint Argentines with institutions that will help them understand interrelationship and technical assistance among state legislatures; channels for effective citizen participation in the design of public policies; training and consulting resources; standards and techniques for drafting legislation; and a study of mechanisms that strengthen citizen participation in the formation of public policy such as popular referenda, voter initiatives, public hearings and lobbying.

*For Costa Rica:* We welcome projects that would explore and strengthen the role of municipal government. Proposals might include an exchange for local mayors to see innovations in city government and citizen participation in municipal affairs; and a return visit by a group of U.S. mayors and city managers and municipal experts to hold larger workshops on the same theme.

*For Haiti:* We welcome proposals focusing on compromise and conflict resolution training sessions for members of political parties, unions, advocacy groups, civic organizations and police. The most competitive proposals will build on earlier conflict resolution pilot programs in Haiti and make an attempt to institutionalize such training.

*For Peru:* We welcome proposals on decentralization and resource management issues for local government.

Competitive proposals should include an exchange for a group of local mayors and other decentralization specialists who would meet with U.S. local government representatives, businesses and neighborhood groups in order to gain a more in-depth understanding of local government in the U.S. E/P contact for WHA programs: Laverne Johnson, 202/619–5337; E-Mail [LJohnson@USIA.GOV].

**Africa (AF)**

Proposals are requested for projects that would advance sustainable democracy by building human capital in Africa and strengthening partnerships between the United States and Africa in the thematic categories delineated below. Projects that foster networking across political as well as government-civil society divisions are encouraged. Proposals that respond to the following suggested themes and organizational approaches will receive priority consideration in the awarding of grants for exchange activity in Sub-Saharan Africa. While not all countries suggested as participants for each project must be included in the exchange, projects which bring together representatives from multiple countries will be given preference. Proposals for exchange projects that address issues of crucial importance to the United States and to proposed partner countries, without responding specifically to the themes included below, also will be considered. Proposed activities may take place only in those countries in which there is a Public Diplomacy Officer (U.S. Mission). Currently there is no USIA presence in Guinea Bissau, Cape Verde, Gambia, Burundi, Central African Republic, Equatorial Guinea, Gabon, Sao Tome and Principe, Djibouti, Lesotho, Somalia, Sudan, and Mauritania.

*Civic Education and Community Life*

(Requested by U.S. Missions in Ethiopia, Cote d'Ivoire, Kenya, Nigeria, Tanzania, Uganda, Zambia; proposals welcome throughout region)—Proposals should encourage the effective engagement of citizens in their country's political life. Preference will be given to projects that focus on organizations whose aim is to motivate citizens to exercise their rights and to meet their civic responsibilities, or through projects that assist key institutions of civil society (e.g., women's groups, grassroots/community organizations, youth-oriented organizations, professional associations, other NGOs) in contributing to democracy through volunteerism. Successful proposals will expose NGO leaders to democratic, team-centered approaches to organizational management appropriate to democratic, civil societies. Related themes might include building values of tolerance, pragmatism, cooperation and compromise; building skills and institutions for constructive non-violent change; addressing cultural and other obstacles to civic participation; inculcating a commitment to rule of law; and teaching and encouraging citizens to participate fully in community and national development. Priority will be given to projects that encourage the development of networks or coalitions to address the advancement of civic society.

*Community Dialogue and Inter-Ethnic Understanding: Seeking Common Ground*

(Requested by U.S. Missions in Cote d'Ivoire, Benin, Tanzania)—We welcome proposals focusing on inter-ethic compromise and conflict resolution training sessions for members of political parties, university student/teacher/trade unions, advocacy groups, civic organizations and other stakeholders. The most competitive proposals will build on earlier conflict resolution pilot programs undertaken in recent years and make an attempt to institutionalize such training in partner countries.

*Democratic Governments*

(Requested by U.S. Missions in Angola, Cote d'Ivoire, Tanzania)—Proposals should work to strengthen institutions of government whose work has a direct impact on the quality of a country's democracy and to increase their transparency, accountability, responsiveness, and effectiveness of operations. Especially welcome would be proposals that address anti-corruption methods. Projects might focus on local government or elements of executive branches, legislatures, or judicial systems.

*Professionalism in Media and Strengthening Journalistic Independence*

(Requested by U.S. Missions in Ethiopia, Angola, Benin, Niger, Senegal, Tanzania, Togo, Zambia; proposals welcome on a regional basis)—Proposals are sought to improve professionalism, independence, and good management in the media of Sub-Saharan Africa. African journalists would benefit greatly from partnership with U.S. institutions for a wide variety of journalism education, including reporting, writing and editing techniques, and media ethics. Proposals also are welcome for projects that focus on newspapers as a business. Successful proposals should focus on capacity building and networking among journalists and media professionals. Projects could link a U.S. organization of journalists to facilitate training and networking of African participants through visits to the U.S., and follow-up consultations by American journalists to host countries

to solidify linkages and assist in efforts to train media professionals and organize associations in the participating countries. Using the Internet as a tool might be a component of the proposal.

*U.S.-Africa Partnership in the 21st Century: Economic Development and Private Sector Reform*

(Requested by U.S. Missions in Cote 'd Ivoire, Ethiopia, Benin, Botswana, Zambia, Togo, Tanzania)—Proposals in the area of economic development and private sector expansion should address either the creation of free trade areas *or* the empowerment of women entrepreneurs.

*Free Trade Areas:* Following the recent inaugural US–SADC Forum which focused on trade, USIA welcomes proposals which would encourage the creation of free trade areas through reduced tariff and non-tariff barriers. Such a project might be carried out with regional chambers of commerce and/or the Southern African Development Community (SADC) Secretariat. Proposals on free trade areas also would be of interest to posts in West and East Africa. Projects should foster an understanding of and commitment to policies and practices that support economic growth in a democratic framework through the private sector and international trade. Especially encouraged are proposals that focus on creating an ''enabling environment'' supportive of these goals. Related issues might include intellectual property rights, trade liberalization (e.g., tax and investment laws, along with other incentives), mechanisms of transparency and accountability, the role of business associations, and regional economic cooperation/integration.

*Women as Economic Partners in Nation Building:* In many countries in Africa, women are the backbone of the economy and yet they remain relatively unorganized and unconnected from one another. The organizations for business women that do exist currently have the capacity to effect little systemic change, but have the potential to have a profound impact on the economy. Priority will be given to proposals that offer African business women the opportunity to interact with U.S. women-owned businesses and interest groups, and to see first hand the work they do to enable business women to network and profit from relationships they create, both domestically and internationally. Successful proposals will expose business leaders to democratic, team-centered approaches to organizational management appropriate to democratic, civil societies. Proposals may also encourage the development of self-help/micro-enterprise programs for women in disadvantaged communities. Contact for AF programs: Orna Tamches, 202/260–2754; E-mail [OTamches@USIA.GOV]

**Near East, North Africa and South Asia (NEA)**

Proposals that respond to the following suggested themes and organizational approaches will receive priority consideration in the awarding of grants for exchange activity in the Near East, North Africa, and South Asia. While not all countries suggested as participants for each project must be included in the exchange, projects bringing together representatives from three or more countries will be given preference. Proposals for exchange projects that address issues of crucial importance to the United States and to proposed partner countries but that do not respond specifically to the themes included below will also be considered.

The countries/entities comprising the NEA AREA are listed below. Currently there is no USIA presence in Afghanistan, Iran, Iraq, Libya, or Mauritania. Please consider countries listed as potential exchange partners in projects that address the theme.

*Countries/Entities of the Near East, North Africa, and South Asia*—Afghanistan; Algeria; Bahrain; Bangladesh; Egypt; India; Iran; Iraq; Israel; Jordan; Kuwait; Lebanon; Libya; Mauritania; Morocco; Nepal; Oman; Pakistan; the Palestinian Authority; Qatar; Saudi Arabia; Sri Lanka; Sudan; Syria; Tunisia; the United Arab Emirates (UAE); Yemen.

*Citizen Participation and Advocacy (Building and Strengthening Non-governmental Organizations)* Region-wide (any country or group of countries). Of specific interest for Bangladesh; Egypt; Pakistan; the Palestinian Authority; Syria; Saudi Arabia Social and political activism, encouraged, focussed, and channeled through non-governmental organizations, is a basic underpinning of democratic society. Strengthening NGO advocacy skills, management, grassroots support, recruitment and motivation of volunteers, fundraising and financial management, media relations, and networking for mutual support and reinforcement will reinforce democratic trends in the region. Among other emphases, this project should focus on computer training and on developing cooperation between educators and NGO's for community action. It is essential that organizations submitting proposals in this category recognize that democratic activism is viewed with distrust by a number of governments in the area and that foreign involvement with local NGO's must be carefully thought out and approached with subtlety, as such involvement is viewed with suspicion. Close consultation with American Embassy/Consulate officers is critical.

*Women's Activism and Political Leadership* Region-wide (any country or group of countries). Of specific interest for Pakistan; Egypt; Israel. Throughout the region, women exercise disproportionately little political and social influence. While some women's groups have organized themselves and actively campaign for equal rights and a greater say in local issues, women need to learn how to mobilize support and raise money at the municipal, state, and national levels and how to win elections. Once elected, how can they most effectively represent the interests of their constituents? What can women activists do, in the political realm on issues of health care, education, domestic violence, and equal treatment under the law?

*Professionalism in Media and the Strengthening of Journalistic Independence*

Region-wide (any country or group of countries). Of specific interest for Jordan; Tunisia; Morocco The development of professionalism in media—gaining an appreciation for the importance of objective reporting; developing subject specialization; applying rational management techniques to newspaper publishing; etc.—remains an area in which serious efforts must be expended if the fourth estate is to fulfill its potential as a pillar of democratic society. Concomitantly, laws throughout the region constrain press freedoms, and journalists, editors, and publishers are forced to self-censor, lest governments punish the media for having conveyed the message. Projects are needed to address professionalism and to focus on training and advice to individuals and organizations devoted to the protection of press freedoms and to the defense of journalists and their right to practice their profession with integrity.

*Judicial Reform and the Administration of Justice*

Egypt; Morocco; Tunisia; Oman; Israel; Pakistan. A well trained, independent judiciary is fundamental to a democratic political and social system. The integrity of the judicial process and, by extrapolation, public confidence in the ability of the judicial process to deliver justice, is threatened in diverse

countries by political interference in legal proceedings and by public perception of unequal and unfair treatment before the bench of women, members of ethnic minority communities, and the poor. Even well qualified and well intentioned judges are obstructed in their efforts to deliver justice by case backlog, by procedural delay, and by insufficient authority to exercise judicial discretion in court management. It is important that judges of both lower and higher courts be introduced to the principles and practices of U.S. jurisprudence and that such fundamental procedures as alternative dispute resolution, early neutral evaluation, case management, the acceptance of guilty pleas, continuous trial proceedings, and arbitration/mediation be familiar to them.

*Anti-Incitement and Conflict Resolution*

Egypt; Israel; Jordan; the Palestinian Authority. The Wye Memorandum, signed by the representatives of Israel and the Palestinian Authority in November 1998, mandates that the problems of incitement to hatred and violence, as well as the ethnic/religious stereotyping that has plagued the region, be addressed. If peace is to have meaning, citizens of the region must begin to address one another in new ways, overcoming the fears and resentments that have built up over generations. A project that includes Israelis, Palestinians, Jordanians, and Egyptians is solicited in an effort to expand the dialogue of coexistence that must accompany formal peace agreements. Two major components of any effort to focus on anti-incitement are the media and the educational establishment. One of the most important areas for the promotion of dialogue and mutual respect as well as the management of conflict is the media. Any effort in this area would need to involve expertise in conflict resolution as well as in professional journalism ethics and the addressing of problems of prejudice, discrimination, and outright incitement to violence. Incitement via curriculum and teacher prejudice is also a legitimate focus. A regional project to examine how contentious historical events are treated, how former enemies are portrayed, and how curricula can help advance tolerance and peace is a high priority.

*Civic Education: Educating for Democracy*

Region-wide (any country or group of countries). Of specific interest for Egypt; Israel; Pakistan. Enhanced citizen awareness of and increased participation in those activities that support democratic goals are a high priority. Regional or single-country exchange projects should be designed to assist educators, community activists, and journalists teach about and demonstrate the efficacy of civic responsibility, citizens' initiative, and tolerance while avoiding direct political advocacy for the establishment of ''liberal democracy.'' The importance of active citizenship and the potent role of democratically oriented institutions in social change should be highlighted, with emphasis on average citizens sharing a sense of responsibility for their national future, voluntarism, and promoting community initiatives for change. Participants might include teachers, administrators, curriculum planners, Ministry of Education policy-makers, community activists, journalists, etc.

*Young Leaders and the Building of Civil Society*

Region-wide (any country or group of countries). Of specific interest for Jordan and the Palestinian Authority.

Proposals should focus on the role young leaders should and can play in building civil society. Participants would be emergent leaders—recent graduates—who appear to be on a trajectory to prominent positions in their societies and/or work with youth organizations and non-governmental organizations. Issues to be addressed would include the meaning of civil society, the role of a responsible citizenry, the separation of powers, the role of non-governmental organizations, components of democracy, the centrality of human rights, issues of national identity, etc. The exchange should encompass both the theoretical and the experiential, with participants working with and learning from American young leaders active in the development and strengthening of civil society.

*International Confidence Building*

India and Pakistan

The stability of any international relationship complicated by weapons of mass destruction depends on the willingness and ability of states to understand the dynamic of mutual vulnerability, to recognize the potential for disaster if deterrence fails, and to assume the responsibilities of nuclear ownership. South Asia is becoming increasingly militarized, and regional disputes continue to escalate. Confidence building measures appropriate to the region must be devised through dialogue among South Asians, and this might best be accomplished with a third-party facilitator.

Strategy sessions across borders, led by young, independent thinkers—political scientists and peace activists who are not political stakeholders—could be based on research papers commissioned for the purpose. Ideally these sessions would widen the discussion, build toward consensus, and sow the seeds for the group to develop into an independent institution of new thinkers with influence and credibility. An independent, American institution with South Asian specialists ready to help build a South Asian institution of new thinkers on strategic issues should be prepared to identify central issues and develop a framework for dialogue in the context of South Asia.

*Economic Policy, Investment, and the Norms of International Commerce*

Tunisia; Morocco; Algeria

The countries of North Africa would welcome proposals to strengthen ongoing efforts to establish a degree of regional economic integration, to stimulate serious thinking about transnational trade and investment, and to link North African business groups with American counterparts. Relevant issues to be incorporated into an exchange would be decentralization of commercial regulation, support for privatization, and competitiveness.

E/P contact for NEA programs: Tom Johnston, 202/619–5325; E-Mail [TJohnston@USIA.GOV]

The Office of Citizen Exchanges strongly encourages the coordination of activities with respected universities, professional associations, and major cultural institutions in the U.S. and abroad, but particularly in the U.S. Projects should be intellectual and cultural, not technical. Vocational training (an occupation other than one requiring a baccalaureate or higher academic degree; *i.e.*, clerical work, auto maintenance, etc., and other occupations requiring less than two years of higher education) and technical training (special and practical knowledge of a mechanical or a scientific subject which enhances mechanical, narrowly scientific, or semi-skilled capabilities) are ineligible for support. In addition, scholarship programs are ineligible for support.

The Office does not support proposals limited to conferences or seminars (*i.e.*, one to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only insofar as they are part of a larger project in duration and scope

that is receiving Bureau funding from this competition. Bureau-supported projects may include internships; study tours; short-term, non-technical training; and extended, intensive workshops taking place in the United States or overseas. The themes addressed in exchange programs must be of long-term importance rater than focused exclusively on current events or short-term issues. In every case, a substantial rationale must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution of the overall project, including, where applicable, the expected yield of any associated conference. No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; nor is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States. Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered. The Office of Citizen Exchanges strongly recommends that applicants consult with host country U.S. Embassies *prior* to submitting proposals.

**Selection of Participants**

All grant proposals should clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. It is recommended that programs in support of U.S. internships include letters tentatively committing host institutions to support the internships. In the selection of foreign participants, the Bureau and U.S. Embassies abroad retain the right to nominate all participants and to accept or deny participants recommended by grantee institutions. However, grantee institutions are often asked by the Bureau to suggest names of potential participants. The grantee institution will also provide the names of American participants and brief (two pages) biographical data on each American participant to the Office of Citizen Exchanges for information purposes. Priority will be given to foreign participants who have not previously traveled to the United States.

**Additional Guidance**

The Office of Citizen Exchanges offers the following additional guidance to prospective applicants:

1. The Office of Citizen Exchanges encourages project proposals involving more than one country. Pertinent rationale which links countries in multi-country projects should be included in the submission. Single-country projects that are clearly defined and possess the potential for creating and strengthening continuing linkages between foreign and U.S. institutions are also welcome.

2. Proposals for bilateral programs are subject to review and comment by the Embassy representative in the relevant country, and pre-selected participants will also be subject to Embassy review.

3. Bilateral programs should clearly identify the counterpart organization and provide evidence of the organization's participation.

4. The Office of Citizen Exchanges will consider proposals for activities that take place exclusively in other countries when U.S. Embassies are consulted in the design of the proposed program and in the choice of the most suitable venues for such programs.

5. Office of Citizen Exchanges grants are not given to support projects whose focus is limited to technical or vocational subjects, or for research projects, for publications funding, for student and/or teacher/faculty exchanges, for sports and/or sports related programs. Nor does this office provide scholarships or support for long-term (a semester or more) academic studies. Competitions sponsored by other Bureau offices are also announced in the **Federal Register.**

For projects that would begin after December 31, 2000, competition details will be announced in the **Federal Register** on or about June 1, 2000. Inquiries concerning technical requirements are welcome prior to submission of applications.

**Funding**

Although no set funding limit exists, proposals for less than $135,000 will receive preference. Organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000. Applicants are invited to provide both an all-inclusive budget as well as separate sub-budgets for each program component, phase, location, or activity in order to facilitate Bureau decisions on funding. While an all-inclusive budget must be provided with each proposal, separate component budgets are optional. Competition for Bureau funding support is keen.

The selection of grantee institutions will depend on program substance, cross-cultural sensitivity, and ability to carry out the program successfully. Since Bureau grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support. Proposals with substantial private sector support from foundations, corporations, other institutions, et al. will be deemed highly competitive. The Recipient must provide a minimum of 33 percent cost sharing of the total project cost.

The following project costs are eligible for consideration for funding:

1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $160/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used.

**Note:** U.S. escorting staff must use the published Federal per diem rates, not the flat rate. Per diem rates may be accessed at [www.usia.gov/agency/ebur-ref.html].

3. Interpreters: if needed, interpreters for the U.S. program are provided by the State Department's Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. Bureau grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $160/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance: Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. staff do not get these benefits.

5. Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

6. Room rental, which generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one.

9. A return travel allowance of $70 for each participant which is to be used for

incidental expenditures incurred during international travel.

10. All Bureau-funded delegates will be covered under the terms of a Bureau-sponsored health insurance policy. The premium is paid by the Bureau directly to the insurance company.

11. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

**Note:** The 20 percent limitation of ''administrative costs'' included in previous announcements does not apply to this RFP. Please refer to the Application Package for complete budget guidelines.

## Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Application Packet. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. All eligible proposals will also be reviewed by the program office, as well as the U.S. Embassy officers for advisory review, where appropriate. Proposals may also be reviewed by the Office of the Legal Advisor or by other offices in the Department of State. Funding decisions will made at the discretion of the Assistant Secretary of State for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) will reside with a contracts officer with competency for Bureau programs.

## Review Criteria

The Bureau will consider proposals based on their conformance with the objectives and considerations already stated in this RFP, as well as the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit originality, substance, precision, and relevance to the Agency mission.

2. *Program Planning/Ability to Achieve Program Objectives:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program objectives and plan.

3. *Multiplier Effect/Impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. *Support of Diversity:* Proposals should demonstrate the substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue, and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials, and follow-up activities

5. *Institutional Capacity/Reputation/Ability:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's or project's goal. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by USIA's Office of Contracts. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. *Follow-up Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) which ensures that Bureau-supported programs are not isolated events.

7. *Evaluation Plan:* Proposals should provide a plan for a thorough and objective evaluation of the program/project by the grantee institution.

8. *Cost-Effectiveness/Cost Sharing:* The overhead and administration components of the proposals, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

## Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by USIA that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the need of the program and the availability of funds. Organizations will be expected to cooperate with the Bureau in evaluating their programs under the principles of the Government Performance and Results Act of 1993, which requires federal agencies to measure and report on the results of their programs and activities.

## Notification

Final awards cannot be made until funds have been fully appropriated by the Congress, allocated, and committed through internal Bureau procedures. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: July 21, 1999.

**William B. Bader,**

*Associate Director, Bureau of Educational and Cultural Affairs.*

[FR Doc. 99–19460 Filed 7–28–99; 8:45 am]

BILLING CODE 8230–01–M

federal register

Thursday
July 29, 1999

# Part II

# Department of Commerce

## International Trade Administration

## Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products From France; India; Indonesia; Italy; Japan and the Republic of Korea; Notice

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–427–816]**

### Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from France

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

**EFFECTIVE DATE:** July 29, 1999.

**FOR FURTHER INFORMATION CONTACT:** Jim Terpstra or Frank Thomson, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3965 or (202) 482–4793, respectively.

### The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all references are made to the Department's regulations at 19 CFR Part 351 (1998).

### Preliminary Determination

We preliminarily determine that certain cut-to-length carbon-quality steel plate products (''CTL plate'') from France are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

*Case History*

Since the initiation of this investigation (*Notice of Initiation of Antidumping Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate from Czech Republic, France, India, Indonesia, Italy, Japan, Republic of Korea, and Former Yugoslav Republic of Macedonia* (64 FR 12959, March 16, 1999)) (''*Initiation Notice*''), the following events have occurred:

In their petition, the petitioners [1] identified Usinor S.A. (''Usinor'') and its affiliates, Creusot Loire Industrie (''CLI''), and GTS Industries S.A. (''GTS'') as possible exporters of CTL plate from France. We requested on March 12, 1999, data on all producers and exporters of the subject merchandise during the period of investigation (''POI'') from the American Embassy in Paris. Based on information on the record we issued antidumping questionnaires to Usinor, CLI and GTS on March 17, 1999. [2]

In April 1999, the United States International Trade Commission (''ITC'') issued an affirmative preliminary injury determination in this case (*see* ITC Investigation No. 731–TA–815–822).

On May 10, 1999, Usinor submitted a consolidated response to sections A, B, and C of the questionnaire on behalf of GTS and Sollac S.A. (''Sollac'') (collectively referred to as ''Usinor''). Usinor identified Sollac in its questionnaire responses as an affiliated producer of subject merchandise during the POI. Usinor submitted a response to section D of the questionnaire on May 14, 1999, and a response to section E on May 21, 1999.

On April 12, 1999, Usinor requested that it be allowed not to report information for the following entities that are affiliated with Usinor: 1) Eurodecoupe, a maker of precision-cut specialty shapes that sold subject merchandise in the home market; 2) CLI, a maker of specialty steel intended for nuclear and high pressure applications; and 3) certain affiliated downstream service centers/reprocessors. Based on the reasons and factual representations outlined in Usinor's request, on May 14, 1999, we granted this request and allowed Usinor to exclude these sales from its response. However, we indicated that we would review this matter at verification.

We issued a supplemental questionnaire for Sections A, B, and C to Usinor in May 1999 and received a response to this questionnaire along with revised home market and U.S. sales listings in June 1999. We issued a supplemental questionnaire for Sections D and E to Usinor in June 1999 and received a response to this questionnaire in June 1999. We received revised home market and U.S. sales listings, along with revised cost of production, constructed value, and further manufacturing cost tapes in July 1999.

In May and June 1999, Usinor submitted additional clarifications to its responses. Also, on July 9, 1999, petitioners submitted comments for the Department's consideration in the preliminary determination.

*Scope of Investigation*

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*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 nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or 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 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15

[1] The petitioners are Bethlehem Steel Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., the United Steelworkers of America, and the U.S. Steel Group (a unit of USX Corporation).

[2] Section A of the questionnaire requested general information concerning the company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of that merchandise in all markets. Sections B and C of the questionnaire requested home market sales listings and U.S. sales listings. Section D of the questionnaire requested information regarding the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E of the questionnaire requested information regarding the cost of further manufacture or assembly performed in the United States.

percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

*Scope Comments*

As stated in our notice of initiation, we set aside a period for parties to raise issues regarding product coverage. In particular, we sought comments on the specific levels of alloying elements set out in the description above, the clarity of grades and specifications excluded from the scope, and the physical and chemical description of the product coverage.

On March 29, 1999, Usinor, a respondent in the French antidumping and countervailing duty investigations and Dongkuk Steel Mill Co., Ltd. and Pohang Iron and Steel Co., Ltd., respondents in the Korean antidumping and countervailing duty investigations (collectively the Korean respondents), filed comments regarding the scope of the investigations on CTL plate and the Department's model matching criteria. On April 14, 1999, the petitioners filed comments regarding Usinor's and the Korean respondents' comments regarding model matching. In addition, on May 17, 1999, ILVA S.p.A. (ILVA), a respondent in the Italian antidumping and countervailing duty investigations, requested guidance on whether certain products are within the scope of these investigations.

Usinor requested that the Department modify the scope to exclude: (1) Plate that is cut to non-rectangular shapes or that has a total final weight of less than 200 kilograms; and (2) steel that is 4″ or thicker and which is certified for use in high-pressure, nuclear or other technical applications; and (3) floor plate (*i.e.*, plate with ''patterns in relief'') made from hot-rolled coil. Further, Usinor requested that the Department provide clarification of scope coverage with respect to what it argues are over-inclusive HTSUS subheadings included in the scope language.

The Department has not modified the scope of these investigations because the current language reflects the product coverage requested by the petitioners, and Usinor's products meet the product description. With respect to Usinor's clarification request, we do not agree that the scope language requires further elucidation with respect to product coverage under the HTSUS. As indicated in the scope section of every Department antidumping and countervailing duty proceeding, the HTSUS subheadings are provided for convenience and Customs purposes only; the written description of the merchandise under investigation or review is dispositive.

The Korean respondents requested confirmation whether the maximum alloy percentages listed in the scope language are definitive with respect to covered HSLA steels.

At this time, no party has presented any evidence to suggest that these maximum alloy percentages are inappropriate. Therefore, we have not adjusted the scope language. As in all proceedings, questions as to whether or not a specific product is covered by the scope and, hence, must be reported, should be timely raised with Department officials.

ILVA requested guidance on whether certain merchandise produced from billets is within the scope of the current CTL plate investigations. According to ILVA, the billets are converted into wide flats and bar products (a type of long product). ILVA notes that one of the long products, when rolled, has a thickness range that falls within the scope of these investigations. However, according to ILVA, the greatest possible width of these long products would only slightly overlap the narrowest category of width covered by the scope of the investigations. Finally, ILVA states that these products have different production processes and properties than merchandise covered by the scope of the investigations and therefore are not covered by the scope of the investigations.

As ILVA itself acknowledges, the particular products in question appear to fall within the parameters of the scope and, therefore, we are preliminarily treating them as covered merchandise.

*Period of Investigation*

The POI is January 1, 1998 through December 31, 1998.

*Fair Value Comparisons*

To determine whether sales of CTL plate from France to the United States were made at less than fair value, we compared the constructed export price (''CEP'') to the Normal Value (''NV''), as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average CEPs for comparison to weighted-average NVs.

*Product Comparisons*

In accordance with section 771(16) of the Act, we considered all products produced by Usinor covered by the description in the ''Scope of Investigation'' section, above, and sold in France during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance (which are identified in Appendix V of the questionnaire): Painting, quality, grade specification, heat treatment, nominal thickness, nominal width, patterns in relief, and descaling.

Because Usinor had no sales of non-prime merchandise in the United States during the POI, we did not use home market sales of non-prime merchandise in our product comparisons (*see, e.g., Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire*

*Rod from Sweden* (63 FR 40449, 40450, July 29, 1998) (''*SSWR*'')).

*Level of Trade*

In accordance with section 773(a)(1)(B) 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 constructed value (''CV''), that of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profit. With respect to U.S. price and CEP transactions, the LOT is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, 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 difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

Usinor reported three customer categories (*i.e.*, steel service centers/resellers, pipe makers and original equipment manufacturers) and five channels of distribution in the home market (*i.e.*, sales made by Usinor's affiliated producer Sollac, through its affiliated sales network Sollac Vente France (SVF), directly to unaffiliated service centers or end users (Channel 1), sales from Sollac, through SVF, to its affiliated steel service center, SLPM, together with subsequent resales by SLPM to unaffiliated end users (Channel 2), sales made by Usinor's affiliated producer GTS Industries (GTS) directly to its affiliated customer Europipe (Channel 3), sales made by GTS, through SVF, directly to unaffiliated service centers or end users (Channel 4), and sales from GTS, through SVF, to its affiliated steel service center, SLPM, together with subsequent resales by SLPM to unaffiliated end users (Channel 5)).

We determined that Usinor sold merchandise at two LOTs in the home market during the POI. The first LOT involved sales through Channels 1, 3 and 4. The second LOT involved Usinor's sales through its affiliated steel service center, SLPM, in Channels 2 and 5. We found significant distinctions in selling activities and associated expenses between the sales through Channels 2 and 5 and those through Channels 1, 3 and 4. Based on these differences, we conclude that two LOTs existed in the home market. From our analysis of the marketing process for these sales, we also determined that sales through Channels 2 and 5 were made at a more remote marketing stage than that for sales through Channels 1, 3 and 4. Because the large number of channels of distribution and selling expenses involved in this analysis presents difficulty in providing an adequate summary in this notice, see the *LOT/CEP Memorandum* for a detailed explanation of the above, dated July 19, 1999, on file in Import Administration's Central Records Unit (''CRU''), Room B–099, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Usinor reported three customer categories (*i.e.*, steel service centers/resellers, pipe makers and original equipment manufacturers) and three channels of distribution in the United States: 1) CEP sales made by Sollac, through its affiliated U.S. importer Francosteel, to unaffiliated service centers or end users (Channel 6), 2) CEP sales made by GTS, through its affiliated U.S. importer Francosteel, to unaffiliated service centers or end users (Channel 7), and 3) CEP sales from GTS directly to its affiliate Berg Steel, who further manufactured the subject merchandise into non-subject merchandise, pipe, and resold it to unaffiliated end users (Channel 8).

In order to determine whether separate LOTs actually existed between the U.S. and home market, we reviewed the selling activities associated with each channel of distribution. We determined that fewer and different selling functions were performed for Usinor's CEP sales than for sales at either of the home market LOTs and these differences constitute differences in LOT. Therefore, we examined whether a LOT adjustment was appropriate. The Department makes this adjustment when it is demonstrated that a difference in LOTs affects price comparability. *See* The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. (1994) (hereinafter, the ''SAA'') at 829–830. However, where the available data do not provide an appropriate basis upon which to determine a LOT adjustment, and where the NV is established at a LOT that is at a more advanced stage of distribution than the LOT of the CEP transactions, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). Because the LOT of the U.S. sales is different than either home market LOTs, there is no reliable basis for quantifying a LOT adjustment in accordance with section 773(a)(7)(A) of the Act. Further, we found that the home market sales were at a more advanced stage of distribution compared to sales at either U.S. LOT. Therefore, a CEP offset was applied to NV for the NV–CEP comparisons. Because the large number of channels of distribution and selling expenses involved in this analysis presents difficulty in providing an adequate summary in this notice, see the *LOT/CEP Memorandum* for a detailed explanation of our analysis.

*Constructed Export Price*

Usinor reported as CEP transactions the resales of its subject merchandise by Francosteel to unaffiliated customers in the United States (channels 6 and 7). We calculated CEP, in accordance with subsection 772(b) of the Act, based on those sales to the first unaffiliated purchaser that took place after importation into the United States.

In addition, Usinor reported as CEP transactions sales of pipe products which were further manufactured from CTL plate (subject merchandise) by one of its affiliates in the United States (channel 8). For these sales we used the price to the first unaffiliated customer and deducted the costs of further manufacturing, in accordance with section 772(d)(2) of the Act. We used the information in Usinor's Section E response to calculate further manufacturing costs, except in the following instances where the data were not properly quantified or valued: (1) We increased the reported further manufacturing costs because we disallowed an adjustment made to coating costs, (2) we revised the reported further manufacturing G&A expense rate to reflect the change we made to coating costs, and (3) we revised the reported further manufacturing interest expense to reflect the interest expenses incurred by Berg Steel Pipe Corporation (''Berg''), Usinor's affiliate that further manufactures the plate in the United States. For further information *see*

*Memorandum to Neal Halper,* dated July 19, 1999.

We based CEP on the packed FOB or delivered prices to unaffiliated purchasers in the United States. We made adjustments to the starting price, where appropriate, for freight revenue, interest revenue, and billing adjustments. We made deductions for early payment discounts and rebates, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. brokerage and handling, foreign trade zone fees, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), and U.S. inland freight expenses (freight from warehouse to the customer). In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs, warranty expenses, and other direct selling expenses), inventory carrying costs, other indirect selling expenses, and commissions. We also deducted an amount for further-manufacturing costs, where applicable, in accordance with section 772(d)(2) of the Act and made an adjustment for profit in accordance with section 772(d)(3) of the Act.

*Normal Value*

After testing (1) home market viability, (2) whether sales to affiliates were at arm's-length prices, and (3) whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparisons'' sections of this notice.

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Usinor's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because Usinor's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for Usinor.

2. Affiliated-Party Transactions and Arm's-Length Test

We have applied the arm's-length test to affiliated-party transactions by comparing them to sales of identical merchandise from Usinor to unaffiliated home market customers. If these affiliated-party sales satisfied the arm's-length test, we used them in our analysis. Sales to affiliated customers in the home market not made at arm's-length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102.

To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and rebates, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c) and 62 FR at 27355. In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. Where the exclusion of such sales eliminated all sales of the identical or most similar comparison product, we made a comparison to the next most similar model. *See*, (e.g., SSWR).

3. Cost of Production Analysis

In their petition, the petitioners submitted an allegation pursuant to section 773(b)(1) of the Act that Usinor had made sales in the home market at less than the cost of production (''COP''). Our analysis of the allegation indicated that there were reasonable grounds to believe or suspect that Usinor sold CTL plate in the home market at prices less than the COP. Accordingly, we initiated COP investigations with respect to Usinor to determine whether sales were made at prices less than the COP pursuant to section 773(b) of the Act (*see Initiation Notice*, 64 FR 12959, 12962).

We conducted the COP analysis described below.

*A. Calculation of COP*

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Usinor's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses (''SG&A''), interest expense, and packing costs.

We relied on the COP data Usinor submitted in its Section D questionnaire responses, without adjustment, to calculate weighted-average COPs for the POI.

*B. Test of Home Market Sales Prices*

We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below COP. In determining whether to disregard home market sales made at prices less than the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, discounts, and direct and indirect selling expenses.

*C. Results of the COP Test*

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we do not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Alternatively, where 20 percent or more of a respondent's sales of a given product during the POI (normally equal to one year, but not less than six months) are at prices less than the COP, we determined that such sales have been made in ''substantial quantities'' in accordance with sections 773(b)(2)(B) and (C) of the Act. In such cases, because we compared prices to POI average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Therefore, in such instances, we disregarded the below-cost sales.

In this investigation, we found that, for certain products, more than 20 percent of Usinor's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining above-cost sales as the basis for determining NV where such sales existed, in accordance with section 773(b)(1) of the Act.

*D. Calculation of CV*

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Usinor's cost of materials, fabrication, SG&A, interest, U.S. packing costs, and profit. We made similar adjustments as those described above for COP. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses.

*Price-to-Price Comparisons*

We calculated NV based on delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length prices. We made adjustments to the starting price, where appropriate, for billing adjustments. We made deductions, where appropriate, from the starting price for early payment discounts, other discounts, rebates, and inland freight. We made circumstance of sale (COS) adjustments, in accordance with section 773(a)(6)(c)(iii) of the Act, for direct selling expenses, including warranty expenses, credit expenses, and other direct selling expenses. In addition, we made adjustments for differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

*Price-to-CV Comparisons*

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. Where we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses and added U.S. selling expenses.

*Currency Conversion*

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *see Policy Bulletin 96–1: Currency Conversions* (61 FR 9434, March 8, 1996).) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the French franc did not undergo a sustained movement.

*Verification*

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

*Suspension of Liquidation*

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

| Exporter/manufacturer | Weighted-average margin percentage |
|---|---|
| Usinor | 29.88 |
| All Others | 29.88 |

*ITC Notification*

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

*Public Comment*

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than August 25, 1999, and rebuttal briefs no later than September 1, 1999. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on September 7, 1999, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

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, U.S. Department of Commerce, Room 1870, within 30 days of the 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 the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: July 19, 1999.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 99–19300 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–533–817]**

## Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products From India

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

**EFFECTIVE DATE:** July 29, 1999.

**FOR FURTHER INFORMATION CONTACT:** James Terpstra, Timothy Finn, or Lyman Armstrong, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3965, (202) 482–0065, and (202) 482–3601, respectively.

## The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all references are made to the Department's regulations at 19 CFR Part 351 (1998).

## Preliminary Determination

We preliminarily determine that certain cut-to-length carbon-quality steel plate products (''CTL plate'') from India are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

### *Case History*

Since the initiation of this investigation (*Notice of Initiation of Antidumping Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate from Czech Republic, France, India, Indonesia, Italy, Japan, Republic of Korea, and Former Yugoslav Republic of Macedonia*), 64 FR 12959 ( March 16, 1999) (''*Initiation Notice*''), the following events have occurred:

In their petition, the petitioners [1] identified the Steel Authority of India (''SAIL'') as the sole exporter of CTL plate from India. Based on the petition and information provided by the U.S. embassy in New Delhi indicating that SAIL was the sole exporter of subject merchandise from January 1, 1998 through December 31, 1998, the period of investigation (''POI''), we issued an antidumping questionnaire to SAIL on March 17, 1999.[2]

In April 1999, the United States International Trade Commission (''ITC'') issued an affirmative preliminary injury determination in this case (*see* ITC Investigation No. 731–TA–815–822).

Between April 12, and May 11, 1999, SAIL submitted responses to all applicable sections of the questionnaire. On May 20, 1999, SAIL submitted certain clarifications which supplemented its Section A response.

On May 24, 1999, petitioners submitted comments regarding SAIL's questionnaire responses, and on May 27, 1999, we issued a supplemental questionnaire covering Sections A–D of SAIL's response.

On June 1, 1999, petitioners submitted additional comments on SAIL's April 12, 1999 and May 10, 1999 questionnaire responses.

On June 3 and 8, 1999, SAIL submitted certain clarifications supplementing SAIL's May 10, 1999 response.

On June 11, 1999, we issued a further supplemental questionnaire covering Sections A–C of SAIL's questionnaire response.

On June 16, 1999, SAIL submitted a revised electronic database. *See* also *Facts Available* section below.

On June 18, 1999, we issued a further supplemental questionnaire concerning SAIL's Section D response, which SAIL had supplemented on June 8, 1999. Also on June 18, 1999, SAIL submitted certain data supplementing its previous submissions.

On June 29, 1999, SAIL made three submissions. The first two submissions were due on June 28 and responded to the Department's letter of June 18, 1999 to SAIL. The third submission responded to the Department's May 27, 1999 supplemental questionnaire, which was due June 18, 1999. On July 2, 1999, we returned all three of these submissions to SAIL as untimely. *See* also the *Facts Available* section below.

On July 6, 1999, petitioners submitted comments regarding deficiencies in SAIL's questionnaire responses.

Finally, on July 12, 1999, we issued a letter to SAIL providing it with a final opportunity to submit a reliable electronic database and information on product-specific costs. On July 16, 1999, SAIL provided this information. *See* also *Facts Available* section below.

### *Facts Available*

We have determined that the use of facts available is appropriate for SAIL for purposes of this preliminary determination. Although SAIL filed a questionnaire response, it contained numerous errors. Moreover, because of the problems with the electronic databases that SAIL submitted, its questionnaire response cannot be used to calculate a reliable margin at this time. Section 776(a)(2)(B) of the Act provides that the administering authority shall use facts otherwise available when an interested party ''fails to provide such information by the deadlines for the submission of the information or in the form and manner requested.'' Therefore, the use of facts available is warranted in this case.

Section 776(b) of the Act provides that adverse inferences may be used in selecting from the facts available if a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. As explained in more detail below, SAIL was provided with numerous opportunities and (effective) extensions of time to fully respond to the Department's original and supplemental questionnaires. However, even with several opportunities to remedy problems, SAIL failed to provide, *inter alia*, a reliable electronic database. Therefore, the Department preliminarily finds that SAIL did not act to the best of its ability to provide the information requested. As a consequence, we have used an adverse inference in selecting the facts available to determine SAIL's margin.

As we discuss below, there are three inter-related problems with SAIL's questionnaire response: (1) technical errors in its electronic databases; (2) lateness and incompleteness of certain narrative portions of its questionnaire response; and (3) the lack of product-specific costs. However, our decision to use facts available for the preliminary determination is based primarily on our inability to use the electronic databases that SAIL submitted.

The problems with the electronic databases began with SAIL's first electronic submission which was formatted incorrectly and was substantially incomplete. As much of the underlying problems with these data involve proprietary information, there is a detailed discussion of these problems in a *Memorandum to the File regarding Problems with SAIL's Questionnaire Response*, dated July 19, 1999 (''SAIL memo''). From the time these electronic databases were submitted on May 11, 1999, until the submission of its revised electronic tapes on July 16, 1999, the Department repeatedly requested that SAIL revise and correct various sections of these databases. However, SAIL never

[1] The petitioners are Bethlehem Steel Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., Tuscaloosa Steel Corporation, the United Steelworkers of America, and the U.S. Steel Group (a unit of USX Corporation).

[2] Section A of the questionnaire requested general information concerning the company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of that merchandise in all markets. Sections B and C of the questionnaire requested home market sales listings and U.S. sales listings. Section D of the questionnaire requested information regarding the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E of the questionnaire requested information regarding the cost of further manufacture or assembly performed in the United States.

resolved all of the ongoing technical problems to a point where the databases could be used reliably in our preliminary determination. SAIL argued that it is a large, decentralized steel producer with 3 plants, 6 regional sales offices, and 42 local service centers which is not fully automated, making the preparation of consolidated electronic databases extremely difficult. On July 12, 1999, we gave SAIL one final opportunity to supply reliable electronic databases to the Department.

Furthermore, certain portions of SAIL's original questionnaire response were substantially incomplete. Throughout its original response, SAIL either failed to provide information, or stated that certain information would be submitted at a later date, effectively granting itself an extension of time for the submission of factual information. After several such submissions, we returned SAIL's information as untimely. *See* our letter of July 2, 1999. Although we have issued several supplemental questionnaires and SAIL responded to them, we have been unable to evaluate adequately the firm's selling practices because of problems with the electronic databases discussed above. On July 16, 1999 SAIL submitted one final electronic database. We intend to issue a final supplemental questionnaire to SAIL after reviewing this electronic data.

Regarding the lack of product-specific costs, SAIL claims that its cost accounting records do not track costs on the product-specific basis required by the questionnaire. Instead, SAIL records cost on a more aggregated level. However, in its questionnaire response, SAIL reported different costs for different products using certain cost allocations. SAIL claimed that the allocation method it used was the only one available given the limitations of its accounting system. However, it is not clear whether SAIL's reported costs are reliable for margin calculation purposes, or that they are based on the most reasonable method available from its accounting records. Because a decision on this issue necessarily requires a detailed analysis of SAIL's accounting system, we have determined that it is necessary to examine this issue exhaustively at verification. *See* also the SAIL memo for a more detailed discussion.

For the preliminary determination, we assigned SAIL the average of the margins in the petition, which is 58.50 percent. Although we find that SAIL did not fully cooperate to the best of its ability, SAIL tried to provide the Department with the data requested in the antidumping questionnaire. Recognizing SAIL's attempts to respond to the Department's information requests, and in light of its claimed difficulties, we do not believe that it is appropriate to assign the highest margin alleged in the petition at this time. *See e.g., Krupp Stahl AG* v. *U.S.*, 822 F. Supp. 789, 793 (Court of International Trade 1993), which referenced a Court of Appeals' opinion sanctioning the Department's practice of taking into account the level of respondent's cooperation, and *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Germany*, 63 FR 8953, 8955 (February 23, 1998).)

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316, (1994) (hereinafter, the ''SAA'') states that ''corroborate'' means to determine that the information used has probative value. *See* SAA at 870.

In accordance with section 776(c) of the Act, we sought to corroborate the data contained in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.*, import statistics and foreign market research reports). *See Initiation Notice*.

For purposes of the preliminary determination, we attempted to corroborate the information in the petition. The petition margins were based on both price-to-price and price-to-constructed value comparisons. Petitioners calculated export price was based on U.S. price offerings, with deductions taken for international movement charges. We compared this with information from U.S. Customs and found them consistent. Petitioners based normal value on prices for comparable products sold in the home market obtained from market research. Petitioners calculated constructed value based on their own production experience adjusted for known differences. We compared the petition information with reliable information obtained during the investigation, primarily SAIL's financial statements and other published materials from the questionnaire response and found them consistent. Given the problems with the data submitted by SAIL, as discussed above, this was the only information in the questionnaire response that was reliable for these purposes, the actual reported prices and costs being difficult to adequately evaluate at this time. Consequently, we find that information in the petition continues to be of probative value. *See Corroboration Memo*, July 19, 1999.

*Scope of Investigation*

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*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 nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or 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 0.10 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 zirconium. All products that

meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

*Scope Comments*

As stated in our notice of initiation, we set aside a period for parties to raise issues regarding product coverage. In particular, we sought comments on the specific levels of alloying elements set out in the description below, the clarity of grades and specifications excluded from the scope, and the physical and chemical description of the product coverage.

On March 29, 1999, Usinor, a respondent in the French antidumping and countervailing duty investigations and Dongkuk Steel Mill Co., Ltd. and Pohang Iron and Steel Co., Ltd., respondents in the Korean antidumping and countervailing duty investigations (collectively the Korean respondents), filed comments regarding the scope of the investigations on CTL plate and the Department's model matching criteria. On April 14, 1999, the petitioners filed comments regarding Usinor's and the Korean respondents' comments regarding model matching. In addition, on May 17, 1999, ILVA S.p.A. (ILVA), a respondent in the Italian antidumping and countervailing duty investigations, requested guidance on whether certain products are within the scope of these investigations.

Usinor requested that the Department modify the scope to exclude: (1) plate that is cut to non-rectangular shapes or that has a total final weight of less than 200 kilograms; and (2) steel that is 4″ or thicker and which is certified for use in high-pressure, nuclear or other technical applications; and (3) floor plate (*i.e.*, plate with ''patterns in relief'') made from hot-rolled coil. Further, Usinor requested that the Department provide clarification of scope coverage with respect to what it argues are over-inclusive HTSUS subheadings included in the scope language.

The Department has not modified the scope of these investigations because the current language reflects the product coverage requested by the petitioners, and Usinor's products meet the product description. With respect to Usinor's clarification request, we do not agree that the scope language requires further elucidation with respect to product coverage under the HTSUS. As indicated in the scope section of every Department antidumping and countervailing duty proceeding, the HTSUS subheadings are provided for convenience and Customs purposes only; the written description of the merchandise under investigation or review is dispositive.

The Korean respondents requested confirmation whether the maximum alloy percentages listed in the scope language are definitive with respect to covered HSLA steels.

At this time, no party has presented any evidence to suggest that these maximum alloy percentages are inappropriate. Therefore, we have not adjusted the scope language. As in all proceedings, questions as to whether or not a specific product is covered by the scope and, hence, must be reported, should be timely raised with Department officials.

ILVA requested guidance on whether certain merchandise produced from billets is within the scope of the current CTL plate investigations. According to ILVA, the billets are converted into wide flats and bar products (a type of long product). ILVA notes that one of the long products, when rolled, has a thickness range that falls within the scope of these investigations. However, according to ILVA, the greatest possible width of these long products would only slightly overlap the narrowest category of width covered by the scope of the investigations. Finally, ILVA states that these products have different production processes and properties than merchandise covered by the scope of the investigations and therefore are not covered by the scope of the investigations.

As ILVA itself acknowledges, the particular products in question appear to fall within the parameters of the scope and, therefore, we are preliminarily treating them as covered merchandise.

*Period of Investigation*

The period of investigation is January 1, 1998 through December 31, 1998.

*Verification*

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

*Suspension of Liquidation*

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average margin, as indicated in the chart below. We will adjust the deposit requirements to account for any export subsidies found in the companion countervailing duty investigation. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

| Exporter/manufacturer | Weighted-average margin percentage |
|---|---|
| SAIL | 58.50 |
| All Others [3] | 58.50 |

[3] The Act normally prohibits inclusion in the ''All Others'' rate of any margins determined entirely on the basis of facts available, pursuant to section 776. Where the estimated weighted-average margin (s) is based entirely on facts available, we must use any reasonable method to establish the estimated ''All Others'' rate for exporters and producers nor individually investigated. *See* section 733(d)(1)(ii); 735(c)(5)(B). In this case, we have determined that the only reasonable method is to use the 58.50 percent simple average of the margins alleged in the petition which was also the source of our facts available margin for SAIL.

*ITC Notification*

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final

determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

*Public Comment*

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than August 25, 1999, and rebuttal briefs no later than September 1, 1998. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on September 8, 1999, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

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, U.S. Department of Commerce, Room 1870, within 30 days of the 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 the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: July 19, 1999.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 99–19301 Filed 7–28–99; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–560–805]**

### Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products From Indonesia

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

**EFFECTIVE DATE:** July 29, 1999.

**FOR FURTHER INFORMATION CONTACT:** Barbara Wojcik-Betancourt or Brian C. Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0629 or (202) 482–1766, respectively.

### The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all references are made to the Department's regulations at 19 CFR Part 351 (1998).

### Preliminary Determination

We preliminarily determine that certain cut-to-length carbon-quality steel plate products (''CTL plate'') from Indonesia are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

*Case History*

Since the initiation of this investigation (*Notice of Initiation of Antidumping Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate from Czech Republic, France, India, Indonesia, Italy, Japan, Republic of Korea, and Former Yugoslav Republic of Macedonia* (64 FR 12959, March 16, 1999))(''*Initiation Notice*''), the following events have occurred:

In their petition, the petitioners [1] identified PT Gunawan Dianjaya Steel (''Gunawan''), PT Jaya Pari Steel Corporation (''Jaya Pari''), and PT Krakatau Steel (''Krakatau'') as possible exporters of CTL plate from Indonesia. Though we requested on March 8, 1999, data on all producers and exporters of the subject merchandise during the period of investigation (''POI'') from the U.S. Embassy in Jakarta, the U.S. Embassy was unable to provide any additional information on producers or exporters of the subject merchandise to the United States. Based on information contained in the petition, the Department issued antidumping questionnaires to Gunawan, Jaya Pari and Krakatau in March 1999.[2]

In April 1999, the United States International Trade Commission (''ITC'') issued an affirmative preliminary injury determination in this case (*see* ITC Investigation No. 731–TA–815–822). Also, the Department received a response to all applicable sections of the questionnaire from Gunawan and Jaya Pari.

On April 7, 1999, Krakatau, a *pro* se company, notified the Department that it did not have the resources available to respond to the Department's questionnaire because of the economic hardship caused by the Indonesian financial crisis. Krakatau filed its letter within the deadline specified for notifying the Department of difficulties faced in responding to the questionnaire in accordance with section 782(c)(1) of the Act and section 351.301(c)(2) of the Department's regulations. On April 20, 1999, the Department informed Krakatau that it was still required to submit a full questionnaire response. However, recognizing Krakatau's claimed difficulties, the Department informed Krakatau that it would grant Krakatau an extension of time to respond to the questionnaire, if requested, and in accordance with section 782(c)(2) of the Act, would provide assistance to Krakatau, to the extent practicable, in preparing its response.

On April 26, 1999, Krakatau requested that the Department reconsider its April 20, 1999, decision and excuse it from the reporting requirement because of its relatively small shipments of the subject merchandise to the United States during the POI and because the Department in

[1] The petitioners are Bethlehem Steel Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., Tuscaloosa Steel Corporation, the United Steelworkers of America, and the U.S. Steel Group (a unit of USX Corporation).

[2] Section A of the questionnaire requested general information concerning the company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of that merchandise in all markets. Sections B and C of the questionnaire requested home market sales listings and U.S. sales listings. Section D of the questionnaire requested information regarding the cost of production (''COP'') of the foreign like product and the constructed value (''CV'') of the merchandise under investigation. Section E of the questionnaire requested information regarding the cost of further manufacture or assembly performed in the United States.

past cases has excused companies under similar circumstances. On the same day, the Department informed Krakatau that although the cover letter to the questionnaire mentioned that if the number of exporters and producers was large, the Department might find it necessary, due to resource constraints, to limit the number of companies subject to the investigation, the Department had determined that it now had sufficient resources to examine all Indonesian exporters and producers of the subject merchandise which were served with a questionnaire in accordance with section 351.204(c) of the Department's regulations. However, recognizing the fact that Krakatau was experiencing difficulties in responding to the questionnaire, the Department again provided Krakatau with an opportunity to respond to the questionnaire by extending the deadline until May 10, 1999. In response to an April 28, 1999, letter from Krakatau requesting assistance on compiling its home market and U.S. sales, the Department on April 30, 1999, provided Krakatau with formatted lotus spreadsheets containing the data fields listed in the questionnaire.

On May 6, 1999, the Department sent Krakatau a letter which provided the *pro se* company with guidelines to follow for submitting documents in antidumping duty proceedings. On May 7, 1999, Krakatau requested an extension of the deadline for submitting its questionnaire response. Due to the statutory time constraints in this case and fairness considerations with respect to other companies participating in the CTL plate proceedings, we granted Krakatau only a partial extension of the deadline until May 14, 1999. On May 13, 1999, we received a response from Krakatau which was significantly incomplete in that it contained no narrative explanation of the documentation submitted or electronic media for its sales, cost and expense data. Recognizing its effort to attempt to respond to the Department's questionnaire, we allowed Krakatau until May 21, 1999, to provide the requested information. We also reminded Krakatau of the instructions contained in the Department's May 6, 1999, letter, which outlined how to properly file questionnaire responses. After receiving Krakatau's questionnaire response on May 24, 1999, we informed Krakatau on May 27, 1999, that the Department was rejecting its response because (1) Krakatau missed the extended deadline date within which to submit its response; (2) Krakatau did not properly file its response in accordance with the Department's instructions; and (3) Krakatau did not fully respond to the Department's questionnaire. In an effort to provide Krakatau with a final opportunity to provide the requested data for use in the preliminary determination given its previous effort to respond to the questionnaire, and based on our decision to require the Indonesian respondents to respond to additional questions based on our determination that the Indonesian economy underwent high inflation during the POI,[3] we granted Krakatau additional time until June 11, 1999, to remedy its deficiencies, which were enumerated in the attachment to our letter dated, May 27, 1999. In our May 27, 1999, letter, we again furnished Krakatau with filing instructions and also provided Krakatau with a section D questionnaire for high-inflation economies.

We issued supplemental section A, B, C and D questionnaires to Gunawan and Jaya Pari in May 1999, including questions related to high-inflation economies, and received responses to these questionnaires along with revised home market and U.S. sales listings in June 1999.

In June 1999, in accordance with section 782(c)(2) of the Act, the Department provided Krakatau additional assistance, upon the company's request, by sending a member of its staff to Jakarta to answer any questions Krakatau had with respect to the Department's questionnaire requirements. Based on the company's request for an extension of time to respond to the supplemental questionnaire subsequent to the Department's visit, the Department on June 10, 1999, granted Krakatau a final extension until June 25, 1999, to file a complete questionnaire response, including monthly production cost data in accordance with its high-inflation methodology. We also stated in the June 10, 1999, letter that we may be unable to use Krakatau's response, if filed by June 25, 1999, in the preliminary determination given the proximity of the final extended response deadline date to the Department's preliminary determination deadline date. While Krakatau's response was received by the Department on the deadline date, it continued to contain major deficiencies and omissions of data despite the Department's previous instructions. For example, Krakatau provided neither calculation worksheets for its reported per-unit charges and adjustments, nor monthly packing and COP amounts on a control-number-specific basis in accordance with the Department's high-inflation methodology. Krakatau also provided no historical shipment data for use in the Department's critical circumstances determination.

On July 2, 1999, the petitioner submitted comments dealing with the Department's high-inflation methodology for consideration in the preliminary determination. On July 7 and 8, 1999, Gunawan and Jaya Pari submitted revised cost data. Also on July 8, 1999, the Department issued Krakatau a supplemental questionnaire and advised Krakatau that it would have to respond fully to the supplemental questionnaire in a timely manner before the Department could consider conducting verification of its response for use in the final determination.

*Scope of Investigation*

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (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 nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically

[3] Based on our analysis of Indonesia's consumer price and wholesale price indices, we determined that the Indonesian economy was experiencing high inflation during the POI (see 1999 issues of the International Monetary Fund's *International Financial Statistics*). ''High inflation'' is a term used to refer to a high rate of increase in price levels. Investigations and reviews involving exports from countries with highly inflationary economies require special methodologies for comparing prices and calculating CV and COP. Generally, a 25 percent inflation rate has been used as a general guide for assessing the impact of inflation on AD investigations and reviews (*see* Antidumping Manual, Chapter 8, Section XV, updated February 10, 1998; *see* also Policy Bulletin No. 94.5, entitled ''Differences in Merchandise Calculations in Hyperinflationary Economies,'' dated March 25, 1994).

included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or 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 0.10 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 zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from this investigation: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to this investigation is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

*Scope Comments*

As stated in our notice of initiation, we set aside a period for parties to raise issues regarding product coverage. In particular, we sought comments on the specific levels of alloying elements set out in the description above, the clarity of grades and specifications excluded from the scope, and the physical and chemical description of the product coverage.

On March 29, 1999, Usinor, a respondent in the French antidumping and countervailing duty investigations and Dongkuk Steel Mill Co., Ltd. and Pohang Iron and Steel Co., Ltd., respondents in the Korean antidumping and countervailing duty investigations (collectively ''the Korean respondents''), filed comments regarding the scope of the investigations on CTL plate and the Department's model matching criteria. On April 14, 1999, the petitioners filed comments regarding Usinor's and the Korean respondents' comments regarding model matching. In addition, on May 17, 1999, ILVA S.p.A. (''ILVA''), a respondent in the Italian antidumping and countervailing duty investigations, requested guidance on whether certain products are within the scope of these investigations.

Usinor requested that the Department modify the scope to exclude: (1) plate that is cut to non-rectangular shapes or that has a total final weight of less than 200 kilograms; and (2) steel that is 4″ or thicker and which is certified for use in high-pressure, nuclear or other technical applications; and (3) floor plate (*i.e.*, plate with ''patterns in relief'') made from hot-rolled coil. Further, Usinor requested that the Department provide clarification of scope coverage with respect to what it argues are over-inclusive HTSUS subheadings included in the scope language.

The Department has not modified the scope of these investigations because the current language reflects the product coverage requested by the petitioners, and Usinor's products meet the product description. With respect to Usinor's clarification request, we do not agree that the scope language requires further elucidation with respect to product coverage under the HTSUS. As indicated in the scope section of every Department antidumping and countervailing duty proceeding, the HTSUS subheadings are provided for convenience and Customs purposes only; the written description of the merchandise under investigation or review is dispositive.

The Korean respondents requested confirmation whether the maximum alloy percentages listed in the scope language are definitive with respect to covered HSLA steels.

At this time, no party has presented any evidence to suggest that these maximum alloy percentages are inappropriate. Therefore, we have not adjusted the scope language. As in all proceedings, questions as to whether or not a specific product is covered by the scope and, hence, must be reported, should be timely raised with Department officials.

ILVA requested guidance on whether certain merchandise produced from billets is within the scope of the current CTL plate investigations. According to ILVA, the billets are converted into wide flats and bar products (a type of long product). ILVA notes that one of the long products, when rolled, has a thickness range that falls within the scope of these investigations. However, according to ILVA, the greatest possible width of these long products would only slightly overlap the narrowest category of width covered by the scope of the investigations. Finally, ILVA states that these products have different production processes and properties than merchandise covered by the scope of the investigations and therefore are not covered by the scope of the investigations.

As ILVA itself acknowledges, the particular products in question appear to fall within the parameters of the scope and, therefore, we are preliminarily treating them as covered merchandise for purposes of these investigations.

*Period of Investigation*

The POI is January 1, 1998, through December 31, 1998.

*Facts Available*

We did not receive a full questionnaire response from Krakatau in time to analyze Krakatau's information for the preliminary determination. Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.'' Although Krakatau provided the Department with a questionnaire

response on June 25, 1999, that response contained numerous deficiencies and omissions of data which rendered the submission unusable for the preliminary determination. Therefore, in accordance with section 776(a) of the Act, we have determined that use of facts available is appropriate for Krakatau at this time. We have issued Krakatau another supplemental questionnaire and, pending receipt of a timely and adequate supplemental response, intend to verify all of Krakatau's submitted data for use in the final determination.

Section 776(b) of the Act provides that adverse inferences may be used in selecting from the facts available if a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. As explained in the ''Case History'' section above, Krakatau, a *pro se* company, had requested the Department's assistance in responding to the questionnaire. In response to Krakatau's request for assistance, the Department helped Krakatau to understand the reporting requirements. The Department's assistance in this regard included sending staff to Krakatau's facilities in Jakarta, Indonesia to clarify and elaborate on the Department's reporting requirements contained in the questionnaire and subsequent Departmental letters. Krakatau was provided numerous opportunities and extensions of time to fully respond to the Department's questionnaire. However, even with the assistance of the Department's staff, Krakatau failed to provide a questionnaire response that addressed the most important deficiencies identified by the Department in the attachment to its May 27, 1999, letter. Therefore, the Department preliminarily finds that Krakatau did not act to the best of its ability to provide the information requested, despite the extent of assistance it received from the Department. Therefore, we have used an adverse inference in selecting the facts available to determine Krakatau's preliminary margin.

For the preliminary determination, we assigned Krakatau the simple average of the margins in the petition, 35.01 percent, rather than the highest margin, 52.42 percent. Although we find that Krakatau did not fully cooperate to the best of its ability, Krakatau, on a *pro se* basis, tried to provide the Department in a timely manner with the data requested in the antidumping questionnaire. Recognizing Krakatau's effort to comply with the Department's information requests, and in light of its claimed difficulties, we do not believe it is appropriate to assign the highest margin alleged in the petition. (*See e.g., Krupp Stahl AG* v. *U.S.*, 822 F. Supp. 789, 793 (Ct. Int'l Trade 1993), which referenced a Court of Appeals' opinion sanctioning the Department's practice to take into account the level of respondents' cooperation; and *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Germany*, 63 FR 8953, 8955 (February 23, 1998).)

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No.316, 103d Cong., 2d Sess. (1994) (hereinafter, the ''SAA'') states that ''corroborate'' means to determine that the information used has probative value. See SAA at 870.

In this proceeding, we considered the petition as the most appropriate information on the record to form the basis for a dumping calculation for an uncooperative respondent. In accordance with section 776(c) of the Act, we sought to corroborate the data contained in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.*, import statistics and foreign market research reports). *See Initiation Notice.*

For purposes of the preliminary determination, we attempted to corroborate the information in the petition. We reexamined the export price, home market price, and CV data provided for the margin calculations in the petition in light of information obtained during the investigation and, to the extent practicable, found that it has probative value (*see* Memorandum to the File regarding the Facts Available Rate and Corroboration of Secondary Information dated July 19, 1999).

*Fair Value Comparisons*

To determine whether sales of CTL plate from Indonesia to the United States were made at less than fair value, we compared the export price (''EP'') to the Normal Value (''NV''), as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs. Indonesia experienced significant inflation during the POI, as measured by the Wholesale Price Index, published in the June 1999 issue of *International Financial Statistics*. Accordingly, to avoid distortions caused by the effects of significant inflation on prices, we calculated EPs and NVs on a monthly average basis, rather than on a POI average basis.

*Product Comparisons*

In accordance with section 771(16) of the Act, we considered all products produced by Gunawan and Jaya Pari covered by the description in the ''Scope of Investigation'' section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate, within the same month. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade and in the same month to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade within the same month. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: painting, quality, grade specification, heat treatment, nominal thickness, nominal width, patterns in relief, and descaling.

*Collapsing*

Pursuant to 19 CFR 351.401(f), the Department will collapse producers and treat them as a single entity where (1) those producers are affiliated, (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production. In determining whether a significant potential for manipulation exists, the Department will consider (1) the level of common ownership, (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, and (3) whether the operations of the affiliated firms are intertwined (*see Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden*, 63 FR 40449, 40452 (July 29, 1999)). Based on a totality of the circumstances, the Department will collapse affiliated producers and treat them as a single entity where the criteria of 19 CFR 351.401(f) are met.

We find that Gunawan and Jaya Pari satisfy the first criterion in that they are affiliated with each other. Under section

771(33)(F) of the Act, persons are deemed to be affiliated where such persons, directly or indirectly, are under the common control of any other person. In this instance, the respondents stated in their questionnaire response that the Gunawan family controls both Gunawan and Jaya Pari (*see* page 5 of Gunawan's June 11, 1999, supplemental questionnaire response). The Gunawan family owns a significant number of shares in both Jaya Pari and Gunawan (*see* page 5 of Gunawan's June 11, 1999, supplemental questionnaire response). In addition, as more fully discussed below, members of the Gunawan family sit on the board of directors of both Gunawan and Jaya Pari. These facts indicate that the Gunawan family controls both Gunawan and Jaya Pari. Thus, we find Gunawan and Jaya Pari to be affiliated.

Moreover, pursuant to 19 CFR 351.401(h), we find that Gunawan and Jaya Pari are both producers of the subject merchandise. The merchandise each produces is identical or similar to merchandise produced by the other, and no retooling would be required to restructure manufacturing priorities. Accordingly, we find the first and second collapsing criteria to have been met in that Gunawan and Jaya Pari are affiliated parties, each of which is a producer of identical or similar subject merchandise.

Finally, we also find that the operations of Gunawan and Jaya Pari are so intertwined that there exists a significant potential for manipulation of price or production if these affiliated producers were not collapsed. *See* 19 CFR 351.401(f)(2). In particular, the level of common control is substantial as the Gunawan family holds a significant number of shares in both Gunawan and Jaya Pari. Additionally, certain executive management positions in Gunawan and Jaya Pari are jointly occupied by members of the Gunawan family. For example, Mr. Gwie Gunawan of the Gunawan family is the President Director of both Gunawan and Jaya Pari. Also, Mr. Gwie Gunawan's son, Mr. Gunadi Gunawan, is a director of Jaya Pari and vice-president director of Gunawan (*see* page 6 of Gunawan's June 11, 1999, supplemental response). Further, Gunawan and Jaya Pari also share information concerning sales, production, and pricing (*see* page 6 of the Gunawan's June 11, 1999, supplemental response). All of these facts indicate that there is significant potential for price manipulation between these two respondents. Therefore, based on the totality of the facts on the record, we have collapsed Gunawan and Jaya Pari under 19 CFR 351.401(f), for purposes of our margin analysis.

*Level of Trade*

In accordance with section 773(a)(1)(B) 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 selling, general and administrative (''SG&A'') expenses and profit. For EP, the LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP, we examined 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 an 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 difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

Gunawan and Jaya Pari reported two customer categories (*i.e.,* trading companies and original equipment manufacturers) and one channel of distribution (*i.e.,* direct sales) for their home market sales. Gunawan and Jaya Pari only reported EP sales in the U.S. market. For EP sales, Gunawan and Jaya Pari reported one customer category (*i.e.,* trading companies) and one channel of distribution (*i.e.,* direct sales to trading companies). Gunawan and Jaya Pari did not claim that their sales to home market customers are at a different LOT than their sales to U.S. customers and, therefore, did not claim a LOT adjustment.

In determining whether separate LOTs actually existed in the home market and U.S. market, we examined whether Gunawan's and Jaya Pari's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories and selling functions. As noted above, Gunawan's and Jaya Pari's sales to their unaffiliated customers were made through the same channel of distribution, albeit to different categories of customer, with no significant differences in selling functions. Based on these factors, we find that Gunawan's and Jaya Pari's home market sales comprise a single LOT.

In analyzing Gunawan's and Jaya Pari's selling activities for their EP sales, we noted that their sales involved essentially the same selling functions associated with the home market LOT described above. The selling activities include: (1) sales representative visits to the customer; (2) freight and delivery; and (3) pre-delivery inspection. Therefore, based upon this information, we have determined that the LOT for all EP sales is the same as that in the home market.

Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted.

*Export Price*

We calculated EP, in accordance with section 772(a) of the Act because the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted, based on the facts of record. We based EP on the packed CNF delivered price to unaffiliated purchasers in the United States. We made deductions to the starting price for discounts granted through credit notes and rebates, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling charges, ocean freight, marine insurance, and stevedoring charges at the U.S. port.

*Normal Value*

After testing (1) home market viability, and (2) whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparisons'' sections of this notice. We note that we did not conduct an arm's length test on affiliated party transactions for the reasons stated in the ''Affiliated-Party Transactions'' section below.

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the respondents' aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for the respondents.

2. Affiliated-Party Transactions

We have not used Gunawan's home market sales to Jaya Pari or Jaya Pari's home market sales to Gunawan in our analysis because we find that Gunawan and Jaya Pari meet the criteria for collapsing affiliated companies, and are, therefore, treating them as a single entity for purposes of our analysis. *See* ''Collapsing'' section above for further discussion. Gunawan and Jaya Pari reported no other affiliated party sales during the POI.

3. Cost of Production Analysis

Based on data contained in the petition, we found that there were reasonable grounds to believe or suspect that sales of CTL plate in the home market were made at prices below the COP. Accordingly, we initiated a country-wide COP investigation to determine whether sales were made at prices less than the COP pursuant to section 773(b) of the Act (*see Initiation Notice* at 64 FR 12959, 12963).

We conducted the COP analysis described below.

*A. Calculation of COP*

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Gunawan's and Jaya Pari's cost of materials and fabrication for the foreign like product, plus an amount for home market SG&A, interest expenses, and packing costs. As noted above, we determined that the Indonesian economy experienced significant inflation during the POI. Therefore, in order to avoid the distortive effect of inflation on our comparison of costs and prices, we computed monthly costs based on the weighted average of all monthly costs as indexed for inflation over the POI (*see* Antidumping Manual, Chapter 8, Section XV, updated February 10, 1998).

We used the information from Gunawan's and Jaya Pari's Section D questionnaire responses to calculate COP. We used the respondents' monthly COP amounts, adjusted as discussed below, and the IMF's *International Financial Statistics* to compute monthly weighted-average COPs for the POI. We made the following adjustments to the respondents' reported costs:

1. We revised Jaya Pari's reported per-unit variable and fixed overhead amounts to include year-end adjustments which had not been included in the reported costs.
2. We computed the respondents' G&A and interest expense ratios on a constant currency basis using monthly inflation indices. We recalculated the reported G&A expense ratios to include the expenses incurred in January 1998 which had been excluded. In addition, we adjusted Gunawan's cost of sales figure to reflect the cost in the income statement.
3. We allocated total foreign exchange gains attributable to accounts payable as a percentage of cost of sales.
4. We calculated the price of slab for those months where there were no purchases using the most recent prior month average purchase price and indexed that price for inflation.
5. For months in which there was no production for Jaya Pari, we have allocated the conversion costs incurred in these months to the remaining months with production.
6. We calculated consolidated weighted-average COPs and CVs for the two companies.

*B. Test of Home Market Sales Prices*

We compared the monthly weighted-average COP figures to the home market sales prices of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below COP. In determining whether to disregard home market sales made at prices less than the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, discounts, and direct and indirect selling expenses.

*C. Results of the COP Test*

Pursuant to section 773(b)(2)(C), where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

We found that, for certain grades of CTL plate, more than 20 percent of Gunawan's and Jaya Pari's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining above-cost sales as the basis for determining NV if such sales existed, in accordance with section 773(b)(1) of the Act. For those U.S. sales of CTL plate for which there were no comparable home market sales in the ordinary course of trade, we compared EPs to CV in accordance with section 773(a)(4) of the Act.

*D. Calculation of CV*

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Gunawan's and Jaya Pari's cost of materials, fabrication, SG&A, interest, and U.S. packing costs. We made adjustments similar to those described above for COP. In accordance with sections 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses.

*Price-to-Price Comparisons*

We calculated NV based on delivered prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for early payment discounts, discounts granted through credit notes, inland freight, and ''billing error'' rebates. We made adjustments for differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. In addition, we made

adjustments under section 773(a)(6)(C)(iii) of the Act for differences in circumstances of sale for imputed credit expenses, warranties and commissions. In this case, respondents incurred commissions only in the home market. Therefore, we offset home market commissions by the lesser of U.S. indirect selling expenses and home market commissions. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

*Price-to-CV Comparisons*

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses in accordance with section 773(a)(6)(C)(iii) of the Act. We offset home market commissions in the manner described above in the ''Price-to-Price Comparisons'' section.

*Critical Circumstances*

In their February 16, 1999, petition, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of CTL plate from the Indonesia. In a preliminary determination of critical circumstances finding published on April 26, 1999, we stated that because there was insufficient evidence on the record to make a finding whether importers, exporters, or producers knew or should have known, at some time prior to the filing of the petition, that a proceeding concerning Indonesia was likely, we would make our preliminary critical circumstances finding by the date of the preliminary determination (*see Preliminary Determination of Critical Circumstances: Certain Cut-To-Length Carbon-Quality Steel Plate from Japan*, 64 FR 20251, 20252 (April 26, 1999)). Therefore, in accordance with 19 CFR 351.206(c)(2)(i), we are issuing our preliminary critical circumstances determination.

Section 733(e)(1) of the Act provides that if a petitioner alleges critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that:

(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 was likely to be material injury by reason of such sales, and

(B) There have been massive imports of the subject merchandise over a relatively short period.

We are not aware of any existing antidumping order in any country on CTL plate from Indonesia. Therefore, we examined whether there was importer knowledge. In determining whether an importer knew or should have known that the exporter was selling the subject merchandise at less than its fair value and thereby causing material injury, the Department normally considers margins of 25 percent or more for EP sales sufficient to impute knowledge of dumping (*see Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China*, 62 FR 9160 (February 28, 1997); and *Notice of Final Determination of Sales at Less Than Fair Value: Steel Sheet and Strip in Coils from Japan*, 64 FR 30574 (June 8, 1999) (*Steel Sheet and Strip in Coils from Japan*)). All respondents in this proceeding have made EP sales to the United States.

The Department's margin for Gunawan and Jaya Pari exceeds 25 percent (*see* ''Suspension of Liquidation'' section below). Therefore, we determine that importers knew or should have known that Gunawan and Jaya Pari made sales of the subject merchandise at prices below fair value. As to the knowledge of injury from such dumped imports, in the present case, the ITC preliminarily determined that there is reasonable indication that the U.S. CTL plate industry is experiencing present material injury. Therefore, we find that the ''importer knowledge of dumping and material injury'' criterion is met with respect to CTL plate from Indonesia.

Because we have found that the first statutory criterion is met with regard to Gunawan and Jaya Pari, 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 will not consider the imports to have been ''massive.'' The Department examines shipment information submitted by the respondent or import statistics when respondent-specific shipment information is not available.

To determine whether imports of subject merchandise have been massive over a relatively short period, we compared Gunawan's and Jaya Pari's export volume for the four months subsequent to the filing of the petition (March–June 1999) to that during the four months prior to the filing of the petition (November 1998-February 1999). These periods were selected based on the Department's practice of using the longest period for which information is available from the month that the petition was submitted through the date of the preliminary determination.

Based on our analysis, we preliminarily find that the increase in imports was not greater than 15 percent with respect to Gunawan and Jaya Pari, as these companies reported that they had no exports of subject merchandise to the United States during the period March-June 1999 (*see* July 9, 1999, submission). In addition, U.S. Customs import data indicate that Gunawan and Jaya Pari accounted for the vast majority of imports of subject merchandise into the United States during the POI. Moreover, since the filing of the petition, U.S. Customs import data does not evidence massive imports of subject merchandise from Indonesia (*see* July 19, 1999, Memorandum to the File Regarding Import Statistics Used for Preliminary Critical Circumstances Determination).

Because the margin we have assigned to Krakatau is 35.01 percent, and thus exceeds 25 percent, we have imputed knowledge of dumping to Krakatau. However, information on the record sufficiently establishes that Krakatau's exports of subject merchandise to the United States have not increased massively since the filing of the petition. U.S. Customs import data does not show such an increase, and we preliminarily do not find massive imports for the two companies responsible for the majority of such exports. Thus, we preliminarily determine that no critical circumstances exist for Krakatau.

Because the margin for all other Indonesian exporters/producers of the subject merchandise is 32.20 percent, and thus exceeds 25 percent, we have imputed knowledge of dumping to ''All Others.'' However, we considered that

the increase in imports was not greater than 15 percent with respect to Gunawan and Jaya Pari. We also considered U.S. Customs data on overall imports from Indonesia of the products at issue. Based on our review of Gunawan's and Jaya Pari's data on massive imports and the U.S. Customs import data, we find that imports from all non-investigated exporters (*i.e.*, ''all others'') were also not massive during the relevant comparison periods. Given these factors, the Department determines that there are no critical circumstances with regard to ''all other'' imports of CTL Plate from Indonesia (*see Steel Sheet and Strip in Coils from Japan* at 64 FR 30585).

*Currency Conversion*

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales certified by the Federal Reserve Bank.

*Verification*

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

*Suspension of Liquidation*

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

| Exporter/manufacturer | Weighted-average margin percentage |
|---|---|
| Gunawan Dianjaya Steel/PT Jaya Pari Steel Corporation | 32.20 |
| PT Krakatau Steel | 35.01 |
| All Others | 32.20 |

*ITC Notification*

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

*Public Comment*

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than August 25, 1999, and rebuttal briefs no later than September 1, 1999. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on September 9, 1999, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

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, U.S. Department of Commerce, Room 1870, within 30 days of the 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 the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by no later than 75 days after the date of this preliminary determination.

This determination is published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: July 19, 1999.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 99–19302 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–475–826]**

## Preliminary Determinations of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products From Italy

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

**EFFECTIVE DATE:** July 29, 1999.

**FOR FURTHER INFORMATION CONTACT:** Howard Smith or Maisha Cryor, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5193 or (202) 482–5841, respectively.

### The Applicable Statute

Unless otherwise indicated, all citations to the statute are reference to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all references are made to the Department's regulations at 19 CFR Part 351 (1998).

### Preliminary Determination

We preliminarily determine that certain cut-to-length carbon-quality steel plate products (''CTL plate'') from Italy are being, or are likely to be, sold the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''*Suspension of Liquidation*'' section of this notice.

*Case History*

Since the initiation of this investigation (*Notice of Initiation of Antidumping Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate from Czech Republic, France, India, Italy, Japan, Republic of Korea, and Former Yogoslav Republic of Macedona*, 64 FR 12959 (March 16, 1999) (''*Initiation Notce*), the following events have occurred:

In their petition, the petitioners [1] identified Ferriera Siderscal SpA (''FS''), ILVA SpA (''ILVA''), Palini & Bertoli SpA (''P&B''), and Siderurgica Villalvernia SpA (''SV''), as possible exporters of CTL plate from Italy. On March 15, 1999, we requested data on all producers and exporters of the subject merchandise during the period of investigation (''POI'') from the U.S. embassy in Rome. The U.S. embassy informed us that only ILVA and P&B are manufacturers and exporters to the United States of carbon steel plate. Based on this information, and information contained in the petition, the Department issued antidumping questionnaires to ILVA and P&B in March 1999. According to the U.S.

[1] The petitioners are Bethlehem Steel Corporation, Gulf States Steel, Inc., PPSCO Steel Inc., the United Steelworkers of America, and the U.S. Steel Group (a unit of USX Corporation).

embassy, SV closed its mill in 1995 and FS is only a manufacturer of cold finished bars and hot-rolled billets and bars. However, based upon information contained in the petition, the Department also issued antidumping questionnaires to FS and SV in March 1999.[2]

On March 26, 1999, ILVA requested that it be excused from reporting certain home market sales of foreign like product. Specifically, ILVA sought to be excused from reporting all home market sales of CTL plate produced from plate-in-coil as well as affiliated resellers' sales of quarto plate (universal mill plate). Because ILVA only sold quarto plate in the United States, it maintained that it should not be required to report home market sales of CTL plate produced from coil since the Department would not compare such sales to ILVA's U.S. sales for purposes of calculating a dumping margin. Furthermore, ILVA claimed that its affiliated resellers' sales of quarto plate constituted an insignificant percentage of its total home market sales of foreign like product and, thus, it should be excused from reporting these downstream sales. On May 3, 1999, the Department denied ILVA's requests with one exception. Based on ILVA's relationship with one affiliated reseller, the nature of which is proprietary, the Department allowed ILVA to report sales of foreign like product to the reseller, rather than sales by the reseller.

On May 17, 1999, ILVA further requested that it be excused from reporting home market sales of certain products that are commercially identified as bar products. However, the Department found these products to be within the scope of the current CTL investigations and, thus, required ILVA to report all of its home market sales of such products. For further information regarding this issue, see the ''*Scope Comments*'' x section of this notice.

In April 1999, the United States International Trade Commission (''ITC'') issued an affirmative preliminary injury determination in this case (*see* Investigation No. 731–TA–815–822). In April and May 1999, The Department received a response to all applicable sections of the questionnaire from ILVA and P&B. On March 28, 1999, and May 3, 1999, respectively, SV and FS submitted letters to the Department stating that they did not produce the merchandise under investigation, nor did they export such merchandise to the United States. In letter dated May 14, 1999, the Department informed FS and SV that their claims are subject to verification and that if the Department finds that they should have responded to the antidumping questionnaire, the Department would rely on facts available in making its determination with respect to FS and/or SV.

We issued supplemental questionnaires for Sections A, B, C and D to ILVA and P&B in May and June 1999 and received responses to these questionnaires along with revised home market and U.S. sales listings in June 1999.

In June and July 1999, the petitioners submitted comments for the Department's consideration in its preliminary determination. Also, in July 1999, ILVA submitted sales and cost listings containing additional information requested by the Department.

*Partial Facts Available*

Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

Section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

The Department resorted to the use of facts available in adjusting the reported cost of certain affiliated supplier inputs under the ''transactions-disregarded'' and the ''major input rule'' of section 773(f)(2) & (3) of the Act. For a detailed discussion of this topic see the ''*Cost of Production Analysis—Calculation of COP*'' section of this notice.

*Scope of Investigation*

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but no exceeding 1250 mm, and of a nominal or actual thickness of not less then 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of cooper, 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 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances;

[2] Section A of the questionnaire requested general information concerning the company's corporate structure, business practices, and sales and production of the merchandise under investigation. Section B and C of the questionnaire requested home market sales listings and U.S. sales listings. Section D of the questionnaire requested information regarding the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E of the questionnaire requested information regarding the cost of further manufacture or assembly performed in the United States.

(2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (i.e., USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S. or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.000, 7208.90.000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.90.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

*Scope Comments*

As stated in our notice of initiation, we set aside a period for parties to raise issues regarding product coverage. In particular, we sought comments on the specific levels of alloying elements set out in the description above, the clarity of grades and specifications excluded from the scope, and the physical and chemical description of the product coverage. On March 29, 1999, Usinor, a respondent in the French antidumping and countervailing duty investigations and Dongkuk Steel Mill Co., Ltd. and Pohang Iron and Steel Co., Ltd., respondents in the Korean antidumping and countervailing duty investigations (collectively ''the Korean respondents''), filed comments regarding the scope of the investigations on CTL plate and the Department's model matching criteria. On April 14, 1999, the petitioners filed comments regarding Usinor's and the Korean respondents' comments regarding model matching. In addition, on May 17, 1999, ILVA SpA (''ILVA''), a respondent in the Italian antidumping and countervailing duty investigations, requested guidance on whether certain products are within the scope of these investigations.

Usinor requested that the Department modify the scope to exclude: (1) plate that is cut to non-rectangular shapes or that has a total final weight of less than 200 kilograms; and (2) steel that is 4″ or thicker and which is certified for use in high-pressure, nuclear or other technical applications; and (3) floor plate (*i.e.* plate with ''patterns in relief'') made from hot-rolled coil. Further, Usinor requested that the Department provide clarification of scope coverage with respect to what it argues are over-inclusive HTSUS subheadings included in the scope language.

The Department has not modified the scope of these investigations because the current language reflects the product coverage requested by the petitioners, and Usinor's products meet the product description. With respect to Usinor's clarification request, we do not agree that the scope language requires further elucidation with respect to product coverage under the HTSUS. As indicated in the scope section of every Department antidumping and countervailing duty proceeding, the HTSUS subheadings are provided for convenience and Customs purposes only; the written description of the merchandise under investigation or review is dispositive.

The Korean respondents requested confirmation whether the maximum alloy percentages listed in the scope language are definitive with respect to covered HSLA steels.

At this time, no party has presented any evidence to suggest that these maximum alloy percentages are inappropriate. Therefore, we have not adjusted the scope language. As in all proceedings, questions as to whether or not a specific product is covered by the scope and, hence, must be reported, should be timely raised with Department officials.

ILVA requested guidance on whether certain merchandise produced from billets is within the scope of the current CTL plate investigations. According to ILVA, the billets are converted into wide flats and bar products (a type of long products). ILVA notes that one of the long products, when rolled, has a thickness range that falls within the scope of these investigations. However, according to ILVA, the greatest possible width of these long products would only slightly overlap the narrowest category of width covered by the scope of the investigations. Finally, ILVA states that these products have different production processes and properties than merchandise covered by the scope of the investigations, and therefore are not covered by the scope of the investigations.

As ILVA itself acknowledges, the particular products in question appear to fall within the parameters of the scope and, therefore, we are preliminary treating them as covered merchandise for purposes of these investigations.

*Period of Investigation*

The POI is January 1, 1998, through December 31, 1998.

*Fair Value Comparisons*

To determine whether sales of CTL plate from Italy to the United States were made at less than fair value, we compared the export price (''EP'') to the Normal value (''NV''), as described, in the ''*Export Price* and ''*Normal Value*'' sections of this notice below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs.

*Product Comparisons*

In accordance with section 771(16) of the Act, we considered all products produced by ILVA and P&B covered by the description in the ''*Scope of Investigation*'' section, above and sold in Italy during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance (which are identified in Appendix V of the questionnaire: painting, quality, grade specification, heat treatment, normal thickness, nominal width, patterns in relief, and descaling.

In addition, we compared U.S. sales of prime merchandise only with home market sales of prime merchandise. Because neither ILVA nor P&B sold non-prime merchandise in the United States during the POI, we did not use home market sales of non-prime merchandise in our product comparisons, (*see Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden*, 63 FR 40449, 40450 (July 29, 1998) (''*SSWR*'')).

*Level of Trade*

In accordance with section 773(a)(1)(B) 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 constructed value (''CV''), that of the sales from which we derive

selling, general and administrative (''SG&A'') expenses and profit. With respect to U.S. price and EP transactions, the LOT is also the level of the starting-price sale, which is usually from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP transactions, 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 an LOT adjustment under section 773(a)(7)(A) of the Act.

P&B reported home market sales to three customer categories through one channel of distribution. For its U.S. sales, P&B reported EP sales to one customer category through one channel of distribution. ILVA reported home market sales to two customer categories through four channels of distribution. For its U.S. sales, ILVA reported EP sales to two customer categories through one channel of distribution. In their responses, neither ILVA nor P&B claimed that their sales to home market customers were made at a different LOT than their sales to U.S. customers. Therefore, neither company claimed a LOT adjustment.

In determining whether separate LOTs actually existed in the home market and U.S. market for each respondent, we examined whether the respondent's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories and selling functions. Based on an analysis of the selling functions performed in the home market channel of distribution, we find that each respondent's home market sales comprise a single LOT. In analyzing each company's selling activities for EP sales, we noted that the sales involved basically the same selling functions as those associated with the home market LOT described above. Therefore, based upon this conclusion, we have determined that the LOT for each respondent's EP sales is the same as that of its home market sales. *See* the July 19, 1999, memoranda to the file regarding *Palini and Bertoli (P&B): Level of Trade Analysis,* and *Ilva SpA (ILVA): Level of Trade Analysis.*

*Export Price*

ILVA and P&B reported as EP transactions their sales of subject merchandise sold to unaffiliated U.S. customers prior to importation.

We calculated EP, in accordance with section 772(a) of the Act, because the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted, based on the facts of record. We based EP on the price to unaffiliated purchasers in the United States. We made deductions to the starting price for billing adjustments and, in accordance with section 772(c)(2)(A) of the Act, movement expenses. Movement expenses included, where appropriate, foreign inland freight, foreign brokerage and handling charges, ocean freight, and marine insurance.

*Normal Value*

After testing (1) home market viability, (2) whether sales to affiliates were at arm's-length prices, and (3) whether home market sales were at below-cost prices, we calculated NV as noted in the ''*Price-to-Price Comparisons*'' and ''*Price-to-CV Comparisons*'' sections of this notice.

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its respective aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for each respondent.

2. Affiliated-Party Transactions and Arm's-Length Test

Both respondents reported home market sales to affiliated parties. Therefore, we have applied the arm's-length test to these sales by comparing them to sales of identical merchandise from the respondent to its unaffiliated home market customers. If these affiliated-party sales satisfied the arm's-length test, we used them in our analysis. Sales to affiliated customers in the home market not made at arm's-length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102.

To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c) and 62 FR at 27355, *Preamble—Department's Final Antidumping Regulations* (May 19, 1997). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis (*see, e.g., SSWR* at 63 FR 40451). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

3. Cost of Production Analysis

In their petition, the petitioners submitted an allegation pursuant to section 773(b) of the Act that ILVA and P&B made sales in the home market at less than the cost of production (''COP''). Our analysis of the allegation indicated that there were reasonable grounds to believe or suspect that each Italian exporter sold CTL plate in the home market at prices less than the COP. Accordingly, we initiated COP investigations with respect to the two Italian exporters to determine whether sales were made at prices below the COP pursuant to section 773(b) of the Act (*see Initiation Notice* at 64 FR 12959, 12963).

We conducted the COP analysis as described below.

*A. Calculation of COP*

In accordance with section 773(b)(3) of the Act, for each respondent we calculated COP based on the sum of the respondent's materials and fabrication cost for the foreign like product, plus an amount for home market SG&A, interest expenses, and packing costs.

Except for the following adjustments to ILVA's costs reported by the respondents' to calculate COP:

1. During the POI, ILVA produced slabs which it sold to its wholly owned subsidiary, ILVA Lamiere e Tubi S.p.A. (ILT). ILT rolled the slabs into quarto plate to ILVA. During the POI, ILT only sold quarto plate to ILVA, which resold

the plate to affiliated and unaffiliated customers in the U.S. and home markets. For cost reporting purposes, ILVA treated itself and ILT as one company and thus reported ILT's rolling cost as part of the COP. Because ILVA ''collapsed'' itself with ILT it did not value the inputs that it purchased from ILT in accordance with section 773(f)(2) of the Act or use the major input rule of section 773(f)(3) of the Act. Section 351.401(f) of the Department's regulations stipulates that the Department will treat two or more affiliated producers as a single entity where, among other things, the department concludes there is a significant potential for the manipulation of price or production in order to evade antidumping duties. However, in the instant situation, based upon the information on the record, the details of which are proprietary, the Department has preliminary determined that it is not appropriate to collapse ILVA and ILT because there is not a significant potential for the manipulation of price or production in order to evade antidumping duties. *See ILVA Collapsing Memorandum* (July 19, 1999). Because the Department has not collapsed ILVA and ILT, and the rolling performed by ILT is a major input to the production of plate sold by ILVA, the major input role should be applied to value the input that ILVA obtained from ILT (*see Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Certain Pasta From Italy*, 64 FR 6615, 6621 (February 10, 1999)). The major input rule of section 773(f)(3) of the Act provides that the Department may value inputs obtained from affiliated parties at the highest of the transfer price, market price, or the affiliated supplier's costs. The petitioners' maintain that the major input rule should be used to value the slabs that ILT purchased from ILVA. However, the Department has treated ILVA as the producer and viewed ILT as an affiliate who provides services to the producer. Thus, the Department used the major input rule to value the rolling services provided by ILT, but found no basis to apply it in valuing the slabs produced by ILVA. In the absence of a market price or a transfer price for rolling slabs, for this preliminary determination, the Department has constructed a transfer price by increasing the reported rolling costs for quarto plate by ILT's general and administrative (G&A) expenses and profit.

2. ILVA included ILT's G&A expenses in its reported G&A expense because it treated ILVA and ILT as one entity for cost reporting purposes. Because the Department has treated ILVA and ILT as separate entities, the Department reduced ILVA's reported G&A expense by the amount of ILT's G&A expenses included therein.

3. The Department excluded extraordinary gains and losses from ILVA's reported G&A expenses because ILVA failed to adequately explain how these expenses were related to its operations.

4. ILVA uses iron pellets to produce the merchandise under investigation. During the POI, ILVA purchased iron pellets from two suppliers, one of which ILVA identified as an affiliated party. In order to satisfy the requirements of section 773(f)(2) of the Act (transactions between affiliated parties disregarded), ILVA compared the price that it paid to purchase iron pellets from the affiliated party to the price that it paid to purchase iron pellets from the ''unaffiliated'' supplier. However, the record shows that ILVA and the ''unaffiliated'' supplier jointly own and control the affiliated supplier. Therefore, in accordance with section 771(33)(F) of the Act, the Department has preliminary determined that ILVA and the supplier which ILVA identified as an unaffiliated party (*i.e.*, the joint venture partner) are in fact affiliated, pursuant to section 771(33)(F). Furthermore, the iron pellets ILVA purchased from its joint venture partner were in fact produced by ILA's affiliated supplier. Thus, for all these transactions, ILVA purchased iron pellets, either directly or indirectly, from its affiliated supplier. Therefore, we have preliminarily determined to disregard these sales, unless ILVA can show that such sales reflect market value as required under section 773(f)(2). In the absence of such evidence, for the preliminary determination, the Department has adjusted the cost of iron pellets included in the reported costs using the information available as to what the price of iron pellets would have been if the iron pellets had been purchased from parties who are not affiliated with ILVA, in accordance with section 773(f)(2). For this preliminary determination, as facts available for this information, we used the weighted-average Italian import values of iron ore as provided by the petitioners in their July 8, 1999 submission.

5. The Department reduced ILVA's reported costs for models sold in the United States by the cost of foreign transportation and port loading expenses for U.S. sales, which were reclassified as movement expenses.

*B. Test of Home Market Sales Prices*

We compared the weighted-average COP figures to home market sale prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, discounts, and direct and indirect selling expenses.

*C. Results of the COP Test*

Pursuant to section 773(b)(2)(C), where less than 20 percent of respondent's sales of a given product were at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

We found that, for certain grades of CTL plate, 20 percent of more of ILVA's and P&B home market sales within an extended period of time were at prices below the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used for remaining sales as the basis for determining NV if such sales existed, in accordance with section 773(b)(1) of the Act.

*Price-to-Price Comparisons*

We calculated NV based on delivered prices to unaffiliated customers to prices to affiliated customers that we determined to be at arm's length prices. We made adjustments, where appropriate, from the starting price for discounts and rebates, billing adjustments, inland freight, shipping revenue, freight insurance, and

warehousing expenses. We made adjustments for differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act for differences in circumstances of sale involving imputed credit expenses (less interest revenue) warranties and commissions, where appropriate. We also made adjustments for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset), pursuant to 19 CFR 351.410(e). Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act. In both its narrative response to the Department's questionnaire and in its home market sales listing, P&B described the terms of certain home market sales as F.O.B. plant. However, P&B reported freight expenses for these sales in its home market sales database. For home market sales transactions where this discrepancy occurs, we did not reduce P&B's home market sales price by the reported freight expense.

*Currency Conversion*

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determined a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *see Policy Bulletin 96–1: Currency Conversions* 61 FR 9434 (March 9, 1996).) The use of an adjustment period was not warranted in this case because of lira did not undergo a sustained movement.

*Verification*

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

*Suspension of Liquidation*

In accordance with section 733(d) of the Act, we are directing the Customers Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds EP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

| Exporter/manufacturer | Weighted-average margin percentage |
|---|---|
| ILVA SpA | 3.67 |
| Palini & Bertoli SpA | 6.35 |
| All Others | 5.78 |

*ITC Notification*

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

*Public Comment*

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than August 25, 1999, and rebuttal briefs no later than September 1, 1999. A list of authorities used and executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on September 10, 1999, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

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, U.S. Department of Commerce, Room 1870, within 30 days of the 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 the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: July 19, 1999.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 99–19303 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–DS–M

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–588–847]**

## Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products From Japan

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

**EFFECTIVE DATE:** July 29, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mark Manning or Wendy J. Frankel, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3936 or (202) 482–5849, respectively.

### The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all references are made to the Department's regulations at 19 CFR Part 351 (1998).

### Preliminary Determination

We preliminarily determine that certain cut-to-length carbon-quality steel

plate products (''CTL plate'') from Japan are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''*Suspension of Liquidation*'' section of this notice.

**Case History**

Since the initiation of this investigation (*Notice of Initiation of Antidumping Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate from Czech Republic, France, India, Italy, Japan, Republic of Korea, and Former Yugoslav Republic of Macedonia* (64 FR 12959, March 16, 1999)) (''*Initiation Notice*''), the following events have occurred:

In their petition, the petitioners [1] identified Kawasaki Steel Corporation (''Kawasaki''), Kobe Steel, Ltd. (''Kobe''), Nippon Steel Corporation (''Nippon''), NKK Corporation (''NKK''), and Sumitomo Metal Industries, Ltd. (''Sumitomo'') as possible exporters of CTL plate from Japan. Though we requested on March 12, 1999, data on all producers and exporters of the subject merchandise during the period of investigation (''POI'') from the U.S. embassy in Tokyo, the U.S. embassy was unable to provide us with any additional information on producers or exporters of the subject merchandise to the United States. Based on information contained in the petition, the Department issued antidumping questionnaires to Kawasaki, Kobe, Nippon, NKK, and Sumitomo on March 17, 1999. [2]

In April 1999, the United States International Trade Commission (''ITC'') issued an affirmative preliminary injury determination in this case (*see* ITC Investigation No. 731–TA–815–822). Also, the Department received a response to all applicable sections of the questionnaire from Kawasaki and responses to question 1.a.1. of Section A from Kobe, NKK, and Sumitomo. On April 12, 1999, Nippon submitted a letter stating that it would not be responding to the Department's antidumping questionnaire. On April 26, 1999, Sumitomo submitted a letter to the Department stating that it would not be providing any further questionnaire responses with respect to this antidumping investigation. Kobe and NKK did not respond further to the Department's requests for information.

On April 26, 1999, the Department published its preliminary determination of critical circumstances for certain cut-to-length carbon-quality steel plate from Japan. In that determination, we preliminarily found that there is a reasonable basis to believe or suspect that critical circumstances exist for imports of CTL plate from Japan. *See Preliminary Determination of Critical Circumstances: Certain Cut-To-Length Carbon-Quality Steel Plate From Japan* (April 26, 1999), 64 FR 2025.

On April 26, 1999, Kawasaki requested that it be allowed to exclude certain home market sales made during the period of investigation (''POI''), of merchandise produced at Kawasaki's universal mill at Mizushima and its hot-strip mill at Chiba, from its home market sales listing. Kawasaki further requested that it be excused from reporting the costs associated with producing this same merchandise.

Kawasaki stated that these sales constitute an insignificant amount of its total home market sales, that subject merchandise produced at these two mills was not sold in the United States, and that no merchandise identical to that produced at these mills was sold in the United States. Kawasaki stated that it would be very difficult and burdensome to report the costs associated with the production of subject merchandise at these facilities, especially in light of the fact that the relevant sales represent such an insignificant portion of sales during the POI. On May 14, 1999, the Department denied Kawasaki's request with respect to the sales of subject merchandise produced at the universal mill at Mizushima and the hot-strip mill at Chiba, and instructed Kawasaki to include these sales in its home market sales listing. However, on June 15, 1999, the Department granted Kawasaki's request not to report costs of producing merchandise associated with these two facilities. In granting this request, the Department notified Kawasaki that the Department reserves the right to request additional information concerning these costs and that in the event that we find that there is a need to use the cost data, we may rely on the facts available, as required by section 776 of the Act, including, if appropriate, adverse inferences.

We issued supplemental questionnaires for Sections A, B, C and D to Kawasaki in May 1999 and received responses to these questionnaires along with revised home market and U.S. sales listings in June 1999. In June 1999, Kawasaki submitted clarifications to its responses and the petitioners submitted comments for the Department's consideration in the preliminary determination. In July 1999, Kawasaki submitted additional clarifications to its responses. Also, the petitioners submitted further comments for the Department's consideration in the preliminary determination.

*Facts Available*

Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

Moreover, section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its abilities to comply with a request for information. Kobe, Nippon, NKK, and Sumitomo all declined to respond to the Department's antidumping questionnaire. Because these respondents have withheld requested information, we must use facts available, in accordance with section 776(a) of the Act. We have also determined that these respondents have not cooperated to the best of their abilities. Therefore, pursuant to 776(b) of the Act, we used an adverse inference in selecting a margin from the facts available. As facts available, the Department has applied a margin rate of 59.12 percent, the highest alleged margin in the petition.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action

[1] The petitioners are Bethlehem Steel Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., Tuscaloosa Steel Corporation, the United Steelworkers of America, and the U.S. Steel Group (a unit of USX Corporation).

[2] Section A of the questionnaire requested general information concerning the company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of that merchandise in all markets. Sections B and C of the questionnaire requested home market sales listings and U.S. sales listings. Section D of the questionnaire requested information regarding the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E of the questionnaire requested information regarding the cost of further manufacture or assembly performed in the United States.

accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. (1994) (hereinafter, the ''SAA'') states that ''corroborate'' means to determine that the information used has probative value. See SAA at 870.

In this proceeding, we considered the petition information the most appropriate record information to use to establish the dumping margins for these uncooperative respondents. In accordance with section 776(c) of the Act, we sought to corroborate the data contained in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.*, import statistics and foreign market research reports). *See Initiation Notice*.

For purposes of the preliminary determination, we attempted to corroborate the information in the petition. We reexamined the export price and CV data which formed the basis for the highest margin in the petition in light of information obtained during the investigation and, to the extent practicable, found that it has probative value (*see* the July 19, 1999, memorandum to the file regarding *Corroboration of the Petition Data*, on file in the Central Records Unit (CRU) of the Main Commerce Department building).

*Scope of Investigation*

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*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 nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or 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 0.10 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 zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (i.e., USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

*Scope Comments*

As stated in our notice of initiation, we set aside a period for parties to raise issues regarding product coverage. In particular, we sought comments on the specific levels of alloying elements set out in the description above, the clarity of grades and specifications excluded from the scope, and the physical and chemical description of the product coverage.

On March 29, 1999, Usinor, a respondent in the French antidumping and countervailing duty investigations and Dongkuk Steel Mill Co., Ltd. and Pohang Iron and Steel Co., Ltd., respondents in the Korean antidumping and countervailing duty investigations (collectively ''the Korean respondents''), filed comments regarding the scope of the investigations on CTL plate and the Department's model matching criteria. On April 14, 1999, the petitioners filed rebuttal comments regarding model matching. In addition, on May 17, 1999, ILVA SpA (''ILVA''), a respondent in the Italian antidumping and countervailing duty investigations, requested guidance on whether certain products are within the scope of these investigations.

Usinor requested that the Department modify the scope to exclude: (1) Plate that is cut to non-rectangular shapes or that has a total final weight of less than 200 kilograms; and (2) steel that is 4″ or thicker and which is certified for use in high-pressure, nuclear or other technical applications; and (3) floor plate (*i.e.*, plate with ''patterns in relief'') made from hot-rolled coil. Further, Usinor requested that the Department provide clarification of scope coverage with respect to what it argues are over-inclusive HTSUS subheadings included in the scope language.

The Department has not modified the scope of these investigations because the current language reflects the product coverage requested by the petitioners, and Usinor's products meet the product description. With respect to Usinor's clarification request, we do not agree that the scope language requires further elucidation with respect to product coverage under the HTSUS. As indicated in the scope section of every Department antidumping and countervailing duty proceeding, the HTSUS subheadings are provided for convenience and Customs purposes only; the written description of the merchandise under investigation or review is dispositive.

The Korean respondents requested confirmation whether the maximum alloy percentages listed in the scope

language are definitive with respect to covered HSLA steels.

At this time, no party has presented any evidence to suggest that these maximum alloy percentages are inappropriate. Therefore, we have not adjusted the scope language. As in all proceedings, questions as to whether or not a specific product is covered by the scope and, hence, must be reported, should be timely raised with Department officials.

ILVA requested guidance on whether certain merchandise produced from billets is within the scope of the current CTL plate investigations. According to ILVA, the billets are converted into wide flats and bar products (a type of long product). ILVA notes that one of the long products, when rolled, has a thickness range that falls within the scope of these investigations. However, according to ILVA, the greatest possible width of these long products would only slightly overlap the narrowest category of width covered by the scope of the investigations. Finally, ILVA states that these products have different production processes and properties than merchandise covered by the scope of the investigations and therefore are not covered by the scope of the investigations.

As ILVA itself acknowledges, the particular products in question appear to fall within the parameters of the scope and, therefore, we are preliminarily treating them as covered merchandise for purposes of these investigations.

*Period of Investigation*

The POI is January 1, 1998, through December 31, 1998.

*Fair Value Comparisons*

To determine whether sales of CTL plate from Japan to the United States were made at less than fair value, we compared the export price (''EP'') or constructed export price (''CEP'') to the Normal Value (''NV''), as described in the ''*Export Price and Constructed Export Price*'' and ''*Normal Value*'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

*Product Comparisons*

In accordance with section 771(16) of the Act, we considered all products produced by Kawasaki covered by the description in the ''*Scope of Investigation*'' section, above, and sold in Japan during the POI to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance (which are identified in Appendix V of the questionnaire): painting, quality, grade specification, heat treatment, nominal thickness, nominal width, patterns in relief, and descaling.

Because Kawasaki had no sales of non-prime merchandise in the United States during the POI, we did not use home market sales of non-prime merchandise in our product comparisons (*see, e.g., Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden* (63 FR 40449, 40450, July 29, 1998) (''*SSWR*'')).

*Level of Trade*

In accordance with section 773(a)(1)(B) 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 constructed value (''CV''), that of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profit. With respect to U.S. price or EP transactions, the LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP, the LOT is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examined 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 difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

Kawasaki reported two customer categories (*i.e.,* trading companies and original equipment manufacturers) and what it claimed were three channels of distribution (*i.e.,* sales to unaffiliated trading companies, direct sales to original equipment manufacturers, and sales to an affiliated trading company, Kawasho Corporation (''Kawasho Japan'')) for its home market sales. Kawasaki reported EP and CEP sales in the U.S. market. For EP sales, Kawasaki reported one customer category and one channel of distribution (*i.e.,* direct sales to unaffiliated Japanese trading companies, for sale to the U.S. market). Kawasaki claimed in its response that its EP sales were made at the same LOT as home market sales to unaffiliated trading companies. For this reason, Kawasaki has not asked for a LOT adjustment to NV for comparison to its EP sales. For CEP sales, Kawasaki reported one customer category and one channel of distribution (*i.e.,* Kawasaki sales through Kawasho International (''KI''), which is the U.S. affiliate of Kawasho Japan, Kawasaki's affiliated trading company that sells in the home market and, for U.S. sales purposes, to KI). Kawasaki stated that there is no LOT in the home market that is comparable to the CEP LOT in the United States. Kawasaki claims that when comparing the selling activities of Kawasaki's affiliated trading company, Kawasho Japan, for home market sales (channel three) and for CEP sales, Kawasho provides a higher level of selling services in home market than for CEP sales. Kawasaki asserts that because Kawasho performs greater selling activities in the home market, Kawasho incurs higher selling expenses for home market sales. In addition, Kawasaki argues that the home market LOTs are more remote (further from production) than the CEP LOT. Kawasaki stated that since there is no comparable LOT in the home market, it could not demonstrate a pattern of consistent differences in price due to sales at different LOTs in the home market and therefore did not claim a LOT adjustment. Kawasaki has requested a CEP offset instead.

In determining whether separate LOTs actually existed in the home market and U.S. market, we examined whether Kawasaki's sales involved different marketing stages (or their

equivalent) based on the channel of distribution, customer categories and selling functions.

For sales in the home market we found that Kawasaki performed essentially the same selling activities for each of the three channels of distribution. These include: technical advice, warranty service, advertising, marketing services, freight and delivery, warehousing, inputting a specification control number, sales processing, rebate administration, and demand forecasting. Based on our analysis of these factors, we found that Kawasaki's home market sales comprise a single LOT.

In analyzing Kawasaki's selling activities for its EP sales, we noted that the sales involved basically the same selling functions associated with the home market LOT described above. These selling activities include technical advice, warranty service, advertising, marketing services, inputting a specification control number, sales processing, rebate administration, and demand forecasting. Therefore, based upon this information, we have determined that the LOT for all EP sales is the same as that in the home market.

Kawasaki failed to provide any factual support for its argument that the LOT of its home market sales is more remote than the LOT of its CEP sales. Our analysis indicates that the selling functions performed at the CEP level are essentially the same as those performed in the home market. Specifically, after having excluded selling functions of its U.S. affiliate from our analysis, in accordance with sections 772(d) and 773(a)(7)(A) of the Act, we determined that Kawasaki and/or Kawasho Japan performed the following selling activities for its CEP sales: technical advice, warranty service, advertising, marketing services, freight and delivery, inputting a specification control number, sales processing, and demand forecasting. Therefore, based upon this analysis, we determine that Kawasaki's CEP and home market sales are made at the same LOT.

Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) and no CEP offset pursuant to 773(a)(7)(B) of the Act are warranted.

*Export Price and Constructed Export Price*

Kawasaki reported as EP transactions sales of subject merchandise sold to unaffiliated U.S. customers prior to importation through multiple unaffiliated Japanese trading companies. Kawasaki reported as CEP transactions sales of subject merchandise to an affiliated trading company, Kawasho Japan, which resold the merchandise to KI (Kawasho Japan's U.S. affiliate), which then resold the subject merchandise to unaffiliated customers in the United States.

We calculated EP, in accordance with section 772(a) of the Act, for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted, based on the facts of record. We based EP on the packed FOB stowed and trimmed or FAS price to unaffiliated purchasers in the United States, as appropriate. We made deductions to the starting price for rebates, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling charges, and foreign insurance.

We calculated CEP, in accordance with subsection 772(b) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on the packed ex-dock, duty paid, U.S. port prices to unaffiliated purchasers in the United States. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, foreign insurance, ocean freight, marine insurance, and U.S. customs duties. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs, technical service costs and advertising expenses) and indirect selling expenses (including inventory carrying costs). We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

*Normal Value*

After testing (1) home market viability, (2) whether sales to affiliates were at arm's-length prices, and (3) whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' section of this notice.

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Kawasaki's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because Kawasaki's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for Kawasaki.

2. Affiliated-Party Transactions and Arm's-Length Test

Kawasaki is affiliated with two home market trading companies—Kawasho Japan and a second trading company, which we will refer to as company X. Kawasaki stated in its questionnaire responses that company X, who purchases both Kawasaki-produced subject merchandise and subject merchandise produced by other manufacturers, is unable to link its sales of subject merchandise to unaffiliated home market customers with its purchases of Kawasaki-produced subject merchandise. For this reason, Kawasaki states that it is unable to report the downstream sale from company X to the first unaffiliated home market customer. Therefore, Kawasaki has reported only its sales to company X.

Kawasaki also stated that Kawasho sells subject merchandise to several affiliated processors and resellers in the home market. According to Kawasaki, these affiliated processors and resellers purchase both Kawasaki-produced subject merchandise and subject merchandise produced by other manufacturers. Kawasaki states that it cannot report the downstream sales by these affiliates because these companies do not link the original subject merchandise produced with the product sold. For this reason, Kawasaki has reported only sales from Kawasho to the affiliated processors and resellers.

Because Kawasaki is affiliated with company X and Kawasho's affiliated processors and resellers, we applied the arm's-length test to sales from Kawasaki to company X, and to sales made by Kawasho to its affiliated processors and resellers, by comparing them to sales of identical merchandise from Kawasaki to its unaffiliated home market customers. If these affiliated party sales satisfied the arm's-length test, we used them in our analysis. Sales to affiliated customers in the home market which were not made at arm's-length prices were excluded from our analysis because we considered them to be

outside the ordinary course of trade. See 19 CFR 351.102.

To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, rebates, direct selling expenses, and home market packing. We added interest revenue and billing adjustments to the gross unit price in the amounts reported by Kawasaki. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c) and 62 FR at 27355, *Preamble—Department's Final Antidumping Regulations* (May 19, 1997). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. *See SSWR* at 63 FR 40451. Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

3. Cost of Production Analysis

In their petition, the petitioners submitted an allegation pursuant to section 773(b) of the Act that Kawasaki and the other named respondents had made sales in the home market at less than the cost of production (''COP''). Our analysis of the allegation indicated that there were reasonable grounds to believe or suspect that Kawasaki had sold CTL plate in the home market at prices at less than the COP. Accordingly, we initiated a COP investigation with respect to each respondent to determine whether sales were made at prices less than the COP pursuant to section 773(b) of the Act (*see Initiation Notice* at 64 FR 12959, 12963).

We conducted the COP analysis described below.

*A. Calculation of COP*

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Kawasaki's cost of materials and fabrication for the foreign like product, direct and indirect selling expenses, plus an amount for home market SG&A, interest expenses, and packing costs.

Kawasaki produced a small quantity of subject merchandise at its universal mill at Mizushima and its hot-strip mill at Chiba. According to Kawasaki, both of these mills primarily produce non-subject merchandise. For this reason, Kawasaki claimed that it would be burdensome to calculate actual production costs for the subject merchandise originating at these mills. After examining this issue, we granted Kawasaki's request not to report the actual costs from both mills, but required Kawasaki to report the standard costs for subject merchandise produced at these mills. We made the following adjustments to respondents' reported costs:

1. For certain models of merchandise produced at both the hot-strip mill at Mizushima and the hot-strip mill at Chiba, we calculated CONNUM-specific weighted-average total costs of manufacture (TOTCOM) using the quantities produced at the respective mills and the actual TOTCOMs from the Mizushima hot-strip facility and the standard costs from the hot-strip mill at Chiba.

2. For certain CONNUMs of merchandise produced only at the universal mill at Mizushima, and for additional other models of merchandise produced only at the hot-strip mill at Chiba, we used as the TOTCOM the standard costs for each product, as reported by Kawasaki.

3. The Department requested in the antidumping questionnaire that Kawasaki provide CONNUM-specific variable cost of manufacturing (''VCOMH'') data for home market sales. For certain home market sales, Kawasaki failed to provide this information. Therefore, we applied the CONNUM-specific variable cost of manufacturing data that Kawasaki reported in its cost of production database as the VCOMH for these sales in Kawasaki's home market sales database.

4. Kawasaki failed to provide cost information for a small number of home market sales. Our analysis of these sales indicates that none are of a specification that would be considered identical or similar to any specification sold in the U.S. market during the POI. For this reason, none of these sales are eligible to be matched to a U.S. sale. Consequently, we have not included them in our analysis.

*B. Test of Home Market Sales Prices*

We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below COP. In determining whether to disregard home market sales made at prices less than the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges and rebates.

*C. Results of the COP Test*

Pursuant to section 773(b)(2)(C), where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to weighted-average COPs for the POI, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

We found that, for certain grades of CTL plate, more than 20 percent of Kawasaki's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining above-cost sales as the basis for determining NV if such sales existed, in accordance with section 773(b)(1) of the Act.

*Price-to-Price Comparisons*

We calculated NV based on delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length prices, where appropriate. We added to the starting price the amount Kawasaki reported for interest revenue and billing adjustments. We made deductions, where appropriate, from the starting price for rebates, inland freight, warehousing, and inland freight insurance. We made adjustments for differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. In its questionnaire responses, Kawasaki reported a certain fee it regularly incurs as a rebate. We reclassified this fee as a direct expense because the amount Kawasaki reported

under this category is for the fees Kawasaki paid to a service provider rather than a rebate Kawasaki paid to its customers. We made adjustments under section 773(a)(6)(C)(iii) of the Act for differences in circumstances of sale for imputed credit expenses, advertising, warranty expenses, technical service expenses, and the above-referenced fee. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

*Currency Conversion*

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *see Policy Bulletin 96–1: Currency Conversions* (61 FR 9434, March 8, 1996).) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the yen did not undergo a sustained movement.

*Verification*

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

*Suspension of Liquidation*

In April 1999, the Department made an early determination of critical circumstances with respect to imports of subject merchandise from Japan. *See Preliminary Determination of Critical Circumstances: Certain Cut-To-Length Carbon-Quality Steel Plate From Japan* (April 26, 1999), 64 FR 2025. Thus, in accordance with section 733(e)(2) of the Act, the Department will direct the U.S. Customs Service to suspend liquidation of all entries of CTL plate from Japan, that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication in the **Federal Register** of our preliminary determination of sales at LTFV.

We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

| Exporter/manufacturer | Weighted-average margin percentage |
|---|---|
| Kawasaki Steel Corporation | 11.70 |
| Kobe Steel, Ltd | 59.12 |
| Nippon Steel Corporation | 59.12 |
| NKK Corporation | 59.12 |
| Sumitomo Metal Industries, Ltd | 59.12 |
| All Others | 11.70 |

*ITC Notification*

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

*Public Comment*

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than August 25, 1999, and rebuttal briefs no later than September 1, 1999. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on September 13, 1999, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

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, U.S. Department of Commerce, Room 1870, within 30 days of the 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 the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: July 19, 1999.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 99–19304 Filed 7–28–99; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–836]**

### Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea

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

**EFFECTIVE DATE:** July 29, 1999.

**FOR FURTHER INFORMATION CONTACT:** Frank Thomson or Howard Smith, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4793, or (202) 482–5193, respectively.

**The Applicable Statute**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all references are made to the Department's regulations at 19 CFR Part 351 (1998).

**Preliminary Determination**

We preliminarily determine that certain cut-to-length carbon-quality steel plate products (''CTL plate'') from the Republic of Korea (''Korea'') are being, or are likely to be, sold in the United

States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

*Case History*

Since the initiation of this investigation (*Notice of Initiation of Antidumping Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate from Czech Republic, France, India, Korea, Italy, Japan, Republic of Korea, and Former Yugoslav Republic of Macedonia* (64 FR 12959, March 16, 1999)) (''*Initiation Notice*''), the following events have occurred:

In their petition, the petitioners [1] identified Daekyung Corporation (''Daekyung''), Dongkuk Steel Mill Co., Ltd (''Dongkuk''), Korea Iron & Steel (''KISCO''), and Pohang Iron & Steel Co., Ltd (''POSCO'') as possible exporters of CTL plate from Korea. We requested on March 12, 1999, data on all producers and exporters of the subject merchandise during the period of investigation (''POI'') from the U.S. Embassy in Seoul. Based on information contained in the petition and received from the Embassy, the Department issued antidumping questionnaires to Daekyung, Dongkuk, KISCO, and POSCO on March 17, 1999.[2]

In April 1999, the United States International Trade Commission (''ITC'') issued an affirmative preliminary injury determination in this case (*see* ITC Investigation No. 731–TA–815–822).

On April 27, 1999, POSCO and Dongkuk submitted responses to section A of the questionnaire. On May 5, 1999, Daekyung submitted a letter to the Department stating that it did not export the subject merchandise to the United States during the POI, with a request that it be excluded from further participation in the investigation. We subsequently informed Daekyung that these facts are subject to verification. POSCO and Dongkuk submitted responses to sections B and C on May 11, 1999, and responses to section D on May 14, 1999.

Petitioners filed comments on POSCO's section A through D responses on May 20, 1999, and May 28, 1999, and on Dongkuk's section A response on May 20, 1999 and on Dongkuk's sections B through D on May 27, 1999.

On May 28, 1999, we issued supplemental questionnaires for sections A, B, and C to POSCO and Dongkuk, and for section D to POSCO and Dongkuk on June 8, and 3, 1999 respectively. POSCO responded to our May 28, 1999, supplemental questionnaire on June 22, 1999; Dongkuk responded to our May 28, 1999, supplemental questionnaire on June 22,1999 and on June 29 for the Section D supplemental questionnaire. Petitioners commented on POSCO's and Dongkuk's supplemental questionnaire on June 30, 1999. On July 2, 1999 we issued an additional supplemental questionnaire to POSCO.

In letters dated June 2, 8, and 14, 1999, Dongkuk requested that it be excused from reporting sales for its affiliate Korean Iron & Steel Co. Ltd. (''KISCO''). Dongkuk stated that KISCO had ceased production of subject merchandise early in the POI and had only an insignificant quantity of home market sales, and no U.S. sales of subject merchandise. Dongkuk argued that the Department should not collapse Dongkuk and KISCO. On June 4, 1999 petitioners argued that the Department should collapse Dongkuk and KISCO and require that its sales and costs be reported. On June 24, 1999, for the reasons outlined in its letters, we granted Dongkuk's request to be excused from reporting KISCO's sales and cost.

On June 11, 1999 we instructed POSCO to report downstream sales through five of its affiliated resellers. POSCO, in its Section A response and in subsequent submissions dated May 17, and June 1, 1999, had requested to be excused from reporting any sales through affiliated resellers. After reviewing certain supplemental information provided by POSCO, we selected the five resellers identified in the June 11, 1999 letter, and requested POSCO to provide a questionnaire response for these affiliated resellers. *See Affiliated Reseller Sales* section below.

*Scope of Investigation*

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*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 nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or 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 0.10 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 zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (i.e., USS AR 400, USS

[1] The petitioners are Bethlehem Steel Corporation, Gulf States Steel, Inc.,IPSCO Steel Inc., Tuscaloosa Steel Corporation, United Steelworkers of America, and the U.S. Steel Group (a unit of USX Corporation).

[2] Section A of the questionnaire requested general information concerning the company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of that merchandise in all markets. Sections B and C of the questionnaire requested home market sales listings and U.S. sales listings. Section D of the questionnaire requested information regarding the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E of the questionnaire requested information regarding the cost of further manufacture or assembly performed in the United States.

AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

*Scope Comments*

As stated in our notice of initiation, we set aside a period for parties to raise issues regarding product coverage. In particular, we sought comments on the specific levels of alloying elements set out in the description below, the clarity of grades and specifications excluded from the scope, and the physical and chemical description of the product coverage.

On March 29, 1999, Usinor, a respondent in the French antidumping and countervailing duty investigations and Dongkuk Steel Mill Co., Ltd. and Pohang Iron and Steel Co., Ltd., respondents in the Korean antidumping and countervailing duty investigations (collectively the Korean respondents), filed comments regarding the scope of the investigations on CTL plate and the Department's model matching criteria. On April 14, 1999, the petitioners filed comments regarding Usinor's and the Korean respondents' comments regarding model matching. In addition, on May 17, 1999, ILVA S.p.A. (ILVA), a respondent in the Italian antidumping and countervailing duty investigations, requested guidance on whether certain products are within the scope of these investigations.

Usinor requested that the Department modify the scope to exclude: (1) Plate that is cut to non-rectangular shapes or that has a total final weight of less than 200 kilograms; and (2) steel that is 4'' or thicker and which is certified for use in high-pressure, nuclear or other technical applications; and (3) floor plate (*i.e.*, plate with ''patterns in relief'') made from hot-rolled coil. Further, Usinor requested that the Department provide clarification of scope coverage with respect to what it argues are over-inclusive HTSUS subheadings included in the scope language.

The Department has not modified the scope of these investigations because the current language reflects the product coverage requested by the petitioners, and Usinor's products meet the product description. With respect to Usinor's clarification request, we do not agree that the scope language requires further elucidation with respect to product coverage under the HTSUS. As indicated in the scope section of every Department antidumping and countervailing duty proceeding, the HTSUS subheadings are provided for convenience and Customs purposes only; the written description of the merchandise under investigation or review is dispositive.

The Korean respondents requested confirmation whether the maximum alloy percentages listed in the scope language are definitive with respect to covered HSLA steels.

At this time, no party has presented any evidence to suggest that these maximum alloy percentages are inappropriate. Therefore, we have not adjusted the scope language. As in all proceedings, questions as to whether or not a specific product is covered by the scope and, hence, must be reported, should be timely raised with Department officials.

ILVA requested guidance on whether certain merchandise produced from billets is within the scope of the current CTL plate investigations. According to ILVA, the billets are converted into wide flats and bar products (a type of long product). ILVA notes that one of the long products, when rolled, has a thickness range that falls within the scope of these investigations. However, according to ILVA, the greatest possible width of these long products would only slightly overlap the narrowest category of width covered by the scope of the investigations. Finally, ILVA states that these products have different production processes and properties than merchandise covered by the scope of the investigations and therefore are not covered by the scope of the investigations.

As ILVA itself acknowledges, the particular products in question appear to fall within the parameters of the scope and, therefore, we are preliminarily treating them as covered merchandise.

*Period of Investigation*

The POI is January 1, 1998, through December 31, 1998.

*Fair Value Comparisons*

To determine whether sales of CTL plate from Korea to the United States were made at less than fair value, we compared the export price (''EP'') or constructed export price (''CEP'') to the Normal Value (''NV''), as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

*Product Comparisons*

In accordance with section 771(16) of the Act, we considered all products produced by POSCO and Dongkuk covered by the description in the ''Scope of Investigation'' section, above, and sold in Korea during the POI to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance (which are identified in Appendix V of the questionnaire): painting, quality, grade specification, heat treatment, nominal thickness, nominal width, patterns in relief, and descaling.

Because respondents had no sales of non-prime merchandise in the United States during the POI, we did not use home market sales of non-prime merchandise in our product comparisons (*see, e.g., Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden* (63 FR 40449, 40450, July 29, 1998) (''SSWR'')).

*Level of Trade*

In accordance with section 773(a)(1)(B) 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 constructed value (''CV''), that of the sales from which we derive

selling, general and administrative (''SG&A'') expenses and profit. With respect to U.S. sales and EP transactions, the LOT is the level of the starting price sale, which is usually from the exporter to the importer. For CEP, the LOT is the level of the constructed sale from the exporter to the importer.

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 an 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 levels between NV and CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

*POSCO*

POSCO reported that it sells at the same LOT in both markets. In order to determine whether NV was established at a different LOT than EP sales, we examined stages in the marketing process and selling functions along the chains of distribution between POSCO and its home market and U.S. customers. Based on our analysis of the chains of distribution and selling functions performed for EP sales in the U.S. market, we preliminarily determine that POSCO and its subsidiaries POSCO Steel Sales and Service Co., Ltd. (''POSTEEL'') and POSAM (for EP sales) provided a sufficiently similar degree of services on sales to all channels of distribution, and that the sales made to the United States constitute one LOT.

Based on a comparison of the selling activities performed in the U.S. market to the selling activities in the home market, we preliminarily determine that there is not a significant difference in the selling functions performed in both markets. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted. *See LOT Memo* dated July 19, 1999. *See also Affiliated Reseller Sales* section below.

*Dongkuk*

In the home market, Dongkuk reported one channel of distribution involving sales to distributors and affiliated and unaffiliated end-users. Dongkuk reported few selling activities for its home market sales. We examined the selling functions and found no appreciable difference between types of customers. Because there are no appreciable differences between the selling functions on sales made to different customers in the home market, sales to these customers represent a similar stage of marketing. Therefore, we preliminarily conclude that all Dongkuk's sales to end-users constitute one LOT in the home market.

For its EP and CEP sales in the U.S. market, Dongkuk reported four sales channels: (1) Dongkuk's sales through Dongkuk Industries Co., Ltd. (''DKI''), Dongkuk's affiliated trading company in Korea, to Dongkuk International, Inc. (DKA), Dongkuk's affiliate located in the United States, to unaffiliated customers; (2) Dongkuk's sales through DKI, to unaffiliated customers; (3) Dongkuk's sales to DKA, to an unaffiliated customer; and (4) Dongkuk's sales to an unaffiliated customer. We examined the selling functions performed for each of the four U.S. sales channels. These selling functions included freight and delivery arrangements, credit services, and post-sale warehousing. With the exception of freight and delivery arrangements for sales in channel 1, selling functions performed in the four sales channels were identical. Thus, sales to these customer categories represent a similar stage of marketing. Therefore, we preliminarily determine that the sales made to the United States constitute one LOT.

Further, because we preliminarily conclude that the U.S. LOT and the home market LOT included similar selling functions, we conclude that these sales are made at the same LOT. Therefore, a LOT adjustment for Dongkuk is not appropriate.

*Export Price and Constructed Export Price*

The Department considers several factors in making its determination concerning whether sales made prior to importation through a U.S. affiliate to an unaffiliated customer in the United States are EP sales. These factors are: (1) whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer without being introduced into the physical inventory of the affiliated selling agent; (2) whether this is the customary commercial channels between the parties involved; and (3) whether the functions of the U.S. sales affiliates are limited to those of a ''processor of sales-related documentation'' and a ''communication link'' with the unrelated U.S. buyer. Where the factors indicate that the activities of the U.S. sales affiliate are ancillary to the sale, we treat the transactions as EP sales. Where the U.S. sales affiliate has a significant role in the sales process, we treat the transactions as CEP sales (*e.g. See Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Administrative Review, 62 FR 18389, 18391* (April 15, 1997); *Mitsubishi Heavy Industries* versus *United States, Slip Op.* 98–82 at 6 (CIT, June 23, 1998)).

*POSCO*

POSCO reported four channels of distribution for U.S. sales. In channel 1 POSCO sold the subject merchandise directly to the United States. In channel 4 POSCO sold the subject merchandise directly to unaffiliated Korean trading companies for resale of subject merchandise to the United States. In channel 2, POSTEEL, which is POSCO's affiliated trading company, sold to a U.S. customer with the assistance of another affiliate, POA. In channel 3, POSTEEL sold to a U.S. customer through its U.S. affiliate POSAM . We classified the sales made through channel 2 as EP sales, since POA had no involvement in the selling process.

In channel 3, the U.S. affiliate, POSAM, was involved in all the sales made to unaffiliated U.S. customers. POSCO reported these sales as EP transactions in its responses. However, because POSAM is involved in the U.S. selling activities for these sales to some degree, we examined whether these sales should be properly classified as EP or CEP transactions.

We examine several factors to determine whether sales made prior to importation through an affiliated sales agent to an unaffiliated customer in the United States are EP sales. Based on our review of the selling activities of POSCO's U.S. affiliate, we preliminarily determine that EP is appropriate for POSTEEL's sales to the United States through POSAM. The customary commercial channel between POSCO and its unaffiliated customers is that POSCO ships the EP merchandise directly to the unaffiliated U.S. customers without having the merchandise enter into the inventory of the U.S. affiliates, and the U.S. affiliates' activities are limited to that of a ''processor of sales-related

documentation'' and a ''communication link'' with the unaffiliated U.S. buyers. Accordingly, for purposes of the preliminary determination, we are treating the sales in question as EP transactions. We will examine this issue further at verification.

We calculated EP in accordance with section 772(a) of the Act. We based EP on the relevant terms of delivery price to unaffiliated purchasers in the United States. We made deductions to the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling charges, ocean freight, U.S. brokerage and wharfage charges and U.S. Customs duty, where appropriate. Finally, we added to the U.S. price an amount for duty drawback pursuant to section 772 (c)(1) (B) of the Act.

*Dongkuk*

For U.S. sales channels two and four, which are defined in the *Level of Trade* section above, we based our calculation on EP, in accordance with section 772 (a) of the Act, because the subject merchandise was sold by the producer or exporter to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise indicated. For U.S. sales channels one and three, which are defined in the *Level of Trade* section above, we based our calculation on CEP, in accordance with section 772 (b) of the Act, because the merchandise was sold by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

We have preliminarily determined that the affiliated purchaser in the United States, Dongkuk International, Inc. (DKA), did more than merely act as a ''processor of sales-related documentation and a communication link with the unrelated U.S. buyer.'' (*i.e.*, channels 1 and 3 sales) Where a U.S. affiliate is involved in making a sale, we normally consider the sale to be CEP unless the record demonstrates that the U.S. affiliate's involvement in making the sale is incidental or ancillary. The record demonstrates that Dongkuk International, Inc.'s role exceeds that of an incidental or ancillary role. *See LOT/CEP Memo* July 19, 1999

We based EP on the price to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign wharfage and loading, foreign brokerage, international freight, marine insurance, domestic inland freight, and U.S. brokerage and wharfage. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act.

We calculated CEP, in accordance with subsections 772(b), (c), and (d) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on the prices to unaffiliated purchasers in the United States. We made deductions for discounts and rebates. Additionally we made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign wharfage and loading, foreign brokerage, international freight, marine insurance, domestic inland freight, U.S. brokerage and wharfage, U.S. duty and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (e.g., commissions, credit costs, bank charges, and warranty expenses), and indirect selling expenses. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act.

*Normal Value*

After testing (1) home market viability, (2) whether sales to affiliates were at arm's-length prices, and (3) whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparisons'' sections of this notice.

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because each of the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for both respondents.

2. Affiliated-Party Transactions and Arm's-Length Test

*POSCO*

POSCO reported sales to affiliated parties in the home market. For sales to affiliated parties we applied the arm's-length test by comparing them to sales of identical merchandise from POSCO to unaffiliated home market customers. If these affiliated-party sales satisfied the arm's-length test, we used them in our analysis. Sales to affiliated customers in the home market not made at arm's-length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102.

To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses and packing. We added to the starting price interest revenue and duty drawback. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c) and 62 FR at 27355. In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. *See SSWR* at 63 FR 40451. Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

*Dongkuk*

Dongkuk also reported sales to affiliated parties in the home market. We applied the arm's-length test as described above.

*Affiliated Reseller Sales*

POSCO asked to be excused from reporting downstream sales through its numerous affiliated service centers. While we denied POSCO's request, we limited the number of service centers that POSCO would have to report. POSCO submitted its narrative questionnaire response on July 8, and its electronic database, along with certain supplemental information, on July 12,

1999. However, there are a number of problems associated with these data that made it difficult to reflect these reseller sales in our preliminary margin calculations. Most important is the fact that two of these resellers sell subject merchandise which they purchase from both POSCO and other unaffiliated suppliers. According to POSCO, these resellers cannot distinguish the producer of the subject merchandise. This makes it impossible to determine whether any given sale by these resellers was produced by POSCO and should be included in our analysis. In addition, petitioners have raised a number of issues regarding the proper treatment of these sales and accompanying adjustments. However, there is insufficient information on the record regarding these issues to make a satisfactory determination concerning the use of these sales in our antidumping analysis at this time. While we have not used these sales for purposes of the preliminary determination, we intend to address these issues in a supplemental questionnaire and determine whether and in what way to use this information in the final determination.

3. Cost of Production Analysis

In their petition, the petitioners submitted a countrywide allegation pursuant to section 773(b)(1) of the Act that Korean producers and exporters had made sales in the home market at less than the cost of production (''COP''). Our analysis of the allegation indicated that there were reasonable grounds to believe or suspect that each Korean exporter sold CTL plate in the home market at prices at less than the COP. Accordingly, we initiated COP investigations with respect to the two Korean exporters to determine whether sales were made at prices less than the COP pursuant to section 773(b) of the Act (*see Initiation Notice* at 64 FR 12959, 12965).

We conducted the COP analysis described below.

*A. Calculation of COP*

In accordance with section 773(b)(3) of the Act, for each respondent we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product plus amounts for home market selling, general and administrative expenses (''SG&A''), interest expense, and packing costs. We relied on the COP data submitted by POSCO and Dongkuk in their section D questionnaire responses to calculate each company's weighted-average COPs for the POI, except for the following instances where the information was improperly quantified or valued: (1) We increased Dongkuk's reported material cost for slabs purchased from affiliated suppliers to account for an understatement of the affiliated supplier's costs reflected in the transfer prices; (2) we increased Dongkuk's reported depreciation expense as a result of our disallowance of the extension of the useful lives for fixed assets; (3) we recalculated general and administrative expenses to exclude certain items which were unrelated to general operations; and (4) we recalculated interest expense to ensure consistency between this basis for this expense and the basis for the other reported costs. *See Memo To Neal Halper,* July 19, 1999. In addition, we analyzed Dongkuk's treatment of certain start-up costs as recorded in its accounting records in accordance with Korean GAAP. We have allowed this treatment for purposes of the preliminary determination as it appears to reasonably state Dongkuk's production costs. However, we will continue to probe this issue at verification and in the final determination.

*B. Test of Home Market Sales Prices*

We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below COP. In determining whether to disregard home market sales made at prices less than the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, discounts, and direct and indirect selling expenses.

*C. Results of the COP Test*

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

For both Dongkuk and POSCO, we found that, for certain grades of CTL plate, more than 20 percent of these firm's sales within an extended period of time were at prices less than COP.

*D. Calculation of CV*

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of POSCO's and Dongkuk's cost of materials, fabrication, SG&A, interest, U.S. packing costs and profit. We made similar adjustments as those described above for COP. In accordance with sections 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses.

*Price-to-Price Comparisons*

We calculated NV based on prices to affiliated (where appropriate) and unaffiliated customers. We made deductions, where appropriate, from the starting price for inland freight, and also added duty drawbacks and interest revenue. We made adjustments for differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act for differences in circumstances of sale for imputed credit expenses, warranties, and commissions. In the case of Dongkuk, we recalculated it's credit expenses in the home market because of inconsistencies in its sales response regarding this expense. *See Dongkuk Calculation Memo from Analyst to the File.* Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

*Price-to-CV Comparisons*

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of the foreign like product. We made adjustments to CV in accordance with section 773(a)(8) of the Act. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses.

*Currency Conversion*

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. *See POSCO Calculation Memo from Analyst to the File* for an explanation of our treatment of currency conversion for the POI in this case.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *see Policy Bulletin 96–1: Currency Conversions* (61 FR 9434, March 8, 1996).)

*Verification*

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

*Suspension of Liquidation*

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, except those entries produced by POSCO.

We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated in the chart below. We will adjust the deposit requirements to account for any export subsidies found in the companion countervailing duty investigation. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

| Exported/manufacturer weighted-average | Margin percentage |
|---|---|
| Dongkuk Steel Mill Co. Ltd ... | 6.15 |
| Pohang Iron & Steel Co., Ltd | .05 |
| All Others Rate ..... | 6.15 |

*ITC Notification*

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 157 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

*Public Comment*

Case briefs or other written comments and at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than August 25, 1999, and rebuttal briefs no later than September 1, 1999. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on September 14, 1999, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

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, U.S. Department of Commerce, Room 1870, within 30 days of the 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 the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: July 19, 1999.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 99–19305 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–DS–P

federal register

Thursday
July 29, 1999

# Part III

# Department of Education

**34 CFR Part 674**

**Federal Perkins Loan Program; Proposed Rule**

**DEPARTMENT OF EDUCATION**

**34 CFR Part 674**

**RIN 1840–AC70**

## Federal Perkins Loan Program

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the Federal Perkins Loan Program regulations. These proposed regulations are needed to implement the changes to the Higher Education Act of 1965, as amended (the HEA), resulting from the Higher Education Amendments of 1998 (the 1998 Amendments). The proposed regulations reflect the provisions of the 1998 Amendments that affect the institutions that participate in, and borrowers who have loans made under, the Federal Perkins Loan Program. These proposed regulations would expand borrower benefits under the Federal Perkins Loan program by increasing loan limits, expanding borrower eligibility for deferments and cancellations, establishing a loan rehabilitation program for borrowers in default on their Federal Perkins Loans, establishing an incentive repayment program, and providing a closed school discharge.

**DATES:** We must receive your comments by September 15, 1999.

**ADDRESSES:** Address all comments about these proposed regulations to Ms. Gail McLarnon, Program Specialist, Policy Development Division, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3042, Regional Office Building 3, Washington, DC 20202–5449. If you prefer to send your comments through the Internet, use the following address: perkinsnprm@ed.gov

If you want to comment on the information collection requirements you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

**FOR FURTHER INFORMATION CONTACT:** Ms. Gail McLarnon, Program Specialist, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3045, Regional Office Building 3, Washington, DC 20202–5449. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:**

### Invitation to Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in Room 3045, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday, of each week except Federal holidays.

### Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

### General

*Background*

On October 7, 1998, President Clinton signed into law the Higher Education Amendments of 1998 (the 1998 Amendments), Pub. L. 105–244, that amended the Higher Education Act of 1965, as amended (the HEA). This notice of proposed rulemaking (NPRM) addresses the changes that affect the Federal Perkins Loan Program.

### Negotiated Rulemaking

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we published a notice in the **Federal Register** (63 FR 59922, November 6, 1998) requesting advice and recommendations from interested parties concerning what regulations were necessary to implement Title IV of the HEA. We also invited advice and recommendations concerning which regulated issues should be subjected to a negotiated rulemaking process. We further requested advice and recommendations concerning ways to prioritize the numerous issues in Title IV, in order to meet statutory deadlines. Additionally, we requested advice and recommendations concerning how to conduct the negotiated rulemaking process, given the time available and the number of regulations that needed to be developed.

In addition to soliciting written comments, we held three public hearings and several informal meetings to give interested parties an opportunity to share advice and recommendations with the Department. The hearings were held in Washington, D.C., Chicago, and Los Angeles, and we posted transcripts of those hearings to the Department's Information for Financial Aid Professionals' website (http://www.ifap.ed.gov).

We then published a second notice in the **Federal Register** (63 FR 71206, December 23, 1998) to announce the Department's intention to establish four negotiated rulemaking committees to draft proposed regulations implementing Title IV of the HEA. The notice announced the organizations or groups believed to represent the interests that should participate in the negotiated rulemaking process and announced that the Department would select participants for the process from nominees of those organizations or

groups. We requested nominations for additional participants from anyone who believed that the organizations or groups listed did not adequately represent the list of interests outlined in section 492 of the HEA. Once the four committees were established, they met to develop proposed regulations over the course of several months, beginning in January.

Proposed regulations contained in this NPRM reflect the final consensus of negotiating Committee II, which was made up of the following members:

- American Association of Community Colleges.
- American Association of Cosmetology Schools.
- American Association of State Colleges and Universities.
- American Council on Education.
- Career College Association.
- Coalition of Associations of Schools of the Health Professions.
- Coalition of Higher Education Assistance Organizations.
- Consumer Bankers Association.
- Education Finance Council.
- Education Loan Management Resources.
- Legal Services Counsel (a coalition).
- National Association of College and University Business Officers.
- National Association for Equal Opportunity in Higher Education.
- National Association of Graduate/Professional Students.
- National Association of Independent Colleges and Universities.
- National Association of State Student Grant and Aid Programs/National Council of Higher Education Loan Programs.
- National Association of State Universities and Land-Grant Colleges.
- National Association of Student Financial Aid Administrators.
- National Association of Student Loan Administrators.
- National Council of Higher Education Loan Programs.
- National Direct Student Loan Coalition.
- Sallie Mae, Inc.
- Student Loan Servicing Alliance.
- The College Board.
- The College Fund/United Negro College Fund.
- United States Department of Education.
- United States Student Association.
- U.S. Public Interest Research Group.

Under committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document.

The Secretary will publish a technical correction package at a later date that replaces all references to ''Direct Loan'' in the Federal Perkins Loan Program and Student Assistance General Provisions regulations with ''National Direct Student Loan Program'' or the acronym ''NDSL.'' The negotiators agreed that such a change would eliminate confusion between the National Direct Student Loan Program and the William D. Ford Federal Direct Student Loan Program.

*Summary of Proposed Regulatory Changes*

We propose to amend the following sections of the regulations:

*Section 674.2 Definitions*

We propose to amend § 674.2 by adding a definition of the term ''satisfactory repayment arrangement'' in accordance with changes made to the 1998 Amendments. The 1998 Amendments define ''satisfactory repayment arrangements'' as the return of Title IV HEA eligibility to a defaulted Federal Perkins Loan borrower, to the extent the borrower is otherwise eligible, if the borrower makes six on-time, consecutive, monthly payment of amounts owed on the loan. As specified in the 1998 Amendments, the proposed regulations would authorize the restoration of the borrower's Title IV eligibility only once on a defaulted Federal Perkins loan.

*Section 674.5 Federal Perkins Loan Program Default Rate and Penalties*

Effective with the 2000–2001 award year, the 1998 Amendments eliminate the requirement that an institution file a default reduction plan with the Secretary if the institution's cohort default rate equals or exceeds 15 percent. The 1998 Amendments also eliminate the series of graduated default penalties imposed on institutions with cohort default rates that equal or exceed 20, 25, or 30 percent or more in favor of one default penalty of zero if an institution's cohort default rate equals or exceeds 25 percent. A default rate penalty of zero eliminates an institution's Federal Capital Contribution. We are proposing to amend § 674.5 to reflect these changes.

For award years that precede award year 2000–2001, the 1998 Amendments also contain a provision that exempts an institution from the default reduction plan filing requirement if the institution has less than 100 students who have Federal Perkins Loans in that academic year and a cohort default rate that is equal to or greater than 15 percent but less than 20 percent. The negotiators agreed not to develop proposed regulations that reflect this change because the final regulations that implement this provision would be outdated immediately upon taking effect on July 1, 2000. However, because the 1998 Amendments were enacted on October 7, 1998, the Secretary will not require an institution that meets the statutory criteria to file a default reduction plan for award years 1998–99 and 1999–2000.

The proposed regulations would further amend this section to reflect a new default penalty established by the 1998 Amendments that terminates the eligibility to participate in the Federal Perkins Loan Program if an institution has a cohort default rate of 50 percent or higher for the three most recent years for which data are available. An institution would be ineligible to participate for the award year in which the determination is made and the two succeeding award years. Under the proposed regulations, the new ineligibility default penalty would become effective with the cohort default rate calculated as of June 30, 2001. The negotiating committee agreed that the cohort default rate calculated as of this date will represent the last of the three most recent years of available cohort default rate data used by the Secretary to make a determination of ineligibility. Thus, the cohort default rates calculated as of June 30, 2001, June 30, 2000, and June 30, 1999 would be the three years used by the Department to make the initial determination of ineligibility under the proposed regulations.

The proposed regulations would allow an institution to appeal a determination of ineligibility, within 30 days of notification by the Secretary, based on an inaccurate calculation of its cohort default rate if a recalculation using corrected data would reduce the institution's cohort default rate to below 50 percent for any of the three award years used to make the determination. This appeal is discussed more fully in the next paragraph. An institution may also appeal if, on average, 10 or fewer borrowers enter repayment for the three most recent award years used to make a determination of ineligibility. For example, an institution might have 5 borrowers entering repayment in the first year, 15 borrowers entering repayment in the second year and 10 borrowers entering repayment in the third year, for an average of 10 borrowers entering repayment per year over the three-year period used to make an eligibility determination. The Secretary has 45 days to issue a decision following the institution's timely submission of a complete and accurate

appeal, during which time the institution may continue to participate in the program. If an institution's appeal is denied by the Secretary, the institution must liquidate its revolving student loan fund in accordance with section 466A of the HEA and assign any outstanding loans to the Secretary in accordance with § 674.50 of the Federal Perkins Loan Program regulations.

In the Federal Perkins Loan Program, an institution's cohort default rate is calculated based on data submitted to the Secretary by the institution on its Fiscal Operations Report and through the edit process used by the institution to adjust the data on its Fiscal Operations Report. We recognize that in order to appeal a notice of ineligibility based on an inaccurate calculation of this data, the institution must correct its own data submission. We consider the complete and timely re-submission of corrected data, both in writing and through the edit process, to be the mechanism an institution uses to affect an appeal. The negotiating Committee agreed that this procedure provided adequate due process since the school submits the actual data used to calculate its Federal Perkins Loan Program cohort default data.

We recognize that the process used to calculate an institution's cohort default rate is unique to the Federal Perkins Loan Program. If, at any time in the future, the National Student Loan Data System (NSLDS) or another method is used to calculate an institution's Federal Perkins Loan Program cohort default rate, we will revisit and revise accordingly the regulations that govern the appeal process under this section.

We are also proposing to amend this section of the regulations to reflect provisions in the 1998 Amendments that allow an institution to exclude loans from its cohort default rate calculation. These exclusions include loans on which the borrower has voluntarily made six consecutive payments, voluntarily made all payments currently due, repaid the loan in full, received a deferment or forbearance based on a condition that predates the borrower reaching a 240/270-day past due status, or rehabilitates the loan after becoming 240/270 past due. The proposed regulations would also allow an institution to remove a loan that is canceled due to death or permanent and total disability, discharged in bankruptcy, forgiven due to a closed school situation, or repaid in full under the compromise repayment provisions contained in § 674.33(e) of the Federal Perkins Loan program regulations.

The 1998 Amendments require that the payments a borrower makes when making six consecutive payments or bringing the loan current be ''voluntary'' payments in order for a school to exclude the borrower from its cohort default rate calculation. In order to clarify the proposed regulations and avoid confusion when a school calculates its cohort default rate, we are proposing that ''voluntary'' payments exclude payments obtained by income tax offset, wage garnishment, income or asset execution, or pursuant to a judgment. Generally, payments obtained by these methods are automatically deducted from the borrower's tax return, wages or assets and the borrower has no control or choice in the payment process. Payments made pursuant to a judgment, although not always automatic, are payments made as the result of a court order and represent last resort due diligence efforts on the part of the school to obtain payment from the borrower. For this reason, the negotiators agreed that payments obtained by judgment also should not be considered voluntary for the purposes of calculating the Federal Perkins Loan Program cohort default rate.

We are also proposing to add the requirement that the six consecutive voluntary payments that a borrower makes on a defaulted loan be ''monthly'' payments in order for a school to remove that borrower from its cohort default rate calculation. We are proposing the addition of the word monthly to provide consistency in interpreting the timeframe in which the payments must be made. We are also proposing to require monthly payments to maintain regulatory consistency in this area. The Federal Perkins Loan Program regulations, as currently written, allow schools to remove a borrower from its cohort default rate calculation if the borrower has made six, consecutive, monthly payments on a defaulted loan.

In accordance with the 1998 Amendments, the proposed regulations would eliminate an institution's authority to exclude improperly serviced loans from its cohort default rate.

Lastly, the paragraphs in this section that describe satisfactory arrangements to repay the loan and loan rehabilitation have been deleted and relocated for administrative ease. The 1998 Amendments modified the definition of satisfactory repayment arrangements and authorized a loan rehabilitation program in the Federal Perkins Loan Program. These provisions are reflected in §§ 674.2 and 674.39 of the proposed regulations.

*Section 674.6 Default Reduction Plan*

For award year 2000–2001 and succeeding award years, the 1998 Amendments eliminate the requirement that an institution with a cohort default rate that equals or exceeds 15 percent establish and implement a default reduction plan. Therefore, we are proposing to remove the default reduction plan provisions contained in § 674.6 from the Federal Perkins Loan Program regulations.

*Section 674.7 Expanded Lending Option*

Effective October 1, 1998, the 1998 Amendments eliminated the Expanded Lending Option in the Federal Perkins Loan Program. This option previously allowed participating institutions to lend at higher limits after depositing an Institutional Capital Contribution equal to 100 percent of their Federal Capital Contribution into their Perkins Loan Revolving Fund. The proposed regulations would eliminate the expanded lending option provisions in § 674.7 to reflect this statutory change.

*Section 674.9 Student Eligibility*

The 1998 Amendments authorize the use of the same criteria that remove a borrower from an institution's cohort default rate in § 674.5 to re-establish a borrower's eligibility for additional Federal Perkins Loans. Accordingly, we are proposing to revise § 674.9 by adding a new paragraph that re-establishes a borrower's eligibility for a Perkins Loan if the borrower voluntarily makes six consecutive monthly payments, voluntarily makes all payments currently due, repays the loan in full, receives a deferment or forbearance based on a condition that predates the borrower reaching a 240/270-day past due status, or rehabilitates the loan after becoming 240/270 days past due. A borrower's eligibility for a Perkins Loan is also re-established if the borrower's loan is discharged due to permanent and total disability, discharged in bankruptcy, forgiven due to a closed school situation, or repaid in full in accordance with § 674.33 of the Federal Perkins Loan Program regulations.

For the purpose of a borrower re-establishing eligibility for a Perkins Loan under this section, the proposed regulations would define ''voluntary'' payments as those payments made directly by the borrower, including payments made over and above a payment made pursuant to a judgment. We are proposing to define payments made over and above the payments required on a judgment as voluntary

because the borrower is freely choosing to make a payment of this nature. Payments made over and above those required on a judgement are not automatic nor are they required. The negotiators agreed that a borrower who opts to make payments over and above payments made pursuant to a judgment is making a good faith effort to repay the debt and should not lose the benefit of Federal Perkins Loan eligibility.

For the purpose of re-establishing a borrower's eligibility for a Federal Perkins Loan, the proposed definition of voluntary payments excludes payments made under the following conditions because a borrower has no control or choice in making these types of payments:

- Payments obtained by income tax offset.
- Payments obtained through wage garnishment.
- Payments obtained through income or asset execution.
- Payments made pursuant to a judgment.

*Section 674.12 Loan maximums*

The 1998 Amendments increase annual maximum loan amounts and increase the aggregate maximum loan amounts allowable for an eligible student to the levels formerly authorized for schools that participated in the Expanded Lending Option. The proposed regulations reflect the following increased annual loan limits for all eligible borrowers: $4,000 for a student who has not successfully completed a program of undergraduate education and $6,000 for a graduate or professional student. The proposed regulations would require that aggregate loan limits not exceed $40,000 for graduate and professional students, $20,000 for a student who has successfully completed two years of a program of education leading to a bachelor's degree but who has not completed his or her degree work, and $8,000 in the case of students who have not completed the first two years of undergraduate work.

During the negotiated rulemaking discussions on this section, the Committee discussed whether this proposed change would create the potential for the inadvertent overaward of Federal Perkins Loans in excess of the new statutory aggregate maximum of $8,000, especially on loans made on or about the date of enactment. Loan maximums in effect prior to enactment of the 1998 Amendments did not tie aggregate loan limits to the completion of two years of undergraduate education. We are aware of this potential problem and will not require resolution of an overaward made prior to the publication of this proposed regulation if a Federal Perkins Loan borrower was inadvertently awarded an amount in excess of the new statutory aggregate maximum of $8,000 and did not complete two years of undergraduate work.

The 1998 Amendments also changed the definition of aggregate loan limits to include only unpaid principal as is the case in the Federal Family Education Loan and Federal Direct Loan Programs. This change allows a borrower who has borrowed the maximum cumulative amount as an undergraduate or professional student to re-establish eligibility for further Perkins loans up to the principal amount the borrower has repaid. Our proposed amendments to § 674.12 of the regulations reflect this change as well.

*Section 674.16 Making and Disbursing Loans*

The proposed regulations would amend this section, in accordance with the 1998 Amendments, to clarify the credit bureau reporting requirements with which an institution must comply after making and disbursing a Federal Perkins Loan. The proposed regulations would amend § 674.16 to require that an institution report to at least one national credit bureau information concerning the repayment and collection of the loan until the loan is paid in full, including the date the loan was repaid, canceled or discharged for any reason. The proposed regulations would also add a new paragraph that requires an institution to report promptly any changes to information previously reported on a loan to the same credit bureaus to which the information was previously reported. The negotiators agreed that reporting a change of information on a loan to the same credit bureaus to which it was previously reported was an important protection for the borrower should the school decide to contract with a different credit bureau at a later date. Reporting changes of information on a loan to the same credit bureaus provides a consistent picture of the borrower's credit history and eliminates the risk that negative credit history might remain on the borrower's record when, in fact, it should have been removed or updated.

*Section 674.31 Promissory Note*

The proposed regulations would amend § 674.31, in accordance with the 1998 Amendments, to exclude from a Federal Perkins Loan Program borrower's initial grace period any period, not to exceed three years, during which a borrower who is a member of the Armed Forces reserve component is called or ordered to active duty for a period of more than 30 days. The proposed regulations would require that any single excluded period may not exceed three years and must include the time necessary for the borrower to resume enrollment at the next available regular enrollment period. We are also proposing that any borrower in a grace period when called or ordered to active duty be entitled to another full six or nine-month grace period upon completion of the excluded period of service.

Discussion of this provision at the negotiated rulemaking sessions focused on the valuable service that these borrowers are providing to our country as members of the Armed Forces reserve component and the care that must be taken not to penalize borrowers returning from active duty. In this regard, we would like to clarify that the time period in which a borrower must re-enroll in the ''next available enrollment period'' after returning from active duty service in the Armed Forces may be longer for some borrowers than others, especially if the borrower is pursuing a non-traditional program. Additionally, the possibility exists that borrowers may not re-enroll in the same program in which they were enrolled at the time they were called to active duty. It was the consensus of the negotiating team that the proposed regulations should provide flexibility in the administration of these aspects of a borrower's grace period.

The proposed regulations would also amend § 674.31 by requiring an institution to disclose to at least one national credit bureau the amount of the loan made to the borrower, along with other relevant information, so as to not restrict an institution from reporting to more than one credit bureau should the institution desire to do so. Previously, this section required an institution to report to any one national credit bureau.

*Section 674.33 Repayment*

The proposed regulations would amend § 674.33 to reflect a new provision of the 1998 Amendments that authorizes an institution to establish an incentive repayment program to reduce defaults and replenish its Federal Perkins Loan revolving fund. The proposed regulations would authorize an institution to offer a reduction of no more than one percent of the interest rate on a loan on which the borrower has made 48 consecutive, monthly payments; a discount of no more than five percent on the balance owed on a loan if the borrower pays in full prior to the end of the repayment period; and,

with the Secretary's approval, any other incentive an institution determines will reduce defaults and replenish its fund. The proposed regulations reflect the requirement in the 1998 Amendments that an institution not use Federal funds, including Federal funds from its Federal Perkins Loan revolving fund, or institutional funds from the fund to pay for any repayment incentive. In this regard, the proposed regulations require an institution to reimburse its Fund, on at least a quarterly basis, for any money lost to its Fund that otherwise would have been paid by the borrower if the borrower had not received the repayment incentive. The negotiators agreed that unless a school reimburses its Federal Perkins Loan revolving fund for the money lost to incentives, funding for future Federal Perkins Loan borrowers might be jeopardized.

The proposed regulations would also amend § 674.33 by adding a new section that implements a closed school discharge for Federal Perkins Loan borrowers as authorized by the 1998 Amendments. Prior to passage of the 1998 Amendments, the Secretary lacked the statutory authority to discharge a Federal Perkins Loan due to a closed school situation. The proposed regulations would authorize the holder of the loan to discharge a borrower's total liability on any loan made under the Federal Perkins Loan Program on or after January 1, 1986, if the borrower is unable to complete the program of study in which the borrower is enrolled due to the institution's closure. The proposed regulations would require that the borrower be reimbursed for any amounts the borrower paid on a discharged loan either voluntarily or through enforced collection. A borrower who has defaulted on a loan that is discharged is no longer considered to be in default and is eligible to receive further Title IV aid. The holder of the loan is required to report the discharge of the loan to all credit bureaus to which the status of the loan was previously reported.

Program regulations that authorize the discharge of a loan made under both the Federal Direct Student Loan (Direct Loan) and Federal Family Education Loan (FFEL) Program have been in effect since July 1, 1995. The proposed regulations include closed school discharge provisions for the Federal Perkins Loan Program that are based largely on the regulations in existence for these programs.

The proposed regulations would authorize a closed school discharge by either the Secretary or the institution. This reflects the possibility that an institution may continue to hold a loan that is eligible for a closed school discharge due to the closure of a location or branch campus of the school, and not the closure of the school itself. However, in order to protect the borrower, the proposed regulations would require a school that denies a borrower's request for a closed school discharge to submit the materials that support such a determination for review and an independent determination of the dischargeability of the loan by the Secretary.

The proposed regulations would also allow the Secretary to discharge a loan based on a school closure without an application from the borrower. The Secretary may discharge a loan without an application if it were determined that the borrower qualified for and received a discharge on his or her FFEL or Direct Loan and was unable to secure a discharge on his or her Federal Perkins Loan only because the Secretary lacked the statutory authority. The proposed regulations would also authorize the Secretary to discharge a Federal Perkins Loan without an application from the borrower based on information in the Secretary's possession that qualified the borrower for a discharge.

Lastly, the proposed regulations contain a provision that would disallow a closed school discharge if the borrower secured his or her Federal Perkins Loan through fraudulent means as determined by the ruling of a court or an administrative tribunal. The negotiators agreed that the discharge of a fraudulently obtained loan would constitute an inappropriate use of federal tax dollars and compromise the integrity of the Federal Perkins Loan Program.

*Section 674.34 Deferment of Repayment—Federal Perkins Loans, Direct Loans and Defense Loans*

The proposed regulations would amend § 674.34, in accordance with changes made in the Amendments, to extend the deferment benefits described in this section to all borrowers with loans made before July 1, 1993, regardless of the terms of the borrower's promissory note. Current regulations authorize the deferments in this section only for an eligible borrower with a loan made on or after July 1, 1993. The extension of the deferments in this section to borrowers with a loan made before July 1, 1993, is effective October 7, 1998.

The proposed amendments to this section would also authorize a deferment for any borrower with a loan made under the program, including National Direct and Defense Loans, during any period in which the borrower is engaged in service that subsequently qualifies the borrower for cancellation of his or her loan. Prior to passage of the 1998 Amendments, if the borrower had a loan under the Federal Perkins Loan Program that was made before July 1, 1993, the borrower was eligible for a postponement of his or her repayment while doing service that qualified the borrower for cancellation. Because all borrowers are now eligible for a deferment in anticipation of cancellation, the postponement provisions in § 674.39 would be removed. Deferments in anticipation of cancellation authorized by this section may not be granted retroactively to cover any period of time prior to October 7, 1998.

*Section 674.39 Loan rehabilitation*

The 1998 Amendments authorize institutions that participate in the Federal Perkins Loan Program to establish a loan rehabilitation program for all defaulted Federal Perkins Loan borrowers. The proposed regulations in § 674.39 would define rehabilitation as the making of an on-time, monthly payment, as defined by the institution, each month for twelve consecutive months by the defaulted borrower. As specified in the 1998 Amendments, a borrower may rehabilitate a loan only once. The proposed regulations would require an institution to notify a defaulted borrower of the option and consequences of rehabilitating a defaulted loan. The consequences of rehabilitating a defaulted loan include returning the borrower to regular repayment status, treating the first payment made under the twelve consecutive payments as the first payment in a new ten-year repayment period, and instructing any credit bureau to which the default was reported to remove the default from the borrower's credit history.

The proposed regulations would limit collection costs that can be assessed a borrower on a rehabilitated loan to 24 percent. However, the proposed regulations would also allow an institution to charge any collection costs that exceed 24 percent on a rehabilitated loan, and that may not be passed along to the borrower, to their Federal Perkins Loan Revolving Fund until July 1, 2002. This would give institutions a chance to renegotiate contracts and service agreements with third-party collection agencies that currently provide for higher collection percentages.

There was much discussion among the negotiators regarding the limit on collection costs that can be charged to the borrower of a rehabilitated Federal Perkins loan. A proposal to limit the

collection costs that may be charged to a Federal Perkins Loan borrower on a rehabilitated loan to 18.5 percent, in order to be consistent with the FFEL and Federal Direct Loan Programs, did not receive the full support of the negotiators. Several negotiators noted that a Federal Perkins Loan borrower might have accrued collection costs in excess of 18.5 percent on a rehabilitated loan, and that institutions would have to cover the spread between an 18.5 percent cap and actual collection costs incurred. Several negotiators suggested that the competitive marketplace should determine the collection costs assessed to the borrower, not an arbitrary cap, and that collection agencies would not agree to contract with schools, especially small schools with low volume business, for such a low fee. However, other negotiators felt that borrowers faced with added marketplace collection costs of 30 to 40 percent when repaying a loan are pushed to the extreme financially. Also, several negotiators felt that, to the extent feasible, collection costs assessed on rehabilitated loans should be consistent across the Title IV loan programs. FFEL and Federal Direct Loan borrowers are not subject to further collection costs beyond the maximum 18.5 percent after rehabilitating their loan.

Several negotiators noted that in the FFEL and Federal Direct Loan programs, collection costs that are charged to a borrower are included in the ''new outstanding principal balance'' of the loan after it has been rehabilitated and returned to current status. That is, the collection costs of up to 18.5 percent are capitalized. This results in an actual higher charge to the borrower as he or she repays the new, higher balance, over time and with interest charged on the full amount. They noted that capitalizing an 18.5 percent collection cost on an FFEL or Federal Direct Loan is equal to assessing approximately a 24 percent fee on a Federal Perkins Loan, since collection costs are not capitalized in the Federal Perkins Loan Program. A proposal to limit the collection costs to 24 percent did not yield immediate consensus. However, negotiators reviewed data and confirmed that a capitalized 18.5 percent collection cost on an FFEL and Federal Direct Loan increases the balance of the loan, which in turn increases the amount of interest that accrues on that balance over the repayment of the loan. The difference in the borrower's monthly payment needed to cover both the collection cost and the interest accruing on an increased principal balance, yields an amount equal to 24 percent of the original principal and interest due on the loan after it has rehabilitated.

For example, on an FFEL or Federal Direct Loan with an outstanding balance of $1,000 after rehabilitation, capitalizing an 18.5 percent collection cost will add an additional $185.00 to the loan, yielding a new outstanding balance of $1,185.00. The borrower's payment will increase by $.46 per month over the life of the loan because of the added $185.00. Over 10 years, the borrower makes 120 payments. The extra $55.20 (120 monthly payments × $.46) added to the original $185.00 in collection costs that were added to the loan balance (capitalized) means that the borrower will repay $240.00 in collection costs over the life of the rehabilitated loan. Therefore, the negotiators felt that a cap of 24 percent on the collection costs that may be charged on a rehabilitated Federal Perkins Loan was comparable to the 18.5 percent cap on FFEL and Federal Direct Loans. They reached consensus on the 24 percent cap with the understanding that, as the example presented illustrates:

- No further collection costs are assessed the borrower. That is, payments are not treated on a ''fee on fee'' basis which is often used by collection agencies.
- The uncapitalized collection costs of 24 percent of the principal and interest due after the loan is rehabilitated is treated as a separate cost.
- The borrower's monthly payment reflects an amount that spreads the collection costs over the life of the loan.

Finally, the proposed regulations would return the benefits and privileges of the promissory note to the rehabilitated borrower as they applied prior to the borrower's default and authorizes institutions to offer flexible repayment options following the borrower's return to regular repayment status. This flexibility was noted in the regulation to assure schools that they can work with rehabilitated borrowers to establish realistic repayment plans in order to avoid a return to a default status.

*Section 674.41 Due Diligence—General Requirements*

The 1998 Amendments provide for the establishment of a Student Loan Ombudsman's office in order to provide timely assistance to borrowers with loans made under Title IV of the HEA. The 1998 Amendments also require that information about the availability and functions of the Ombudsman be made available to all borrowers in the Title IV student loan programs. The proposed regulations would amend § 674.41 to comply with this new requirement. The proposed regulations would require that institutions participating in the Federal Perkins Loan Program, as part of the general due diligence requirements, provide the borrower with information on the availability of the Student Loan Ombudsman's office if the borrower disputes the terms of the loan in writing and the institution does not resolve the dispute.

*Section 674.42 Contact With the Borrower*

The 1998 Amendments modified section 486(b) of the HEA by eliminating the requirement that institutions conduct exit counseling individually or in groups and by encouraging institutions to use electronic means in providing personalized exit counseling. The proposed regulations in § 674.42 would facilitate these changes and make exit counseling requirements in the Federal Perkins Loan Program consistent with those in the Federal Direct Loan and the Federal Family Education Loan Programs.

Specifically, the proposed regulations would reorganize this section by first describing the disclosures that an institution is required to make to a Federal Perkins Loan borrower under section 463A(b) of the HEA, either as part of the promissory note or in another written statement provided to the borrower. The disclosure requirements have not changed. However, the proposed regulations would provide that the institution must make these disclosures either shortly before the borrower ceases at least half-time study at the institution, during the exit interview, or immediately by mail, if the borrower enters repayment without the institution's knowledge. As currently written, the regulations stipulate that the institution must make these disclosures during exit counseling.

The proposed regulations would require an institution to provide exit counseling to each borrower either in person, by audiovisual presentation, or by interactive electronic means before the student ceases at least half-time study. The proposed regulations would provide alternative written and electronic counseling options for borrowers engaged in study-abroad or correspondence study, and for borrowers who have left school without the institution's knowledge. In conducting exit counseling, the proposed regulations would require that an institution inform the borrower of the anticipated monthly repayment amount, review repayment options, suggest debt

management strategies, emphasize the seriousness of the repayment obligation and the consequences of default, review deferment and cancellation benefits of the loan, require the borrower to provide corrections to the institution's records, and review with the borrower information on the availability of the Student Loan Ombudsman's office. They would also propose that institutions that provide exit counseling by electronic means take reasonable steps to ensure that each borrower receives the counseling materials and actively participates in and completes the exit counseling. If, for example, a school sends counseling materials by electronic mail or other electronic means, not including the U.S. mail, the school must obtain documentation through return receipt or some other mechanism that the student received the materials and completed them.

Lastly, in order to facilitate the use of electronic exit counseling, the proposed regulations would eliminate the requirements that a school, as part of exit counseling, have the borrower sign a copy of the repayment schedule and provide a copy of the signed repayment schedule and the signed promissory note to the borrower. The institution would still have to provide the borrower with a copy of the borrower's repayment schedule and the promissory note as part of the disclosure requirements listed in § 674.42(a).

*Section 674.45 Collection Procedures*

The 1998 Amendments clarify an institution's credit bureau reporting responsibilities by requiring that a school promptly disclose changes to any information it has reported on a borrower's Federal Perkins Loan. As currently written, § 674.45 requires a school to report changes on a defaulted loan to the same credit bureau to which it originally reported the default. Section 674.45 also currently requires an institution to respond within one month of its receipt to any inquiry from any credit bureau regarding the information reported on the loan amount. In order to prevent the borrower from suffering the negative consequences that may result from the existence of an inaccurate credit history, the proposed regulation amends the collection procedures in § 674.45 to require that an institution report changes to the account status of a defaulted loan to any national credit bureau to which it reported the default. The regulation also proposes, in accordance with provisions in the Fair Credit Reporting Act, that an institution be required to resolve, within 30 days of its receipt, any inquiry from any credit bureau that disputes the completeness or accuracy of information reported on the loan. This would protect the borrower from the negative impact of a protracted resolution in disputes involving the accuracy of his or her credit history.

The 1998 Amendments require an institution to disseminate information regarding the Student Loan Ombudsman to borrowers who are unable to resolve a dispute over the terms of their loan with the loan holder. A new paragraph is proposed for § 674.45 that would require an institution, as part of the collection activities contained in this section, to provide the borrower with information on the availability of the Student Loan Ombudsman's office.

*Section 674.47 Costs Chargeable to the Fund*

The proposed regulations would amend § 674.47, in accordance with the loan rehabilitation provisions in § 674.39 of the proposed regulations. The proposed change would authorize an institution, until July 1, 2002, to charge its Fund for any collection costs assessed on a rehabilitated loan that are in excess of the 24 percent maximum limit that may be passed along to the borrower. This authority is necessary to give institutions time to renegotiate contracts with collection agencies if current contracts call for the assessment of collection fees in excess of 24 percent of outstanding principal, interest and late fees due on defaulted loans.

*Section 674.49 Bankruptcy of Borrower*

The proposed regulations would amend § 674.49 in order to reflect changes made to section 523(a)(8) of title 11 of the United States Bankruptcy Code by the Amendments. Effective October 8, 1998, the 1998 Amendments eliminated a borrower's ability to have a student loan automatically discharged due to bankruptcy if the loan has been in repayment for seven years or more. The proposed regulations would also clarify that the seven-year repayment period on bankruptcies filed before October 8, 1998, excludes any applicable suspension of the repayment period as defined by 34 CFR 682.402(m) of the Federal Family Education Loan Program regulations. Lastly, the proposed regulations would amend this section to require institutions to use due diligence and assert any defense consistent with its status under applicable law to avoid discharge of a Federal Perkins Loan in a bankruptcy proceeding.

*Section 674.52 Cancellation Procedures*

The proposed regulations would amend this section to clarify that a borrower whose defaulted loan has not been accelerated may qualify for any cancellation authorized by section 465 of the HEA and Subpart D of the Federal Perkins Loan Program regulations by complying with the requirements of this section. In current regulations, the wording in this paragraph erroneously states that borrowers whose defaulted loans have not been accelerated could qualify only for teaching, volunteer, or military service cancellations by complying with the requirements of this section.

The proposed regulations also would amend paragraph (d) of this section to clarify that a Federal Perkins loan, Direct loan or Defense loan borrower's deferment under § 674.34(c) runs concurrently with any period for which cancellation under §§ 674.53–674.60 is granted.

*Section 674.53 Teacher cancellation—Federal Perkins, Direct and Defense Loans.*

Effective October 7, 1998, the 1998 Amendments extended the Federal Perkins Loan Program cancellation benefits in section 465(a)(2) of the HEA to all borrowers with outstanding loan balances who perform qualifying service regardless of when the loans were made or any contrary provisions of the borrowers' promissory notes. Prior to the addition of this language to the HEA, the benefits were based upon when the loan was made and the provisions of the borrower's promissory note. The proposed regulations would amend § 674.53 to extend the following teaching cancellation benefits to all borrowers, regardless of when their loan was made or the terms of the borrower's promissory note:

- teaching in a low-income school,
- full-time teaching in special education, and
- full-time teaching in fields of expertise.

These teaching benefits would be extended to any borrower with an outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for teaching service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the borrower's promissory note. We would like to emphasize that cancellation benefits may not be granted retroactively for teaching service performed prior to October 7, 1998.

*Section 674.56 Employment Cancellation—Federal Perkins Loan, Direct and Defense Loans*

The 1998 Amendments amended the HEA to extend all cancellations in section 465(a)(2) to all borrowers with outstanding balances as of October 7, 1998. The proposed regulations would amend § 674.56 to extend the following cancellation benefits to all borrowers with an outstanding balance on Federal Perkins, Direct or Defense loans made before July 23, 1992, for employment in these areas on or after October 7, 1998, regardless of when their loan was made or the terms of the borrower's promissory note:

- full-time employment as a nurse or medical technician,
- full-time employment in a public or private nonprofit child or family service agency, and
- full-time employment as a qualified professional provider of early intervention services.

Only periods of qualifying service performed on or after October 7, 1998, are eligible for cancellation benefits if the borrower was not previously eligible due to the date the loan was made.

*Section 674.57 Cancellation for Law Enforcement or Corrections Officer Service—Federal Perkins, Direct and Defense Loans*

The proposed regulations would amend § 674.57 to extend the cancellation for full-time service as a law enforcement or corrections officer for an eligible employing agency to any borrower with an outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to November 29, 1990, for law enforcement or correction officer service performed on or after October 7, 1998, in accordance with changes to the HEA by the Amendments. Cancellation benefits may not be granted retroactively for qualifying service performed before October 7, 1998.

*Section 674.58 Cancellation for Service in a Head Start Program*

The proposed regulations would amend § 674.58 to extend cancellation for service as a full-time staff member in a ''Head Start'' program to any borrower with an outstanding balance on a Defense loan for service performed on or after October 7, 1998, in accordance with changes made to the HEA by the Amendments. Federal Perkins and Direct loan borrowers have always been eligible for this cancellation and would not be affected by this regulatory change.

*Section 674.60 Cancellation for Volunteer Service—Perkins Loans, Direct Loans and Defense Loans*

The proposed regulations would amend § 674.60 to extend cancellation for service as a volunteer under The Peace Corps Act or The Domestic Volunteer Service Act of 1973, to any Direct loan borrower with a loan made on or after October 7, 1998, and any borrower with an outstanding balance on a Direct or Defense loan for service as a volunteer under the above Acts performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the borrower's promissory note, in accordance with the Amendments.

*Executive Order 12866*

1. *Potential Costs and Benefits*

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently. There is a detailed discussion of the cost implications associated with the rehabilitation of a Federal Perkins Loan under the heading *Sec. 674.39 Loan rehabilitation* in the preamble of this NPRM.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We note that, as these proposed regulations were subjected to negotiated rulemaking, the costs and benefits of the various requirements were discussed thoroughly by the negotiators. The resultant consensus reached on a particular requirement generally reflected agreement on the best possible approach to that requirement in terms of cost and benefit.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or to increase any potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the title IV, HEA programs.

2. *Clarity of the Regulations*

Executive Order 12866 and the President's Memorandum of June 1, 1998 on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, § 674.41 *Due diligence—general requirements.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?
- Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

*Regulatory Flexibility Act Certification*

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The parties affected by these proposed regulations are institutions of higher education that participate in the Federal Perkins Loan Program, and individual Federal Perkins Loan borrowers. Federal Perkins Loan borrowers are not considered small entities under the Regulatory Flexibility Act. Institutions of higher education are defined as small entities, according to the U.S. Small Business Administration, if they are: for-profit or nonprofit entities with total revenue of $5,000,000 or less; and entities controlled by governmental entities with populations of 50,000 or less. Of the institutions of higher education that participate in the Federal Perkins Loan program, approximately 12 percent would be considered small entities under the definition. Those small institutions receive approximately three percent of new Federal Capital Contributions.

These proposed regulations would not impose a significant economic impact on a substantial number of small entities. The proposed regulations would expand borrower benefits, and provide additional flexibility in the administration of the Federal Perkins Loan Program to both large and small institutions without requiring significant changes to current institutional system operations.

The Secretary invites comments from small institutions as to whether the proposed changes would have a significant economic impact on them.

*Paperwork Reduction Act of 1995*

Sections 674.6, 674.16, 674.31, 674.33, 674.34, 674.39, 674.41, 674.42, 674.45, 674.47, and 674.49 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Federal Perkins Loan Program

Section 674.6 Default reduction plan. The Department currently has this section approved under OMB control number 1840–0535. The Amendments eliminated the requirement that institutions with a cohort default rate that equals or exceeds 15 percent submit a default reduction plan to the Secretary. Therefore, we are proposing to remove the required default reduction plan measures from the regulations. The total annual recordkeeping and reporting burden hours for § 674.6 equals 579 hours. The proposed regulation will therefore eliminate 579 hours from the 12,719 total recordkeeping and burden hours contained in the information collection requirements under OMB control number 1840–0535.

Section 674.16 Making and disbursing loans. The Department currently has this section approved under OMB control number 1840–0535. We are proposing to clarify the credit bureau reporting requirements with which a school must comply when making and disbursing loans in accordance with the changes made to the HEA by the Amendments. Because credit bureau reporting is considered to be a normal business practice in the administration of the Federal Perkins Loan program, there is no additional burden associated with this section.

Section 674.31 Promissory Note. The Department currently has this section approved under OMB control number 1840–0535. We are proposing to exclude any period during which a borrower who is a member of the reserve component of the Armed Forces is called or ordered to active duty for a period of more than 30 days from the borrower's initial grace period. This exclusion will be contained in the terms of the borrower's Federal Perkins Loan promissory note. Because institutional use of the Secretary's promissory note in the Federal Perkins Loan program is considered part of normal business practice in administering the Federal Perkins Loan program, there are no burden hours calculated for this section. We are also proposing to require an institution to disclose to at least one national credit bureau the amount of the loan made to the borrower, along with other relevant information. Previously, the institution was required to report to ''any'' national credit bureau. This proposed change does not increase or decrease the frequency or amount of credit bureau reporting required by an institution. Additionally, credit bureau reporting is considered to be a normal business practice associated with the administration of the Federal Perkins Loan program and no burden hours are associated with this section.

Section 674.33 Repayment. The Department currently has this section approved under OMB control number 1840–0535. We are proposing to authorize institutions to establish repayment incentives for borrowers by reducing by no more than 1 percent the interest rate on a loan on which the borrower has made 48 consecutive, monthly repayments; discounting by no more than 5 percent the balance owed on a loan which the borrower pays in full prior to the end of the repayment period; or, by offering any other incentive, with the Secretary's approval, that the institution determines will reduce defaults and replenish its revolving fund. The establishment of repayment incentives is not mandatory nor are institutions required to notify borrowers of the existence of repayment incentives. Institutions are currently required to retain a repayment history on each Federal Perkins Loan borrower that includes the frequency, timeliness, and number of repayments made by the borrower under the information collection requirements contained in § 674.19 and currently approved under OMB control number 1840–0073. Because institutions are already collecting the information needed to implement repayment incentives, there is no change to the information collection contained in this section.

We are also proposing a closed school discharge in this section for Federal Perkins Loan borrowers who did not complete the program of study for which the loan was made because the school at which the borrower was enrolled closed. This proposed change is retroactive to loans made on or after January 1, 1986. The proposed regulations would allow for a closed school discharge by an institution, as well as the Secretary. The proposed regulations would authorize the Secretary to discharge a loan based on a school closure without an application from the borrower if the borrower qualified for and received a discharge on his or her FFEL or Federal Direct Loan and was unable to secure a discharge on his or her Federal Perkins Loan only because the Secretary lacked the statutory authority. The proposed regulations would also authorize the Secretary to discharge a Federal Perkins Loan without an application from the borrower based on information in the Secretary's possession that qualifies the borrower for a discharge. The proposed regulations would also provide for an application process in the case of loans that the Secretary cannot discharge based on the above two criteria. Under the proposed regulations, the information the borrower is asked to provide in order to obtain the discharge of a debt based on the closure of a school is consistent with the information required under the application process currently in place for the FFEL and Federal Direct Loan programs. However, the application used in the FFEL and Federal Direct Loan Program does not currently apply to the discharge of loans made under the Federal Perkins Loan program. The current form will require revision or, alternately, a new form will be developed for the Federal Perkins Loan Program. Until such time as we are able to develop an application for borrowers seeking a closed school discharge of a Federal Perkins Loan, we cannot accurately project the number of burden hours contained in this section, although we expect the completion of such a form to be no more burdensome to applicants than the form used in the FFEL and Federal Direct Loan Programs. The burden hours associated with completing the closed school discharge form in the FFEL and Direct Loan Programs is currently 30 minutes or .5 hours per response.

Section 674.34 Deferment of repayment—Federal Perkins Loans, Direct Loans and Defense Loans. The Department currently has this section approved under OMB control number 1840–0535. We are proposing, in accordance with the Amendments, to extend the deferment benefits in this

section to borrowers who were formerly ineligible because of when their loans were made or the terms of their promissory notes. This change offers greater flexibility to both the borrower and the institution in defining the circumstances in which a deferment of repayment is appropriate. This proposed change does not affect the deferment process nor does it change the eligibility requirements with which a borrower must comply. Therefore, this provision would not add burden hours to the current information collection requirements associated with this section.

Section 674.39 Loan Rehabilitation. The Department currently has this section approved under OMB control number 1840–0535. We are proposing a new section that requires an institution to establish a loan rehabilitation program. A loan is considered rehabilitated when the borrower makes an on-time, monthly payment, as determined by the institution, each month for twelve consecutive months. The institution must notify a defaulted borrower of the option and consequences of rehabilitating a loan under these proposed regulations. Once the loan is rehabilitated, the borrower is returned to regular repayment status, the first payment made under the 12 consecutive payments is treated as the first payment under a new 10-year repayment period and any adverse credit bureau history related to the default is removed from the borrower's credit report. Under § 674.16 and § 674.42 of current and proposed regulations, respectively, institutions are required to disclose to the borrower the definition of default and the consequences of defaulting on a Federal Perkins Loan, along with information on any cost that may be assessed to the borrower in the collection of the loan, including late charges and collection costs. The institution is required to provide this information in writing as part of the written application material, as part of the promissory note or on a separate written form before making and disbursing a Federal Perkins Loan to the borrower. The institution is again required to disclose information on the consequences of default to the borrower before he or she ceases at least half-time study at the institution, during the exit interview or immediately, in writing, if the borrower enters repayment without the institution's knowledge. There is ample opportunity for a school to disclose information to the borrower regarding the availability and consequences of loan rehabilitation when making the disclosures currently required under § 674.16 and § 674.42. Disclosures made under § 674.16 are considered part of normal business practice under OMB control number 1840–0535. Further calculation of burden hours under § 674.42 for providing notice of the option and consequences of rehabilitation would duplicate hours already calculated and cleared under OMB 1840–0535 that account for the disclosures that an institution is currently required to make that section. Because any burden associated with notifying a borrower of the option and consequences of rehabilitation is burden associated with or accounted for under other sections of the regulations, there are no new burden hours contained in this section.

Section 674.41 Due diligence—general requirements. The Department is adding this section as a new section approved under OMB control number 1840–0581. The proposed regulation would require institutions to provide a Federal Perkins Loan Program borrower with information on the availability of the Student Loan Ombudsman's office if the borrower disputes the terms of the loan in writing and the institution does not resolve the dispute. A total of 1,049,216 Federal Perkins Loan borrowers were in repayment as of June 30, 1998. The Department estimates that 5,246 (.5 percent) borrowers in repayment may require information on the availability of the Student Loan Ombudsman's office after failing to resolve a dispute regarding the terms of the loan with the institution. The Department further estimates that providing information on the availability of the Student Loan Ombudsman's office will average 5 minutes per response. The 437 hours and 10 minutes of burden associated with this section.

Section 674.42 Contact with the borrower. The Department currently has this section approved under OMB control number 1840–0581. The proposed regulation reorders the provisions in § 674.42 by moving the disclosure requirements with which an institution must comply under section 463A(b) of the HEA, either as part of the promissory note or in another written statement, to paragraph § 674.42(a). The disclosures have not changed. However, the proposed regulations give a school additional flexibility in the timing of the disclosures. Therefore, the information collection requirements remain unchanged for this section.

In accordance with the Amendments, this proposed change also authorizes an institution to use electronic means to facilitate exit counseling in the Federal Perkins Loan program. Previously, an institution was required to offer the borrower exit counseling in person or in groups. Exit counseling provisions are contained in § 674.42(b) of the proposed regulation. The proposed regulation provides consistency across the title IV, HEA loan programs in describing the disclosures that an institution is required to make during exit counseling. Because the authority to use electronic means in offering exit counseling does not change the nature of the information disseminated, there are no additional information collections that result from this change.

Lastly, in order to facilitate the use of electronic exit counseling, we are proposing regulations that would eliminate the requirement that a school, as part of exit counseling, have the borrower sign a copy of the repayment schedule and provide a copy of the signed repayment schedule and the signed promissory note to the borrower. However, because an institution must still provide the borrower with a copy of the borrower's repayment schedule and the promissory note as part of the disclosures required by § 674.42(a) of this section, the information collection burden contained in this section does not change.

Section 674.45 Collection procedures. The Department currently has this section approved under OMB control number 1840–0581. We are proposing to clarify that an institution must report any changes regarding a defaulted borrower to any national credit bureau to which it reported the default. The institution must also resolve, within 30 days of its receipt, any inquiry from any credit bureau that disputes the completeness or accuracy of information reported on the loan. Institutions are currently reporting information to credit bureaus that reflect the recent changes made to the HEA by the Amendments. The Amendments merely codify standard business practice as it relates to credit bureau reporting. This provision does not change the information collection contained in this section. We are also proposing that as part of the collection activities provided for in this section, the institution provide the borrower with information on the availability of the Student Loan Ombudsman. The information collection contained in this section takes into account more intensive efforts an institution must make to recover amounts owed from defaulted borrowers. Information on the availability of the Student Loan Ombudsman is easily incorporated into the existing due diligence efforts required of institutions. Any further calculation of burden hours for this

requirement would duplicate hours already calculated and cleared under OMB 1840–0581.

Section 674.47 Costs chargeable to the Fund. The Department has this section approved under OMB control number 1840–0581. We are proposing to amend this section, in accordance with the loan rehabilitation provisions in § 674.39 of the proposed regulations. The proposed change would authorize an institution, until July 1, 2002, to charge its Fund for any collection costs assessed on a rehabilitated loan that are in excess of the maximum 24 percent limit that may be passed along to the borrower. This authority spares an institution any out-of-pocket expense that it may incur in complying with the terms of existing contracts with collection agencies that call for collection fees in excess of 24 percent. The proposed regulation would provide a transition period during which an institution could, in the normal course of business, renegotiate or renew existing contracts in order to accommodate the 24 percent limit on collection costs. The proposed regulations authorizing an institution to charge collection costs in excess of 24 percent to its Fund does not substantially change the information collection contained in this section.

Section 674.49 Bankruptcy of borrower. The Department currently has this section approved under OMB control number 1840–0581. We are proposing to amend this section in order to reflect changes made to the U.S. Bankruptcy Code that eliminate the automatic discharge of a student loan if the loan was in repayment for seven years or more. The fact that a federal student loan cannot be automatically discharged in a bankruptcy filing does not change the due diligence efforts required of an institution in collecting on a loan, defaulted or otherwise. The institution's collection responsibilities remain as a matter of normal business practice and the proposed regulations would not change the information collection contained in this section.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

*Assessment of Educational Impact*

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number: 84.037 Federal Perkins Loan Program)

## List of Subjects in 34 CFR Part 674

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

Dated: July 12, 1999.

**Richard W. Riley,**

*Secretary of Education.*

For the reasons stated in the preamble, the Secretary proposes to amend part 674 of title 34 of the Code of Federal Regulations as follows:

## PART 674—FEDERAL PERKINS LOAN PROGRAM

1. The authority citation for part 674 continues to read as follows:

**Authority:** 20 U.S.C. 1087aa–1087ii and 20 U.S.C. 421–429, unless otherwise noted.

2. Section 674.2(b) is amended by adding, in alphabetical order, the following definition:

### § 674.2 Definitions.

* * * * *

(b) * * *

*Satisfactory repayment arrangement:* For purposes of regaining eligibility for grant, loan, or work assistance under Title IV of the HEA, to the extent that the borrower is otherwise eligible, the making of six (6) on-time, consecutive, monthly payments on a defaulted loan. A borrower may obtain the benefit of this paragraph with respect to renewed eligibility once on a defaulted loan.

* * * * *

3. Section 674.5 is amended as follows:

A. By revising paragraphs (a)(1) and (a)(2).

B. By removing paragraphs (a)(3) and (a)(4).

C. By removing paragraph (b)(2) and redesignating paragraph (b)(3) as paragraph (b)(2).

D. By removing paragraph (c)(4); and redesignating paragraph (c)(3)(ii) as paragraph (c)(4) and by removing ''; and'' at the end of the sentence in the new paragraph (c)(4) and adding, in its place, a period; and by revising paragraph (c)(3).

E. By removing paragraphs (e) and (f).

### § 674.5 Federal Perkins Loan Program cohort default rate and penalties.

(a) * * *

(1) *FCC reduction.* If the institution's cohort default rate equals or exceeds 25 percent, the institution's FCC is reduced to zero.

(2) *Ineligibility.* For award year 2000–2001 and succeeding award years, an institution with a cohort default rate

that equals or exceeds 50 percent for each of the three most recent years for which cohort default rate data are available is ineligible to participate in the Federal Perkins Loan Program. Following a review of that data and upon notification by the Secretary, an institution is ineligible to participate for the award year in which the determination is made and the two succeeding award years. An institution may appeal a notification of ineligibility from the Secretary within 30 days of its receipt.

(i) *Appeal procedures.*—(A) *Inaccurate calculation.* An institution may appeal a notice of ineligibility based upon the submission of erroneous data by the institution, the correction of which would result in a recalculation that reduces the institution's cohort default rate to below 50 percent for any of the three award years used to make a determination of ineligibility. The Secretary considers the edit process, by which an institution adjusts the cohort default rate data that it submits to the Secretary on its Fiscal Operations Report, to constitute the procedure to appeal a determination of ineligibility based on a claim of erroneous data.

(B) *Small number of borrowers entering repayment.* An institution may appeal a notice of ineligibility if, on average, 10 or fewer borrowers enter repayment for the three most recent award years used by the Secretary to make a determination of ineligibility.

(C) *Decision of the Secretary.* The Secretary issues a decision on an appeal within 45 days of the institution's submission of a complete, accurate, and timely appeal. An institution may continue to participate in the program until the Secretary issues a decision on the institution's appeal.

(ii) *Liquidation of an institution's Perkins Loan portfolio.* Within 90 days of receiving a notification of ineligibility or, if the institution appeals, within 90 days of the Secretary's decision to deny the appeal, the institution must—

(A) Liquidate its revolving student loan fund by making a capital distribution of the liquid assets of the Fund according to section 466(c) of the HEA; and

(B) Assign any outstanding loans in the institution's portfolio to the Secretary in accordance with § 674.50.

(iii) *Effective date.* The provisions of paragraph (a)(2) of this section are effective beginning with the cohort default rate calculated as of June 30, 2001.

* * * * *

(c) * * *

* * * * *

(3)(i) In determining the number of borrowers who default before the end of the following award year, a loan is excluded if the borrower has—

(A) Voluntarily made six consecutive monthly payments;

(B) Voluntarily made all payments currently due;

(C) Repaid the full amount due, including any interest, late fees, and collection costs that have accrued on the loan;

(D) Received a deferment or forbearance based on a condition that predates the borrower reaching a 240- or 270-day past due status; or

(E) Rehabilitated the loan after becoming 240- or 270-days past due.

(ii) A loan is considered canceled and also excluded from an institution's cohort default rate calculation if the loan is—

(A) Discharged due to death or permanent and total disability;

(B) Discharged in bankruptcy;

(C) Discharged due to a closed school; or

(D) Repaid in full in accordance with § 674.33(e).

(iii) For the purpose of this section, funds obtained by income tax offset, garnishment, income or asset execution, or pursuant to a judgment are not considered voluntary.

* * * * *

**674.6 [Removed and Reserved]**

4. Section 674.6 is removed and reserved.

**674.7 [Removed and Reserved]**

5. Section 674.7 is removed and reserved.

6. Section 674.9 is amended by redesignating paragraph (i) as paragraph (j) and adding new paragraph (i) to read as follows:

**§ 674.9 Student eligibility.**

* * * * *

(i) In the case of a borrower who is in default on a Federal Perkins Loan, NDSL or Defense loan, satisfies one of the conditions contained in § 674.5(c)(3)(i) or (ii) except that—

(1) For the purposes of this section, voluntary payments made by the borrower under paragraph (i) of this section are those payments made directly by the borrower, including payments made over and above payments made pursuant to a judgment; and

(2) Voluntary payments do not include payments obtained by income tax offset, garnishment, income or asset execution or pursuant to a judgment.

* * * * *

7. Section 674.12 is amended by revising paragraphs (a), (b) and (d) to read as follows:

**§ 674.12 Loan maximums.**

(a) The maximum annual amount of Federal Perkins Loans and Direct Loans an eligible student may borrow is—

(1) $4,000 for a student who is enrolled in a program of undergraduate education; and

(2) $6,000 for a graduate or professional student.

(b) The aggregate unpaid principal amount of all Federal Perkins Loans and Direct Loans received by an eligible student may not exceed—

(1) $20,000 for a student who has successfully completed two years of a program leading to a bachelor's degree but who has not received the degree;

(2) $40,000 for a graduate or professional student; and

(3) $8,000 for any other student.

* * * * *

(d) For each student, the maximum annual amounts described in paragraphs (a) and (c) of this section, and the aggregate maximum amounts described in paragraphs (b) and (c) of this section, include any amounts borrowed previously by the student under title IV, part E of the HEA at any institution.

* * * * *

8. Section 674.16 is amended by revising paragraph (i) to read as follows:

**§ 674.16 Making and disbursing loans.**

* * * * *

(i)(1) An institution must report to at least one national credit bureau—

(i) The amount and the date of each disbursement;

(ii) Information concerning the repayment and collection of the loan until the loan is paid in full; and

(iii) The date the loan was repaid, canceled or discharged for any reason.

(2) An institution must promptly report any changes to information previously reported on a loan to the same credit bureaus to which the information was previously reported.

* * * * *

9. Section 674.31(b)(2)(i) is amended by redesignating paragraphs (C) and (D) as (D) and (E), respectively; by adding new paragraph (b)(2)(i)(C); and by revising paragraph (b)(10)(i) to read as follows:

**§ 674.31 Promissory note.**

* * * * *

(b) * * *

(2) * * *

(i) * * *

(C) For purposes of establishing the beginning of the repayment period for Direct or Perkins loans, the 6- and 9-

month grace periods referenced in paragraph (b)(2)(i) of this section exclude any period during which a borrower who is a member of a reserve component of the Armed Forces named in section 10101 of Title 10, United States Code is called or ordered to active duty for a period of more than 30 days. Any single excluded period may not exceed three years and includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any Direct or Perkins loan borrower who is in a grace period when called or ordered to active duty as specified above is entitled to a new 6- or 9-month grace period upon completion of the excluded period.

* * * * *

(10) * * *

(i) The institution must disclose to at least one national credit bureau the amount of the loan made to the borrower, along with other relevant information.

* * * * *

10. Section 674.33 is amended by adding new paragraphs (f) and (g) to read as follows:

**§ 674.33 Repayment.**

* * * * *

(f) *Incentive repayment program.* (1) An institution may establish the following repayment incentives:

(i) A reduction of no more than one percent of the interest rate on a loan on which the borrower has made 48 consecutive, monthly repayments.

(ii) A discount of no more than five percent on the balance owed on a loan which the borrower pays in full prior to the end of the repayment period.

(iii) With the Secretary's approval, any other incentive the institution determines will reduce defaults and replenish its Fund.

(2) *Limitation on the use of funds.* (i) The institution must reimburse its Fund, on at least a quarterly basis, for interest lost to its Fund that otherwise would have been paid by the borrower as a result of establishing a repayment incentive under paragraph (f)(1)(i) and (ii) of this section.

(ii) An institution may not use Federal funds, including Federal funds from the student loan fund, or institutional funds from the student loan fund to pay for any repayment incentive authorized by this section.

(g) *Closed school discharge.* (1) *General.* (i) The holder of an NDSL or a Federal Perkins Loan discharges the borrower's (and any endorser's) obligation to repay the loan if the borrower did not complete the program of study for which the loan was made because the school at which the borrower was enrolled closed.

(ii) For the purposes of this section—

(A) A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary;

(B) ''School'' means a school's main campus or any location or branch of the main campus; and

(C) The ''holder'' means the Secretary or the school that holds the loan.

(2) *Relief pursuant to discharge.* (i) Discharge under this section relieves the borrower of any past or present obligation to repay the loan and any accrued interest or collection costs with respect to the loan.

(ii) The discharge of a loan under this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on the loan.

(iii) A borrower who has defaulted on a loan discharged under this section is not considered to be in default on the loan after discharge, and such a borrower is eligible to receive assistance under programs authorized by title IV of the HEA.

(iv) The Secretary or the school, if the school holds the loan, reports the discharge of a loan under this section to all credit bureaus to which the status of the loan was previously reported.

(3) *Determination of borrower qualification for discharge by the Secretary.* The Secretary may discharge the borrower's obligation to repay an NDSL or Federal Perkins Loan without an application if the Secretary determines that—

(i) The borrower qualified for and received a discharge on a loan pursuant to 34 CFR 682.402(d) (Federal Family Education Loan Program) or 34 CFR 685.213 (Federal Direct Loan Program), and was unable to receive a discharge on an NDSL or Federal Perkins Loan because the Secretary lacked the statutory authority to discharge the loan, or

(ii) Based on information in the Secretary's possession, the borrower qualifies for a discharge.

(4) *Borrower qualification for discharge.* Except as provided in paragraph (g)(3) of this section, in order to qualify for discharge of an NDSL or Federal Perkins Loan, a borrower must submit to the holder of the loan a written request and sworn statement, and the factual assertions in the statement must be true. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement the borrower must—

(i) State that the borrower—

(A) Received the proceeds of a loan to attend a school;

(B) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 90 days before the school closed (or longer in exceptional circumstances); and

(C) Did not complete and is not in the process of completing the program of study through a teachout at another school as defined in 34 CFR 602.2 and administered in accordance with 34 CFR 602.207(b)(6), by transferring academic credit earned at the closed school to another school, or by any other comparable means.

(ii) State whether the borrower has made a claim with respect to the school's closing with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower or credited to the borrower's loan obligation; and

(iii) State that the borrower—

(A) Agrees to provide to the holder of the loan upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(B) Agrees to cooperate with the Secretary, in the case of a discharged loan held by the Secretary, in enforcement actions in accordance with paragraph (g)(6) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (g)(7) of this section.

(5) *Fraudulently obtained loans.* A borrower who secured a loan through fraudulent means, as determined by the ruling of a court or an administrative tribunal of competent jurisdiction, is ineligible for a discharge under this section.

(6) *Cooperation by borrower in enforcement actions.*

(i) In order to obtain a discharge under this section, a borrower must cooperate with the Secretary in any judicial or administrative proceeding brought by the Secretary to recover amounts discharged or to take other enforcement action with respect to the conduct on which the discharge was based. At the request of the Secretary and upon the Secretary's tendering to the borrower the fees and costs that are customarily provided in litigation to reimburse witnesses, the borrower must—

(A) Provide testimony regarding any representation made by the borrower to support a request for discharge;

(B) Provide any documents reasonably available to the borrower with respect to those representations; and

(C) If required by the Secretary, provide a sworn statement regarding those documents and representations.

(ii) The holder denies the request for a discharge or revokes the discharge of a borrower who—

(A) Fails to provide the testimony, documents, or a sworn statement required under paragraph (g)(6)(i) of this section; or

(B) Provides testimony, documents, or a sworn statement that does not support the material representations made by the borrower to obtain the discharge.

(7) *Transfer to the Secretary of borrower's right of recovery against third parties.* (i) In the case of a loan held by the Secretary, upon discharge under this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, its affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.

(ii) The provisions of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower, limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(iii) Nothing in this section limits or forecloses the borrower's right to pursue legal and equitable relief regarding disputes arising from matters unrelated to the discharged NDSL or Federal Perkins Loan.

(8) *Discharge procedures.* (i) After confirming the date of a school's closure, the holder of the loan identifies any NDSL or Federal Perkins Loan borrower who appears to have been enrolled at the school on the school closure date or to have withdrawn not more than 90 days prior to the closure date.

(ii) If the borrower's current address is known, the holder of the loan mails the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The holder of the loan also promptly suspends any efforts to collect from the borrower on any affected loan. The holder of the loan may continue to receive borrower payments.

(iii) In the case of a loan held by the Secretary, if the borrower's current address is unknown, the Secretary attempts to locate the borrower and determine the borrower's potential eligibility for a discharge under this section by consulting with representatives of the closed school or representatives of the closed school's third-party billing and collection servicers, the school's licensing agency, the school accrediting agency, and other appropriate parties. If the Secretary learns the new address of a borrower, the Secretary mails to the borrower a discharge application and explanation and suspends collection, as described in paragraph (g)(8)(ii) of this section.

(iv) In the case of a loan held by the school, if the borrower's current address is unknown, the school attempts to locate the borrower and determine the borrower's potential eligibility for a discharge under this section by taking steps required to locate the borrower under § 674.44.

(v) If the borrower fails to submit the written request and sworn statement described in paragraph (g)(4) of this section within 60 days of the holder of the loan's mailing the discharge application, the holder of the loan resumes collection and grants forbearance of principal and interest for the period during which collection activity was suspended.

(vi) If the holder of the loan determines that a borrower who requests a discharge meets the qualifications for a discharge, the holder of the loan notifies the borrower in writing of that determination.

(vii) In the case of a loan held by the Secretary, if the Secretary determines that a borrower who requests a discharge does not meet the qualifications for a discharge, the Secretary notifies that borrower, in writing, of that determination and the reasons for the determination.

(viii) In the case of a loan held by a school, if the school determines that a borrower who requests a discharge does not meet the qualifications for discharge, the school submits that determination and all supporting materials to the Secretary for approval. The Secretary reviews the materials, makes an independent determination, and notifies the borrower in writing of the determination and the reasons for the determination.

(ix) In the case of a loan held by an school and discharged by either the school or the Secretary, the school must reimburse its Fund for the entire amount of any outstanding principal and interest on the loan, and any collection costs charged to the Fund as a result of collection efforts on a discharged loan. The school must also reimburse the borrower for any amount of principal, interest, late charges or collection costs the borrower paid on a loan discharged under this section.

* * * * *

11. Section 674.34 is amended by revising the section heading; and revising paragraphs (a) and (c) to read as follows:

**§ 674.34 Deferment of repayment—Federal Perkins loans, Direct loans and Defense loans.**

(a) The borrower may defer making a scheduled installment repayment on a Federal Perkins loan, a Direct loan, or a Defense loan, regardless of contrary provisions of the borrower's promissory note and regardless of the date the loan was made, during periods described in this section.

* * * * *

(c) The borrower of a Federal Perkins loan, a Direct loan, or a Defense loan need not repay principal, and interest does not accrue, for any period during which the borrower is engaged in service described in §§ 674.53, 674.54, 674.55, 674.56, 674.57, 674.58, 674.59, and 674.60.

* * * * *

12. Section 674.39 is revised to read as follows:

**§ 674.39 Loan rehabilitation.**

(a) Each institution must establish a loan rehabilitation program for all borrowers for the purpose of rehabilitating defaulted loans made under this part. The institution's loan rehabilitation program must provide that—

(1) A defaulted borrower is notified of the option and consequences of rehabilitating a loan; and

(2) A loan is rehabilitated if the borrower makes an on-time, monthly payment, as determined by the institution, each month for twelve consecutive months.

(b) Within 30 days of receiving the borrower's last on-time, consecutive, monthly payment, the institution must—

(1) Return the borrower to regular repayment status;

(2) Treat the first payment made under the 12 consecutive payments as the first payment under the 10-year repayment maximum; and

(3) Instruct any credit bureau to which the default was reported to remove the default from the borrower's credit history.

(c) Collection costs on a rehabilitated loan—

(1) If charged to the borrower, may not exceed 24 percent of the unpaid principal and accrued interest; and

(2) That exceed the amounts specified in paragraph (c)(1) of this section may be charged to an institution's Fund until July 1, 2002, in accordance with § 674.47(e)(5).

(d) After rehabilitating a defaulted loan and returning to regular repayment status, the borrower regains all of the benefits and privileges of the promissory note as applied prior to the borrower's default on the loan. Nothing in this paragraph prohibits an institution from offering the borrower flexible repayment options following the borrower's return to regular repayment status on a rehabilitated loan.

(e) The borrower may rehabilitate a defaulted loan only one time.

* * * * *

13. Section 674.41 is amended by adding a new paragraph (a)(3) to read as follows:

**§ 674.41 Due diligence—general requirements.**

(a) * * *

* * * * *

(3) Provide the borrower with information on the availability of the Student Loan Ombudsman's office if the borrower disputes the terms of the loan in writing and the institution does not resolve the dispute.

* * * * *

14. Section 674.42 is amended by redesignating paragraph (b) as paragraph (c), revising paragraph (a) and adding a new paragraph (b) to read as follows:

**§ 674.42 Contact with the borrower.**

(a) Disclosure of repayment information. The institution must disclose the following information in a written statement provided to the borrower either shortly before the borrower ceases at least half-time study at the institution or during the exit interview. If the borrower enters the repayment period without the institution's knowledge, the institution must provide the required disclosures to the borrower in writing immediately upon discovering that the borrower has entered the repayment period. The institution must disclose the following information—

(1) The name and address of the institution to which the debt is owed and the name and address of the official or servicing agent to whom communications should be sent.

(2) The name and address of the party to which payments should be sent.

(3) The estimated balance owed by the borrower on the date on which the repayment period is scheduled to begin.

(4) The stated interest rate on the loan.

(5) The repayment schedule for all loans covered by the disclosure including the date the first installment payment is due, and the number, amount, and frequency of required payments.

(6) An explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan, and a statement that the borrower has the right to prepay all or part of the loan at any time without penalty.

(7) A description of the charges imposed for failure of the borrower to pay all or part of an installment when due.

(8) A description of any charges that may be imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the Secretary or the institution to collect on the loan.

(9) The total interest charges which the borrower will pay on the loan pursuant to the projected repayment schedule.

(10) A copy of the borrower's signed promissory note.

(b) *Exit interview.* (1) An institution must conduct exit counseling with each borrower either in person, by audiovisual presentation, or by interactive electronic means. The institution must conduct this counseling shortly before the borrower ceases at least half-time study at the institution. As an alternative, in the case of a student enrolled in a correspondence program or a study-abroad program that the school approves for credit, the school may provide written counseling materials by mail within 30 days after the borrower completes the program. If the borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session as required, the school must provide exit counseling through either interactive electronic means or by mailing counseling material to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to complete exit counseling as required.

(2) In conducting the exit counseling, the school must—

(i) Inform the student as to the average anticipated monthly repayment amount based on the student's indebtedness or on the average indebtedness of students who have obtained Perkins loans for attendance at that school or in the borrower's program of study;

(ii) Review for the borrower available repayment options (e.g. loan consolidation and refinancing);

(iii) Suggest to the borrower debt-management strategies that the school determines would best assist repayment by the borrower;

(iv) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;

(v) Describe in forceful terms the likely consequences of default, including adverse credit reports and litigation;

(vi) Emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower has not completed the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the borrower purchased from the school;

(vii) Review with the borrower the conditions under which the borrower may defer repayment or obtain partial cancellation of a loan;

(viii) Require the borrower to provide corrections to the institution's records concerning name, address, social security number, references, and driver's license number, the borrower's expected permanent address, the address of the borrower's next of kin, as well as the name and address of the borrower's expected employer; and

(ix) Review with the borrower information on the availability of the Student Loan Ombudsman's office.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials set forth in appendix D to 34 CFR part 668.

(4) An institution that conducts exit counseling through interactive electronic means must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the exit counseling.

(5) The institution must maintain documentation substantiating the school's compliance with this section for each borrower.

* * * * *

15. Section 674.45 is amended by revising paragraph (b) and adding a new paragraph (h) to read as follows:

**§ 674.45 Collection procedures.**

* * * * *

(b)(1) An institution must report to any national credit bureau to which it reported the default, according to the reporting procedures of the national credit bureau, any changes to the account status of the loan.

(2) The institution must resolve within 30 days of its receipt, any inquiry from any credit bureau that disputes the completeness or accuracy of information reported on the loan.

* * * * *

(h) As part of the collection activities provided for in this section, the institution must provide the borrower with information on the availability of the Student Loan Ombudsman's office.

* * * * *

16. Section 674.47 is amended by redesignating paragraphs (e)(5) and (e)(6) as (e)(6), and (e)(7), respectively, and by adding new paragraph (e)(5) to read as follows:

**§ 674.47 Costs chargeable to the Fund.**

* * * * *

(e) * * *

(5) Until July 1, 2002 on loans rehabilitated pursuant to § 674.39, amounts that exceed the amounts specified in § 674.39(c)(1) but are less than—

(i) 30 percent if the loan was rehabilitated while in a first collection effort; or

(ii) 40 percent if the loan was rehabilitated while in a second collection effort.

* * * * *

17. Section 674.49 is amended as follows:

A. By redesignating paragraphs (f)(2)(ii)(A) and (f)(2)(ii)(B) as paragraphs (f)(2)(ii)(B) and (f)(2)(ii)(C), respectively; and adding a new paragraph (f)(2)(ii)(A).

B. By redesignating paragraphs (f)(3)(ii)(A) and (f)(3)(ii)(B) as paragraphs (f)(3)(ii)(B) and (f)(3)(ii)(C), respectively; and adding a new paragraph (f)(3)(ii)(A).

C. By revising paragraphs (c)(1), (c)(2) and (c)(3); paragraph (e)(4)(i); newly redesignated paragraphs (f)(2)(ii)(B) and (f)(3)(ii)(B); and paragraph (g).

**§ 674.49 Bankruptcy of borrower.**

* * * * *

(c) * * *

(1) The institution must use diligence and may assert any defense consistent with its status under applicable law to avoid discharge of the loan. The institution must follow the procedures in this paragraph to respond to a complaint for a determination of dischargeability under 11 U.S.C. 523(a)(8) on the ground that repayment of the loan would impose an undue hardship on the borrower and his or her dependents, unless discharge would be more effectively opposed by avoiding that action.

(2) If the petition for relief in bankruptcy was filed before October 8, 1998 and more than seven years of the repayment period on the loan (excluding any applicable suspension of the repayment period defined in 34 CFR 682.402(m)) have passed before the borrower filed the petition, the institution may not oppose a determination of dischargeability requested under 11 U.S.C. 523(a)(8)(B) on the ground of undue hardship.

(3) In any other case, the institution must determine, on the basis of reasonably available information, whether repayment of the loan under either the current repayment schedule or any adjusted schedule authorized under subpart B or D of this part would impose an undue hardship on the borrower and his or her dependents.

* * * * *

(e) * * *

* * * * *

(4)(i) The institution must monitor the borrower's compliance with the requirements of the plan confirmed by the court. If the institution determines that the debtor has not made the payments required under the plan, or has filed a request for a ''hardship discharge'' under 11 U.S.C. 1328(b), the institution must determine from its own records and information derived from documents filed with the court—

* * * * *

(f) * * *

(2) * * *

(ii)(A) The petition for relief was filed before October 8, 1998;

(B) The loan entered the repayment period more than seven years (excluding any applicable suspension of the repayment period as defined by 34 CFR 682.402(m)), and

(3) * * *

(ii)(A) The petition for relief was filed before October 8, 1998;

(B) The loan entered the repayment period more than seven years (excluding any application suspension of the repayment period as defined by 34 CFR 682.402(m)) before the filing of the petition, and

* * * * *

(g) *Termination of collection and write-off.* (1) An institution must terminate all collection action and write off a loan if it receives a general order of discharge—

(i) In a bankruptcy in which the borrower filed for relief before October 8, 1998, if the loan entered the repayment period more than seven years (exclusive of any applicable suspension of the repayment period defined by 34 CFR 682.402(m)) from the date on which a petition for relief was filed; or

(ii) In any other case, a judgment that repayment of the debt would constitute an undue hardship and that the debt is therefore dischargeable.

(2) If an institution receives a repayment from a borrower after a loan has been discharged, it must deposit that payment in its Fund.

* * * * *

18. Section 674.52 is amended by revising paragraphs (c)(1) and (d) to read as follows:

**§ 674.52 Cancellation procedures.**

* * * * *

(c) *Cancellation of a defaulted loan.* (1) Except with regard to cancellation on account of the death or disability of the borrower, a borrower whose defaulted loan has not been accelerated may qualify for a cancellation by complying with the requirements of paragraph (a) of this section.

* * * * *

(d) The Secretary considers a Perkins loan, Direct loan or Defense loan borrower's loan deferment under § 674.34(c) to run concurrently with any period for which cancellation under §§ 674.53, 674.54, 674.55, 674.56, 674.57, 674.58, 674.59, and 674.60 is granted.

* * * * *

19. Section 674.53 is amended by redesignating paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) as (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7), respectively; by revising the heading of the section; by adding a new paragraph (a)(2); by revising paragraph (a)(1), paragraph (b), and paragraph (c) to read as follows:

**§ 674.53 Teacher cancellation—Federal Perkins, Direct and Defense loans.**

(a)(1) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.*

(i) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins loan or a Direct loan made on or after July 23, 1992, for full-time teaching in a public or other nonprofit elementary or secondary school.

(ii) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for teaching service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(2) The borrower must be teaching full-time in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualified for funds, in that year, under title I of the Elementary and Secondary Education Act of 1995, as amended; and

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of title I children.

(b) *Cancellation for full-time teaching in special education.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for the borrower's service as a full-time special education teacher of infants, toddlers, children, or youth with disabilities, in a public or other nonprofit elementary or secondary school system.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for teaching service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

* * * * *

(c) *Cancellation for full-time teaching in fields of expertise.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for full-time teaching in mathematics, science, foreign languages, bilingual education, or any other field of expertise where the State education agency determines that there is a shortage of qualified teachers.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for teaching service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

* * * * *

20. Section 674.56 is amended by revising the section heading and paragraphs (a), (b) and (c) to read as follows:

**§ 674.56 Employment cancellation—Federal Perkins, Direct and Defense loans.**

(a) *Cancellation for full-time employment as a nurse or medical technician.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct loan made on or after July 23, 1992, for full-time employment as a nurse or medical technician providing health care services.

(2) An institution must cancel up to 100 percent of the outstanding balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for full-time service as a nurse or medical technician performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the borrower's promissory note.

(b) *Cancellation for full-time employment in a public or private nonprofit child or family service agency.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct loan made on or after July 23, 1992, for service as a full-time employee in a public or private nonprofit child or family service agency who is providing, or supervising the provision of, services to high-risk children who are from low-income communities and the families of such children.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for employment in a child or family service agency on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(c) *Cancellation for service as a qualified professional provider of early intervention services.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct loan made on or after July 23, 1992, for the borrower's service as a full-time qualified professional provider of early intervention services in a public or other nonprofit program under public supervision by the lead agency as authorized in section 676(b)(9) of the Individual with Disabilities Act.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992 for early intervention service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

* * * * *

21. Section 674.57 is amended by redesignating paragraphs (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7) as (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), and (a)(8), respectively; by revising the section heading and paragraph (a)(1); and adding a new paragraph (a)(2) to read as follows:

**§ 674.57 Cancellation for law enforcement or corrections officer service—Federal Perkins, Direct and Defense loans.**

(a)(1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct Loan made on or after November 29, 1990, for full-time service as a law enforcement or corrections officer for an eligible employing agency.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to November 29, 1990, for law enforcement or correction officer service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

* * * * *

22. Section 674.58 is amended by revising paragraph (a) to read as follows:

**§ 674.58 Cancellation for service in a Head Start Program.**

(a)(1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Direct or Federal Perkins loan, for service as a full-time staff member in a ''Head Start'' program.

(2) An institution must cancel up to 100 percent of the outstanding balance on a Defense loan for service as a full-time staff member in a ''Head Start'' program performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(3) The Head Start program in which the borrower serves must operate for a complete academic year, or its equivalent.

(4) In order to qualify for cancellation, the borrower's salary may not exceed the salary of a comparable employee working in the local educational agency of the area served by the local Head Start program.

* * * * *

23. Section 674.60 is amended by revising the section heading and paragraph (a) to read as follows:

**§ 674.60 Cancellation for volunteer service—Perkins loans, Direct loans and Defense loans.**

(a)(1) An institution must cancel up to 70 percent of the outstanding balance on a Perkins loan, and 70 percent of the outstanding balance of an NDSL made on or after October 7, 1998, for service as a volunteer under The Peace Corps Act or The Domestic Volunteer Service Act of 1973 (ACTION programs).

(2) An institution must cancel up to 70 percent of the outstanding balance on a Direct or Defense loan for service as a volunteer under The Peace Corps Act or The Domestic Volunteer Service Act of 1973 (ACTION programs) performed on or after October 7, 1998, if the cancellation benefits provided under

this section are not included in the terms of the borrower's promissory note.

* * * * *

[FR Doc. 99–19230 Filed 7–28–99; 8:45 am]

BILLING CODE 4000–01–U

federal register

Thursday
July 29, 1999

# Part IV

# Department of Agriculture

## Agricultural Marketing Service

**7 CFR Part 1216**

**Peanut Promotion, Research, and Information Order; Final Rule**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1216**

**[FV–98–702–FR]**

## Peanut Promotion, Research, and Information Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes a Peanut Promotion, Research, and Consumer Information Order (Order) under the Commodity Promotion, Research, and Information Act of 1996. Under the order, producers will pay an assessment of 1 percent of the price of farmers stock peanuts sold to first handlers. First handlers and marketing associations will remit the assessments to the National Peanut Board (Board). The Board will use the funds collected to conduct a generic program of promotion, research, consumer information, and industry information to maintain and expand markets for peanuts. The U.S. Department of Agriculture (USDA or the Department) conducted a referendum among eligible peanut producers to determine whether they favor the implementation of the Order. The order was approved by a majority of those voting in the referendum.

**DATES:** July 30, 1999.

**FOR FURTHER INFORMATION CONTACT:** Daniel R. Williams II, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, S.W., Room 2535 South Building, Washington, D.C. 20250–0244; telephone (202) 720–9916 or fax (202) 205–2800.

**SUPPLEMENTARY INFORMATION:** This Order is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996, 7 U.S.C. 7401–7425; Public Law 104–127, enacted April 4, 1996, hereinafter referred to as the Act.

Previous documents in this proceeding: Proposed Rule Number 1 (November 1998 proposed rule) on the Order published in the November 6, 1998, issue of the **Federal Register** [63 FR 59893]; a proposed rule on referendum procedures published in the November 6, 1998, issue of the **Federal Register** [63 FR 59907]; Proposed Rule Number 2 (April 1999 proposed rule) on the Order, which included a Referendum Order, published in the April 23, 1999, issue of the **Federal Register** [64 FR 20107]; a final rule on referendum procedures published in the April 23, 1999, issue of the **Federal Register** [64 FR 20102 ]; and an amendment to the Referendum Order published in the June 14, 1999, issue of the **Federal Register** [64 FR 31736].

### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or state law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary of Agriculture (Secretary) will issue a ruling on a petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

### Executive Order 12866

This rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

### Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has examined the impact of the rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Act authorizes generic programs of promotion, research, and information for agricultural commodities. Congress found that it is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, government-supervised, generic commodity promotion programs.

This program is intended to develop and finance an effective and coordinated program of promotion, research, and consumer information to maintain and expand the markets for peanuts. A proposal was submitted by the American Farm Bureau Federation (proponent), working in cooperation with 20 state and regional peanut grower organizations representing the nine primary peanut-producing states and other states. The proponent proposed that peanut producers approve the program in a referendum in advance of its implementation and that producer members would serve on the 10-member National Peanut Board (Board) that would administer the program under USDA's supervision. In addition, any person subject to the program may file with the Secretary a petition stating that the program or any provision under it is not in accordance with law and requesting a modification of the Order or an exemption from the Order.

While the Order will impose certain recordkeeping requirements on first handlers, information required under the Order can be compiled from records currently maintained. First handlers and area marketing associations—for peanuts placed under loan with the Commodity Credit Corporation (CCC) in the price support program administered for CCC by USDA's Farm Service Agency (FSA)—will collect and remit all assessments to the Board. Their responsibilities will include accurate recordkeeping and accounting of all peanuts purchased or contracted for, including the number of pounds handled, price paid to the producer, and when peanuts are purchased. The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Order and the Act. Such records shall be retained for at least two years. These requirements are either already being conducted as a normal business practice or are required by other USDA peanut regulations. The added burden to first handlers and area marketing associations for a peanut promotion, research, and information program is therefore expected to be minimal.

There is also a minimal burden on producers. The burden relates to those producers who seek nomination to serve on the Board and those who vote in referenda. In addition, the Order requires producers to keep records and

to provide information to the Board or the Secretary when requested. However, it is not anticipated that producers will be required to submit forms to the Board. Most likely, the information will be obtained through an audit of a producer's records to confirm information provided by a first handler or if a first handler did not file the required reports as part of the Board's compliance operation.

The estimated annual cost of providing the information to the Board by an estimated 98 respondents (21 producers, 57 first handlers, and 20 producer organizations) is be $4,059.85 or $5.00 per producer, $66.05 per first handler, and $9.50 per producer organization.

The Department will oversee program operations and will conduct a referendum: (1) Every five years to determine whether peanut producers support continuation of the program, as requested by the proponent, (2) at the request of the Board established under the Order, or (3) at the request of 10 percent or more of the number of persons eligible to vote in referenda. Additionally, the Secretary may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the Order or a provision of the Order is favored by those eligible to vote in referenda.

There are approximately 25,000 producers and 57 first handlers of peanuts that will be subject to the program. Most of the producers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) (13 CFR 121.601). Most first handlers would not be classified as small businesses. The SBA defines small agricultural handlers as those whose annual receipts are less than $5 million, and small agricultural producers are defined as those having annual receipts of not more than $500,000 annually.

According to USDA's National Agricultural Statistics Service (NASS), the nine major peanut-producing states in the United States account for 99 percent of the peanuts grown in this country. The combined production from these states totaled 3.5 billion pounds in 1997. The farm value of peanuts in 1997 reached $932 million. NASS reports that Georgia was the largest producer (38 percent of the total), followed by Texas (23 percent), Alabama (11 percent), North Carolina (9 percent), Florida (6 percent), Virginia (5 percent), Oklahoma (5 percent), New Mexico (1 percent), and South Carolina (1 percent). According to 1992 Census of Agriculture (Census) data, small amounts of peanuts were also grown in seven other states.

According to the proponent, based on Census data for these nine states, 36 percent of the peanut-producing counties in the United States acquired 35 percent or more of their total crop income from peanuts. Twenty-four percent of the counties had 50 percent or more of their crop income from peanuts. From a state perspective, 70 percent of the crop income in Alabama's peanut-producing counties is generated from peanuts. For Virginia, the percentage is 48 percent. In addition, 16,194 farms harvested peanuts in 1992. Of these, 15,914 were located in the nine primary peanut-producing states.

Three main types of peanuts are grown in the United States: Florunners, Virginia, and Spanish. The southeast growing region grows mostly the medium-kernel Runner peanuts. The southwest growing region once grew two-thirds Spanish and one-third Runner peanuts, but now more Runners than Spanish are grown. Virtually all of the Spanish peanut production is in Oklahoma and Texas. In the Virginia-Carolina region, mainly large-kernel Virginia peanuts are grown. New Mexico grows a fourth type of peanut, the Valencia.

Peanut manufacturers produce three principal peanut products: peanut butter, packaged nuts (including salted, unsalted, flavored, and honey-roasted nuts), and peanut candies. In most years, half of all peanuts produced in the United States for edible purposes are used to manufacture peanut butter. Packaged nuts account for almost one-third of all processed peanuts. Some of these (commonly referred to as ''ballpark'' peanuts) are roasted in the shell, while a much larger quantity is used as shelled peanuts packed as dry-roasted peanuts, salted peanuts, and salted mixed nuts. Some peanuts are ground to produce peanut granules and flour. Other peanuts are crushed to produce oil.

According to USDA's Foreign Agricultural Service, U.S. exports of peanuts (including peanut meal, oil, and peanut butter) totaled 880 million in-shell equivalent pounds in 1997, with a value of $285 million (U.S. point of departure for the foreign country). Of the total quantity, 60 percent was shelled peanuts used as nuts, 11 percent was blanched or otherwise prepared or preserved peanuts, 10 percent was in-shell peanuts, 7 percent was peanut butter, 4 percent was shelled oil stock peanuts, 4 percent was crude peanut oil, and 3 percent was refined peanut oil.

The major destinations for domestic shelled peanuts for use as nuts are Canada, Mexico, the United Kingdom, and the Netherlands. Blanched or otherwise prepared peanuts are sent mainly to Western Europe, especially the Netherlands, France, and Spain. In-shell peanuts are mainly exported to Canada and various countries in Western Europe. Peanut butter is sent to many countries, with the largest amounts going to Canada and Saudi Arabia. Peanut oil and oil stock peanuts are exported world-wide, but major destinations can vary from year to year.

Approximately 250 million in-shell equivalent pounds of peanuts and processed peanuts (including oil and peanut butter) were imported in 1997 with a combined value (f.o.b. country of origin) of $73 million. Most of the imports (45 percent) were shelled peanuts for use as nuts. The major U.S. supplier is Argentina, but several other countries export shelled peanuts to the United States, including Mexico, Nicaragua, and South Africa.

Peanut butter imports are also significant and accounted for about 32 percent of the total quantity of nuts (in-shell basis) imported in 1997. Most peanut butter imports come from Canada and Argentina. The other major import category—crude and refined peanut oil—is shipped mainly from Argentina and Nicaragua and account for approximately 18 percent of total imports (in-shell equivalent basis). In-shell peanuts, primarily from Mexico, accounted for nearly 3 percent of total imports in 1997. About 3 percent of total imports consisted of blanched or other processed peanuts, mainly from China. Imports of oil stock shelled peanuts were negligible.

Most peanuts produced in other countries are crushed for oil and protein meal. The United States is the main producer of peanuts used in such edible products as peanut butter, roasted peanuts, and peanut candies. Peanuts are one of the world's principal oilseeds, ranking fourth behind soybeans, cottonseed, and rapeseed. India and China usually account for half of the world's peanut production.

According to the ''Agricultural Statistics Report'' published by USDA, during the 1995–96 season, the average annual production per U.S. producer was 144,228 pounds of peanuts. Peanuts produced during this growing season provided average annual gross sales of $42,222 per peanut producer. The value of the 1995–96 crop was approximately $1.013 billion. During the same period, per capita consumption in the United States was 5.7 pounds of peanuts.

The Order establishes a fixed assessment paid by producers (to be collected by first handlers) at a rate of

1 percent of the price paid for all farmers stock peanuts, regardless of whether the peanuts are sold commercially or placed under loan with CCC in the price support program administered for CCC by FSA.

Section 516(a)(1) of the Act provides authority to the Secretary to exempt from the Order any de minimis quantity of an agricultural commodity otherwise covered by the Order. At the recommendation of the proponent, this program does not include a de minimis exemption.

At the assessment rate of 1 percent of farm value, the Board is expected to collect approximately $10 million annually, assuming 1 billion pounds of peanuts are produced. It is anticipated that the 1 percent rate of assessment will represent approximately 1 percent of producers' average return. During the 1995–96 crop year, the average price for peanuts was $0.293 per pound.

Each primary producing state will have one member on the Board, and the minor peanut-producing states will be represented collectively by one member on the Board. Each member will have an alternate. Therefore, the Board will have 10 members and 10 alternates.

Primary peanut-producing states are defined in the Order as Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia, provided that these states maintain 3-year average production of at least 10,000 tons of peanuts each. Minor peanut-producing states are defined in the Order as all peanut-producing states other than the primary peanut-producing states. Currently, the following states are considered minor states: Arizona, California, Louisiana, Mississippi, and Tennessee.

Peanut producers or producer organizations will nominate producers to serve as members on the Board. USDA will ensure that the nominees represent the peanut industry in accordance with the Order and the Act.

After the Board is appointed by the Secretary, the Board will recommend programs and projects, a budget, and any rules and regulations that might be necessary for the administration of the program.

The recordkeeping and reporting requirements for the Order are designed to minimize the burden on first handlers. They are designed to collect as much of the necessary information as possible from forms already submitted to another USDA agency. In addition, any information collection that cannot occur through forms already in use will pose a minimal additional burden.

The estimated annual cost of providing the information to the Board by an estimated 98 respondents (21 producers, 57 first handlers, and 20 producer organizations) is $4,059.85, which represents $5.00 per producer, $66.05 per first handler, and $9.50 per producer organization.

With regard to alternatives to this rule, the Act itself provides authority to tailor a program according to the individual needs of an industry. Provision is made for permissive terms in an Order in Section 516 of the Act, and other sections provide for alternatives. For example, Section 514 of the Act provides for programs applicable to: (1) Producers; (2) first handlers and other persons in the marketing chain as appropriate; and (3) importers (if imports are subject to assessment). Section 516 authorizes a program to provide for: the exemption of *de minimis* quantities of an agricultural commodity; different payment and reporting schedules; types of research, promotion, and information activities in both domestic and foreign markets; reserve funds; credits for generic and branded activities; and the assessment of imports. In addition, Section 518 of the Act provides for referenda to ascertain approval of program to be conducted either prior to its going into effect or within three years after assessments first begin under the program. A program also may provide for its approval in a referendum to be based upon: (1) A majority of those persons voting; (2) persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. Section 515 of the Act provides for the establishment of a board from among producers, first handlers and others in the marketing chain as appropriate, and importers, if importers are subject to assessment.

The proponent's proposal included provisions for both domestic and foreign market expansion and improvement; reserve funds; and an initial referendum to be conducted prior to the Order going into effect, with approval based upon a majority of those persons voting in a referendum.

In order to conduct the Regulatory Flexibility Analysis regarding the impact of the Order on small entities, the November 1998 proposed rule invited comments concerning the potential effects of the Order. One comment was received concerning the paperwork burden on first handlers. As a result of the comment, changes were made in the order, as discussed in the April 1999 proposed rule.

**Paperwork Reduction Act**

In accordance with the Office of Management and Budget (OMB) regulation (5 CFR part 1320) which implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by this Order were submitted to OMB for approval and were approved under OMB control number 0581–0093.

*Title:* National Research, Promotion, and Consumer Information Programs.

*OMB No. for background form (number 1 below):* 0505–0001.

*Expiration date of approval:* November 30, 1999.

*OMB No. for other information collections:* 0581–0093.

*Expiration date of approval:* November 30, 2000.

*Type of request:* Revision of currently approved information collections for advisory committees and boards and for research and promotion programs.

*Abstract:* The information collection requirements in the request are essential to carry out the intent of the Order and the Act.

In addition, there will be the additional burden on the producers who vote in referenda. The referendum ballot, which represents the information collection requirement relating to referenda, was addressed in the final rule on referendum procedures.

Under this program, first handlers are required to collect assessments from producers and file reports with and submit assessments to the Board. While the Order imposes certain recordkeeping requirements on first handlers, information required under the Order can be compiled from records currently maintained. Such records shall be retained for at least two years beyond the marketing year of their applicability. The estimated annual cost of providing the information to the Board by an estimated 98 respondents (21 producers, 57 first handlers, and 20 producer organizations) is $4,059.85, which represents $5.00 per producer, $66.05 per first handler, and $9.50 per producer organization.

The Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other peanut programs administered by the Department.

Most of the forms require the minimum information necessary to effectively carry out the requirements of

the program, and their use is necessary to fulfill the intent of the Order and the Act. Much information can be supplied from the FSA Form 1007 without data processing equipment or outside technical expertise. FSA Form 1007 Inspection Certificate and Sales Memorandum is a standard form used within the peanut industry to collect peanut crop characteristics and value of the load from the producer to the first handler. This form contains the information that is needed in order to complete the first handlers form for the Board. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms will be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information monthly coincides with normal industry business practices. Reporting other than monthly will impose an additional and unnecessary recordkeeping burden on first handlers. The timing and frequency of collecting information is intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports.

As discussed in the RFA section of this rule and in the April 1999 proposed rule, the paperwork burdens on first handlers were modified as a result of a comment received in response to the November 1998 proposed rule.

Information collection requirements that are included in this rule include:

(1) *A background information form to be completed by candidates nominated by certified producer organizations for appointment to the Board.*

*Estimate of Burden:* Public reporting for this collection of information is estimated to average 0.5 hours per response for each producer.

*Respondents:* Producers.

*Estimated Number of Respondents:* 21 (average of 40 for the initial nominations to the Board and approximately 12 respondents annually thereafter for each 3-year period).

*Estimated Number of Responses per Respondent:* 1 every 3 years.

*Total Estimated Annual Burden on Respondents:* 20 hours for the initial nominations to the Board and 6 hours annually thereafter.

(2) *A monthly report by each first handler of peanuts.*

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.5 hours per each first handler reporting on peanuts handled.

*Respondents:* First handlers.

*Estimated Number of Respondents:* 57.

*Estimated Number of Responses per Respondent:* 12.

*Estimated Total Annual Burden on Respondents:* 342 hours.

(3) *Nomination information by which certified producer organizations will nominate producers for membership on the Board.*

*Estimate of Burden:* Public reporting burden for this collecting of information is estimated to average 0.5 hours per response.

*Respondents:* Certified producer organizations.

*Estimated Number of Respondents:* 20.

*Estimated Number of Responses per Respondent:* 1 per year.

*Estimated Total Annual Burden on Respondents:* 10 hours.

(4) *An application for peanut producer organizations for certification of eligibility to nominate Board members.*

*Estimate of Burden:* Public reporting for this collection of information is estimated to average 0.5 hours per response for each organization.

*Respondents:* Peanut producer organizations.

*Estimated Number of Respondents:* 9.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 9 hours.

(5) *A requirement to maintain records sufficient to verify reports submitted under the Order.*

*Estimate of Burden:* Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

*Recordkeepers:* First handlers.

*Estimated Number of Recordkeepers:* 57.

*Estimated Total Recordkeeping Hours:* 28.5 hours.

**Background**

The Act authorizes the Secretary, under a generic authority, to establish agricultural commodity research and promotion programs. Section 516 of the Act provides permissive terms for programs, and other sections provide alternatives. For example, Section 514 of the Act provides for orders applicable to: (1) Producers, (2) first handlers and others in the marketing chain as appropriate; and (3) importers (if importers are subject to assessment). Section 516 authorizes an order to provide for: the exemption of *de minimis* quantities of an agricultural commodity; different payment and reporting schedules; different types of research, promotion, and information activities in domestic and foreign markets; reserve funds; credits for generic and branded activities; and the assessment of imports. In addition, Section 518 of the Act provides for referenda to ascertain approval of a program to be conducted either prior to its going into effect or within three years after assessments first begin under the program. A program also may provide for its approval in a referendum based upon different voting patterns. Section 515 provides for establishment of a board from among producers, first handlers and others in the marketing chain as appropriate, and importers, if imports are subject to assessment.

On June 15, 1998, the proponent, working in cooperation with 20 state and regional peanut industry organizations representing the nine primary peanut-producing states, submitted a proposal for a national peanut promotion, research, and information Order pursuant to the Act.

The Department published the proponent's proposal, with modifications, for public comment in the November 1998 proposed rule. Fourteen comments were received by the January 5, 1999, deadline. These comments, and related changes to the Order, were discussed in the April 1999 proposed rule, which included a Referendum Order.

The Order is summarized as follows: Sections 1216.01 through 1216.29 of the Order define certain terms, such as peanuts, minor peanut-producing states, primary peanut-producing states, producer, and quota peanuts, which are used in the Order.

Sections 1216.40 through 1216.49 include provisions relating to the Board establishment and membership, nominations, selections and acceptance, term of office, vacancies, alternate members, and compensation and reimbursement; procedures for conducting Board business; and powers and duties of the Board, which is the governing body authorized to administer the Order through the implementation of programs, plans, projects, budgets, and contracts to promote and disseminate information about peanuts, subject to oversight by the Secretary. These sections also include maintenance of books and records by the Board and prohibited activities of the Board, its employees, and agents.

In order to ensure support throughout the production area for all Board votes, § 1216.46 (b) provides that all Board members' votes will be weighted by the value of production represented by each member. The votes of members from

primary peanut-producing states will represent their respective states' three-year running average of total gross farm income derived from all peanut sales. The votes of the at-large Board member will equal the collective value of production from all minor peanut-producing states' three-year running average of total gross farm income from all peanut sales. Any Board action will require the concurring votes of members collectively representing more than 50 percent of the total U.S. gross farm income derived from all peanut sales plus an additional two votes from other Board members, provided a minimum of five members concur. Therefore, regardless of the volume voted by the members, no Board action will be approved unless at least five members vote in favor of it. Similarly, if five members vote in favor of a motion and those five members do not represent more than 50 percent of the total U.S. gross farm income derived from all peanut sales, the motion will not be approved.

Sections 1216.50 through 1216.55 cover budget review and approval; authorize the collection of assessments; use of assessments, including reimbursement of necessary expenses incurred by the Board for the performance of its duties, including expenses incurred for the Department's oversight responsibilities; specify who pays the assessment and how; authorize the imposition of a late-payment charge on past-due assessments; address programs, plans, and projects; require the Board to conduct periodically an independent review of its overall program; specify a program operating reserve; and cover the investment of assessment funds.

There will be an assessment rate of 1 percent of the price paid for all farmers stock peanuts sold. Peanut producers may sell their peanuts commercially or put them in a government loan program. For peanuts sold commercially, the first handler will remit the assessment to the Board. The assessment will be 1 percent of the price paid for the peanuts. Under a loan program administered by FSA, a peanut producer also has the option of delivering the peanuts to an area marketing association and receiving payment for the peanuts from CCC. The area association will deduct 1 percent of the payment from the producer's proceeds and remit that amount to the Board as the producer's initial assessment payment on the peanuts. After the association sells the peanuts, the area association reimburses CCC the amount of the payment to the producer and deducts its expenses from the selling price. If there is any profit from the sale of the peanuts, the association will deduct 1 percent of the profit, remit that amount to the Board to pay the producer's assessment, and pay the balance to the producer.

The Board may raise or lower the rate of assessment with the approval of the Secretary and a producer referendum.

The federal debt collection procedures referenced in § 1216.51 (g) include those set forth in 7 CFR 3.1 through 3.36 for all research and promotion programs administered by AMS (60 FR 12533, March 7, 1995).

Sections 1216.60 through 1206.62 concern reporting and recordkeeping requirements for persons subject to the Order and protect the confidentiality of information from such books, records, or reports.

Section 1216.70 describes the certification requirements for peanut-producer organizations to be eligible to nominate Board members and submit requests for funds from the Board.

Sections 1216.80 through 1216.88 describe the rights of the Secretary; authorize the Secretary to suspend or terminate the Order when deemed appropriate; prescribe proceedings after suspension or termination; address personal liability, separability, and amendments; and address patents, copyrights, trademarks, information, publications, and product formulations developed through the use of assessment funds.

In preparing this rule, AMS made editorial changes to three sections. First, AMS revised the definitions of ''suspend'' (§ 1216.27) and ''terminate'' (§ 1216.29) to cover any part of the Order, in addition to the entire Order. This is consistent with other national programs. The third section which was modified slightly was § 1216.70(e)(2), in keeping with the government's policy of plain language in regulations. The phrase ''proportion of total such active membership accounted for by producers'' was changed to ''proportion of the organization's active membership accounted for by producers.'' In addition, in the same section, the word ''such'' was removed.

### General Findings

The Department conducted a referendum among peanut producers from May 14 through July 2, 1999, to determine whether the Order would become effective. The representative period for establishing voter eligibility was from August 1, 1997, through July 31, 1998 (1997 crop year). All peanut producers who produced peanuts during the 1997 crop year and at the time of the referendum (1998 crop year) were eligible to vote.

It is determined that a majority of the eligible peanut producers voting favored implementation of the Order. After consideration of all relevant material presented, including the initial proposal, comments received, and the referendum results, it is found that the Order is consistent with and effectuate the declared policy and purpose of the Act.

Pursuant to the provisions in 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action implements a program requested by the nation's peanut producers to begin with the 1999 crop year; (2) interested parties were allowed 60 days to comment on the program and a referendum was held among peanut producers—who will bear the cost of this program; (3) in the referendum a majority of the eligible peanut producers who voted favored implementation of the program; (4) the 1999 crop year begins on August 1, 1999; (5) domestic peanuts are marketed mainly between August 1 and December 31 of each year; (6) it is important that the 1999 crop be covered by the program; and (3) no useful purpose would be served by a delay of the effective date.

### List of Subjects in 7 CFR Part 1216

Administrative practice and procedure, Advertising, Consumer Information, Marketing agreements, Peanut promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Title 7 of Chapter XI of the Code of Federal Regulations is amended as follows:

## PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER

1. The authority citation for part 1216 continues to read as follows:

**Authority:** 7 U.S.C. 7401–7425.

2. Subpart A is added to part 1216 to read as follows:

### Subpart A—Peanut Promotion, Research, and Information Order

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1216.2 Additional peanuts.
1216.3 Area marketing association.
1216.4 Board.
1216.5 Conflict of interest.
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**Certification of Peanut Producer Organizations**

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1216.80 Right of the Secretary.
1216.81 Implementation of Order.
1216.82 Suspension and termination.
1216.83 Proceedings after termination.
1216.84 Effect of termination or amendment.
1216.85 Personal liability.
1216.86 Separability.
1216.87 Amendments.
1216.88 Patents, copyrights, trademarks, information, publications, and product formulations.

## Subpart A—Peanut Promotion, Research, and Information Order

### Definitions

#### § 1216.1 Act.

*Act* means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7401–7425; Public Law 104–127, 110 Stat. 1029), or any amendments thereto.

#### § 1216.2 Additional peanuts.

*Additional peanuts* means peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

#### § 1216.3 Area marketing association.

*Area marketing association* means an association selected and approved by the Secretary to conduct activities under regulations of the Department's Farm Service Agency. Under an interagency agreement, area marketing associations may assist in the collection of assessments under this subpart. The approved area marketing associations and the areas served by such associations are as follows:

(a) *GFA Peanut Association of Camilla, Georgia (GFA).* GFA serves the southeastern area consisting of Puerto Rico, the U.S. Virgin Islands, and the states of Alabama, Florida, Georgia, Mississippi, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers;

(b) *Peanut Growers Cooperative Marketing Association of Franklin, Virginia (PGCMA).* PGCMA serves the Virginia-Carolina area consisting of the District of Columbia, and the states of Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers; and

(c) *Southwestern Peanut Growers Association of Gorman, Texas (SWPGA).* SWPGA serves the southwestern area consisting of the states of Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Louisiana, Montana, Nebraska, New Mexico, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming, and all other territories of the United States not listed in paragraph (a) or (b) of this section.

#### § 1216.4 Board.

*Board* means the administrative body referred to as the National Peanut Board established pursuant to § 1216.40.

#### § 1216.5 Conflict of interest.

*Conflict of interest* means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

#### § 1216.6 Contract export additional peanuts.

*Contract export additional peanuts* are additional peanuts for exportation, including peanuts for crushing for exportation, for which a contract has been entered into between a first handler and a producer.

#### § 1216.7 Department.

*Department* means the U.S. Department of Agriculture.

#### § 1216.8 Farm Service Agency.

*Farm Service Agency or FSA* means the U.S. Department of Agriculture's Farm Service Agency.

#### § 1216.9 Farmers stock peanuts.

*Farmers stock peanuts* means picked or threshed peanuts produced in the United States which have not been changed (except for removal of foreign material, loose shelled kernels and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers, plus any loose shelled kernels that are removed from farmers stock peanuts before such farmers stock peanuts are marketed.

#### § 1216.10 First handler.

*First handler* means any person who handles peanuts in a capacity other than that of a custom cleaner or dryer, an assembler, a warehouseman, or other intermediary between the producer and the person handling.

#### § 1216.11 Fiscal year.

*Fiscal year* is synonymous with crop year and means the 12-month period beginning with August 1 of any year and ending with July 31 of the following year, or such other period as determined by the Board and approved by the Secretary.

#### § 1216.12 Handle.

*Handle* means to engage in the receiving or acquiring, cleaning and shelling, cleaning in-shell, or crushing of peanuts and in the shipment (except as a common or contract carrier of peanuts owned by another) or sale of cleaned in-shell or shelled peanuts, or other activity causing peanuts to enter the current of commerce: *Provided,* that this term does not include sales or deliveries of peanuts by a producer to a handler or to an intermediary person engaged in delivering peanuts to handler(s) and: *Provided further,* that this term does not include sales or deliveries of peanuts by such intermediary person(s) to a handler.

**§ 1216.13 Information.**

*Information* means information and programs that are designed to increase efficiency in processing and to develop new markets, marketing strategies, increased market efficiency, and activities that are designed to enhance the image of peanuts on a national or international basis. These include:

(a) *Consumer information,* which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of peanuts; and

(b) *Producer information,* which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the peanut industry, and activities to enhance the image of the peanut industry.

**§ 1216.14 Market.**

*Market* means to sell or otherwise dispose of peanuts into interstate, foreign, or intrastate commerce by buying, marketing, distributing, or otherwise placing peanuts into commerce.

**§ 1216.15 Minor peanut-producing states.**

*Minor peanut-producing states* means all peanut-producing states with the exception of Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia.

**§ 1216.16 Order.**

*Order* means an Order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

**§ 1216.17 Part and subpart.**

*Part* means the Peanut Promotion, Research, and Information Order and all rules, regulations, and supplemental Orders issued pursuant to the Act and the Order. The Order shall be a ''subpart'' of such part.

**§ 1216.18 Peanuts.**

*Peanuts* means the seeds of the legume *arachis hypogaea* and includes both in-shell and shelled peanuts other than those marketed by the producer in green form for consumption as boiled peanuts.

**§ 1216.19 Peanut producer organization.**

*Peanut producer organization* means a state-legislated peanut promotion, research, and education commission or organization. For states without a state-legislated peanut promotion, research, and education commission or organization, ''peanut producer organization'' means any organization which has the primary purpose of representing peanut producers and has peanut producers as members.

**§ 1216.20 Person.**

*Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

**§ 1216.21 Primary peanut-producing states.**

*Primary peanut-producing states* means Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia, *Provided,* these states maintain three-year average production of at least 10,000 tons of peanuts.

**§ 1216.22 Producer.**

*Producer* means any person engaged in the production and sale of peanuts and who owns, or shares the ownership and risk of loss of the crop. This does not include quota holders who do not share in the risk of loss of the crop.

**§ 1216.23 Promotion.**

*Promotion* means any action taken by the Board under this Order, including paid advertising, to present a favorable image of peanuts to the public to improve the competitive position of peanuts in the marketplace, including domestic and international markets, and to stimulate sales of peanuts.

**§ 1216.24 Quota peanuts.**

*Quota peanuts* means peanuts which are:

(a) Eligible for domestic edible uses; and

(b) Marketed or considered marketed from a farm as quota peanuts pursuant to the provisions of 7 CFR Part 729 and are not in excess of the effective farm poundage quota established for the farm on which such peanuts were produced.

**§ 1216.25 Research.**

*Research* means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of peanuts, including research relating to nutritional value and cost of production.

**§ 1216.26 Secretary.**

*Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

**§ 1216.27 Suspend.**

*Suspend* means to issue a rule under section 553 of title 5, United States Code, to temporarily prevent the operation of an Order, or part thereof, during a particular period of time specified in the rule.

**§ 1216.28 State.**

*State* means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

**§ 1216.29 Terminate.**

*Terminate* means to issue a rule under section 553 of title 5, United States Code, to cancel permanently the operation of an Order, or part thereof, beginning on a date certain specified in the rule.

**§ 1216.30 United States.**

*United States* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

## National Peanut Board

**§ 1216.40 Establishment and membership.**

(a) Establishment of a National Peanut Board. There is hereby established a National Peanut Board, hereinafter called the Board, composed of no more than 10 peanut producers and alternates, appointed by the Secretary from nominations as follows:

(1) Nine members and alternates. One member and one alternate shall be appointed from each primary peanut-producing state, who are producers and whose nominations have been submitted by certified peanut producer organizations within a primary peanut-producing state.

(2) The minor peanut-producing states shall collectively have one at-large member and one alternate, who are producers, to be appointed by the Secretary from nominations submitted by certified peanut producer organizations within minor peanut-producing states or from other certified farm organizations that include peanut producers as part of their membership.

(b) Adjustment of membership. At least once in each five-year period, but not more frequently than once in each three-year period, the Board, or a person or agency designated by the Board, shall review the geographical distribution of peanuts in the United States and make recommendation(s) to the Secretary to continue without change, or whether changes should be made in the number of representatives on the Board to reflect

changes in the geographical distribution of the production of peanuts.

**§ 1216.41 Nominations.**

(a) All nominations authorized under § 1216.40 shall be made within such a period of time as the Secretary shall prescribe. Eligible peanut producer organizations within each state as certified pursuant to § 1216.70 shall nominate two qualified persons for each member and each alternate member. The nominees shall be elected at an open meeting among peanut producers eligible to serve on the Board. Any certified peanut producer organization representing a minor peanut-producing state may nominate two eligible persons for each member and two eligible persons for each alternate member.

(b) As soon as practicable after this subpart becomes effective, the Secretary shall obtain nominations for appointment to the initial promotion Board from certified nominating organizations. In any subsequent year in which an appointment to the Board is to be made, nominations for positions whose terms will expire shall be obtained from certified nominating organizations by the Board's staff and submitted to the Secretary by May 1 of such year, or other such date as approved by the Secretary.

(c) Except for initial Board members, whose nomination process will be initiated by the Secretary, the Board shall issue the call for nominations by March 1 of each year.

(d) The nomination meeting shall be announced 30 days in advance:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as deemed advisable.

(e) At nominations meetings, Department personnel will be present to oversee and to verify eligibility and count ballots.

**§ 1216.42 Selection.**

From the nominations, the Secretary shall select the members of the Board and alternates for each primary peanut-producing state. The Secretary shall select one member and one alternate from all nominations submitted by certified peanut producer organizations representing minor peanut-producing states.

**§ 1216.43 Term of office.**

All members and alternates of the Board shall each serve for terms of three years, except that the members and alternates appointed to the initial Board shall serve proportionately for two-, three-, and four-year terms, with the length of the terms determined at random. No member or alternate may serve more than two consecutive three-year terms. An alternate, after serving two consecutive three-year terms, may serve as a member for an additional two consecutive three-year terms. A member, after serving two consecutive three-year terms, may serve as an alternate for an additional two consecutive three-year terms. Each member and alternate shall continue to serve until a successor is selected and has qualified.

(a) Those members serving initial terms of two or four years may serve one successive three-year term.

(b) Any successor serving one year or less may serve two consecutive three-year terms.

**§ 1216.44 Vacancies.**

To fill any vacancy resulting from the failure to qualify of any person selected as a member or as an alternate member of the Board, or in the event of death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be nominated and selected in the manner specified in § 1216.40.

**§ 1216.45 Alternate members.**

An alternate member of the Board, during the absence of the member for the primary peanut-producing state or at-large member for whom the person is the alternate, shall act in the place and stead of such member and perform such duties as assigned. In the event of death, removal, resignation, or disqualification of any member, the alternate for that state or at-large member shall act for the member until a successor for such member is selected and qualified. In the event that both a producer member of the Board and the alternate are unable to attend a meeting, the Board may not designate any other alternate to serve in such member's or alternate's place and stead for such a meeting.

**§ 1216.46 Procedure.**

(a) A majority of the members of the Board, including alternate members acting for members, shall constitute a quorum.

(b) At assembled meetings, all votes shall be cast in person. Board actions shall be weighted by value of production as determined by a primary peanut-producing state's three-year running average of total gross farm income derived from all peanut sales. The at-large Board member's vote shall be weighted by the collective value of production from all minor peanut-producing states' three-year running average of total gross farm income derived from all peanut sales. Any Board action shall require the concurring votes of members or alternates from states representing more than 50 percent of total U.S. gross farm income derived from all peanut sales, plus an additional two votes from any other Board members, provided a minimum of five votes concur.

(c) For routine and noncontroversial matters which do not require deliberation and the exchange of views, and in matters of an emergency nature when there is not time to call an assembled meeting of the Board, the Board may also take action as prescribed in this section by mail, facsimile, telephone, or any telecommunication method appropriate for the conduct of business, but any such action shall be confirmed in writing within 30 days.

(d) There shall be no voting by proxy.

(e) The chairperson shall be a voting member.

**§ 1216.47 Compensation and reimbursement.**

The members of the Board, and alternates when acting as members, shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board, incurred by them in the performance of their duties as Board members.

**§ 1216.48 Powers and duties.**

The Board shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board, and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among the members of the Board a chairperson, other officers, committees, and subcommittees, as the Board determines to be appropriate;

(d) To employ persons, other than the members, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons;

(e) To develop programs and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for

the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and make such other reports available as the Board or the Secretary considers relevant. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget or budgets that show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor;

(f) To prepare and submit for approval of the Secretary fiscal year budgets in accordance with § 1216.50;

(g) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(h) To cause its books to be audited by a competent auditor at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(i) To give the Secretary the same notice of meetings of the Board as is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Board to the Secretary;

(j) To act as intermediary between the Secretary and any producer or first handler;

(k) To furnish to the Secretary any information or records that the Secretary may request;

(l) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(m) To recommend to the Secretary such amendments to the Order as the Board considers appropriate; and

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the peanut industry's position in the marketplace; maintain and expand existing markets and uses for peanuts; and to carry out programs, plans, and projects designed to provide maximum benefits to the peanut industry.

### § 1216.49 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that would be a conflict of interest;

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, including local, state, national, and international, other than recommending to the Secretary amendments to the Order; and

(c) Any advertising, including promotion, research, and information activities authorized to be carried out under the Order, that is false or misleading or disparaging to another agricultural commodity.

## Expenses and Assessments

### § 1216.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data for at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the Board's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

(d) The Board is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use.

(g) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(h) The Board may not expend for administration, maintenance, and functioning of the Board in any fiscal year an amount that exceeds 10 percent of the assessments and other income received by the Board for that fiscal year. Reimbursements to the Secretary required under paragraph (g) of this section are excluded from this limitation on spending.

(i) The Board shall allocate, to the extent practicable, no less than 80 percent of the assessments collected on all peanuts available for any fiscal year on national and regional promotion, research, and information activities. The Board shall allocate, to the extent practicable, no more than 20 percent of assessments collected on all peanuts available for any fiscal year for use in

state or regional research programs. Specific percentages and amounts shall be determined annually by the Board, with the approval of the Secretary.

(j) Certified peanut producer organizations may submit requests for funding for research and/or generic promotion projects. Amounts approved for each state shall not exceed the pro rata Share of funds available for that State as determined by the Board and approved by the Secretary. Amounts allocated by the Board for state research or promotion activities will be based on requests submitted to the Board when it is determined that they meet the goals and objectives stated in the Order.

(k) Assessments collected, less pro rata administrative expenses, from the gross sales of contract export additional peanuts shall be allocated by the Board for the promotion and related research of export peanuts.

(l) The Board shall determine annually how total funds shall be allocated pursuant to paragraphs (i), (j), and (k) of this section, with the approval of the Secretary.

**§ 1216.51 Assessments.**

(a) The funds to cover the Board's expenses shall be acquired by the levying of assessments upon producers in a manner prescribed by the Secretary.

(b) Each first handler, at such times and in such manner as prescribed by the Secretary, shall collect from each producer and pay assessments to the Board on all peanuts handled, including peanuts produced by the first handler, no later than 60 days after the last day of the month in which the peanuts were marketed.

(c) Such assessments shall be levied at a rate of 1 percent of the price paid for all farmers stock peanuts sold. Price paid is the value of segment entry on the FSA 1007 form.

(d) For peanuts placed under loan with the Department's Commodity Credit Corporation, each area marketing association shall remit to the Board the following:

(1) One (1) percent of the initial price paid for either quota or additional peanuts no more than 60 days after the last day of the month in which the peanuts were placed under loan; and

(2) One (1) percent of the profit from the sale of the peanuts within 60 days after the final day of the area association's fiscal year.

(e) All assessments collected under this section are to be used for expenses and expenditures pursuant to this Order and for the establishment of an operating reserve as prescribed in the Order.

(f) The Board shall impose a late payment charge on any person who fails to remit to the Board the total amount for which the person is liable on or before the payment due date established under this section. The late payment charge will be in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(g) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(h) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

(i) The assessment rate may not be increased unless the new rate is approved by a referendum among eligible producers.

**§ 1216.52 Programs, plans, and projects.**

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer information, with respect to peanuts; and

(2) The establishment and conduct of research with respect to the use, nutritional value, sale, distribution, and marketing of peanuts and peanut products, and the creation of new products thereof, to the end that marketing and use of peanuts may be encouraged, expanded, improved, or made more acceptable and to advance the image, desirability, or quality of peanuts.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Board shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, or consumer information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, or consumer information, then the Board shall terminate such program, plan, or project.

(d) No program, plan, or project shall make any false claims on behalf of peanuts or use unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product. Peanuts of all domestic origins shall be treated equally.

**§ 1216.53 Independent evaluation.**

The Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and other programs conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this section.

**§ 1216.54 Operating reserve.**

The Board shall establish an operating monetary reserve and may carry over to subsequent fiscal years excess funds in a reserve so established; *Provided*, that funds in the reserve shall not exceed any fiscal year's anticipated expenses.

**§ 1216.55 Investment of funds.**

The Board may invest, pending disbursement, funds it receives under this subpart, only in obligations of the United States or any agency of the United States; general obligations of any state or any political subdivision of a state; interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve system; or obligations that are fully guaranteed as to principal and interest by the United States.

## Reports, Books, and Records

**§ 1216.60 Reports.**

(a) Each producer and first handler subject to this part shall be required to report to the employees of the Board, at such times and in such manner as it may prescribe, such information as may be necessary for the Board to perform its duties. Such reports shall include, but shall not be limited to the following:

(1) Number of pounds of peanuts produced or handled;

(2) Price paid to producers (entry in value of segment section on the FSA 1007 form); and

(3) Total assessments collected.

(b) First Handlers shall submit monthly reports to the Board. These reports shall accompany the payment of the collected assessments and shall be due 60 days after the last day of the month in which the peanuts were marketed.

**§ 1216.61 Books and records.**

Each first handler and producer subject to this subpart shall maintain and make available for inspection by the

Secretary and employees and agents of the Board such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall include but are not limited to the following: copies of FSA 1007 forms, the names and address of producers, and the date the assessments were collected. Such records shall be retained for at least two years beyond the marketing year of their applicability.

### § 1216.62 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart, and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members, producers, importers, exporters, or handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

## Certification of Peanut Producer Organizations

### § 1216.70 Certification.

(a) Organizations receiving certification from the Secretary will be entitled to submit nominations for Board membership to the Secretary for appointment and to submit requests for funding to the Board.

(b) For major peanut-producing states, state-legislated peanut promotion, research, and information organizations may request certification, provided the state-legislated promotion program submits a factual report that shall contain information deemed relevant and specified by the Secretary for the making of such determination pursuant to paragraph (e) of this section.

(c) If a state-legislated peanut promotion, research and information organization in a major peanut-producing state does not elect to seek certification from the Secretary within a specified time period as determined by the Secretary, or does not meet eligibility requirements as specified by the Secretary, then any peanut producer organization whose primary purpose is to represent peanut producers within a primary peanut-producing state, or any other organization which has peanut producers as part of its membership, may request certification. Certification shall be based, in addition to other available information, upon a factual report submitted by the organization that shall contain information deemed relevant and specified by the Secretary for the making of such determination pursuant to paragraph (e) of this section.

(d) For minor peanut-producing states, any organization that has peanut producers as part of its membership may request certification.

(e) The information required for certification by the Secretary may include, but is not limited to, the following:

(1) The geographic distribution within the state covered by the organization's active membership;

(2) The nature and size of the organization's active membership in the state, proportion of the organization's active membership accounted for by producers, a map showing the peanut-producing counties in the state in which the organization has members, the volume of peanuts produced in each county, the number of peanut producers in each county, and the size of the organization's active peanut producer membership in each county;

(3) The extent to which the peanut producer membership of such organization is represented in setting the organization's policies;

(4) Evidence of stability and permanency of the organization;

(5) Sources from which the organization's operating funds are derived;

(6) Functions of the organization;

(7) The organization's ability and willingness to further the aims and objectives of the Act and Order; and,

(8) Demonstrated experience administering generic state promotion and research programs.

(f) The Secretary's determination as to eligibility or certification of an organization shall be final.

## Miscellaneous

### § 1216.80 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

### § 1216.81 Implementation of the Order.

The Order shall not become effective unless:

(a) The Secretary determines that the Order is consistent with and will effectuate the purposes of the Act; and

(b) The Order is approved by a simple majority of the peanut producers as defined in § 1216.21 voting in a referendum who, during a representative period determined by the Secretary, have been engaged in the production of peanuts.

### § 1216.82 Suspension and termination.

(a) The Secretary shall suspend or terminate this subpart or a provision thereof if the Secretary finds that this subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) Every five years, the Secretary shall hold a referendum to determine whether peanut producers favor the continuation of the Order. The Secretary will also conduct a referendum if 10 percent or more of all eligible peanut producers request the Secretary to hold a referendum. In addition, the Secretary may hold a referendum at any time.

(c) The Secretary shall suspend or terminate this subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a simple majority of the producers voting in a referendum who, during a representative period determined by the Secretary, have been engaged in the production of peanuts.

(d) If, as a result of the referendum conducted under paragraph (b) of this section, the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an Orderly manner.

**§ 1216.83 Proceedings after termination.**

(a) Upon the termination of this subpart, the Board shall recommend not more than three of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to the Order;

(3) From time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the trustees, to such person or persons as the Secretary may direct; and

(4) Upon request of the Secretary execute such assignments or other instruments necessary and appropriate to vest in such persons title and right to all funds, property and claims vested in the Board or the trustees pursuant to the Order.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to the peanut producer organizations, certified pursuant to § 1216.70, in the interest of continuing peanut promotion, research, and information programs.

**§ 1216.84 Effect of termination or amendment.**

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder; or

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

**§ 1216.85 Personal liability.**

No member or alternate member of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or alternate, except for acts of dishonesty or willful misconduct.

**§ 1216.86 Separability.**

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

**§ 1216.87 Amendments.**

Amendments to this subpart may be proposed, from time to time, by the Board or by any interested person affected by the provisions of the Act, including the Secretary.

**§ 1216.88 Patents, copyrights, trademarks, information, publications, and product formulations.**

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government as represented by the Board and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 1216.82 shall apply to determine disposition of all such property.

Dated: July 26, 1999.

**Barbara C. Robinson,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 99–19461 Filed 7–28–99; 8:45 am]

BILLING CODE 3410–02–P

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## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT JULY 29, 1999

**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

Cranberries grown in—
- Massachusetts et al.; published 6-29-99

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Noxious weeds:
- Permits and interstate movement; published 7-29-99

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Fishery conservation and management:
- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; correction; published 7-29-99
  - Pacific Coast groundfish; correction; published 7-29-99

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States:
- Arizona; published 6-29-99

**LABOR DEPARTMENT**

**Employment and Training Administration**

Aliens:
- Nonimmigrant agricultural workers; temporary employment; labor certification process; administrative measures to improve program performance; published 6-29-99

**POSTAL SERVICE**

Domestic mail manual:
- Package reallocation for periodicals and standard mail (A) flats placed on pallets and new labeling list L001; implementation; published 4-7-99

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:
- Robinson Helicopter Co.; published 6-24-99

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

Cherries (tart) grown in—
- Michigan et al.; comments due by 8-6-99; published 6-7-99

Nectarines and peaches grown in—
- California; comments due by 8-6-99; published 6-7-99

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Animal welfare:
- Dogs and cats; acclimation certificates; comments due by 8-6-99; published 6-7-99

Exportation and importation of animals and animal products:
- Ports of entry—
  - New Jersey and New York; ports designated for exportation of horses; comments due by 8-2-99; published 6-4-99

Plant-related quarantine, domestic:
- Fire ant, imported; comments due by 8-6-99; published 6-7-99
- Mediterranean fruit fly; comments due by 8-6-99; published 6-7-99

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Endangered and threatened species:
- Designated critical habitats—
  - Snake River spring/summer chinook salmon; comments due by 8-2-99; published 6-2-99

Fishery conservation and management:
- Northeastern United States fisheries—
  - Northeastern multispecies; comments due by 8-2-99; published 6-1-99

**DEFENSE DEPARTMENT**

**Air Force Department**

Military personnel:
- Military personnel, employees, and dependents available to civilian authorities for trial; comments due by 8-2-99; published 6-1-99

**DEFENSE DEPARTMENT**

**Defense Logistics Agency**

Defense contracting:
- Wildfire Suppression Aircraft Transfer Act of 1996; implementation; comments due by 8-2-99; published 6-1-99

**EDUCATION DEPARTMENT**

Family educational rights and privacy
- Amendments; comments due by 8-2-99; published 6-1-99

**ENVIRONMENTAL PROTECTION AGENCY**

Air pollution control; new motor vehicles and engines; and fuels and fuel additives:
- Tier 2 motor vehicle emission standards and gasoline sulphur control requirem ents; comments due by 8-2-99; published 5-13-99
- Tier 2 motor vehicle emission standards and gasoline sulphur control requirements; comments due by 8-2-99; published 6-30-99

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Illinois; comments due by 8-6-99; published 7-7-99

Air quality implementation plans; approval and promulgation; various States:
- Delaware; comments due by 8-6-99; published 7-7-99

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Emergency exemptions; time-limited tolerances; comments due by 8-2-99; published 6-3-99

Water programs:
- Underground injection control program; Alabama's Class II program withdrawn; plic hearing and comment request; comments due by 8-5-99; published 5-21-99

**FEDERAL COMMUNICATIONS COMMISSION**

Common carrier services, etc.:
- Agency competitive bidding authority; comments due by 8-2-99; published 6-7-99

Common carrier services:
- Agency competitive bidding authority—
  - Private Mobile Radio Service channels in 800 MHz band; licensing for use in Commercial Specialized Mobile Radio systems; comments due by 8-2-99; published 7-29-99

Radio stations; table of assignments:
- Texas; comments due by 8-2-99; published 6-22-99

**FEDERAL TRADE COMMISSION**

Children's Online Privacy Protection Act; implementation
- Initial regulatory flexibility analysis; comments due by 8-6-99; published 7-27-99

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Food for human consumption:
- Food labeling—
  - Dietary supplements; effect on structure or function of body; types of statements definition; meeting; comments due by 8-4-99; published 7-8-99

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

Mortgage and loan insurance programs:
- Single family mortgage insurance—
  - Appraiser roster; placement and removal procedures; comments due by 8-2-99; published 7-2-99

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

Migratory bird hunting:
- Seasons, limits, and shooting hours; establishment, etc.
  - Meeting; comments due by 8-2-99; published 7-22-99

**INTERIOR DEPARTMENT**

**Minerals Management Service**

Federal regulatory review; request for comments; comments due by 8-6-99; published 6-7-99

**INTERIOR DEPARTMENT**

**Surface Mining Reclamation and Enforcement Office**

Permanent program and abandoned mine land

reclamation plan submissions:
Kentucky; comments due by 8-2-99; published 7-16-99

**JUSTICE DEPARTMENT**

**Immigration and Naturalization Service**

Nonimmigrant classes:
Adjustment of status; H-1 and L-1 status applicants; continued validity of nonimmigrant status, unexpired employment authorization, and travel authorization; comments due by 8-2-99; published 6-1-99
Status adjustment; H-1 and L-1 status applicants; continued validity of nonimmigrant status, unexpired employment authorization, and travel authorization
Correction; comments due by 8-2-99; published 6-4-99

**LABOR DEPARTMENT**

**Mine Safety and Health Administration**

Coal mine and metal and nonmetal mine safety and health:
Underground mines—
Self-rescue devices; comments due by 8-6-99; published 7-7-99

**LABOR DEPARTMENT**

**Occupational Safety and Health Administration**

Safety and health standards:
Tuberculosis; occupational exposure; comments due by 8-2-99; published 6-17-99

**LIBRARY OF CONGRESS**

**Copyright Office, Library of Congress**

Copyright office and procedures:
Vessel hulls; design protection; comments due by 8-6-99; published 7-7-99

**NUCLEAR REGULATORY COMMISSION**

Early site permits standard design certifications and combined licenses for nuclear power plants:
AP600 design certification; comments due by 8-3-99; published 5-20-99
Production and utilization facilities; domestic licensing:
Nuclear power reactors—
Reporting requirements; comments due by 8-5-99; published 7-6-99

**SMALL BUSINESS ADMINISTRATION**

Disaster loan program:
Pre-disaster mitigation loans; comments due by 8-6-99; published 7-7-99

**TRANSPORTATION DEPARTMENT**

**Coast Guard**

Ports and waterways safety:
Mandatory ship reporting systems; comments due by 8-2-99; published 6-1-99
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San Pedro Bay, CA; safety zone; comments due by 8-2-99; published 6-2-99
Vessel inspection alternatives:
Alternate Compliance Program; incorporations by reference; comments due by 8-6-99; published 6-8-99

**TRANSPORTATION DEPARTMENT**

Workplace drug and alcohol testing programs:
Organizations certifying substance abuse professionals; procedure to have members included in DOT's substance abuse professional definition; comments due by 8-2-99; published 6-3-99

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Air carrier certification and operations:
Aging airplane safety; comments due by 8-2-99; published 4-2-99
Air traffic operating and flight rules, etc.:
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Airworthiness directives:
Bell Helicopter Textron, Inc.; comments due by 8-2-99; published 6-3-99
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**TRANSPORTATION DEPARTMENT**

**Federal Highway Administration**

Engineering and traffic operations:
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**TREASURY DEPARTMENT**

**Internal Revenue Service**

Income taxes:
Long-term contracts, income accountability; comments due by 8-3-99; published 5-5-99
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**VETERANS AFFAIRS DEPARTMENT**

Acquisition regulations:
Simplified acquisition procedures; comments due by 8-3-99; published 6-4-99